

A practical guide to preparing,
implementing and ensuring
sustainability of reforms to property
rights registration systems.

Real Estate Registration and Cadastre

Practical Lessons and
Experiences - Chapter 1. An
Introductory Chapter

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Chapter 1 The Purpose of These Training Materials – an Introductory Chapter

Gavin Adlington

Why Be Involved in Property Rights Registration?

Just over a year ago I was in a West African country walking along the roadside towards the local World Bank office when I passed a little girl, maybe nine years old, sitting with her back against the wall. She was selling peanuts. A small paper cone of nuts would cost the equivalent of a few US cents. Some hours later after coming back from the office I noticed she was still there, sitting quietly. As I looked, I saw tears streaming down her face and those deep shuddering sobs you see when someone is really upset, but she made no noise or attempt to attract anyone's attention. I asked a local man to translate so that I could find out what was wrong, and it turned out that a man had recently passed by and stolen her takings for the day. I presume that she was not in school either because her parents could not pay the school fees or because they needed the money for daily living costs. She would now have to go home and tell her parents how she had lost both the money and most of the peanuts. Of course, we bought some peanuts and made sure we paid enough for both the peanuts and the money she had lost. This was not onerous as her takings for the day were about US\$2, and it reminded me clearly why many of us work in the development sector.

The governments and the various financing partners have projects in education, health, clean water supply, social services and similar support to help little girls like this, and they often make great progress. You might wonder how working in real estate registration would in any way make an impact on the life of people like this little girl, but it does. Clear and secure land titles are one small cog in a bigger machine that can make life better for those less fortunate than ourselves. When I first went to the countries that used to form the Soviet Union, shortly after it collapsed economically, I saw much hardship, especially in the Central Asian countries in the early-mid 1990's. I recall in one country hiring the local secondary school English teacher to translate as we went around the farms to think about how to implement the early stages of the land reform. After checking how much I should pay, I handed her US\$20 for the day's work. I thought it was not much, but she was thrilled and told me it would take her months to earn so much on her teacher's salary. In another country, we hired qualified surveyors and lawyers who, like most of the population, were out of work. They were paid US\$20 per month and their assistants US\$17 per month to undertake systematic registration. At this time the general population was very poor and had many of the problems seen in Africa where children could not go to school; they had insufficient food and health care was too costly.

In our projects all we gave the beneficiaries at the end were title deeds or certificates – although we also usually included various other interventions to get banks to accept the title documents as collateral for loans, gave advisory services to improve farming and provided public information campaigns and guidance on how to acquire their property rights and make use of them. Various other financiers and civil society organizations were supporting reform activities in other related areas – and the government oversaw it all. Gradually, we saw people developing new businesses, often using small loans from the banks, and improving their income and living standards. They began to be able to afford school fees and health care, etc. They really valued the title documents they had been given, as it gave them confidence that it was their property and that any improvements and developments would not be taken from them. When going to the banks for loans, the title deed or certificate convinced the bank that the applicant was local, had roots in the community and would not abscond. The title was often used as collateral to register a mortgage even for small sums. By the end of the projects we often saw transaction numbers at the registry office increasing by a hundred per cent per year and the value of money borrowed vastly increased. In one of the poorer countries, Kyrgyzstan, the population went from not being able to get credit at all to over US\$1.3 billion in loans through mortgages - a figure that was

equivalent to 23 per cent of their GDP.¹ In that project they also regularized over 660,000 informally constructed buildings and registered the property rights for the occupants. Further details and actual figures for other countries in the region can be found in book reference Nos 11 and 37 in Annex 1.

We worked in that whole region for some 20 years or so and saw society quickly transformed and vast improvements in the standards of living – the land registration and cadastral projects across the whole of Europe and Central Asia region played a vital part in this success. The lessons learned are important when looking at how we can help other countries needing support – so that little girls can go to school and have a future.

The Economic Perspective

First, let us look at why land and registering land rights is so important from an economic perspective.

Real estate

Rowton Simpson (see No 2 in the Book List, Annex 1) starts his book with these words:

Land is the source of all material wealth. From it we get everything that we use or value, whether it be food, clothing, shelter, metal or precious stones. We live on the land and from the land, and to the land our bodies or our ashes are committed when we die. The availability of land is the key to human existence, and its distribution and use are of vital importance.

It is often the buildings and resources found within and upon the land that bring about the greatest wealth creation. In many parts of the world, the land and the buildings or objects upon the land are considered separately, and sometimes registered independently, so here we use the term ‘real estate’ to ensure that the reader appreciates that we are talking about both the land and anything firmly affixed to it.²

Registration

Real estate is registered for two good reasons:

- (i) governments need to know who lives where and who owns what so that they can manage land resources optimally and for taxation purposes, providing income to help run the government. We often focus on the ‘tax’ part, but a good government needs to know who lives where and who owns what so that they can provide the services that are needed to society, such as garbage and sewerage disposal, provision of utilities, locations of schools, transport networks, social services and hospitals, etc;
- (ii) the business community and people in general need to know with clarity who lives where and who owns what so that they can be secure when buying, selling, leasing, mortgaging or otherwise dealing with real estate. This is needed both if you want to stay on the land and not be removed by some other person or group (*for tenure security*) and if you want to deal with the real estate safely and securely for business purposes or to change habitation.

¹ See the Kyrgyz Land and Real Estate Registration project implementation completion report for further details. <http://documents.worldbank.org/curated/en/463911468047089384/Kyrgyz-Republic-Land-and-Real-Estate-Registration-Project>

² Throughout this book, the word ‘land’ will often be used, but unless it is clearly indicated to the contrary, the word can be read as ‘real estate’. This follows the English common law tradition. Similarly, ‘property’ and ‘real property’ will also be used and mean the same as ‘real estate’ as defined above.

Economics

Classical economics often refers to the key factors of production that create wealth as Land, Labour and Capital. 'Land' is the fundamental requirement and often the access and use of capital includes using real estate as collateral. The link between real estate registration and economic growth has been made for many years, with *The Economist* of May 29, 2003 stating that "land and property markets, including construction, may contribute as much as 15 per cent to GDP in a developed economy". In the UK there is approximately US\$5 trillion in the value of housing and US\$2 trillion in the value of commercial properties. The value of construction, professionals in the real estate sector and various rents etc., the contribution to GDP for housing alone is estimated at 15-18 per cent of GDP (see web site of National Association of Home Builders) and this probably rises to over 20 per cent when commercial property is included. Mortgages registered at the Land Registry in England and Wales amount to over US\$1.2 trillion. (Land Registry Business Strategy for 2017 to 2022). This is a huge amount of investment that has an enormous impact on the economy as a whole.

In order for the market to work well, the corresponding registration system must be efficient. In the book reference No 23 (see Annex 1) there is a clear diagram explaining how this linkage works. (Byamagushi, 1999). See figure 1, below. (Note: the term 'land' in this diagram includes all real estate.)

The key linkages are:

- (i) tenure security and investment linkage, because people are satisfied that any investments or developments will accrue to themselves and will not be taken from them;
- (ii) land title, collateral and credit linkage, because people now have an asset they can use to get credit and invest in their homes, land and businesses;
- (iii) land markets, transactions and efficiency linkage, because it becomes easier and more secure to buy, sell, mortgage with security and efficiency; people will be more likely to make such living and investment decisions that create and improve the real estate market, construction and business development;
- (iv) labour mobility and efficiency linkage, because it is easier to change residence or business locations and therefore for job seekers to move or rent property; it helps business and society in general to make sensible decisions with security;
- (v) the land liquidity, deposit mobilisation and investment linkage, because formalisation of real estate rights frees up the "dead capital" and, because real estate is by far a nation's most valuable asset, it needs to be utilized for the highest and best use.

The logic and economic case for the registration of property rights is also made in the major textbooks, references Nos 1-7 in Annex 1. Byamagushi's 1999 paper covers this in more detail and De Soto brings out the importance of registering property rights in *The Mystery of Capital* (see book reference No 24 in Annex 1), where the importance of registration to a country to release 'dead capital' is dealt with in detail. Book reference No 35 of Annex 1 deals with land markets in general and book reference No 37 uses the linkages suggested by Byamagushi for case studies with actual data and results from 13 countries following land registration projects in the former socialist block. Book reference No 11 deals with the economic impact of projects the Europe and Central Asia region, as well as other lessons learned.

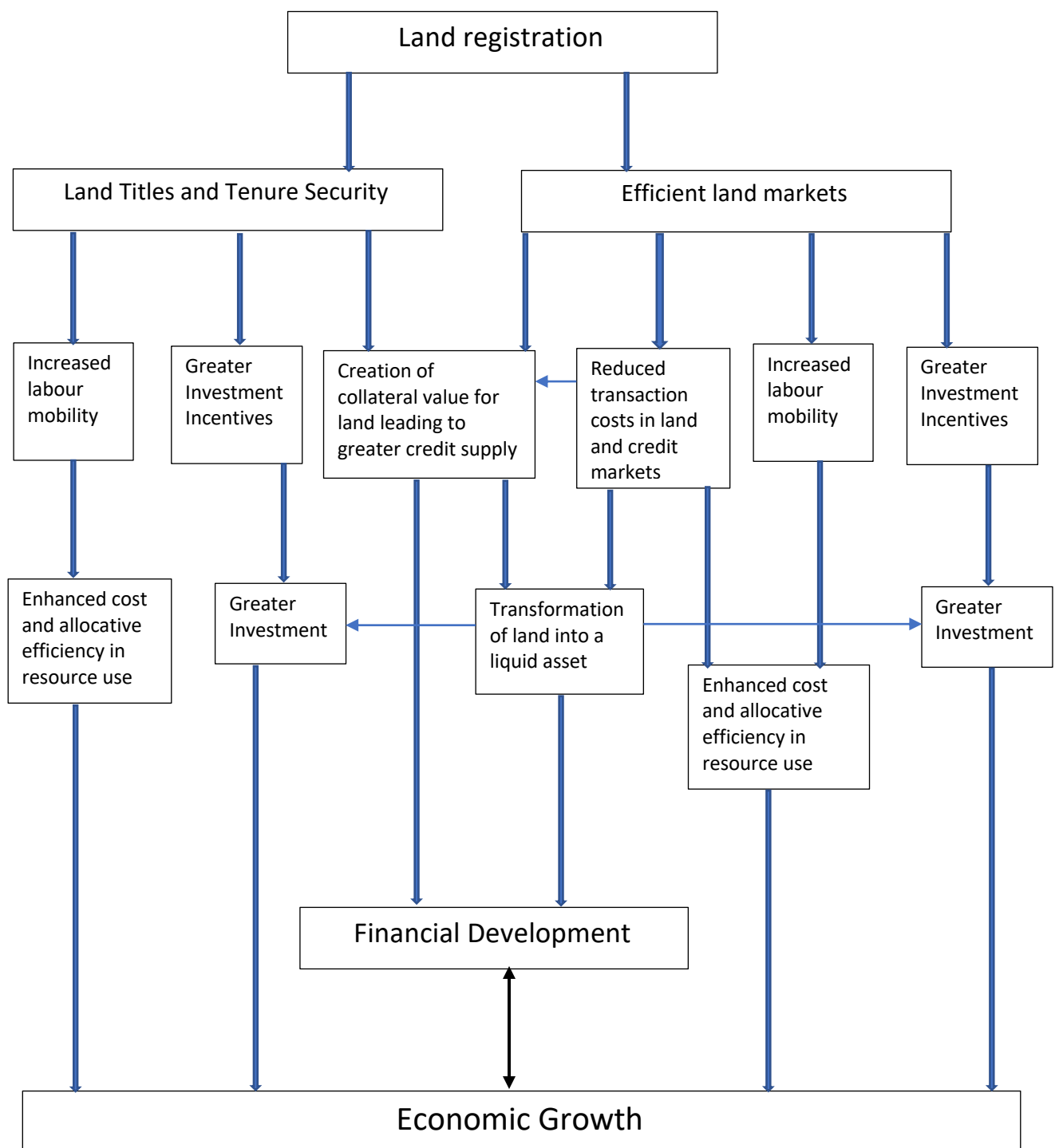


Figure 1: Relationship between Economic Growth and Land Registration (Byamagushi, 1999)

In the year 2000, in *The Mystery of Capital* (Book No 24 in Annex 1) de Soto argues that an effective registration system is a necessity if an economy is to be successful. He looks at the countries of the former socialist block in Eastern Europe and Central Asia and compares them with poor systems in the developing world. De Soto states ‘... today they look astonishingly similar: strong underground economies, glaring inequality, pervasive mafias, political instability, capital flight and flagrant disregard for law most people cannot participate in an expanded market because they do not have access to a legal property rights system that represents their assets in a manner that makes them widely

transferable and fungible...'. If de Soto were to review the situation now, some 20 years later, he would see a completely different situation. Indeed, if you were to check the *Registering Property* ranking in the annual report on *Doing Business for 2019*³ you would find six of these countries in the top 10, 10 in the top 20 and 13 in the top 30, etc. Only two can be found in the bottom half of the 190 countries measured (at 98 and 99), with one country not included in the list. Some 24 of the 30 countries had World Bank funded projects dealing with property registration and cadastre. There are many lessons to learn from the projects in the post-socialist countries and these are included within this book. Of course, the established countries in North America, Australasia and Europe already had good registration systems, and score well in the *Doing Business* indexes, but other parts of the world have not seen such significant impacts, despite having major projects on the registration of real estate rights.

The economies of the former socialist block of Europe and Central Asia have been transformed in these twenty years, but the improvements that might be made in registering property rights are not enough on their own to make a difference in the economy. Those countries had an overall program of economic reform; improving the security of real estate rights was just one of them. Unlike many of the countries in the developing world, they also had a history of strong government, good record keeping and a good tertiary education system. Many countries in the region included within their reforms the transferring of government-controlled lands and residential properties to the occupants free of charge. This introduced a huge number of very valuable, fungible assets into the economy that the public could utilise for economic benefit. It is probably true to say that the positive economic changes many countries desire will not occur just because of reforms in the real estate sector, but that they are unlikely to occur without addressing deficiencies in the real estate rights sector.

The Wider Context

The above text is written from an economic perspective and does not take into account the needs of society to congregate and live together socially, nor the very intense emotional connections to real estate that has been in family ownership for generations or where ancestors are buried. The stories of people holding up huge development projects for sentimental reasons, despite being offered huge sums of money for their land or house, have made good movies over the years. Large tracts of land across Africa, South America and Asia have been held in customary or indigenous ownership, with full tenure security through local acceptance, for centuries.⁴ Systems have worked well, but disruption has been occurring in the last 60 or more years as land has become more scarce, and therefore valuable, and the danger of the wealthy, the elite or governments taking land that they wanted or erroneously thought was unused. Although there may not always be great economic benefit to clarifying and protecting these rights, there is a definite need to protect citizens from losing their heritage, their homes or their means of livelihood, and thus the registration and protection of these rights is fundamental for peace and security. Increasingly, it has turned out that failure to protect indigenous rights in forested areas or large pastoral lands is adversely affecting the climate as well as the livelihoods of the indigenous communities.

Local government authorities usually have a key role in deciding how land might be used in their jurisdiction, such as what can be built on the land or what activities can be undertaken there. This role overrides the supposed freedom that landowners have to utilize their property as they wish. Thus, in many countries an investor (or any person involved in a transaction) will need to check whether the

³ The *Doing Business* report measures how business friendly a country is for medium sized businesses. They measure 11 different aspects that businesses need for investment and growth, one of which is the ease of registering the sale of a warehouse for business purposes. It measures the speed, cost and number of procedures that the parties have to go through, and also measures the quality and national geographic coverage of the systems in use.

⁴ Tenure security does not necessarily need a certificate or document. It is a term associated with ensuring that people with rights acceptable to the community are protected in law and practice. It is now common that a certificate (or title document), record or register held by government bodies provides an extra level of security that will stop the elite or wealthy from taking land from people who have insufficient knowledge or power to protect their own rights.

land has all the necessary permits for development and check the restrictions on usage and environmental considerations before purchasing or using the property. Also, apart from concerns over unfair acquisition and use of land held for generations by local communities, a major concern has been the rapid growth of cities as people migrate from rural to urban areas. In 1950 about 30 per cent of the world population lived in cities, but by 2018 this was 55 per cent. The greatest growth is in Africa and Asia, where urban populations are expected to triple in Africa and increase by 60 per cent in Asia by 2050 (UN, 2018). If the local government manages its jurisdiction well and caters properly for housing and business needs, then both the social and economic benefits will be felt. However, it is very common that housing land is not provided in a timely fashion and large informal areas with poor sanitation, transport and facilities develop. The role of local government in good land management is key, although not the subject matter of this book.

Generally speaking, if the economy is progressing well, then all of society benefits through greater employment opportunities as well as the more productive use of the land. The important linkage between sustainable development, including greater productivity and better land usage, with land administration systems in general, is described very well in Figure 2 below, which is taken from a paper by Enemark, Williamson and Wallace on *Building Modern Land Administration Systems in Developed Economies*, Journal of Spatial Sciences in 2005 and reproduced in book reference 7 in Annex 1. More detail can be found in that book.

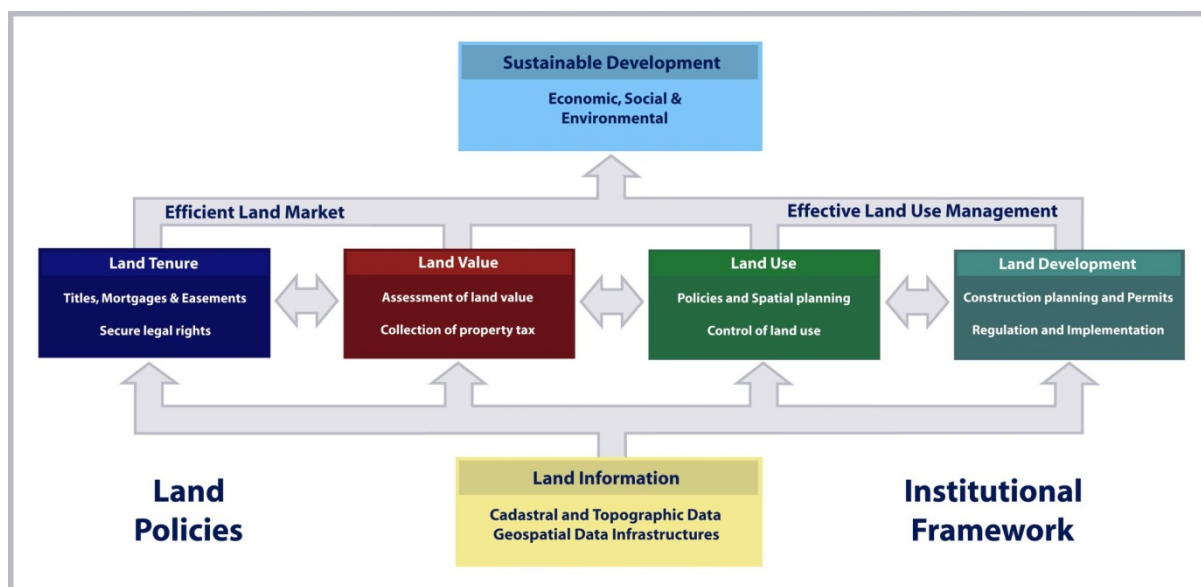


Figure 2: Context of Land Administration (Enemark et al, 2005)

General Background to Registration and Cadastre

The following text deals with some of the fundamentals of real estate rights, recording titles and boundaries of properties.

Land and Real Estate Rights

From earliest history, property rights needed to be protected and there are early examples, such as when Jeremiah the Prophet (about 626 BC) bought some land from his cousin. The Bible text states:

“I bought the field at Anathoth from my cousin Hanamel and weighed out for him seventeen shekels of silver. I signed and sealed the deed, had it witnessed and weighed out the silver on the scales. I took the deed of purchase – the sealed copy containing the terms and conditions, as well as the unsealed copy, and I gave this deed to Baruch, son of Neriah, the son of Mahessiah, in the presence of my cousin

Hanamel and of the witness who has signed the deed and all of the Jews sitting in the courtyard of the guard. (Jerimiah 32 v 9-12). Later the text notes that he put the deed in a clay jar “so that they will last a long time”.

This gives us some basics. The process makes sure that the piece of land has not been stolen and the owner mysteriously disappears, or that the owner does not sell the same property to two different people. Public acceptance and publicity are very important. In this example, all the neighbours and the people of the community recognise that Hanamel sold the property (the field of Anathoth is the object description) freely of his own will. The transaction is documented and witnessed, and the documents stored away safely in a place that anyone can come along later and check. The neighbours and community recognise and accept the new owner. This is an important principle that is still applied to this day in keeping registers open to the public. Whenever a program to create deed or title registers⁵ or adjudicate the rights of individuals claiming real estate is involved, this ‘public viewing and acceptance’ is an essential element and it is almost always included in the law to register a property for the first time. In countries that have retained a level of customary land ownership (very commonly in Africa, but many other regions also have customary or verbal systems) the principle that the community agrees to the allocations of land or transfer of land, with the information held securely either verbally or in written form by the elders, headmen and chiefs, still works well in many places.

It was rare in olden times for people to move far from their original home, but as it became more common, a deed of sale or a deed showing money loaned using the land as collateral, needed to be stored in a safe place. This was often a local courthouse, so that it was publicly available to all to check and could be protected from theft, changes, destruction, etc. Sometimes the public official that kept these records in their office was a notary. In these early years, there were few real landowners and most people neither owned land nor travelled far from their original place of birth. There was a lot of trading and business development in the middle ages and forms of documents and safe storage of the documents became more structured, but the major changes that came about were because of the much more widespread changes that arose from the agrarian and industrial revolutions in the 18th and early 19th centuries in Europe and North America. At this time there was mass movement to the cities, businesses were established and flourished, and transactions became more frequent and more complicated. Also, at this time, there was a demand to protect newly acquired land rights by settlers in the colonies in the Americas, Asia, Australasia and Africa, which occurred at about the same time.⁶ Systems developed and were implemented by governments around the world to protect people’s real estate rights and to facilitate the real estate market operations for economic growth. It was not only ownership rights that needed protection and facilitating – other rights such as leases, rights of way across another person’s land, rights to extract minerals or other wealth from the land, rights associated with mortgages, rights of third parties to prevent an owner blocking their light or view, or using the property for unacceptable purposes (such as creating excess noise or pollution in a residential area) could be included.

Tax Records

Nations also often collected land records for tax purposes, with examples going back as far as Egypt in 3000 BC, usually to fund governments or their wars. The term ‘cadastre’ is often used. A cadastre is really a record of all land parcels and information about those parcels in a jurisdiction, and it is used for various purposes, depending on the needs of the country concerned. Some include value and use, others information about ownership and yet others information about soils and productivity. Cadastres for taxation purposes became quite common long ago – such as in China and India around 1000 AD; Britain’s Domesday Book in 1086; records in the Ottoman Empire in the middle ages and thereafter; and then more comprehensively across Europe, largely by countries emulating the very successfully established national cadastre in France ordered by Napoleon in 1790. The principle was that every piece

⁵ Chapter 2 includes a section that explains the difference between a register of deeds and a register of title.

⁶ Even though there is some contention about the way in which these land rights were acquired, they still became the foundation for recording property rights and the famous ‘Torrens System’ that originated in Australia had the objective of protecting settlers’ land rights.

of land would be recorded on a map so that none would be missed when requiring taxes to be paid. The value of the land could be included so that those living on more valuable land paid more towards the tax revenues. In some countries, the term ‘cadastral survey’ came to be used instead of the term ‘boundary survey’ when recording the boundaries of ownership, even though that country might not have a complete cadastre recording all properties.

The Modern Registration and Cadastre System

The comments above are just a very brief overview leading to the decisions in the mid 19th century by countries around the world to address the problem of recording all real estate rights (for tax and tenure security) and to cater for the increasing numbers of people owning real estate and those moving to towns where they might acquire such rights. This, then, encouraged property markets to operate more efficiently and securely for the overall good of the economy and social cohesion. In the mid 19th century, countries in Europe began linking their cadastres with legal records. In much of Northern, Eastern and Central Europe they created land books or land registers. However, in those countries of Southern and Western Europe that had a French or Spanish influence, the link between the cadastre and legal records was more tenuous. The Ottoman Empire was doing something similar to link existing cadastres to deeds registries.

In many of the colonies and ex-colonies of the major European powers, formal systems similar to the European models were established. In England and Wales, they developed the Land Title Registry System and Sir Robert Torrens introduced the system that goes by his name in Australia. In fact, many of the countries were in contact and learning from each other in the first half of the 19th century, but each developed the systems suited to their own history, culture and needs. Since then there have been enormous changes as systems developed to meet the needs of society. Computerisation has made systems much more useful and efficiently accessible, and the land records about ownership and the graphical record of boundary positions have become an integral part of the current information society. A much greater in-depth analysis of the history is contained in the textbooks, book references 1-7 in Annex 1. A good summary of the modern cadastre is found in page 127 onwards in book reference 7 (Annex 1), summarised in their ‘butterfly diagram’ in Figure 3 below.

Significance of the Cadastre

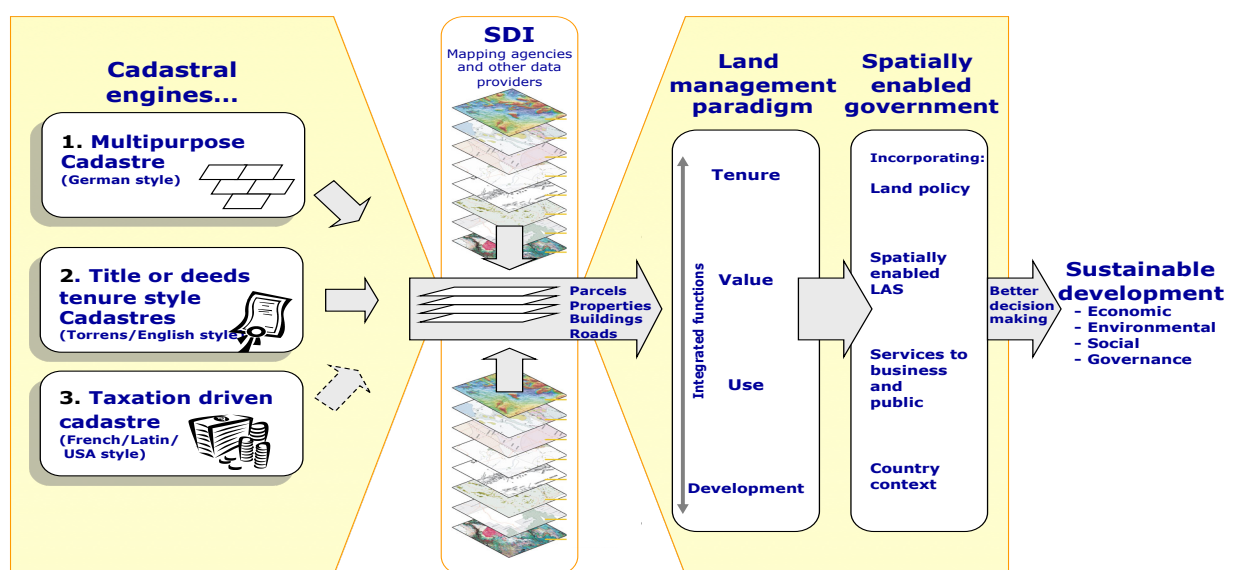


Figure 3: Significance of the Cadastre (William et al, 2010)

Projects Involving Real Estate Registration and Cadastre

In any country you will find that the rich and powerful have secure real estate rights. Generally, they know how to make sure that their land will not be trespassed upon and how to get the legal and government protections needed. There have been criticisms in the past that focussing on the economic benefits of real estate registration projects can have the unintended consequences of harming poor people and women because their access to land and use of resources is curtailed. In worst case scenarios, ‘land grabs’ by influential people have occurred. For example, in some of our own experiences in the Europe and Central Asia region, anomalies emerged during the course of the projects. The ‘maps’ showing land in collective farms were sometimes deliberately “reduced” in scale during communist times, by showing a larger recorded scale on the map. It then appeared that there was less land on the farm than in reality. By recording, the ‘area’ as less than actually existed, it was easier to meet the quotas for production that came down from the government in the capital. When privatisation occurred after the collapse of the former Soviet Union this ‘smaller’ area was divided up for the members of the collective, but that meant that a fairly large area was left unallocated. This was not common in reality, but happened on occasions, when the administrators basically just ‘took’ the unallocated land for themselves and their colleagues.

There are also areas where ‘land grabs’ have occurred because many of the population did not know their rights and unscrupulous people claimed the land for themselves. There has been a lot written about this, especially with respect to people with customary rights or grazing rights who lost land because there was no written record. (See summary under “Land Grabbing” in Wikipedia.) There have been many reported cases worldwide where women had access to and use of land and basically did all the farming, but when the time came to put the name of the owner on the title document, it was a man that was registered. These types of examples might come from practices or projects that were badly implemented and should not deter us from ‘doing it right’. Hopefully some of the discussions in the following chapters will help to make sure that such mistakes do not happen in any new projects. In Chapter 3 the ‘team’ of people required to prepare a project is discussed and this type of problem is addressed.

When commencing a project, the plan is always to establish a registration and cadastre system that is fair, efficient and meets the needs of all in society. People should not be excluded because of lack of knowledge about the program and its benefits, or because they cannot afford to be included. It should certainly protect the more vulnerable. Projects tend to focus on the register of legal rights and the survey of the boundaries of the properties, although it may be included within a wider program involving land valuation and taxation, recording land use or land management. The management of State-owned lands is often a major issue, partly because the State very often does not know the full extent and locations of the land that they are responsible for, and partly because government agencies are often poor at getting the highest and best use of the land under their control.

Real estate registration is basically a legal activity because the program should protect the *real estate rights* of the population, and then should formally record all rights whether they have prior documentation or not. It needs to include their rights (for example) to outright ownership, to pass on their ownership to their heirs, to access their land through the land of another person, to gather wood or food from commonly used land or to pasture their cattle – even if it is seasonal. The *boundary survey* activity may be done by various methods, including aerial photography, conversion or identification from existing maps and diagrams, or new surveys on the ground using traditional surveying techniques or identification of boundaries on orthophotos. But it is essentially a support for the need to record the legal rights because it is used mainly to identify the extent of those rights. This is important so that the same piece of land is not recorded to different people and so that the boundaries can be relocated in time of doubt or dispute.

It is an anomaly that by far the majority of experts working in this sector are surveyors rather than lawyers. A very high percentage of the literature and publications that you will find at conferences is

about how to conduct the surveys, rather than how to assess the legal rights and record them. The latter is often the more complex. My opinion is that this is because of the nature of the legal profession in contrast to those involved in more ‘engineering’ tasks. Engineers tend to be more pro-active and to focus on getting solutions to problems, whereas lawyers often wait for a query or problem to come to them so that they can adjudicate, advise or argue a case.⁷ (This is a big generalisation, of course, but it is a fact that the majority of specialists advising in this sector originally have a surveying, planning or GIS background.)

Many countries in Europe, plus the USA, Canada, Australia, New Zealand and others, already have existing and efficient registration systems. They continually change as new technology, new needs of society and the demands of integrated government in the digital age have to be addressed. The text of this book focuses on those countries that need to fix or change systems that currently do not work as well as they should, and for those that want to include *all* of the population in their systems because too many are excluded. It is assumed that they have decided to do this and commence a project, whether funded by the government entirely or funded partially through external funding. When doing so, there are a few things to remember:

- There is an existing system running that people use on a daily basis. It is required for the economy to function, so do not disrupt it. Whatever new interventions are included in the project, the ability to seamlessly continue providing services to the public is essential;
- The existing system may need improving and this should be done in parallel with any mass registration of property rights for others. It may take years to include everyone who previously had no registered rights within the new system, but the government and public will want to see changes very quickly;
- People already have property rights. Some will be documented, and some may not be. Very often people in squatter areas, informal settlements, customary land areas, etc., already have secure tenure because they may have been there for years (or generations) and no government is going to remove them because of the civil unrest it would cause. Often, they are protected through local community acceptance. *It is important to ensure that you only make things better for them and that they recognise the improvements and benefits that come from the project.* Do not include a requirement to pay or to make existing buildings conform to planning requirements as this always causes resentment. I have never come across any situation where the people object to getting a new, government guaranteed title when they have not had to pay or do something other than filling in necessary forms and showing officials their property. The benefits to government and the economy as a whole soon cover the cost of the project implementation. (See Chapter 15.8 of book reference 2 in Annex 1 for clarity on why systematic registration should be free of charge and the benefits to government and society as a whole. Book references 11 and 37 outline the economic benefits in the Europe and Central Asia region);
- The first-time registration of property rights under a mass registration program is a ‘one-off’ exercise requiring very large costs and human resources. Once it is done those human resources have learned a lot, but would no longer be required because the work is completed. Some should be absorbed into the tasks of registering ongoing transactions and others may be absorbed into other sectors of the economy. It is important to have a plan for the future careers of these people, including retraining, or they may be inclined to delay completion of the initial registration in order to stay employed;

⁷ In reviewing this chapter, Tony Lamb suggested that the lack of interest by lawyers arises from the fact that they are usually employed in more lucrative jobs than registering land. Disputes are by far a better way to make money!

- There are three basic ways for people to be registered for the first time:
 - i. Systematic registration. When trying to include all the population, especially those in more rural communities and in the poorer areas of towns and cities, a systematic registration of title program may be undertaken. This is usually done on a ‘block by block’ or ‘area by area’ basis until all properties are included. After completing a whole block or area the results are put on public display so that all can inspect and agree the registered ownership rights, or object if they disagree. Some guidelines for this work are included in book references 16 and 17 in Annex 1, and the theory and practice are also covered in book references 2 and 4. Depending on the specific country context, systematic registration may include one, or both, of the two methodologies:
 - Land Allocation – where land is allocated for the first time by government, often based on rules enshrined in law. This is commonly the case where customary land or indigenous land that is held in trust by the government or some other local authority or body is to be registered to the beneficiaries. It was also the case for those ex-socialist countries where State ownership of real estate was prevalent, and it was decided to transition to private ownership and for the real estate market to function;⁸
 - Land Adjudication – where people already have some rights for which they have evidence of ownership through deeds, transfer documents, evidence of paying taxes for the property, evidence of long occupation, etc. and the rights are assessed and adjudicated by the body specified in the law to do so. This may be required either when existing systems have become so flawed that the system is unreliable or unusable or because the existing system has not been used by the public in the past because of cost, corruption, complexity or remoteness of the service providers.

Whichever of the two systematic registration methods is needed, there would typically be required:

- a) an adjudication or allocation officer to manage the process, make decisions and adjudicate disputes;
- b) a demarcation team to meet the public, ensure good publicity and public engagement, agree the property locations on the ground, gather documentation, and generally oversee the public displays and public interactions with the process;
- c) a survey team to record the boundaries as agreed by the demarcation team and to create the cadastral map;
- d) a recording team to analyse the claims, review legal (or other) records and prepare the registers. They would also refer complex or disputed cases to the adjudication or allocation officer.

This whole process is dealt with in much more detail and clarity in book 2, Annex 1.

- ii. Sporadic registration. Even when a project involves systematic registration of rights, the option of first-time registration of a property right based on the owner’s application should also be included. The applicant would normally pay a fee for this. It is not acceptable to tell someone that you will get to their area and register their property in

⁸ Not all land allocation programs result in a registration of the allocations. There are many examples around the world where governments have allocated land, especially when colonial powers established themselves in the Americas, Australasia, the Pacific and the Caribbean prior to the 20th century, where the allocation to settlers and others was done, but it was not recorded in an accessible register.

'x' years. Sometimes systematic registration cannot be done because of the volume or the costs of the activity and limited resources. It requires a very large initial outlay to systematically record all property rights. In some former socialist countries in Eastern Europe and Central Asia sporadic registration was used for the main cities because of their size; the real estate market activity was high and property values were high. People were willing to pay for registration. The UK has always used only the sporadic first registration method, although this did include compulsory registration whenever a transaction occurred from 1990 onwards, and therefore had elements of a systematic approach. In the sporadic approach you do lose one of the main advantages of undertaking a systematic approach. In the systematic approach all properties in a specified area are recorded and matched against each other, and then the public viewing period makes all results visible together for public acceptance. It is possible in the sporadic approach for people to register their rights without neighbours or other interested parties being aware, and for the other interested parties to not have the opportunity to object.

- iii. Conversion. If you are putting in a new system, but there is an existing (fairly) reliable system, it should be possible to just convert the records to the new system. This is the methodology that was used in much of Northern and Central Europe when they created their land books from deeds registries in the late 19th and early 20th centuries. The owners have to be informed so that they can object if there is something wrong. If combining this approach with a systematic registration program, it is also normal to also include these titles within the period when public display occurs in the systematic registration project. It is important that *there should never be a case where a person with an existing registered right in the older system is not included in the new system.*⁹

Summary

This chapter introduces the subject matter and explains why the registration of real estate rights is so important. It provides the general background to the importance of registering real estate rights and recording the boundaries of the land. Primarily the registration system improvements should have a major economic impact nationally if implemented correctly, but any registration program should be inclusive and also focus on those who are in poorer circumstances, who currently have little chance to utilise the rights that they might already have because they are not documented or usable.

A project involving the registration of real estate rights will have the greatest impact on the overall economy if it is part of wider economic reforms. On its own, it may not be enough. Having said this, my experience has shown that the registration of real estate rights and associated cadastres is complex enough on its own and projects are more often successful when the focus is on this. Projects could include work in the financial services sector and links with municipal development to ensure that the benefits of clear tenure are not constrained by planning and building restrictions or business rates and taxes. However, experience has clearly shown that overly complex projects with too many components often do not succeed. Coordination across projects is more effective than integration of projects.

A project can help those in rural communities or in informal or sub-standard housing areas, and it can encourage and facilitate the development of small businesses in those communities if there is a well-designed program to do so. It can have an impact well beyond the immediate need to clarify real estate rights and promote the real estate market to operate if it is completed as part of wider reforms aimed at improving the lives of the poorer members of the community. When analysing the results of projects, it is important to gather information about the impact and benefits to people, other than just giving them

⁹ Conversion is also commonly conducted on a sporadic or case-by-case basis as someone buys a property, but it can take many decades before the new system can replace the older one.

certificates. This is required for political support and justification of the large amounts of money that will have been spent.

There always needs to be a double focus – both to register properties for the first time in a reliable system and to ensure that transactions can be facilitated and protected quickly in an affordable, reliable and efficient manner. Projects should not in any way impede or restrict the real estate market or the members of the public who are already utilising systems. The projects should only make things better for the public. It is fundamental that projects should do no harm, especially to the more vulnerable members of the community and to women, as this seems to have happened on occasion in the past. It is important that impacts can be seen quickly and clearly demonstrated. This is important because of the political imperative for governments to show that they have made a difference and made life better for the citizens.