



“Modernizing Conveyancing and Securing Land Tenure in The Bahamas”

The Introduction of Land Registration

Preliminary Findings & Recommendations

Land Reform Committee

- **Leon Lundy, MP Co-Chairperson**, Parliamentary Secretary- Office of the Prime Minister
- **Sharlyn R. Smith**, Co-Chairperson, Sharon Wilson & Co.
- **Creswell Sturup**, Permanent Secretary, Office of the Prime Minister
- **Myra Farquharson**, Land Reform Committee Secretariat, Office of The Prime Minister
- **Camille Gomez Jones**, Registrar General, Registrar General's Department
- **Richard Hardy**, Director, Department of Lands & Surveys
- **Brian Bynoe**, Surveyor General, Department of Lands & Surveys
- **Jerome Fitzgerald**, Senior Policy Advisor, Office of the Prime Minister
- **Antoinette Bonamy**, Director of Legal Affairs, Office of the Attorney General
- **Petrocelli Edwards**, Chief Counsel, Office of the Attorney General
- **Stephanie Unwala**, Unwala & Co.
- **Dana Wells**, Graham Thompson
- **Alistair Chisnall**, Graham Thompson
- **Kimberley Smith Rolle**, McKinney, Bancroft & Hughes
- **Nikki Boeuf**, President, Bahamas Real Estate Association
- **Christine Wallace Whitfield**, Past President, Bahamas Real Estate Association
- **Dame Anita Allen**, Ret. Justice, Law Review Commissioner, Law Reform
- **Shunda Strachan**, Actg. Controller and Chief Valuation Officer, Department of Inland Revenue
- **Patricia Jackson**, Legal Consultant, Department of Inland Revenue

Terms of Reference

- To review the present land tenure arrangements in The Bahamas and to make recommendations for the required legislative actions to bring greater clarity to the system;
- To review the overall policy on land associated with foreign investments; and
- To revert to Cabinet with a report within 90 days.

The challenges to land tenure as identified in the Land Use Policy and Administration Project (LUPAP) 2004 include, among other things:

- Overlapping claims and rights to land – where two or more people claim to own the same land;
- Uncertainty regarding ownership;
- Outdated policies for Crown Land divestment and administration which do not promote efficient and equitable use of the lands;
- Existence of Commonage land and generational property; and
- High transaction costs and mortgage-backed financing in the formal sale of land and slow process.

State of Existing Conveyancing Legislation

- Conveyancing and Law of Property Act (1909)
- Quieting Titles Act, 1959
- Law of Property and Conveyancing (Condominium) Act (1967)

Methodology

Sub-committees

- Land Adjudication & Investment Holding
- Registered Land
- Law of Property

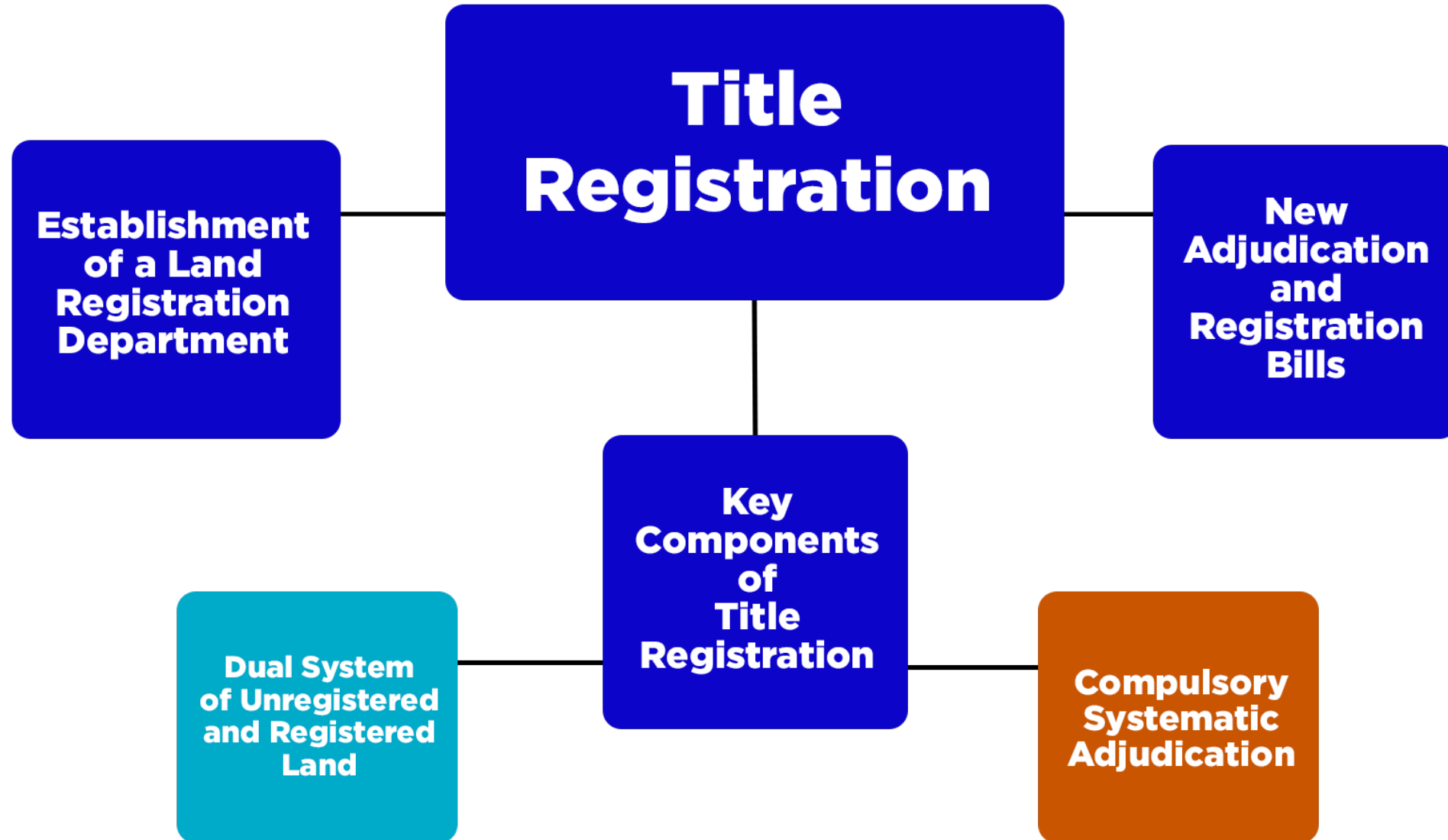
Consultations

- Barbados
- Turks & Caicos Islands
- Cayman Islands

Mapping Group

- Department of Lands & Surveys
- Department of Physical Planning
- Department of Inland Revenue
- Bahamas National Geographic Information Systems (BNGIS) Centre
- BTC, BPL, Water & Sewerage Corporation

Recommendations



Benefits of Land Registration

- Security of tenure
- Greater efficiency in property taxation
- New government fees through land searches of the Register
- Enhanced land transfer taxes
- More marketable titles
- Access to credit
- Reduction in land disputes
- Conveyancing by registration
- Facilitating land reform
- Management of Crown and Government Lands
- Improvements in mapping
- Support for land resource management

Rationale for Title Registration

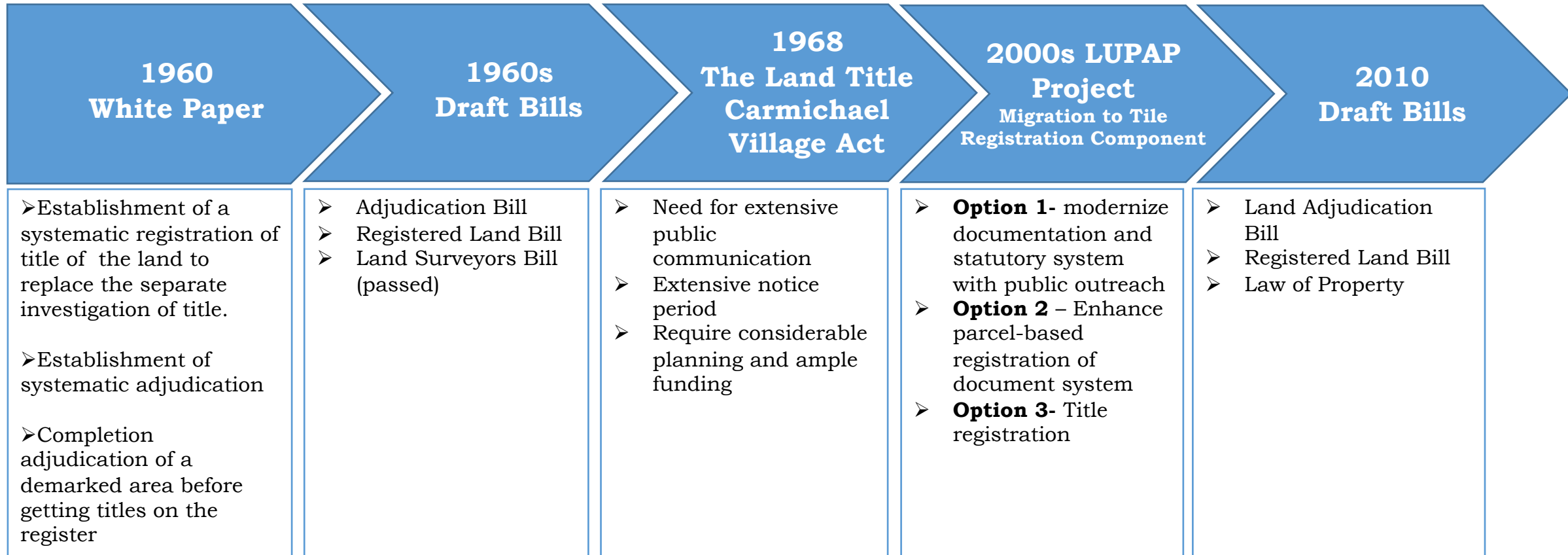
“But while the 1959 Act meets an economic and social need, there has also been a warning from a lecturer, familiar with the 1959 Act both as a legislator and as a practising member of the bar, that bench and bar must be vigilant to prevent the statutory procedure being abused by “land thieves” (the Hon Paul L. Addersley in an address to the National Land Symposium on 17 March 2001). It is no accident that the Judicial Committee has over the years heard many appeals raising questions of title to land in the Bahamas, including Paradise Beach and Transportation Co Ltd v Price-Robinson [1968] AC 1072, Ocean Estates Ltd v Pinder [1969] 2 AC 19, Higgs v Nassauvian Ltd [1975] AC 464, and Higgs v Leshel Maryas Investment Co Ltd [2009] UK PC 47”.

Anthony Armbrister et al. v Marion E Lightbourn et al. [2012] UKPC 40 Privy Council Appeal No 0034 of 2010

Operating Principles of Registered Land

- **The Mirror Principle:** The register of title is intended to reflect accurately and incontrovertibly the totality of estates and interests which at any time affect the registered land.
- **The Curtain Principle:** certain equitable interests in lands should be hidden behind the 'curtain' of a special type of trust. Thus, during a transaction of registered land, the purchaser is only concerned with the legal title to the land, which is held by the trustee and reflected on the title register.
- **The Insurance Principle:** The Government itself guarantees the registered title. This guarantee is supported by a system of statutory indemnity for loss suffered by reason of the conclusive nature of the register.

Attempts at Reform Land Registration



- **Adjudication** is a thorough investigation and determination of all interests in a parcel to ensure that ownership can be guaranteed on the registered.
- There are two approaches to Adjudication:

Systematic Adjudication	Sporadic Adjudication
Proactive and mission driven	Passive and market driven
Process is a Pro- poor and vulnerable group - the interests of all stakeholders irrespective of their means, presence or level of understanding	Favors those who can afford it
A lot of publicity is done which makes it very transparent.	Less publicity which makes it less transparent
Methodical and systematic manner, parcel by parcel for a large area.	Random manner, without following any order, schedule and based on demand by an individual land rights holder.
Initiated and substantially funded by government and may compel all landowners to participate	Initiated by an application from the land holder
Structured with regard to location and timing	Unpredictable with regard to location and timing
Capable of dealing with many land parcels at one time	Available to deal with one land parcel at one time
Produces a lot of data whose quality control concerns can be easily monitored. Such data is can be used to as the basis for +developing a Land Information System (LIS).	Data produced will be privately owned
Process is a Pro- poor and vulnerable group - the interests of all stakeholders irrespective of their means, presence or level of understanding	
A lot of publicity is done which makes it very transparent.	

New Draft Adjudication Bill

Objects and Reasons

- Provides for a process of systematic adjudication of land title to demarked areas of The Bahamas,
- Appoints a special Adjudication Officer, who has the qualification of a Supreme Court Judge,
- Set out the procedure to be followed by the Adjudication Officer,
- Specifies the principles to be followed in preparing the adjudication record and form of the record, and
- Provides for the making of objections and for hearing of the same, and corrections of the records.

Features of New Draft Adjudication Bill

➤ **Administration of Adjudication**

- Appointment of Adjudicators,
- Duties and power of the Adjudicators,
- Duties and power of Land Surveyors, Demarcation Officers and Registration Officers, and
- Demarcation & Demarcation Maps.

New Draft Registered Land Bill

Objects and Reasons

- Provides certainty of ownership of interests in land and to simplifying proof of ownership,
- Facilitates the economic and efficient execution of transactions concerning interests in land, and
- Provides compensation for persons who sustain a loss in the circumstances prescribed.

New Draft Registered Land Bill

- Establish a parcel-based register for land title
- Use of a Unique Parcel Reference Number to identify each parcel of land,
- Establish the legal ownership in land by registration,
- Establish priority for enforcement of interests by time and date of registration,
- Establish procedures to manage the land registration process,
- Maintain records in the prescribed format, and
- Establish procedures for compensating persons who sustain a loss due to the fault of the Government.
- Establish rights of appeal.

Content of The New Registered Land Bill

- Provides for the appointment of the Registrar and other officers
- Establishes the Land Registry
- Outlines duties and power of the Registrar and other officers
- Outline registration process:
 - ✓ Documentation
 - ✓ Affidavits
 - ✓ Review of Application
 - ✓ Registration gap
- Provides for Registry Maps:
 - Boundaries
 - Parcel maps
 - Index maps

Content of The New Registered Land Bill

Outlines Registrable Interests:

- Crown Land
- Estates
 - ✓ Leasehold
 - ✓ Freehold
 - ✓ Other

Provides for Titles:

- Absolute
- Qualified/Provisional
- Possessory

Compensation Scheme

LAND REGISTER (SAMPLE)		
Edition		
Opened	A - PROPERTY SECTION NO. 20B-435	
CROWN/PRIVATE	APPURTENANCES	Registration Selection
Name of Title: ABSOLUTE/ PROVISIONAL (QUALIFIED)/ POSSESSORY	A 6-ft. Right of Way on foot over 15B-244 as indicated on the Registry Map. (See filed instrument)	Block and Parcel No. Name of Parcel Unit entitlement <u>Approx area</u>
Particulars recorded in para 6 of adjudication record (provisional titles only)		
Origin of title FIRST REGISTRATION MUTATION NO.		

B - PROPRIETORSHIP SECTION				
ENTRY	DATE	INSTRUMENT NO.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF REGISTRAR
1	14/9/24	001/2023	REUNO P. WILLIAMS and MIYA P. MALCOLM as Joint Proprietors, Gregory Street, Matthew Town, Inagua, Bahamas. P.O. Box MT5500	

C - INCUMBRANCES SECTION					
ENTRY NO.	DATE	INSTRUMENT NO.	NATURE OF INCUMBRANCES	FURTHER PARTICULARS	SIGNATURES OF REGISTRAR
1	04/03/24	001/2023	Easement	A 12ft. pedestrian Right of Way in <u>favour</u> of 20B-435 as indicated on the Registry Map (see attached 20B-435)	
2	10/04/25	002/2025	Charge		
3	10/05/26	003/2026	Lease		

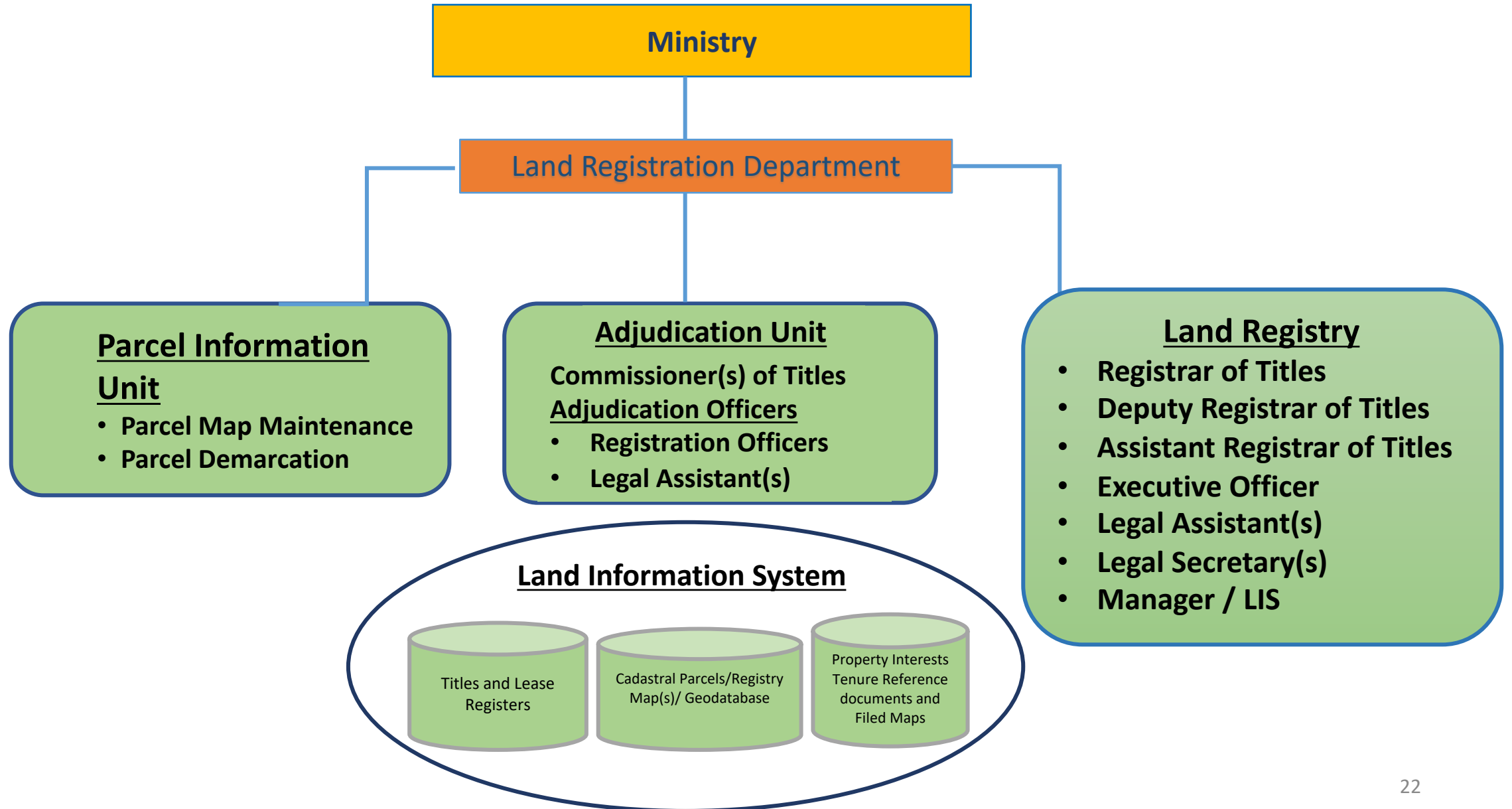
Content of a New Registered Land Bill

- Indicates and describes the effect on **dispositions of Registered Land:**
 - Registrable dispositions
 - Overriding interests
 - Statutory charges
- **Priority**
 - Registered charges
 - Tacking/further advances
- **Cautions**
- **Provide for appeals:**
 - Right to appeal
 - Appellate body
 - Jurisdiction
 - Procedure
 - Enforcement

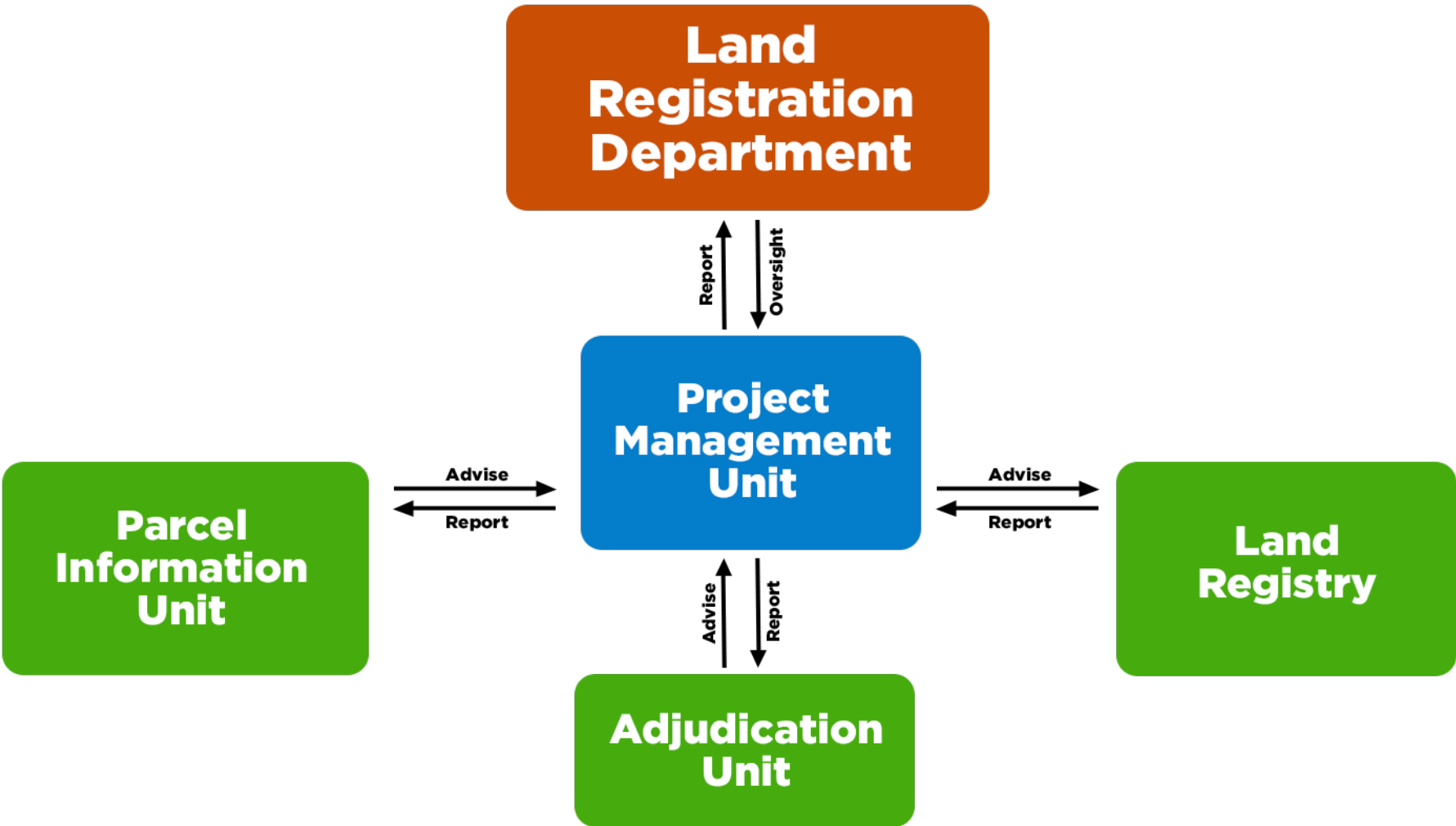
Contents of a New Registered Land Bill

- Calls for alteration of Register:
 - Powers of Registrar
 - Powers of the courts
 - Applications to alter
- Calls for Indemnification of whom (staff)
- Provides for inspections of the Register
- Provides for copies of Register
- Outlines fees
- Provides for trust in the land
- Transfers for conditions
- Easements, positive and restrictive covenants, profits and licences

Proposed Organisational Structure



Proposed Project Implementation Arrangements



NEXT STEPS

Proposed Implementation Approach

Institutional

- Assessment of user requirements
- Legal Reform
- Financial Arrangements
- Land Information Policy

Organizational

- Administrative organization and or reorganization
- Develop Data organization and Procedure standards
- Appropriate personnel arrangements
- Establish a digital register
- Communication Strategy
 - Public Education
 - Vertical and Horizontal

• Technical

- Acquire and use appropriate Technology
- Develop data compilation and maintenance standards
- Spatial Reference Framework
- Base Mapping
- Land Adjudication/Parcel Demarcation: Opportunity to increase capacity in partnership with University of The Bahamas
- Registry Map / LIS Development
- Design /Assign parcel identifiers and System access mechanisms

References

Anthony Armbrister et al v Marion E Lightbourn. (Privy Council, Heard on 29 – 30 October 2012).

Dale, P, F. & McLaughlin, D, J. (2000). Land Information Management, Land Administration (Oxford, 2000; online edn, Oxford Academic, 12 Nov. 2020) <https://doi.org/10.1093/oso/9780198233909.003.0012>

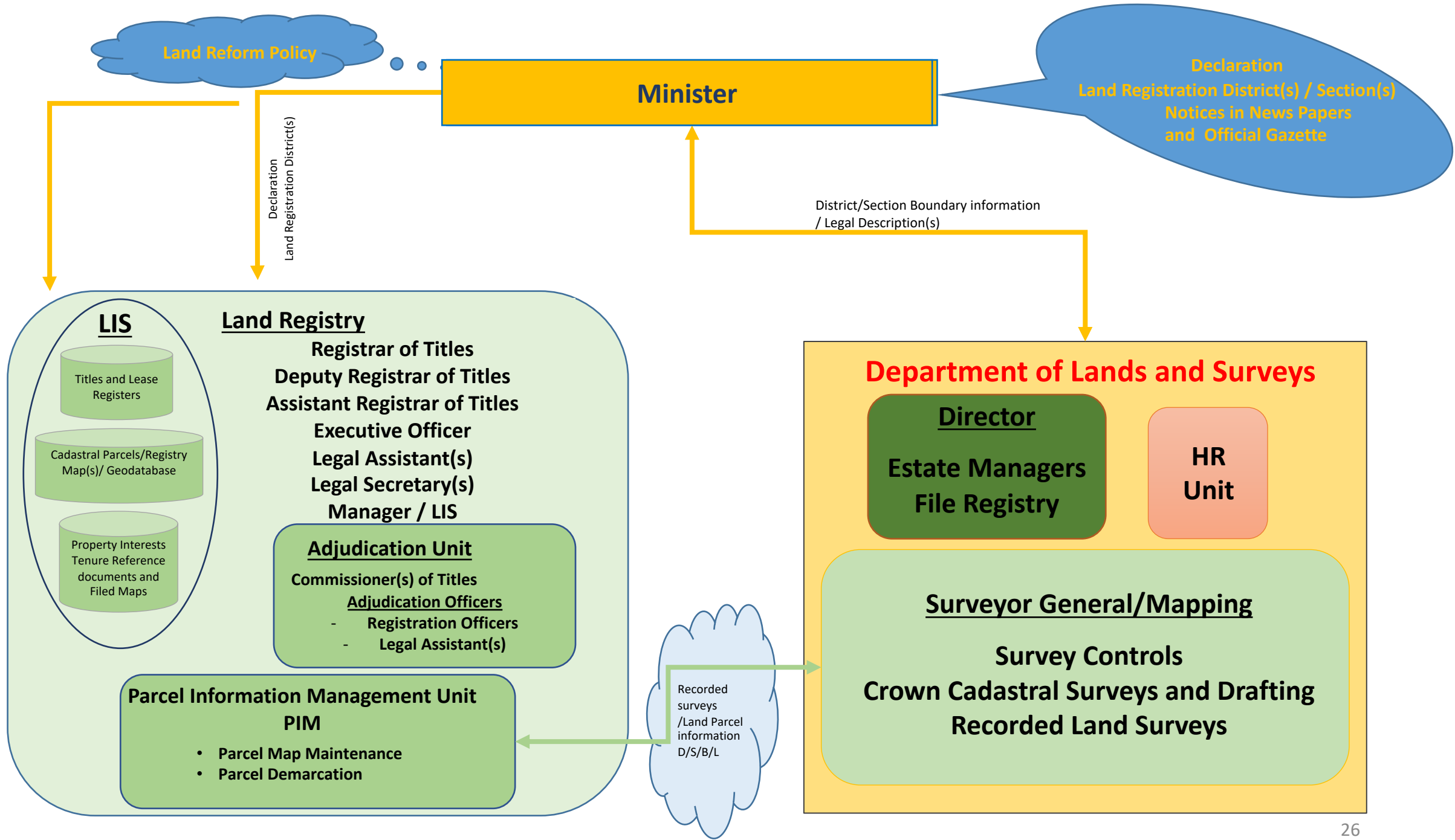
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The Land Adjudication Bill 1967. Bill No. 29. (Bahamas)

The Republic of Uganda Ministry of Lands, Housing & Urban Development. (June 2015). Systematic Land Adjudication and Certification Operations Manual. <https://mlhud.go.ug/wp-content/uploads/2013/08/Operational-Manual.pdf>



REGISTRIES RELATIONSHIP VIA Information Communication Technology

