Same tasks, different roles:

Analyzing Land Administration Systems requires differentiating activities and actors

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E-event “Mandatory Use of Notaries in Land Transactions Becoming Unnecessary?”, 12 November 2010
Mandatory Use of Notaries in Land Transactions Becoming Unnecessary?

- Not the right type of question
- Need to look at the whole process (or chain) of a land transaction
  - Who are involved
  - What do they contribute
  - What are the consequences if this was not done
- ... Breakdown procedures into ‘steps’ (Zevenbergen 2002):
Role of legal expert

- This is needed somewhere in the procedure
  - In most countries land transaction is too complex for person who only transacts a few times in his/her life
  - Financial risk if something goes wrong much larger than the costs of involving expert
  - For all experts and steps together it might become (too) expensive: high transaction costs, informal transfers
Role of legal expert

- Should the government supply the expertise, or should parties hire it?
- Do both parties need a separate expert?
- Is it mandatory, or can parties make a (informed?) decision to take a certain risk?
- What ‘guarantee’ does the government give after excepting a document for inclusion in the land registry?
Role of legal expert

- Let us focus on legally checking the document, this can be done:
  - During making of document (e.g. notary, of both parties)
  - During ‘registration’ of document (e.g. registrar, government)
  - When relying on document (e.g. lawyer, of buyer)

- But does it need to be done by more than one lawyer?
  - No, in deeds system with notary
  - Yes, in title system with notary
  - Yes, in non-notary system where both parties hire a lawyer
We are talking about the wrong question

- What tasks are needed?
  - E.g. legally checking the document
- Who performs this role?
  - A lawyer, or at least para-legal
  - Preferably only one
  - Not so important at which stage of each transaction, as long as it is done systematically
- Notary with deeds? Fine
- Notary with title? Double work
- Two lawyers on one transaction? Double work