

The Relative Efficacy of Deed and Title Registration Procedures for Facilitating Land Transactions

Charisse GRIFFITH-CHARLES, Trinidad and Tobago

Key words: land titling, land economy, land registration, land administration.

SUMMARY

Within the formal land administration system of Trinidad and Tobago are two coexisting sub-systems of land registration; the deed registration system known as the 'Old Law' and the title registration system known as the RPO or Real Property Ordinance. The deed registration system houses a majority of the existing registered parcels in the country and there is little landowner interest in converting land from this system to the registration of title system as the title system is perceived to be restrictive to transactions. These restrictions are as a result of the institutional checks and approvals required for first registration of land and for subdivision of registered parcels. This paper reports on an investigation done on the relative incidence of transactions occurring on land held under either of these systems to determine which of these systems was more conducive to formal land market activity. It was found that, in keeping with the theory, the title registration system allows more frequent transactions of sale and mortgage to occur. Values of sale and mortgage on parcels held under the title system, however, are lower than those of parcels held under the deed system. The former finding is positive news for the proposed land title registration programme that would systematically bring all land in Trinidad and Tobago under an updated title registration system. However, the current institutions and processes that will still be required for subdivision of registered parcels after the completion of the registration programme will not be able to cope with a larger volume of transactions.

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1. INTRODUCTION

Developing countries are being encouraged to embark on nationwide programmes of systematic title registration to improve their land administration systems. The main reasons for suggesting that these countries should convert from deed systems or informal systems are that landholders would benefit from an improved ability to access credit and so develop the countries' economies and that land transactions would increase resulting in economic development. This land registration process sometimes works to positively impact the economy (Feder et al. 1988, Feder and Nishio 1998) but sometimes has negative economic, social and environmental impact (Pinckney and Kimuyu 1994; Rattanibirabongse et al. 1998; Leonard and Narintarakul Na Ayutthaya 2003). The reason for the variable outcomes of title registration is that the land administration infrastructure is improved by the title registration process which creates a comprehensive database of parcels and tenure data. However, factors exogenous to the physical infrastructure, such as the state of the economy, and the political and social environment within which the land market operates also impact on the outcomes (Barnes and Griffith-Charles 2007; Deininger et al. 2003; Gould et al 2006). Factors within the land administration system such as the resources within the institutions and the level of information technology also affect the sustainability of the land administration system over the medium to long term (Griffith-Charles 2004; Proenza 2006). Trinidad and Tobago has accepted the challenge to register title systematically. The systematic process has not yet begun, and is scheduled to last for conservatively 2 decades. The time, effort and cost required to undertake the process demands a preliminary assessment of the impact the project will have on the economy given current land market, political and social conditions. The current relative level of transactions on the two existing land registration systems is investigated here in an attempt to predict what the economic outcome of the programme will be on land transactions.

2. BACKGROUND

Trinidad and Tobago is a Caribbean country comprised of two separate islands. The State owns 53% of the 512,600 hectares of land in the country, inclusive of reserves, with the remaining 47% being privately owned land. There are currently two formal systems for land registration operating in Trinidad and Tobago, the deed registration system and the land title registration system. The deed system is based on English common law and came into being in Trinidad and Tobago with the reception of English law in 1848 (Wylie 1986). The particular legislation affecting the deed system has been modified from time to time by new legislation and amendments to the old such as the Registrar General Ordinance Ch 28 No. 1, Conveyancing and Law of Property Ordinance Ch. 27 No. 12, Registration of Deeds Ordinance Ch 28. No. 2, Tobago Deeds Ordinance Ch. 28 No 3 and several subsequent

amendments. However, the primary item of legislation governing registration of deeds is currently the Registration of Deeds Act Ch. 19:06. In 1889 a Torrens type title registration system was introduced with legislation known as the Real Property Ordinance (RPO) Ch. 27 No. 11. Land held under this legislation is thus called RPO land. In the hundred years since the introduction of this voluntary land title registration system, there have been relatively few conversions from deed registration to title registration so that the majority of registered parcels are still held under the registration of deeds system. Estimates are that as few as 3000 parcels have been brought under the title registration system since its introduction (Leatherdale and Stanfield 1993). This has been partly due to the rigorous and lengthy and thus expensive procedure involved in the title registration process. In fact, voluntary title registration has had few successes if any, internationally, and it has been found that unless the process is compulsory, conversions do not readily occur and a comprehensive system is not attained (Larsson 1991). Voluntary land title registration failed to become established in the US for example despite the virtues of title registration being frequently touted (Bostic 1987; Miceli et al. 2000; Williams 1983).

The land titling process can move along a continuum between totally voluntary and totally compulsory. The UK for example has progressed along this continuum from totally voluntary land title registration initially then to compulsory registration triggered by sales and then triggered by other transactions. Trinidad and Tobago has maintained completely voluntary and sporadic first registration since the introduction of the system. The first registration process tends to be time consuming and costly since the title to the land becomes guaranteed by the State upon registration. In an effort to obviate any subsequent challenges to the tenure, the State makes very stringent legal and survey related checks on the parcel to be registered. Landowners would not voluntarily subject themselves to this process unless they are assured of some benefit. This benefit usually is the ‘quieting’ of a defective title. The efficiency of transaction to be derived from bringing land under the title system would only be experienced by someone who expects to perform several transactions on the same parcel and this is seldom the case.

Parcels that are already under the system must still undergo a strict survey related checking procedure in instances of subdivision to create new parcels from the original registered parcel. These delays are of the order of several months in Trinidad and Tobago and result in a loss of efficiency in the system and a restriction to the operations of the land market.

Similarly to the titling process, the land registration system type may also move along a continuum from deed registration to title registration. Title registration systems are not necessarily more efficient and effective than deed registration systems since a great deal of the value of the system depends on the structure of the system itself and the institutions, legislation and policies that support its functioning. Many countries still use the registration of deeds system with great success as the digitisation of the data, availability of online access to the data, unique parcel referencing and parcel information systems and checks on the data prior to registration all lead to a more efficient system that provides greater security of tenure and is more conducive to facilitating and accelerating land transactions.

3. DATA

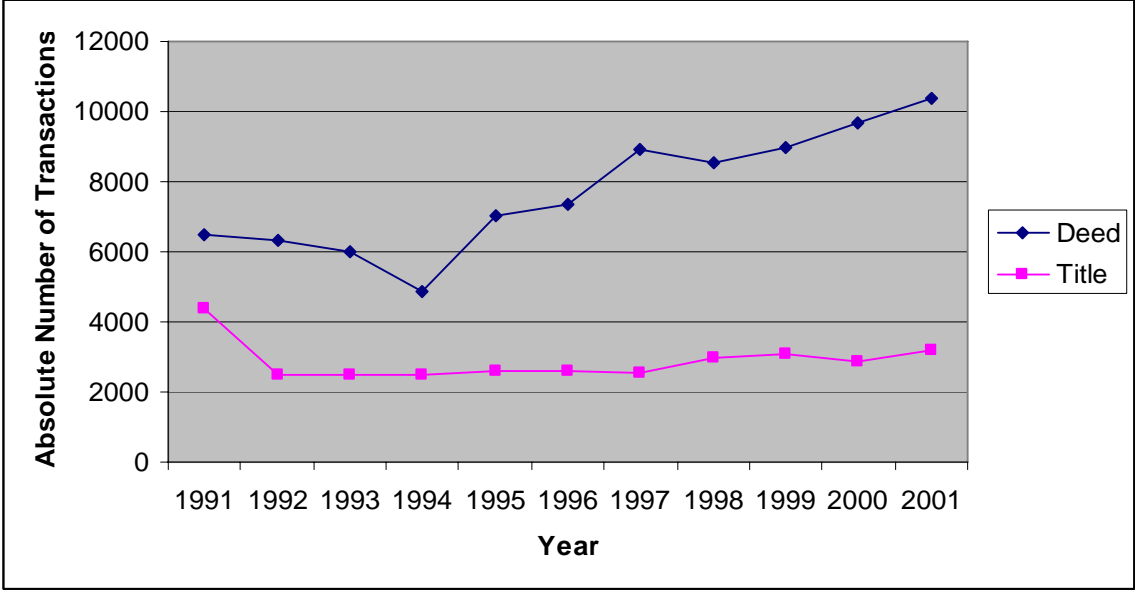
The current status of the title registration system in Trinidad and Tobago is therefore that few parcels have voluntarily been placed under the system. The majority of the parcels held under the system were initially land grants and subdivision of these grants. An assessment in 1992 stated that there were 151 applications per year for approval of first registration or subdivision RPO survey plans to the office of the Director of Surveys who must approve all such survey plans prior to registration (Kishor 1993). Both of these types of application increase the number of parcels held under the title registration system. However not all of the first registration applications are eventually approved through the legal process as the survey check is only the first hurdle in the process. The primary impetus for persons opting to put land under the system has been a fault in the title or to obtain added tenure security in cases of adverse possession claims. It is important therefore to analyse the data to determine the current status of land transactions in the country and the difference between the number of transactions taking place on either system. This would give an indication of the relative efficacy of either system for supporting land transactions.

Data on levels of sale and mortgage transactions were obtained from the Registrar General's Department, which registers deeds of transactions and also maintains the register of title for parcels under the title registration system. Data for the decade from 1991 to 2001 were used in this analysis.

4. DATA ANALYSIS

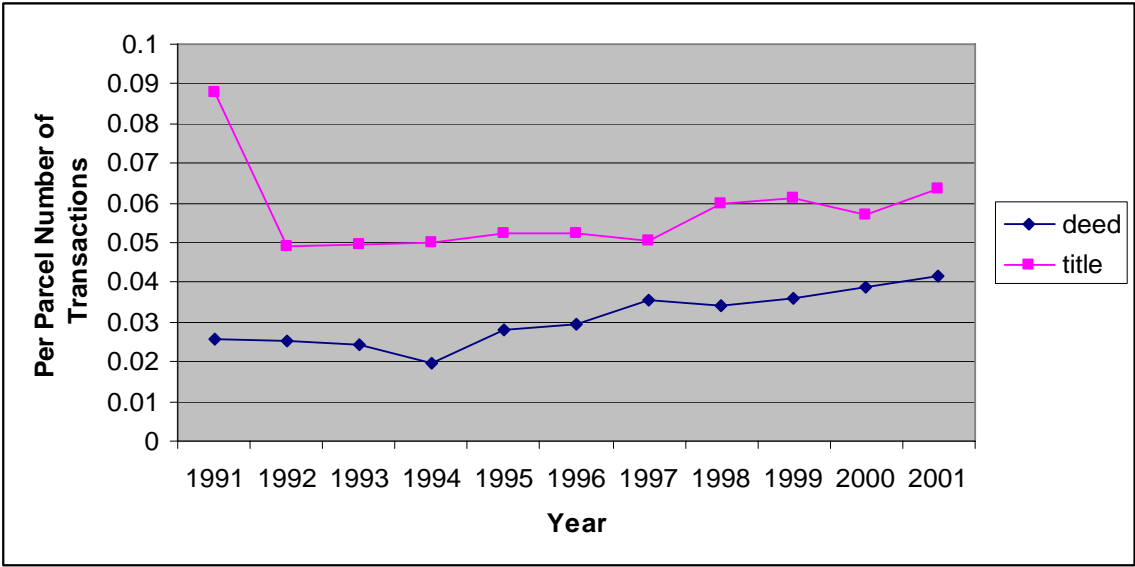
Figure 1 shows the absolute number of transactions of sale transfer under the deed system and the land title registration system in Trinidad and Tobago for the years 1991 to 2001. On the face of it, there are more transactions on land held under the deed system than under the RPO system since there are many more parcels held under the deed registration system than under the title registration system. Therefore these absolute numbers must be adjusted to reflect the differential in the number of parcels held under the deed system as opposed to the RPO system. Due to the inadequacies of the system including the manual nature of some of the process and the lack of comprehensiveness of the data, it is difficult, if not impossible, to determine the total number of parcels existing under either system and existing informally without either registration. Registered deeds are given sequential numbers based on the time of registration of the deed in the specific year. As is the norm for deed registration systems the focus of the registration is the transaction and not the parcel. Therefore the transaction is numbered and not the parcel. Under the RPO system, parcels are referenced by the volume and folio number of the book where the initial state grant document or certificate of registration is bound. Estimates have therefore been arrived at by various means and researchers quote approximate figures of 500,000 total parcels (Burns et al.), 250,000 parcels held under the deed system and 50,000 parcels held under the RPO system (Leatherdale and Stanfield 1993). The mean number of transactions per parcel is therefore shown in Figure 2.

Figure 2 indicates that there are therefore a relatively greater number of transactions occurring on the title registered parcels than on the deed registered parcels, assuming that the estimates of the relative numbers of parcels on either system are correct.



Source: Central Statistical Office

Figure 1. Comparison of the number of transactions on deed registered and title registered parcels

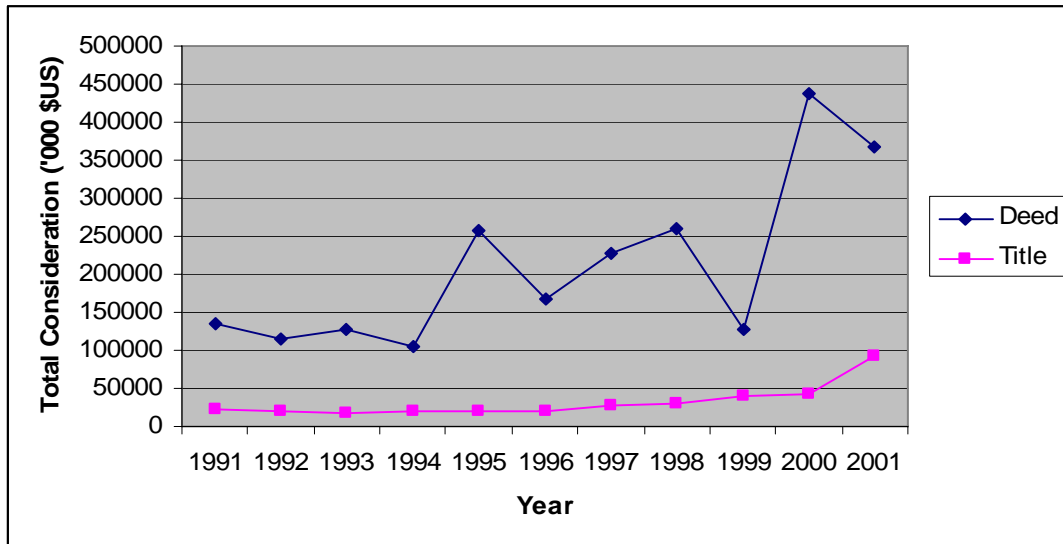


Source: Central Statistical Office

Figure 2. Mean number of transactions per parcel compared between deed registered and title registered parcels

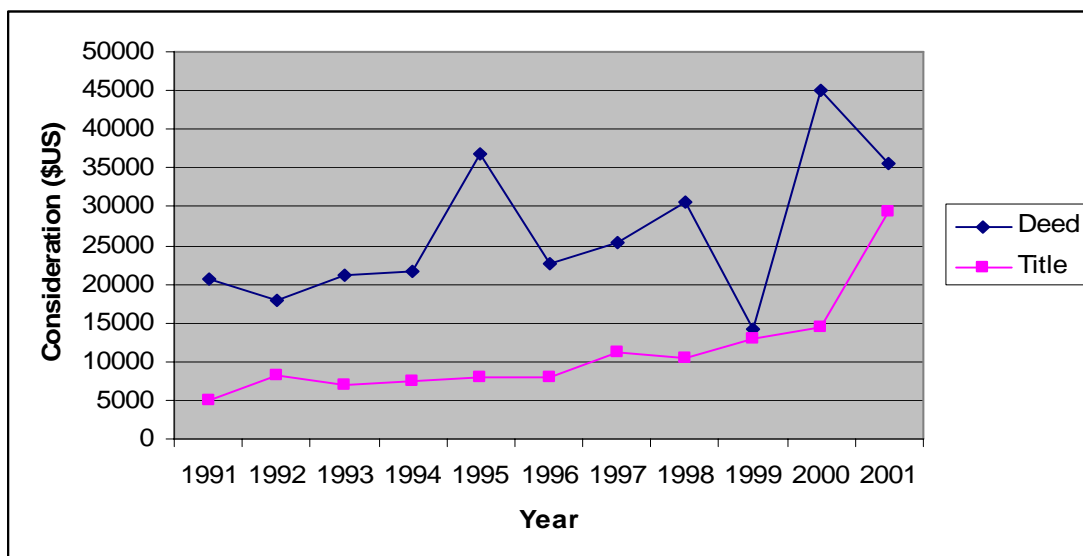
Reasons for this disparity in transaction activity may be that the land title registration system is indeed more efficient for land transactions as is posited in the theory. Other reasons may be that 1) The titled lands are in the more affluent areas where transactions and economic

development is more likely to occur, 2) the titled lands are in the more urban areas where again transactions are more likely, 3) many transactions on deed registered lands are informal since lack of deed registration has a relatively less drastic impact on legal title than does lack of title registration. To investigate further, the consideration listed on the transfers is compared between the two systems. Figure 3 shows the total absolute consideration on both systems. Figure 4 shows the mean consideration per transaction in \$US.



Source: Central Statistical Office

Figure 3. Total consideration on transactions in both systems ('000 \$US)



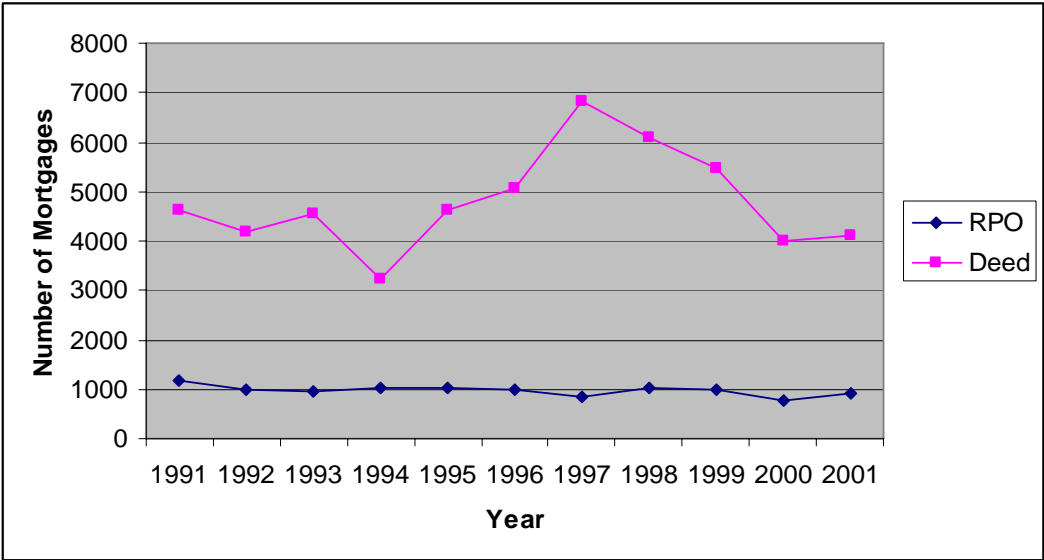
Source: Central Statistical Office

Figure 4. Mean consideration per transfer on deed registered and title registered land

The costs have not been adjusted for inflation over the period shown so it is anticipated that there would be an increase in costs over time in both registration systems. The figure indicates

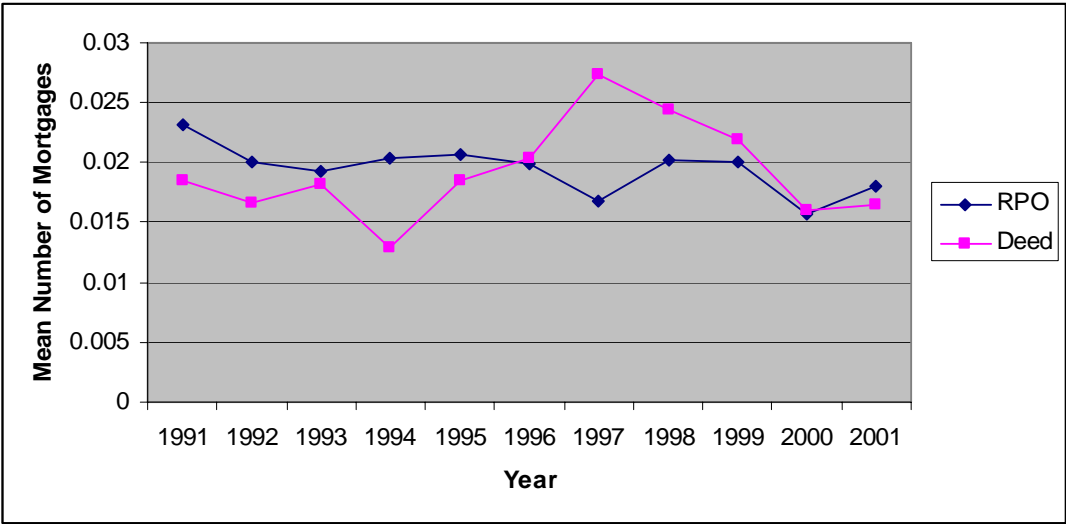
that consideration on the title registered parcels is lower than on the deed registered parcels. This suggests that the titled lands are not in the more affluent or urbanised areas. It may also suggest that titled lands are cheaper to acquire because of the lower costs involved in searching for title. It may also suggest that titled land is less attractive to purchasers because of the perception of the restrictions related to transactions but this is belied by the greater volume of transactions occurring under the title registration system.

Figure 5 shows the absolute number of mortgages on both systems and Figure 6 shows the mean number of mortgages on both systems.



Source: Central Statistical Office

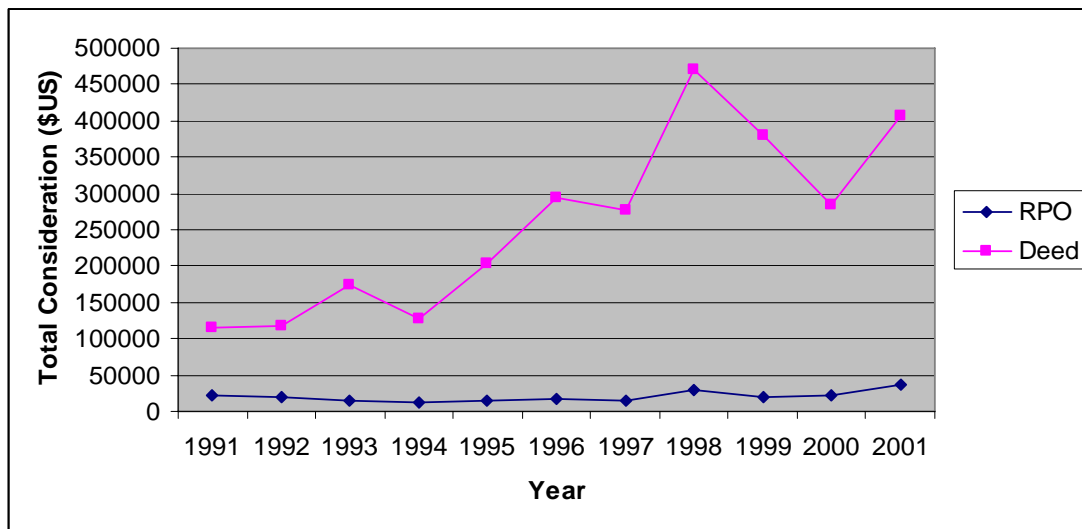
Figure 5. Absolute number of mortgages on deed registered and title registered land



Source: Central Statistical Office

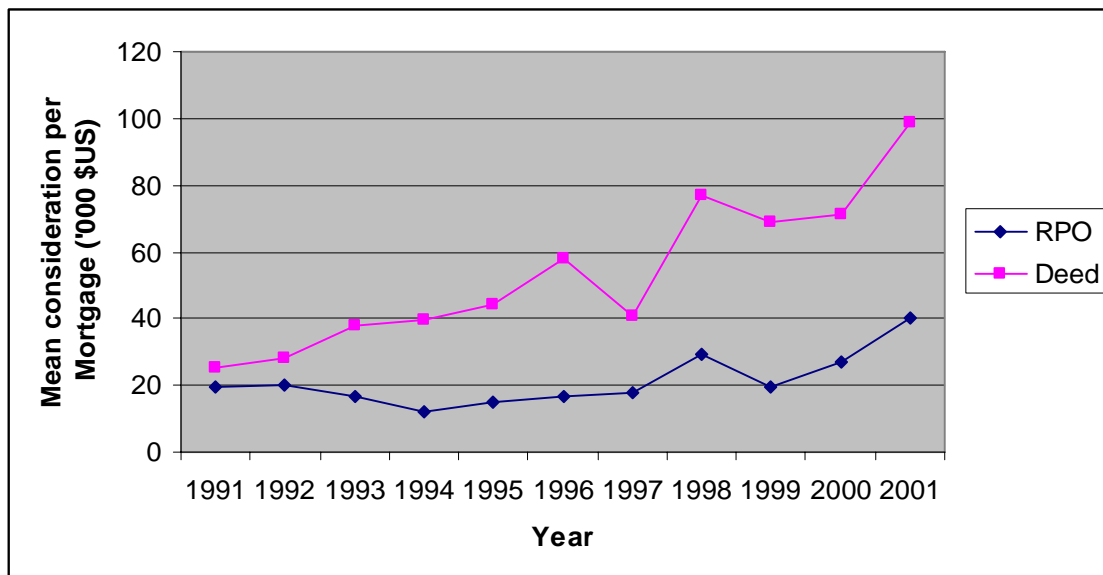
Figure 6. Mean number of mortgages per parcel on deed registered and title registered land Again, even though there are many more absolute mortgages on parcels under the deed system, the difference is less marked when the means are compared. Figure 7 shows the total

consideration on mortgages on deed registered and title registered land while Figure 8 shows the mean consideration per mortgage. The values have not been adjusted for inflation over the period shown as the relative difference is what is of importance.



Source: Central Statistical Office

Figure 7. Total consideration on mortgages on deed registered and title registered land



Source: Central Statistical Office

Figure 8. Mean consideration per mortgage on deed registered and title registered land

The graphs indicate that titled land, since they are fewer in number, attract a lower amount of consideration than does deed registered land. The mean consideration is also lower but again the difference between the mean consideration on either registration system is less marked than is the absolute difference. The consideration per mortgage is related to the consideration for sale where mortgages are taken for purchase of property so that it is anticipated that there

would be close correlation between the sale and mortgage levels of consideration. There would therefore also be close correlation between the reasons for lower values in sales and mortgages on title registered land. The reasons could be as listed previously. Further assessment of the locations of the parcels would be required to determine the reasons for the lower values on title registered parcels.

5. CONCLUSION

Trinidad and Tobago proposes to launch a systematic adjudication and registration programme in the near future, funded by the IDB. The process is supported by legislation to guide the implementation. However the implementation does not extend to proposals for increasing the capacity of the existing checking system to deal with the increased workload anticipated. The land administration infrastructure, inclusive of the surveys or cadastral arm and the tenure or registry arm, is therefore the key to sustainable land administration in this regard.

Despite the reluctance of landowners in Trinidad and Tobago to voluntarily bring their lands under the title registration system, and despite the restrictions in the time consuming and rigid procedures in the title registration system, the data show that the title registration system is more conducive to transactions of both sale and mortgage. The anticipated increase in land transactions in efficiency and number to be obtained by the proposed systematic titling programme should have positive benefits to the economy. However, the current institutions that are responsible for delays in transactions as a result of the checking and approval procedures for surveys and registration of subdivisions will be overwhelmed by the increase in the volume of applications after the programme is concluded. This situation may reduce any positive impact of title registration.

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BIOGRAPHICAL NOTES

Academic achievements:

PhD University of Florida, Gainesville

Mphil, BSc. Land Surveying, University of the West Indies, St. Augustine

Current position:

Lecturer, Department of Surveying and Land Information, Faculty of Engineering, The University of the West Indies, St. Augustine

Experience:

Land surveying, land administration, cartography, research and consultancy in land tenure, land registration systems in Trinidad and Tobago, St. Lucia,

Membership

Management, Institute of Surveyors of Trinidad and Tobago

FIG, Commission 7 Institute of Surveyors of Trinidad and Tobago delegate 2002-

CONTACTS

Dr Charisse Griffith-Charles

The University of the West Indies, St. Augustine

St. Augustine

TRINIDAD AND TOBAGO

Tel. + 868 662 2002 ext 2520

Fax + 868 662 2002 ext 3700

Email: Charisse.Griffith-Charles@sta.uwi.edu

Web site: <http://www.eng.uwi.tt/depts/survey/staff/cgriffith-charles/cgriffith-charles.htm>