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CADASTRAL ORGANISATION, ADMINISTRATION AND LEGISLATION AS A CONTRIBUTION TO SOCIO-ECONOMIC DEVELOPMENT

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'Land registry and cadastre' do not serve a purpose in themselves, they have to facilitate the improvement of a country's socio-economic structure. For optimal facilitation, there is a need for meeting the demands of the users. This will reflect in the tools which should be available to meet these demands, tools like a legal framework and an institutional framework. The paper will elaborate the elements to be taken into account in legal regulations. Regarding the institutional framework, the paper will elaborate some important topics in administration which may be seen as critical success factors for achieving desired effects for an operational land registry and cadastre. Finally the paper reflects on trends in the context of land registry and cadastre.

1. Political Context of Land Administration

1.1 Sustainable development

Since the Rio Summit 1992 information supply is seen as a prerequisite for 'sustainable development', as follows.

One helpful means in achieving the aim of combatting poverty is the development and reinforcement of the statutory frameworks for land management, for the accessibility of land as a means of existence and in conjunction with that the opportunity to own land, and the protection of land. Owning land by the people surely is a way towards better economic development and increasing growth.

Sustainable housing also deals with access to land ownership, and the need to initiate activities in land management, and urban and infrastructure management; it also advocates that policy be developed at local level, creating scope for what are termed integrated decisions on land use and land management, the creation of efficient and accessible land markets, improving land registration systems, streamlining procedures for land transactions, offering legal security for all land users, one means being the provision of sound information.

To achieve a sustainable agriculture, another important political objective, it may be very helpful to shape policy on the release of land for ownership and possession,

allocate clear ownership titles, set up an effective land-use registration system, create databases, GIS's, and alleviate the causes of the 'degradation' of land, one means being to make it possible to own land.

1.2 Housing

The HABITAT II Conference declared that two very important aims are to be achieved, these are 'housing for all', and a 'sustainable development of human settlement in an urban environment'. Adequate housing means more than a roof above one's head. It also means having enough room, accessibility of land and security of land tenure. One of the necessary measures is providing sufficient legal security on land ownership and land use, an equal distribution of land to all people, and protection against illegitimate expulsion. There is a need for programmes for the construction of houses, which should include the encouragement of self owned properties, therefore adequate means of financing should be found. An important objective is the development of land markets, which operate very effectively and efficiently, and which have mechanisms to deliver and to transfer land; lack of legal security to rights in rem is seen as a considerable risk. A well functioning real estate market (especially for houses and buildings) is important: governments should aim at legal frameworks facilitating the land market, by clarifying the definition of land tenure and property rights, by creating clear procedures for transfer of rights, by establishing a transparent and reviewable market, by encouraging access to land especially for women, and by fiscal systems providing opportunities for adequate housing.

1.3 Economic Structure

Economic growth will be encouraged by a proper allocation of societal activities. The demand for land as a base for e.g. housing, industrial activities, farming, infrastructural elements, can not be met without a well functioning land market. Of course the actual use of land, will be regulated by the spatial planning decisions by the various governmental levels. Within these restrictions individuals and businesses should be able to optimize their land use, in order to fulfil their economic needs. A land administration system that meets the requirements of the land market in terms of user-friendliness, transparency and fastness, contributes to economic benefits.

Economic growth also is depending on the way of financing of economic activities. In the National Statistics of the Netherlands we see that 29 up to 43% of the balance sheet of all businesses is financed with long term liabilities. It is unknown to which extent these liabilities are mortgages, but especially in the small and middle scale businesses it may be expected that almost all of these liabilities are mortgages. Building and construction industry contribute substantially to the GDP (in some countries up to 40%). Mortgaging of real estate is essential for acquiring ownership or lease of houses, which will increase the demand for houses, and encourages the industry. Also the bank sector has a lot of benefit of lending money for mortgages, it provides them with a basic income from interests.

Providing legal security to owners and mortgage companies is important. Land administration consequently is an indispensable activity.

2. Legal security, tax policy and Land use planning as cornerstones for good governance

2.1 Legal Security as a facilitator for land markets and financing economic activities

It is widely spread that a sound legal framework for land registry and cadastre is a prerequisite for legal security on land and land transfer. It is also recognised more and more that there is no best system for land administration. That is -for exemple- the reason why the UN working group "Task force on Land Administration Guidelines" decided not to develop a blueprint for the most recommendable cadastre, but to publish the so called Guidelines on Landadministration.

In many countries there has been a debate on civil law, in connection with land registry law and cadastre, and on public law, in connection with land use planning and public encumbrances.

Basic questions that arise in the process of thinking, considering and writing bills are of a fundamental nature. What exactly is ownership on land? What is the power of land ownership against third parties, and the State? How can it be transferred, what should be the legal conveyance procedure? In which ways the State may interfere in private landownership for public purposes? How can landownership be used for a mortgage in order to obtain possibilities for financing local economic activities? Considering land registry and cadastre fundamental questions arise like what is the legal meaning of the recording of a deed or a title in the land registers, what is the legal meaning of the landsurvey and of a line mapped on the cadastral map? Here we see occurring the complex problem of the protection of third parties in good faith. To which extent there is a legal guarantee by the State of registers and maps? Here we see occurring difficult questions concerning the nature of positive and negative systems of land registry and all kind of intermediate forms.

The completeness of land information is an issue in almost all countries. Systems provide facilities to record deeds and titles as a result of transferring land, e.g. the selling and buying activity. But some conveyance however is done by power of the law, such as according to the law of inheritance, distribution of an estate, prescription (adverse possession), or the fulfillment of a condition. It is important to record these facts, by the entry of a formal statement by a notary-public or a solicitor. The law should make this possible.

The demands on the actuality of the land registry and the cadastre are high. The users, the public and the government, require up to date land information. In many countries therefore actuality is an hot issue. It may be observed that the actuality differs from country to country, depending on the legal situation, and on the system of updating maps. The law can require the recording of a deed or title as a condition

for a legal delivery of ownership, in other countries the legal delivery takes place at the moment of undersigning a deed without recording.

2.2 Tax Policy as a basic provider for the government's budget

Levying taxes on land (including buildings) and land transfers provides a substantial base for the government budget. In the Netherlands we read in the National Statistics:

- land based income tax (1% of tax revenues at state level)
- land transfer tax (2% of tax revenues at state level)
- wealth tax, death tax, corporation tax (partly land based, % revenue at state level not available)
- local real estate tax (50% of tax revenues at municipality level !)
- land tax (28% of tax revenues at regional waterboard level !)

It seems to be very efficient and effective if the land (including buildings) is valued once in a period by mass appraisal and only by one official institution, which value consequently is used by all tax levying governments in stead of all doing their own appraisal. The latter was the approach in the Netherlands until 1995. Then a Law for the assessment of real estate came into power, enforcing that only municipalities were allowed to assess the value of real estate for tax purposes under the supervision of a national Council for Real Estate Assessment. The availability of land information is indispensable, not only regarding individual ownership and surface area, but also regarding market prices.

2.3 Land Use Planning for planning, development and maintenance

In managing land resources and land use it should be recognised that a certain legal provision is needed by governments to affect private property and private land use. As a base for such legal provision one should be aware of three important stages, planning, development/implementation the planned land use and maintenance to keep the implemented land use in proper order. The democratic structure of a country seems to determine the structure of the planning system. If, for example, much governmental power is given to the local authorities, one may expect that the local zoning plan will be a cornerstone of the planning system. More in general: the common opinion on democracy determines the governmental structure and the assignment of responsibilities and competences.

As in many countries at least three levels of government exist, the planning system will comprise national, regional, and local planning. In establishing a planning system consideration is needed on a few basic assumptions, as there are:

- the nature of these plans (sectoral or integration, mutual relation between plans, who is the competent authority, control by the public)
- the legal enforcement (legally binding to citizens in using the land, and to the government in the implementation of the land use regulations ?)
- are authorities obliged to draw up plans ?
- are regulations imposing or only prohibiting?

- how to implement (tools according to private and public law, expropriation)

Especially in the stage of implementing a given land use at local level, the availability of land information from land registry and cadastre is necessary in order to clarify to the individual land owner and land user which land use is attributed to their land, and to give the government an opportunity to make legal decisions on the application of regulations. In many local zoning plans we see three possibilities to enforce:

- building permits for building and alteration of real estate (often issued together with an approval of building regulation according to the building law)
- construction permits for other activities (often issued together with an approval of environmental regulations according to environmental laws)
- land use regulations (which could be of a different nature, such as imposing a given land use to the owner/user, or only prohibiting an undesired land use unless one has a permit).

A appropriate local zoning plan should indicate very clear and at a specific individual level which are the requirements to be met in order to obtain permits. If the government wants to realise a certain given land use, and owners or users are not willing to co-operate, there is often only one way to proceed: expropriation. Also then a good land administration is indispensable, because the impact of the expropriation and the individual land parcels should be very explicit.

3. Legal Framework: a condition for good land administration

3.1 The State's influence on providing legal security

It is interesting to see the wide range of land administration systems in the countries of the world. History, culture, and tradition often determine the nature of such systems, as land tenure is basic common value in a society. Important is the common opinion on the role of the State (e.g. government) in the citizens life. This opinion will reflect on the way legal security is provided to land owners and land users, and to the government as well (in its role as an owner/user or as a governor of society). Here we enter the domain of private law and public law, namely which part of the conveyancing process is ruled by private law, and which part by public law. It is quite interesting: at one hand we see legal frameworks in which the State only is a facilitator. The State places public registers at the disposal of the land market, records documents of transfer quite passively, and makes those knowable, but does not approve anything. Legal security should be provided by investigations of a notary or solicitor, and a legally correct procedure of conveyancing, which procedures are open to the public.

At the other hand we see legal frameworks in which the State should approve the land transfer, after performing an investigation and an adjudication, and finally issues a land certificate (title) which is legally guaranteed. In between we see a lot of variety.

3.2 Land survey before or after conveyance

The role of the State also reflects on the legal meaning of the cadastral map, and more specific: the cadastral parcel. The cadastral parcel actually is an administrative unit. Then the legal question arises: is the object of conveyance the administrative unit as such, or the area on which purchaser and buyer have an agreement of sale whatever cadastral parcel (or part of that) it may concern? Which role plays such an administrative unit in the law of obligations? These considerations determine the role of the land survey in the process of land transfer. Often we see that a land survey is required preceding the formal land transfer and the submitting of the land transfer document to the public registers (the land registrar). In a single other country (like the Netherlands) the written (even verbal) description of the object to be transferred is legally binding, and afterwards the object is surveyed, the cadastral map is being adapted and new parcel numbers are attributed. Legal security is provided by the law, which states that a legal transfer should meet 4 requirements:

- seller should have the right to dispose
- agreement between seller and buyer
- written document by a notary (a deed)
- recording of the deed in the public registers

For appeals the (civil) courts are competent, because the public registers are under the civil code. Note that appeals against the updating of registers and maps should be lodged with the administrative court, because this is under public law (Cadastre Act).

3.3 Position of Land Registrar: legal attribution and official hierarchy

It is often said that the legal attribution to the Land Registrar may conflict with the official hierarchy. After all the Law gives the Land Registrar the legal power to keep the public registers and to decide on which documents may or may not be entered in the registers. It seems that he may decide completely in accordance with his own views and at his own discretion. Regarding the doctrine of legal attribution however the communis opinio among lawyers is that:

- the authorities which have a legal attribution, can get official instructions and orders for the pursuance of its profession,
- and may get orders in individual cases.

The legal possibility for citizens to appeal against the decisions of Land Registrar with the (civil) court, does not mean that only the Court can act to the Land Registrar in a repressive and corrective way. Such an appeal affects only the relation Land Registrar-citizen, and not the relation Land Registrar-superior. In the Netherlands this communis opinio has validated the position of the Land Registrars within the hierarchy of the Agency, instead of having an independent position somewhere else, like in the courts. Recently the (4) Land Registrars are transferred to the Headoffice forming one new unit, in order to encourage uniformity in keeping the public registers. This unit has special (data-)communications-facilities, like a national 'Land Registrar Hot Line' for the regional offices and for notaries, real estate brokers, mortgage companies.

3.4 Influence of public law on private property: is ownership still an absolute right in rem ?

A topic is the interference of the State in real rights on land for reason of public interest. In many countries there may be tens of public encumbrances, like land use regulations, soil pollution orders, appointments as an historic monument, noise protection orders, various official prohibitions, priority rights for municipalities c.a. Traditionnally land registry and cadastre deal with private real rights on land. Nowadays the public encumbrances are of equal importance to the public as the legal situation according to private law. Provisions should be made for entry of these public encumbrances in de land records.

4. Institutional Framework: a condition for good land administration

4.1 Developments in public sector management as a context for land administration institutions

Management and organisation of the public sector are rarely items on the priority list of politicians. However, the last ten years we have seen, that in the context of economy measures as the reduction of the state's deficit, the performance of the public sector is getting more and more in the political picture. The public sector with her aura of a cumbersome, inflexible, and public money wasting bureaucracy, had to change in order to enjoy a sustainable confidence of the citizens.

Since then, we see in many countries a growing political interest in the efficiency and effectiveness of public institutions, and even more: also in the legitimacy and legality of the government administration. Fundamental questions are being asked, such as the desirable intergovernmental relationships, the adequacy of the role of the central civil service, the governability of society, the actual core competences of the ministeries, and the most desirable position of large operational units within the governmental structure.

In considering the various manifestations of land administration institutions in the differenet countries, awareness of such a knowledge seems to be very important.

In the literature you may find that at least three topics are determining the way of public administration, namely the opinion on how to govern a society, secondly the way of management and organisation of the administration, and thirdly the civil service culture.

4.2 Financing: money makers and big spenders

In many countries there is a trend to discuss the funding of the land registry and the cadastre. This trend arises from a more general debate on the role of the State in the government of a nation. Should the State care for everything, or -to a certain extent- only for the basic needs. Should the State pay for land registry and cadastre, or should it be paid -somehow- by the customers. Customer-paid services, agencies, privatisation, are the key words in this debate.

One element in the structure of land registry and cadastre seems to be of a certain importance. In almost all countries where the land registry and the cadastre are part of different organisational structures, there are difficulties in financing the cadastre.

The reason is simple: the land registry is a money maker, the cadastre is a big spender. Land registers are often exerted as a monopoly and can generate income, while the costs are often low. Land surveying and mapping however are expensive, while these expenses often are not passed to the customers. The situation is even worse when cadastral reform is carried out, and investments are needed for improving and digitizing maps. When land registry and cadastre are in one organisation, there will be one responsibility and one shared financial management. Necessary investments in the cadastre may then be paid out of the profit on the land registers. It will be difficult to reach such an attractive situation when the condition of organisational unity is not fulfilled. If so, it will be highly advisable to make an attempt to link the land registry budget and the cadastre budget within the State's financial system.

4.3 Applying marketing techniques to encourage fitness for use

Optimizing the effect of land information is basically a marketing issue: try to satisfy the need of the users. The expensive process of data capturing, processing, storage and supply is useless without being sure that these data meet the requirements of the users.

A first step is at a strategic level: which position the institution wants to have in the field of land information. After having a view on the marketing positioning, the next step is: what are the key-factors one has to fulfil to reach that position. All different kinds of users make the market divers. The next step thus is subsequently to analyse the various key factors per segment of the market. After establishing this approach, the last question to be answered will be: how to operationalize.

To make a clear choice in step 1, it is necessary to analyse the core-capacities of the institution, and the core requirements of the users. It is only after this analysis one can establish the role one is able and willing to play for one's customers. Analysing core-capacities is a matter of being honest: recognising the activities in which one does well, and in which not.

To implement this marketing strategy (step 2) it is important to know which requirements an institution should meet to reach and keep the desired position. Marketing research may result in the success factors like:

- a. quality of the data (in terms of accuracy, reliability, actuality and completeness),
- b. the feeling of customers of getting 'value for money'
- c. form of the product-information, e.g. flexible, tailor-made, and digital.
- d. keep in touch with the users, and have segment based communications.

One of the important elements in making the marketing strategy work, is integrating clear objectives in a planning and control cycle.

4.4 Planning and Control: how to manage a land administration institution

To encourage a good management of a land administration institution it is advised to decide on two basic assumptions. Those are:

- a management vision.
- a planning and control process.

The 'management vision' clarifies the allocation of tasks, responsibilities and powers. Such a vision may be 'management with responsibility for results' which lays down that in the organisation:

- the management has responsibilities and powers for achieving results laid down in advance;
- the responsible management is assessed on how far it achieves these results which concern all aspects of the running of operations.
- the responsible management is called to account for that part of these results which it can influence.
- Control is effected on the basis of budgets, control variables and cost prices. The control variables comprise the task-setting agreements on the quality of the conduct of operations and the primary processes.

One may strive to apply objective standards for production. The purpose of this is firstly to be able to estimate satisfactorily the resources (including personnel) required to carry out activities. Secondly, the standards can be used as an instrument for reviewing the results of the institution's operations.

A 'planning & control process' may be highly standardised and structured.

The plan may comprise both a non-financial and a financial component. It also may comprise both the quantitative estimates and their translation into financial terms (budget). The plan could be built up from a number of constituent plans: sales plan, production plan, capacity plan, plan for action programmes, 'other costs' plan, investment plan and liquidity plan.

The plan, de facto an agreement between the management levels should be both financial and non-financial in nature. The agreements of a non-financial (but nevertheless quantitative) nature are shaped in control variables.

4.5 Impact of new technology: workprocesses and structures can not stay the same

Some strategic business objectives cannot be achieved without sensible use of IT. This means, in effect, that business objectives and information technology become interwoven at the strategic level in the organization. This desirable interdependence will definitely have an enormous impact. Computerization has traditionally involved computerizing existing processes: in its simplest form it was a way of improving efficiency. Every organization started out this way, including the Cadastre. As time goes by, more and more work is computerized, other departments in the organization follow suit, and the end-result is a set of computerized islands, lacking in logical coordination, with differing data definitions, and over-dependent on hardware and software suppliers. The cost of adapting to new demands is ever-increasing - not to mention the rapidly rising costs of management and maintenance, which have to be accepted, however, if you don't want the systems to start malfunctioning or even break down. The strategic application of IT needs (a) to put an end to this painful technological and organizational situation as soon as possible and (b) to enable the new business objectives to be achieved in a new technological situation. A

turnaround of an organisation is most likely, as all the working processes should be redesigned.

5. Trends in the public sector

5.1 Integrated Service Delivery to citizens

Citizens do not understand why they have to drop in by innumerable governmental desks, before they can go-ahead with f.e. the building of a house. They want: one stop shopping. No doubt that land information will be part of that.

The response of the government in many countries is a policy of integrated service delivery to citizens and businesses. Such a policy seems to be a simple objective, but it may be for sure that streamlining the 'front office' at the same time places great demands on the 'back office'. Here we see the interwovenness of strategy and information technology again.

5.2 Efficient informationmanagement by data-sharing

It is well known that the costs of data procurement accounts for over half over the total system costs, may be even more. Sharing and re-use of information can help to avoid duplication in data-capture and data-processing and thus will reduce costs and improve reliability.

Also the trend towards integrated service delivery requires datasharing, because communication between citizens, businesses and governemnt through a 'single window', the datasets of various departments and agencies are involved.

5.3 Internet as a distribution channel

Disseminating geo-data through internet and intranets is becoming a beckoning prospect.

Of course the availability of digital geo-databases is being pre-supposed. In many countries the work to establish digital geo-databases is in progress. Taking into account the rapid developments in solving the problems in the usage of Internet (band width, viewwers/browsers, transport-security, secure paying facilities) the potentials of Internet are a beckoning perspective for disseminating land information.