

THE IMPORTANCE OF ENHANCING LANDREGISTRATION AND CADASTRE: SOME GENERAL CONSIDERATIONS

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INTRODUCTION

Land and the way governments deal with the land, are issues of major importance in the development of society. This does not go unnoticed at global level. In the Global Plan of Action for Sustainable Development, as adopted by the Rio Conference 1992 (Agenda 21), global objectives of combating poverty, sustainable settlement, sustainable agriculture and forestry, are directly related to the land issue. According to the Plan of Action, strengthening legal frameworks for land management and land ownership is strongly recommended to facilitate access to land for the urban and rural poor, to create efficient and accessible land markets, to establish appropriate forms of land tenure that provide security for all land users especially for indigenous people. Another Plan of Action, as adopted by the HABITAT II Conference in Istanbul 1996, considered sustainable housing not only as a roof above one's head, but also as having enough room, access to land and security of tenure. This Plan advocated providing sufficient legal security of land ownership and land use, an equal distribution of land to all people and protection against illegitimate expulsion. Governments should furthermore, as it says, aim to provide legal frameworks facilitating the land market, by clarifying the definition of land tenure and property rights, by creating clear procedures for transfer of rights, by establishing a transparent and reviewable market, by encouraging access to land especially for women, and by creating fiscal systems providing opportunities for adequate housing. One new initiative is the Global Campaign for Secure Tenure launched last December by the UN Commission on Human Settlements (Habitat) as a follow-up to the Istanbul Conference. The Campaign states that insecure tenure inhibits investment in housing, hinders good governance, promotes social exclusion, undermines long-term planning, distorts prices of land and services, reinforces poverty, and adversely affects women and children. Action point number 1 is the struggle against forced eviction, as the UN feels that forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing (see the Universal Declaration of Human Rights, 1948). In a world where 1, 3 billion people live on less than 1\$ a day (with the worst decline in living standards in eastern Europe and the former Soviet Union), 1 billion people live without adequate housing, 100 million people are homeless, 600 million people suffer from chronic under-nourishment, reviewing the way how governments deal with land and land administration seems to be *a matter of urgency*.

ABOUT LAND ADMINISTRATION

First of all it is needed to clarify how we understand the land administration activity. In this background-paper we consider land administration as the process of determining, recording and disseminating information on ownership, value and use of land, when

implementing land management policies (UN, 1996). 'Ownership' is to be seen in a broad sense: land tenure, as the mode in which rights to land are held, based on *statutory law, common law, and customary traditions*. 'Value' is to be understood as all kinds of values which land might have, dependent from purpose of the value, use of land and method of valuation. 'Land use' is to be understood as all kinds of use land might have, dependent from purpose and use, classification and methodology. 'Land' is to be considered as the surface of the earth, the materials beneath, the air above, and all things fixed to the soil, so more than 'land' alone.

Regarding the content of the concept of land administration, the following is important: land administration is *not a purpose in itself*. It aims at serving society, when implementing land policy through land management activities. 'How to deal with land', is in all countries (whatever stage of development they are) a topic of government policy (might even be expanded to 'civil society'). Such a land policy explicits the governments decisions on the whole complex of socio-economic and legal prescriptions how the land and the benefits from the land are to be allocated and therefore relates to economic development, equality and social justice, and environmental preservation and sustainable land use (UN, 1996).

Here we enter a very sensitive field, as land policy will be very much determined by *ideology*. It makes a world of difference whether capitalists or communists, whether socialists or liberals are in power: will the land and the benefits of the land be allocated to the rich or the poor, to large-holders or small-holders, to individuals or to the state. There is a growing notion that ideology, history and attitude of a people are important parameters to understanding the role and the organisation of land administration in a certain country.

From an ICT-architectural point of view, such a tool will be materialized in the form of a *geospatial data infrastructure*, ultimately in a digital environment (Groot & MacLaughlin 1999) as a network of distributed data sources. From a users perspective (functionality) land administration provides a *land information service*.

Within the institutional framework (public administration, good governance, legal framework) *land administration systems* will occur in various forms. Concerning land tenure there are deed and title registration systems, negative and positive systems of legal evidence, general and fixed boundaries, legal status according to private and public law, centralised and decentralised systems etc. and *all forms in between*. The implementation of a land policy (e.g. by land management activities) will be a joint responsibility of private and public parties, however it is the governments task to set a binding framework: 'the rules of the game'.

This puts emphasis on *institutional* matters like adoption and enforcement of laws, and the organization of the public sector, preferably based on the concepts of the 'rule of law' and 'good governance'.

A government normally has quite a few instruments to implement land policy from which the most important ones, *inter alia*, are (GTZ, 1998):

- providing security of land tenure and security of credit
- regulating the land market
- urban and rural planning development and maintenance
- land taxation

By consequence, talking about the contribution of land administration to society, this contribution can be identified in the way they facilitate these land-policy instruments.

IMPROVING LAND TENURE SECURITY

A land administration system differs from other geo-information systems in a sense that it represents more than physical attributes to spatial objects only, namely the relationship humankind to land in the form of rights, interests and responsibilities to land. These relationships might be based on statutory and common law, customary traditions, or informal use (*therefore more comprehensive than the traditional western approach to ownership, often named as 'colonial'*). As such, land administration relates directly to the norms and values in society.

Without an in-depth understanding of land tenure arrangements, it will be hard -if not impossible- to identify the processes of determining, recording and disseminating of information on tenure arrangements, which should be in place in order to deliver the services required for an adequate facilitation of security of tenure, markets, planning, taxation.

The instruments for establishing a land administration system are the adjudication process, and mapping. These instruments are focused on the recording of existing land tenure arrangements: the status quo. Both adjudication and mapping by their nature therefore have a static connotation. Adjudication after all is the process whereby all existing rights in a particular parcel of land are finally and authoritatively ascertained (Lawrance, 1985). Land adjudication does not create rights, only establishes existing rights.

Mapping, in the sense of fixing some kind of geo-reference to the object where rights to land are being exerted, also reflects by its nature the status quo. The mapping part of land administration has to provide sufficient specification on the location of the object. *It is a misunderstanding that this could only be done by defining a cadastral parcel and by a precise boundary survey.* Any sort of geo-reference which is recognised by a community will meet the demands of specifying an object. At the contrary it is a misunderstanding that object-definitions without any reference to the earth's surface can meet demands of providing evidence of the location of legally recognised land-objects.

REGULATING LAND MARKETS

The previously mentioned global summits expect that a free land market will move the key economic resource of land towards the highest and economically most efficient use. Governments are therefore challenged to encourage the creation of efficient and accessible land markets that meet the community needs by improving cadastres and streamlining procedures in land transactions. The World Bank Land and Real Estate Initiative urges the re-engineering of cadastres, developing regulatory infrastructures, and access for the poor. Access to land, and access to credit especially for the poor, is to be facilitated by simple, fast and clear procedures, cheap and accessible information on land, clear definitions of land tenure and property rights, the World Bank says. Knowing the inequitable income distribution in the world, one might wonder which instruments a government has for regulating the market in such a way that not only the rich benefit. One recent experience is that some governments in Eastern Europe are considering restricting the new open land market, as the few privatisation-oligarchs will possess the bulk of the land in the country in due course. After all, the effects of a real free open market can be *disastrous*. Without any doubt the abolition of moratoria on land transactions, the elimination of restrictions on the size of ownership, the elimination of price restrictions, the elimination of land use restrictions, the minimizing of preferential

rights for the government, will be in favor of the rich. Our view is that governments should aim for a well-balanced set of regulations to manage the land market in such a way that access to land and credit for the poor becomes attainable (Dale & Baldwin 2000). The driving force behind that opinion is that land should not only be considered a commodity, but also a scarce community resource which needs to be handled with care. We would like governments to considering regulations on the maximum size of land holdings in order to break up large holdings, on the minimum size to prevent farmers from being too small, on pre-emptive rights to acquire public land, on the approval of land-transfers for preventing undesirable changes in land use, on anti-speculation orders to avoid speculation, on moratoria on land transfer to avoid undesirable land transfers, on price restrictions to facilitate access to land by the poor, on ceilings to credit with land as a collateral to avoid a boost in foreclosures. This should be done, as we said, in a well-balanced manner, as too many restrictions and unnecessary regulations immediately will result in an informal market.

PLANNING AND DEVELOPMENT OF URBAN AND RURAL LAND USE

Regarding the third sector to be facilitated by land administration, urban and rural land use planning, our view is that planning and development should be seen as an intervention by the government in existing proprietary structures. The FAO Guidelines for Land Use Planning 1983 recognise legal and traditional ownership and usage rights for land, trees, and grazing as one of the important basic elements of information about an area when developing land-use plans. The FAO in its study on the role of legislation in land-use planning 1985 emphasizes the influence of existing land tenure patterns in the decision-making process by formulating questions like who owns the land in a legal sense, who controls the land in fact, and how are customary rights integrated into statutory law.

Although the attention of international organisations is attracted more and more by urbanisation they should not forget the *rural areas*, as the complex of food, water and land is a major prerequisite to solving the problem of 600 million people suffering from hunger.

Talking about *urbanisation*, we should however admit that the growth of urban and peri-urban areas constitute a big problem. The world's urban population continues to boom. While in 1950 30% of people lived in urban areas, the United Nations estimate that in the year 2030 60% will do so. At the same time experience shows that governments in the 'non-western' countries can by no means cope with the migration of rural people to the cities, resulting in a growing number of informal settlements. It is estimated that up to 80% of urban growth is in informal settlements. Problems accumulate dramatically, resulting in lack of services, no infrastructure, bad housing, and above all insecurity of land tenure. The World Bank estimates that 25% of all urban dwellers live in poverty. The HABITAT Global Plan of Action 1996 (mentioned earlier), considers insecure tenure as one of the most essential elements of a successful shelter strategy and no wonder that the Global Campaign for Secure Tenure has as its first priority opposition against forced eviction, because forced eviction always exists where the worst housing conditions are, always touches the poor, often is violent, and results in evictees who end up even worse off than before. *Anti-eviction laws* become more and more common which -seen from the cadastral point of view- constitutes a sort of innovative right to land, namely the right not to be kicked off the land you actually live on. A new right, which is eligible for registration in a land administration system! Providing governments

with information on who has certain rights to land, where that land is located, what size the land plot has, is a major task of cadastres. This is especially valid when a land-use plan is to be implemented. Such implementation is hardly possible when a government does not know in which private rights to land it has to interfere.

TAXATION OF LAND

Land administration traditionally serve land taxation purposes. An international survey showed that of 14 countries examined spread around the world, all had some kind of immovable property taxation (Youngman & Malme, 1994). All countries used information from cadastres, land registry and land title offices except Israel where they use information extracted from building permits. Normally the land tax is a *local tax*, as a source of autonomous local government revenue. An inventory by the UN/ECE shows that of the 40 ECE member countries, 95% operate a land-valuation system for assessing land values for taxation (UN/ECE 1998). Even in the Netherlands the legal base for the Cadastre was the Law on Land Taxation until 1973 when this law was replaced by a municipal land tax. The current multi-purpose character of the Dutch cadastre was legitimised in the new Cadastre Act 1992 along with the new Civil Code.

In 1999 the Association of Netherlands Municipalities calculated that taxes based on land value generate 4.4 billion Dfl for the municipalities, 3.7 billion Dfl for the State government, and 0.4 billion Dfl for the waterboards, while monitoring costs are no more than 200 million Dfl. For the municipalities this is 47% of their income from revenues. Countries in transition also introduce land taxation, which constitutes a joint challenge to the efforts towards privatisation, decentralisation of state power, and market development. For example, in the Republic of Estonia the revenue from local land tax already is 3% of the local budget, in the Czech Republic 3%, in the Slovak Republic 11% and in Poland even 13%. In Columbia as in many other countries in Latin America a political debate is going on highlighting the difficulty of measurement of the land tax base due to the obsolete current cadastres, reports the Lincoln Institute of Land Policy. El Salvador, recovering from civil war, is discussing the introduction of a municipal land tax for the city of San Salvador starting from a simple tax rate and growing into a more sophisticated system.

An up-to-date land administration system is an essential information source for levying land taxes. Without knowledge about taxable persons, taxable objects and market values it will hardly be possible for tax authorities to enforce land taxation. The Federation of Bosnia Herzegovina, for example, after the signing of the Dayton peace treaty is currently trying to develop local land tax based on the existing cadastral records, combined with local public housing records and information from utilities. The city of Mexicali invested large amounts in a municipal cadastre, and then succeeded in raising the land tax revenue from 5 million pesos in 1990 to 70 million nowadays.

The demands for urban services normally exceed the financial capacity of local governments, which makes land taxation a very popular means of generating revenue. At the same time a government can regulate the land market by *fiscal measures*. Well-known examples are the tax on potential value (which encourages optimal land use), penalty tax on fallow land (which stimulates the use of vacant land), progressive tax (to avoid speculation) and tax-deduction measures for mortgage rents to advance private house ownership, where the Netherlands by the way is on top of the list of favourable tax-relief policy, at least in Europe and probably in the whole world by allowing 100% tax relief of mortgage rents for a maximum of 30 years on the principal residential home.

As a sideline consequence real estate prices are very high: where there is a demand, supply adapts.

THE CONFERENCE

It is not always easy to relate investments in land administration systems to effects on economic growth and poverty alleviation. For India, McKinsey Global Institute calculated in its report 'The Growth Imperative' (2001) that removing barriers in the performance of the real estate market would propel the economic growth with 1, 3%. Apart from inflexible zoning, rent controls, protected tenancies, also the lack of good land registration and cadastre limits growth rates. The relation between land policy and poverty reduction was explored in the research report of the World Bank, 'Land Policy for Growth and Poverty Reduction' (2003). Both reports justify investment in improving land records and land access. During a conference held by the World Bank and the Ministry of Rural Development on 6th January 2006 in New Delhi, the participants even agreed that improving land administration is a top-priority for India.

Based on the earlier mentioned concepts and principles, the international conference attempts to elaborate the improvement of land registration and cadastre in India, in such a way that it provides for both conceptual and practical ideas that can be applied in reality.

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