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Title:

**Some options for updating the Land Administration Guidelines
with respect to institutional arrangements and financial matters.**

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ABSTRACT

The 'Land Administration Guidelines' have been playing an influential role in many countries of the world, with a focus on countries in transition. It might be expected that also in the future the Guidelines would be consulted frequently. Therefore the initiative of the WPLA to evaluate the Guidelines and to identify options for updating, should be highly appreciated. In my view the Guidelines could develop in -at least-ways. First of all land administration organisations needs more support in providing evidence of their importance for society, in order to justify investments in their systems. Secondly the use of Internet will impact heavily on land administration organisations. Guiding principles are needed. Thirdly the challenges for land administration in the developing world should be included. Fourthly the need for improved customer orientation and financial transparency will urge for radical change. Updated Land Administration Guidelines could provide guiding principles on these issues. Apart from that, the recent WPLA workshops on mass valuation, public private partnership (PPP), customer-demand and feed back will give valuable input. Reports to be published on PPP and on cadastral objects can be included.

1. Introduction

It is my belief that the 'UN/ECE/Land Administration Guidelines' have been a substantial contribution to the understanding and development of land administration systems all over the world. Some indicators for that are the many translations of the document, the many times that the Guidelines are used as a reference, and the use in many academia as teaching material. The definition of 'land administration' as 'the process of determining, recording and disseminating information about ownership, value and use of land, when implementing land management policies' has proven to be a guiding principle in policy documents, research programmes, and education and training. Although other definitions are used (e.g. Dale & McLaughlin, 1999), and also the definition is challenged (e.g. Fourie, Groot & van der Molen, 2002), the definition still stands firmly especially when the concepts of 'ownership', 'value', and 'use' are interpreted in a broad sense.

The concept of '*ownership*' should -in my view- be understood as a relationship between people concerning land within any jurisdiction, so the mode in which rights to land are held, and therefore based on *statutory law, common law, and customary traditions*.

'*Value*' should be understood as all the values that could be assigned to land, depending on the purpose of the value, the use of the land, and the method of valuation.

'*Land use*' should be understood as both the use to which the land can be put, depending on the purpose and nature of the land, classification, methodology, and land cover according to defined classification systems (e.g. FAO Land Classification System, 2000).

The concept of '*land*' should be understood as the surface of the earth, the materials beneath the surface, the air above the surface, and everything attached to the surface – i.e. it should be perceived as more than just the 'land' as such.

The definition reveals that land administration is a process, which brings application of process-modelling and related topics (e.g. workflow management, process re-design, and system-support), within the scope of land administration.

Finally, the definition makes very clear that the land administration activity is not an end in itself, but that it facilitates the implementation of land management policies. So, the way land administration should work depends on the requirements defined by the various instruments, which are at the disposal of governments in order to allow appropriate implementation of its land policy.

2. Institutional matters and financial matters

Unlike many other geographic information systems, which provide information

about geographical objects and their attributes, land administration systems reflect in principle the social relationship between people concerning land, as they are recognised by a community or a state. Therefore such a system is in no way just a 'GIS'. Data recorded in a land administration system have a social and legal meaning, and are based on accepted social concepts. That concerns both to owners, rights and land objects. It is not relevant whether these concepts are laid down in the law or in unwritten customs. In both cases the way how rights to land, the right-holders and the land itself is understood by the individual people, determine the content and meaning of the land administration system. These rules, constituting the basic principles for the system and justifying its existence, form the institutional context for land administration. Without rules, land administration is not possible, as it will be without a societal and legal meaning and by consequence it will be a meaningless activity not worth to put any effort in.

Institutional aspects are therefore of paramount importance, The legal framework for land issues, and the mandates and tasks as they are allocated in the public administration to perform the land administration function, determine how the system should function. Other institutional measures also do, although they might be more specific and down to earth, like a requirement to the financial conditions that the government wants to apply on the land administration activity for example that the work should be executed under a cost recovery regime. Rules for investments in the system, the way it should operate, the way the government wants to keep control, all of these can form operational constraints.

In this paper I would like to consider some developments at institutional and financial level, that might be taken into account when the WPLA decides to start an updating process for the Land Administration Guidelines. Being aware that the Guidelines were published in 1996, and that some new developments occurred last years, I would encourage the WPLA to do so.

Not so much focussing on operational and technical issues (although of course relationships exist) I would like to mention 4 developments that –at least in my belief- should be included in an update of the Guidelines.

The first deals with the functions of land administration in society. People involved in the public administration of a country seem not always to understand the importance of land administration for vital societal functions. This might hamper positive decisions on investments in the system. It might be good if the Guidelines elaborate on the issue, especially in quantitative economic figures.

Secondly I believe that the emerging possibilities of the Internet as a channel through which both input and output of land administration systems can develop, will change considerably the way that land administration organisations work.

Thirdly the Guidelines, which mainly focus on countries in transition (this relates to the scope of the WPLA), can play a role for the developing world as much as they did for Central and Eastern European countries. The creation of news forms

of land tenure, and the integration of customary tenure arrangements in statutory law, impact heavily on how land administration should cope with these.

Fourthly institutional and financial requirements for better customer-orientation and financial transparency form interesting challenges to traditional land administration organisations.

3. **Updating option 1: justification for investments in land administration.**

Land administration serves various functions in a society. Documents like Agenda21, Habitat etc. relate the land issue very much to poverty reduction, sustainable housing, sustainable agriculture and the strengthening of the role of vulnerable groups in society, like women, farmers, indigenous groups. Land administration systems are –as said earlier- not a purpose in themselves. They are part of a broader land policy.

Land policy reflects the way governments want to deal with the land issue in sustainable development, or as the Guidelines say ‘land policy consist of the whole complex of socio-economic and legal prescriptions that dictate how the land and the benefits from the land are to be allocated’. That –of course- depends on the culture, history and attitude of a people. It is worthwhile to draw up a picture of the support land administration systems give to the implementation of (the most important) land policy instruments, as there are (GTZ, 1998):

1. *improving land tenure security*
2. *regulating the land markets*
3. *implementing urban and rural land use planning, development and maintenance*
4. *providing a base for land taxation.*
5. *management of environmental resources*

Concerning the *improvement of land tenure security*, the legal framework of land administration systems (related to the registration or recording of rights and interest in land) is determining the nature of the security provided. Within the context of the definition of these rights ‘in rem’ (as an institutional prerequisite), deed-systems provide a different (i.c. less) security compared with title systems. The combination of a strong notary-system (e.g. *Latin Notary*) and a deed registration might however provide as much security as the combination of non-authentic (underhand) documents with a title registration (strong role of the registrar).

Concerning the regulations for the *land market*, land administration systems provide transfer procedures of a different nature. On one hand there are plain procedures of submission of a transfer document and a recording after a minimum of formalities (e.g. *simple deed registration*). On the other hand there are more complex procedures regarding investigations prior to the approval of the legal impact of the transfer (e.g. *issuing of a title certificate*). Some countries

require approval by a chief surveyor, a chief planner or another authority. Advantage is that e.g. a building permit is granted together with the title, while in the first case the procedure for planning- and building permits starts just after the transfer. The process-time necessary for the transfer procedure (for example from the obligatory agreement to the official recording or registration, that is often used as a benchmark) therefore might result in a different 'value' for the applicant.

Concerning *urban and rural land use planning, development and control*, the support of land administration systems lies foremost in the phase of development and control of a given land use. This activity is to be seen as an intervention by the government in private rights to dispose. Without knowledge about who owns what and where (also in *customary areas*) land management will be hardly possible for the government. From the landowner's point of view, intervention by the government specifically limits his private right to dispose on the actual parcel, being the legal object of his private rights. The intervention takes an ultimate form in the execution of pre-emptive rights and expropriation. Regarding protection of third parties in good faith, pre-emptive rights and expropriation decisions should therefore be recorded in the land administration system.

Concerning the support of *land taxation*, the fact is that land tax is an outstanding example of local tax. Without knowledge about taxable persons, taxable objects and land values (all data to be provided by the land administration system), the generated revenue can not be high. Land taxation in many countries is based on land administration systems (UN/ECE 2001).

The *management of environmental resources* is of increasing importance. The measures a government can take, are in many cases executed by imposing restrictions on the use of land. A good example is soil sanitation, where governments can impose to owners of land a compulsory soil cleaning, and can give such measures the status of real right, which means that these orders have legal power against third parties (e.g. new owners). Therefore these public encumbrances are eligible for registration.

In meeting its functions, the land administration system should be able to quantify its importance. So far, the importance of land administration has been mainly described in qualitative terms (e.g. UN/ECE/WPLA, 1998). However, a description in economic terms, will -in my belief- definitely provide a better justification for investments. From that point of view, updated Guidelines should provide some clear case studies. Looking at my own country, the Netherlands, I would expect that the government would be happy to invest in the land administration activity if she would be aware of land administration supporting a property market worth 9,3 billion euro each year, securing mortgages of a total loan sum of 355 billion euro, and land based tax revenues of 4,9 billion euro. Even when the involved Agency not had been 100% cost recovery, it would be worth every penny of investment!

4. Updating option 2: Internet as a driver for change.

The emerging use of the Internet will in my belief impact heavily on land administration organisations. At the same time it provides opportunities for better customer satisfaction and reduction of operational costs. On one hand this pertains to the submission of official documents concerning the establishment, transfer or deletion of rights to land. With respect to this opportunity it is not relevant whether these documents are submitted by notaries public, solicitors, conveyancers or the parties involved in a transaction themselves. Increasing use of personal computers, text processing software and electronic signatures create an user demand for electronic submission of deeds or civil agreements. The development of systems for electronic conveyancing in the e.g. UK, Canada, Lithuania, and electronic submission of deeds in e.g. the Netherlands are results of this understanding.

On the other hand, users of land information also expect easy and quick access to the information sources, in order to speed up their own work processes. Users expect even more: they want to have access to all information that is relevant for the solution of their problems and business opportunities (Magis, 2002).

Geo spatial information infrastructures (GSDI) should provide the appropriate possibilities. Many countries embark on GSDI. Standards are developed to facilitate data integration (both institutional standards like ISO and de facto industrial standards like OpenGIS). At the same time GSDI provide opportunities for data sharing, which can avoid multiple data acquisition, data duplication and data storage. Sharing data on popular census, and topography are already in use, resulting in reduction of costs and improvement of quality of data through avoiding redundancy and resulting in less confusion by the users. In countries like Lithuania even a next step is taken, by bringing the main land related government registers under one organisational umbrella. A sideline advantage of the use of Internet is that also private citizens get easy access to land information.

As an example I mention the launching of a new service in my own country, where citizens now can access the land administration databases very easily via the Internet with direct electronic credit card payment. No passwords are necessary. McLaughlin even judges access to land information for the man in the street as a boost for the democratic participation (McLaughlin, 2001).

Of course there are many operational challenges, like the 7 x 24 availability of digital data in the back office of land administration organisations, the billing procedures, and the marketing communication necessary to explain the citizens what they actually get for their payments, but that is not the subject of this paper.

Whatever the case, land administration in the Internet era should definitely be part of the update of the Land Administration Guidelines.

5. Updating option 3: land administration challenges in the developing world.

In many countries the provision of *secure access to land* has been assigned a high priority as a result of the recommendations enclosed in the global plans of action drawn up by Agenda21 (1992), Habitat (1996) and Johannesburg Summit (2002), as well as the current UNCHS Global Campaign for secure tenure. The drivers that are responsible for the endeavours to improve the security of land tenure are primarily based on the worldwide attempts to eradicate poverty. Consequently measures that are implemented to encourage the security of tenure focus largely on the urban and rural poor, and on vulnerable groups (the indigenous population and women). The use of traditional forms of tenure to provide security of tenure (freehold, leasehold, etc.) have proven to be a cumbersome approach that ultimately results in lengthy procedures which offer totally inadequate access to the poor (Worldbank, 2002) (de Soto 2000). Consequently governments are adopting an innovative approach in experiments with *new forms of land tenure* and simplified land rights that can be assigned with relative ease.

Examples of these new forms are certificates of ownership (Uganda), certificates of occupancy of mailo lands (Uganda), village titles (Tanzania), native title (Australia, USA, Canada), Maori Title (New Zealand), co-titling (Mozambique), starter title (Namibia), communal property (South Africa), cadastral certificates (Albania), and anti-eviction measures (various countries). All these forms of land tenure share, to a greater or lesser extent, a common characteristic; they all *provide basic de facto security rather than sophisticated de jure security*.

Adverse possession constitutes a special situation case; adverse possession refers to the peaceful occupation of land without a formal legal agreement. National legislation that does not recognise adverse possession (in presuming a precise knowledge of the relevant boundaries, which is in practice an impossible requirement) whilst the country's society perceives adverse possession as an acceptable form of land tenure will impose a burden on the land market. However problems will also be encountered when the legislation recognises adverse possession but the land administration system is unable to cater for this form of land tenure.

Also an increasing number of countries recognise customary tenure in statutory law, like Uganda (Land Law 1998), Mozambique (Land Law 1998), Land Bill Namibia (pending), Communal Property Bill South Africa (pending), INRA LAW Bolivia (1996), Constitution Ghana (1992), Tribal land Act Botswana (1968), Native title acts (various countries). Decree 22/91 Brazil, Procede programme Mexico. It is not always clear how land administration should facilitate its functions within these new institutional environments and how the operational activities can cope with it.

In my belief this constitutes a major problem (e.g. Obree, 2002: how to register 1 million certificates of occupancy within 3 years, as the South African government aims for). Generally spoken, one might expect that this developments impact heavily on the form of spatial unit that should be used, and on the nature of information infrastructures to facilitate this (Fourie, 2002).

If we are serious in saying that land administration is a prerequisite for sustainable development (UN/FIG Bathurst Declaration, 1999), an update of the land Administration Guidelines should definitely address these issues.

6. Updating option 4: customer orientation and financial transparency.

Many organisations for land administration face similar problems. First of all there is tension between the organisational principles of the public administration and the requirements of an executive organisation. The aim for serving customers impact heavily on organisations for land administration because they need continuity in investments in ICT and organisational development. The government however is restricted to its annual budget, which can differ from year to year because of the endorsement of the Parliament, the inflexible labour conditions, changing political priorities, still apart from political instability and lack of money.

Secondly, governments tend to impose some kind of cost recovery regime on these kinds of executive organisations, causing decrease of legitimacy because customers might not be satisfied in their desire to receive value for money.

Thirdly executive organisations are almost everywhere on top of the list for staff and budget reductions because this kind of going concern activities seldom are politician's favourite priority.

Fourthly, under-investments in land administration have the potential to cause backlogs that never can be overcome in the future.

Yet there is a need for radical change in many land administration organisations. Insufficiently performing organisations supply incomplete, incorrect, out of date, not timely information on ownership, value and use of land and real estate, therefore can not serve land tenure security, the land market, and government functions like land taxation, land use planning and development, and management of natural resources. The government might create new organisations in an attempt to neglect existing cadastres, or -if the government does not take action- an illegal land market and land use will come into existence.

Land administration organisations wanting to cope with changing environment, face a real challenge. To revitalise an organisation is playing a simultaneous chess game, as the necessary changes likely consists of various components, like redefinition of mandates, tasks and responsibilities, definition of mission, vision and strategy, creation of transparent managerial and financial structures

and the establishment of processes for good customer relations.

The ambitions of organisations for land administration can hardly be met within the traditional structure of the public administration. However there are administrative reforms going on. From an historical perspective (last 20 years) one might observe many reasons for reform. Administrative reform in the United Kingdom was very much based on the opinion that the administration was too ineffective, money wasting, not able to govern, and in the grip of pressure groups and trade unions (the Thatcher era). Administrative reform aimed at restoring political primacy, reduction of the tasks of the ministries to their core-business, and the improvement of the output of the large public organisations by steering them at distance. This has been set trend since, applied by many neighbouring countries, and finally worldwide. Thus large operational public units should not be part of the core activities of ministries, but be positioned at a certain distance, ranging from agencies within the ministry to fully privatised units. Land administration normally is being considered as a public task, in the sense that one way or another the government takes responsibility for execution of the task and for good performance. A form that could suit organisations for land administration is that of a public independent agency with responsibilities that are sufficient for the goals they wish to achieve.

In land administration organisations traditionally a lot of attention is dedicated to the production processes, as daily maintenance and updating are major operational tasks. The risk is that managers pay insufficient attention to customers. It is their perception that customers disturb the production process. Creation of a special customer unit therefore is recommendable. In fact the organisation is divided in two: the factory and the shop. All the contacts with the customer are channelled through the front shop.

Customer satisfaction depends very much on the expectations a customer has, compared with his perception of the performance. The expectations of a customer are to a certain extent manageable. Of course the customer has its own channels in which he is influenced (earlier experiences, colleagues), however the organisation through good communications can encourage a realistic expectation of the customer.

A similar situation occurs towards the political people, ministers, and members of parliament. It is good to know what is going on which can be of influence to the organisation, and reversibly it is important that political people are aware of the existence of the organisation, its performance and its view to the future.

Updating the Land Administration Guidelines definitely should include these kinds of organisational issues, providing guidance for land administration organisations committed to change.

7. Conclusions and recommendations.

The various workshops of WPLA provide lots of information on the developments

in our field of work.

To refer to recent ones, the workshop in Moscow (June 2002) revealed new developments on mass valuation, especially in an environment where the land market is not yet fully operational. These lessons are valuable for countries facing similar circumstances, and there are many!

The workshop in Vienna (September 2002) addressed customer orientation and public private co-operation, especially the conditions under which this can be successful. The experiences are interesting for many countries.

The reports that are under development, like on cadastral objects and their numbering systems, and on public private partnership are expected to give good input to up to date Guidelines.

A recent WPLA-supported symposium on renewal strategies for information systems (FIG, 2003) provides many insights in the pro's and con's of different approaches.

From the institutional and financial point of view I believe attention must be paid to a better economic justification for investments in land administration systems, the impact of the use of internet, the inclusion of the specific land administration issues in the developing world and the need for radical change in case of adopting customer orientation and financial transparency.

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BIOGRAPHICAL NOTES

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