

LAND AND PROPERTY REGISTRATION GUIDELINES FOR THE COUNTRIES IN TRANSITION*

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1. INTRODUCTION

In 1993, the United Nations Economic Commission for Europe – UN ECE – began to prepare guidelines on land administration particularly directed at countries in central and eastern Europe that were moving towards a market driven economy. The Guidelines were formally launched at the HABITAT II Conference held in Istanbul in June 1996 as one of the EC's contributions to that event. The term 'land administration' was adopted after much discussion to cover the processes of land registration and cadastral systems as well as the dissemination of the information for the purposes of managing land and property resources. In general the term 'land' was taken to include all constructions upon or beneath the surface of the earth although a distinction between land and property is significant for valuation and tax assessment.

The Guidelines do not recommend one specific design of a land administration system since conditions vary from country to country. They do recommend the adoption of a clear legislative system, and the integration of map data with text data relating to who owns the land, what is its value and how the land is put to use. The recurring theme is the need to link the three elements of ownership, value and use in a manner that can ensure sustainable development. The Guidelines describe a general framework for land administration, examine the legal framework within which the administration must operate, and consider financial and land use planning matters. The 7 chapters look at both institutional and technical issues and consider procedures whereby new systems can be introduced. In addition, as an annex, there is a practical case history – the experiences of Hungary in modernising a land registration system.

2. LAND AND LAND ADMINISTRATION

The guidelines are built on the premise that good stewardship of the land is essential for present and future generations. As countries move towards a market driven economy there are dangers that short term gains, especially by greedy enterprises, can prejudice the long term economic viability of the land. Balances need to be established that encourage immediate investment and development but in a manner that is sustainable in the long term. At least 20% of the gross domestic product of a nation can come from land, property and construction. All countries need to determine the ownership and

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value of their land and to monitor and manage its use. Collection of data is necessary but not sufficient to ensure sustainable development. Cadastral systems, for example, are a means to an end but not the end itself.

Most countries have existing systems for recording land rights or transactions and have what is often described as a cadastral system. Indeed many countries in economic transition have had several cadastral systems each with its own theme. In many cases these are at too small a mapping scale to provide guarantees for ownership and a major exercise is needed to resurvey the land. Even between countries within the European Union there are as many different systems as there are countries. There is no such thing as a European model cadastral system. Between countries, cadastral maps have different contents and style, are different scales, give different levels of guarantee, have different levels of completeness of cover, and are underpinned by different legislation.

A distinction can be made between those systems that exclusively support land ownership and conveyancing or land transfer – such as the land registration systems, including those based on the Grundbuch concept – and those originally developed for tax purposes, generally called cadastral systems. The cadastre is essentially an information system. In general, neither land registers nor cadastres have been treated as instruments of land management. In many countries, land use rights are recorded by municipalities and local authorities while ownership rights are centrally recorded in the land registers. Anyone dealing in land must make separate enquiries about what is owned and that may be done with it.

Many of the systems of land administration that have been emerging in central and eastern Europe have been driven by two forces – the need to improve agricultural production and the desire to computerise the existing record management processes. The former has in many cases led to a focus on rural land to the detriment of urban land markets. The latter has tended to focus on technological problems without proper concern for the interests of both government and private citizens and both the rural and urban sector of the economy. The Guidelines list as the potential customers:

- (a) Government: Agriculture and forestry; defence; education; environment; finance/economic affairs; health; highways and transportation; housing; internal affairs/police; justice; lands and surveys; local government; natural resources; planning and development; power and electricity; public works; trade and industry; etc.
- (b) Private sector: Architects; banks and building societies; construction companies; economists; engineers; environmentalists; farmers and foresters; financial and insurance advisors; investors; land and property owners; lawyers and notaries; marketing specialists; planners; property developers; property managers; real estate agents; surveyors and valuers; etc.

The fundamental objectives for any land administration systems should be to guarantee title and provide security for credit; to support land and property tax assessments; to provide data on the performances of land and property markets; to document the structure of land use and land use restrictions; to monitor the environmental impact of development projects; and to facilitate land reform. While seeking to do so, the system should recover fully its recurrent operating costs, even through the initial creation of a system may need to be subsidised by the State.

3. THE LEGAL FRAMEWORK

One of the distinguishing features of a land administration system is that unlike many other forms of information system, that relating to land must conform to special laws. All forms of information may be subject to intellectual property law but that relating to land is, in many jurisdictions, subject to additional regulation, including

guarantees as to accuracy. Errors in land information may not only give rise to claims for compensation but may even cause bloodshed between warring neighbours.

Some systems merely record documents without guaranteeing their content while others, either in law or in practice, will compensate land owners for any loss incurred as a result of incorrect entries in the registers. As a result, special procedures must be adopted to ensure that when data are collected, they are correct – for instance a law on Adjudication of Title may be needed to control the first registration of title to land. Unlike many items of data in a generalised geographic information system where only a general impression is being sought, in a land administration system every data item must be subject to scrutiny.

The extent to which dimensions such as the width of a property or the co-ordinates of its boundaries are guaranteed is less certain. Some systems claim to have fixed boundaries though the meaning of such a term can be ambiguous – some mean that the marks in the ground constitute the fixed points while others that the dimensions are fixed. In theory the two should agree but in practice they may not. Precise surveys tend to be expensive (for instance, the refurbishment of the Polish cadastre to a high standard of accuracy and precision would on its own cost in excess of one thousand million United States dollars) and boundaries can move with the agreement of neighbours but without resurvey.

The law may also prescribe who may conduct cadastral surveys and the procedures for licensing surveyors. It may also lay down how surveys should be carried out both in terms of methods and standards of accuracy. The law does not however place the same restrictions on data processing. Nevertheless rules of negligence will still apply, as do those relating to copyright, the ownership of data in data bases, data protection etc.

4. FINANCIAL MATTERS

One of the distinguishing features of countries in economic transition has been their lack of skills in land and property valuation. There is a distinction between transaction prices, market values, construction costs and potential site values and each way of assessing a property will place a different value on it. As land markets develop and as governments begin to consider imposing taxes on the value of either land or properties, so the need for expertise in determining value has grown. Even where the cadastral system can provide the raw data from which values can be estimated there is still a need for skills in interpreting those data.

The Guidelines explore alternative methods for determining value and identify the stages that must be gone through in order to create a set of land and property records that are suitable to form the basis of a taxation system. It is of course a matter of political judgement as to whether it is fair and equitable to impose taxes on land or property or even to tax the process of their transfer. A buoyant land market underpins the economy of many developed countries and a taxation system can detract from the growth of such a market. On the other hand, taxes on land and property are in general taxes upon wealth and hence on the rich. As such they have a degree of political appeal.

The development of any land administration system requires investment, whatever its objectives. The costs and benefits of the system need to be considered, just as the costs and benefits of computerisation need to be evaluated. Although the methodology of cost-benefit analysis has a number of weaknesses, it is a useful tool in support of making judgements and setting priorities. There are various ways of assessing costs and calculating benefit and hence of evaluating the overall risks in any investment. An improved benefit to cost ratio can come from reducing costs by cutting out wastage and by becoming more efficient, or through increasing the benefits by better marketing of land information products and services.

Selling cadastral and other land information is becoming common. Marketing such products and services necessitates the establishment of a fair price for land information.

This price must be fair to the data producers and providers, to the data users and to the geo-spatial data market as a whole. In general the State need to subsidise the creation of any new land administration system, especially where it involves the compulsory registration of the land, but there is no inherent reason why the subsequent running costs should not be fully recovered from the users of the system.

5. LAND-USE PLANNING

The key to the development these days lies in the word 'sustainability'. Land use planning is the process whereby changes in the environment can be brought about through formal procedures. Such procedures are necessary even in a market driven economy to ensure that development is appropriate and to suitable standards.

In many countries the processes of land use control have been conducted outside the system of land registration of the cadastre. Spatial planners have all too often been more concerned with the aesthetics of developments than with their impact on land markets. Physical planning, however, inevitably has an effect upon the operations of land registration since it often involves creating new subdivisions and new controls on how the land may be used. These controls affect the value of the land and property – the granting of permission to change agricultural land into land that may be used to build new houses can enhance its value by a factor of between ten and twenty times. The ownership, value and use of land are independent concepts but in practice have great influence upon each other.

The land reform programmes in most countries in economic transition have concentrated upon the agricultural sector with the objective of restoring old patterns of land ownership as best as possible. This has resulted in many cases in the restoration of an inefficient pattern of land parcels. Market forces may bring about some rationalisation but it is probable that land markets will be much more dynamic in the urban areas than in the rural. If agriculture is to be cost effective, government driven land consolidation programmes and further land reforms will be necessary in the future. Geographical information systems will be useful tools in analysing and redesigning the pattern of agricultural land holdings. The key at present however is to ensure that the data collected are necessary and sufficient for this task and that the legislative framework is in place to carry out the work efficiently and effectively.

6. INSTITUTIONAL ARRANGEMENTS

Three key elements arise in designing a new land administration system. Who should take the lead? To what extent should the system be decentralised? What should be the role of the private sector? Subsidiary issues include those related to management of the system, education and training especially in management skills, research and development, and the use of outside consultants. All these elements interact and none can be addressed outside the context of the individual country concerned. Nevertheless there are some underlying principles.

In many cases, land administrative reforms are being driven through the Ministry of Agriculture, with the encouragement of funding agencies such as the European Union and the World Bank. If the system is to respond to the complex relationship between the ownership, value and use of land then the dominance of the interests of one element (agricultural land use) is not necessarily the best way to achieve this. It is desirable that the detailed execution of a land administration system should be the responsibility of only one organisation. Co-ordination and co-operation between different governmental ministries and departments is essential and yet is often difficult due to rivalries and conflict between personalities. Lead agencies often have their own priorities and can give less weight to other interested parties. The key is to balance the interests of all sectors of the economy with the needs of the individual land owners.

A centralised system can be more easy to control but can become bureaucratically unwieldy. It can also lay greater emphasis on the needs of the administrators than on those for whom the service is provided. Cadastral systems in many countries in economic transition have been dominated by a concern to meet the requirements of authorities, even though the data gathered and processed are little if ever used. Decentralisation can bring the service much closer, both literally and metaphorically, to the actual users, namely the owners and occupiers of the land. The issue is one of economies of scale and the optimum balance will depend very much upon the size and shape of the country concerned.

It will also depend in part upon the extent to which the private sector is involved and whether the public deal directly with government officials or whether they use the services of professionals such as private sector lawyers and valuers. On the international scene there is a growing tendency to make greater use of the private sector. United Nations Agencies and many national governments are using Non-Governmental Organisations (NGOs) to do work that traditionally has been seen as the direct responsibility of governments. The reason is in part financial – the private sector and certainly NGOs can cost less than the costs with overhead of government agencies. It is also political, to harness the energy and skills and motivation of the private sector and to involve citizens more directly in the day affairs that affect them most.

7. TECHNICAL MATTERS

A major challenge facing many countries is how to resurvey their lands to the optimum accuracy and precision at minimum cost within a very limited time scale. Many western countries have spent more than a century building up accurate surveys of their lands while transition countries have little more than half a decade to try to solve the problems. Modern survey technology is still relatively expensive but permits greater productivity. In Hungary, the use of the Global Positioning System reduced the unit cost of fixing survey control points by fifty per cent but the overall cost of surveying the country remains high in comparison to the resources available.

The standards of accuracy and hence the costs of the surveys should in some way relate to the value of the land surveyed. High-precision surveys are often unnecessary provided that there is suitable monumentation of property boundaries. Quality control is essential but its imposition should not preclude the use of alternative methods of survey from photogrammetric analogue and digital techniques through to all forms of field surveying. Quality control should be applied as much to the text data as to the graphical and numerical.

The volumes of data that must be processed and disseminated encourage the use of electronic data processing. Technology such as geographic information systems (GIS) are relevant although up until now there has been little need for the more sophisticated analysis tools that are built into many GIS. The basic requirement has been for a drafting package linked to a traditional hierarchic or relational data base. Wide area networks that provide access to textual data bases are becoming established in many western countries but for those in transition to a market economy, the telecommunications infrastructure is often not yet robust enough for this to happen. The transmission of map data across such networks is still very much in the experimental stage.

8. PROCEDURES FOR INTRODUCING A LAND ADMINISTRATION SYSTEM

The Guidelines conclude by suggesting a number of issues that need to be considered if an efficient and effective land administration is to be introduced. The first is to determine what is really wanted – who will be the users and what will be their needs? The second is to create new administrative and organisational structures that can (a)

work across existing ministerial boundaries, (b) will have on-going political support and (c) are staffed by people with the appropriate technical and managerial skills. The third is to prepare new legislation covering the identification, recording, disseminating and use of information about land and property.

Within the legislative framework procedures can then be put in place to adjudicate or otherwise determine what rights in land exist, to survey the land and its boundaries and to manage the resulting land information. Management is a key element; there must be sound financial management and sensitive personnel management. The costs, benefits, opportunities and threats of the system must be communicated to the public and to politicians and decision makers. At the end of the proverbial day, the success of any system will depend upon how well it is marketed and how well it is managed.

9. CONCLUDING REMARKS

Croatia is going through a period of dramatic changes. While its history and culture are different from every other country, there is much to learn from other people's experiences. The Land Administration Guidelines offer no single solution to the problems of land management but do offer some ideas about how to improve existing systems. The best solution for Croatia will be a Croatian solution, not a system imported from elsewhere. Croatian surveyors have clearly an important role to play in seeking this solution. There is plenty of evidence of the high standards that have been set for surveying and mapping in Croatia – which is in part why one of the members of Task Force preparing the UN ECE Guidelines was Croatian. Solutions should not therefore be hard to find.

Wearing my hat as President of the International Federation of Surveyors (FIG) I can assure you that the Federation will seek to support you in your endeavours. FIG is truly international community, a fellowship through which we all learn from each other, giving as well as taking, and through which you will find friendship and good will. The world is becoming smaller and in spite of certain local, and in most cases temporary, difficulties, its boundaries are becoming more and more easy to cross. I look forward to seeing many of you participate in the affairs of FIG. I wish your Association every good fortune in all that you do.

REFERENCES

- Land Administration Guidelines with special reference to countries in transition. Economic Commission for Europe, United Nations – New York and Geneva, 1996, publication ECE/HBP/96, ISBN 92–1–116644–6.

SMJERNICE ZA EVIDENTIRANJE ZEMLJIŠTA I STVARNIH PRAVA U ZEMLJAMA U TRANZICIJI

SAŽETAK: U radu su izložene smjernice za evidentiranje zemljišta i stvarnih prava koje su usvojene u lipnju 1996. na Konferenciji HABITAT II u Istanbulu, a namjenjene su osobito zemljama srednje i istočne Europe. Smjernice ne preporučuju jedan specifični model sustava zemljišnog katastra, već usvajanje jasnog zakonskog sustava, te integraciju grafičkih i tekstualnih podataka vezanih uz zemljište, naglašavajući stalnu potrebu povezivanja triju elemenata: vlasništva, vrijednosti i korištenja zemljišta.