

Creation Land Administration in Formal and Informal Environment

András OSSKÓ, Hungary

Key words: land administration, informal land tenure, customary tenure, sustainable development

SUMMARY

FIG Commission 7 deals with land administration matters (“the process of determining recording and disseminating information about ownership, value and use of land when implementing land management policies” ref. UNECE Land Administration Guidelines (1996).

Furthermore Commission 7 deals with land management issues as well, implementation of land policy by a wide range land policy instruments e.g. land reform, land consolidation, land markets, land taxation, marine resource management, etc.(ref. Commission 7 Work plan 2002-2006).

Commission 7 activities contribute to the overall FIG Councils’ strategy and implementation of its work plan.

Legal, institutional framework concerning land related activities, well operational land administration especially cadastre, land registry in developed countries, creation or modernising land administration in transition and developing countries is essential because the land administration is the most important infrastructure for the sustainable development. There are many countries mainly in Africa, South-Latin America, Middle East, Asia with existing customary and informal land tenure. To create efficient land administration it’s essential to register customary and informal land tenure to support the implementation of sustainable development. The efficient land administration sector is also a very important infrastructure for the economic, environmental and social development and its institutions can play important role to co-ordinate the rapid urban development.

This paper wants to prove that operational land administration is one of the most important infrastructure for the sustainable development and in the same time for the economic growth.

Creation Land Administration in Formal and Informal Environment

András OSSKÓ, Hungary

1. INTRODUCTION

There have been several changes world wide during the last decades creating several challenges to be solved. These changes very much effected the developed, transition and developing countries as well. Of course the tasks to be achieved are very different in countries with developed market economy and in countries with less developed economy.

The way how to solve challenges created by changes are also varying from country to country in every region and continent depends on the historical and political background. It is also obvious that changes strongly influence the economy, the land and real estate market and there is a very strong need in any country for the existence of proper legal and institutional framework which can co-ordinate as infrastructure of the land and real estate property related activities and the sustainable development in long term.

The International Federation of Surveyors, FIG has recognised the increasing importance of this topic and few years ago when the Council worked out its new professional strategy, and land administration matters became one of the most important field to deal with. The FIG professional activities based on the permanent commissions works and achieves its task through commissions.

FIG Commission 7, Cadastre and Land management, is one of the fundamental pillars and very active commissions of FIG. There are many areas of interests of Commission 7 but land administration matters are the main objectives in the Commission 7 activities. In the Commission 7 Work Plan 2002-2006 we decided to put more efforts on countries in Africa, Asia, Middle East, South-Latin America hoping to contribute the development and modernisation of land administration systems for above regions.

2. FIG COMMISSION 7, CADASTRE, LAND MANAGEMENT

FIG Commission 7 deal with land administration (“ the process of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies “ (ref. UNECE Land Administration Guidelines) “Ownership” should be seen as a broad concept of land tenure within various jurisdictions (statutory, customary, informal, etc.) “Land” includes constructions at surface level, ground level and above land level (e.g. buildings). Furthermore Commission 7 deals with land management, that is the implementation of land policy by a wide range of land policy instruments (e.g. land reform, land consolidation, land markets, land taxation, marine resource management, etc) (ref. Commission 7 work plan 2002-2006 prof. Paul van der Molen)

Commission 7 aims, among others

- to provide a world wide forum for enhancing and exchanging the knowledge and understanding about land administration and land management
- elaborating the role of land administration and land management for sustainable development
- encouraging the development of appropriate concepts and tools for land administration and land management with regard to the specific institutional and operational context of developed and developing countries
- playing leading role in advancing land administration and land management

As I mentioned before Commission 7 deals with land administration matters but we had to make choice focusing on the most important issues based on the UN/FIG Bathurst Declaration

“ Land Administration infrastructures for sustainable development”. Furthermore there has been very active working relation between FIG and UN organisations, UN FAO, UN HABITAT, etc. since years.

The important issues have been selected

- land administration, land management in customary and informal areas
- land administration, land management in the marine environment
- avoiding land fragmentation
- institutional conditions as critical success factor
- efficiency and effectiveness
- low costs land administration systems
- ICT support for modern land administration and land management
- Capacity Building for land administration and land management

To achieve our work plan 2002-2006, the Commission 7 formed three working groups

1, Working group 7.1

Creation Land Administration in formal and informal environment

2, Working group 7.2

Instruments for land distribution

3, Working group 7.3

3. CREATION LAND ADMINISTRATION IN FORMAL AND INFORMAL ENVIRONMENT

The implementation of sustainable development has been one of the greatest challenges world wide since years. It's already obvious today that the success of sustainable development is not an environmental question only but mainly economic task. The utilisation

of natural sources, the importance of long term land- real estate property development has been increased during the last decades all over the world. There have been several changes in the world during the last decades, effected the activities on land, real estates, creation challenges to be solved.

Changes: globalisation, IT revolution, increasing poverty in the developing countries, rural population moves to cities, lack of drinking waters in many regions in the world, etc.

Challenges: sustainable development, creation active land market and land administration in developing, transition countries and countries in post conflict areas, access to land and real estate property for all people, etc.

According to experience sustainable development requires an integrated approach which means legal framework, institutional infrastructures at central and local level and good communication between central and local level. An integrated approach is also means that sustainable development covers rural and urban issues. In both areas there are several problems to be solved and rural lands are potential sources for the further urban development. Creation legal and institutional framework for land related activities (land administration) is not enough the performance and efficiency of institutions requires educated staff as well.

What is the necessary legal and institutional framework concerning land related activities supporting the sustainable development. The law must guarantee the security of tenure and equal access to land and real estate properties. Land administration institutions regulate the land and real estate markets and the infrastructure for sustainable development.

Land registry and cadastre institutions are the most important elements but spatial planning and valuation are also essential parts of the land administration activities.

“ Sustainable development is not attainable without land administration “ ref. Bathurst Declaration

The existence of a well operational land administration in developed and developing countries is equally important. Active land- real estate market and in the same time the market economy requires legal guarantee of secure land tenure and well operational land administration institutions. In the majority of developed countries the secure land tenure and efficient land administration are existing and well performing but their legal and institutional systems are varying from country to country. The legal and institutional framework depends on the historical background and every country is very much attached its traditions. There is no common recipe. In the developed countries the ICT systems and other technical elements are also in advanced stage.

In the developing and transition countries, including post conflict areas, the task is the establishment, reestablishment or modernisation of the legal and institutional framework in other words creation land administration.

In the majority of developing and transition countries world wide the lack of legal security of land tenures hampers the use of rural and urban land, national and international investments and the efficient land management. In countries effected by wars, internal conflicts, ethnic

violence, a lot of problems have been appeared. In post conflict areas the new authorities have to solve the past injustice, implementing land reform and compensation procedures which requires operational land administration. Without security of land tenure, equal right to access land and real estate properties the economy can't improve and sustainable development couldn't be realised. Because of above and other reasons FIG and particularly Commission 7 have decided to put more efforts in countries in Africa, Latin America, Middle East and Asia in exchanging information on the introduction and development of land administration system and land management policies.

Commission 7 Working group 1. "Creation land administration in formal and informal environment" was created to contribute the development of land administration, especially land registry and cadastre in the aimed countries, regions. Land registry and cadastre organisations are the most important institutions within land administration responsible for the registration of land tenure and changes of tenure, maintenance of registered legal and cadastral mapping data and in the same time data provider to the economy, decision makers and the public.

Why is it important in each country to develop efficient land administration ? Because it's a basic condition to develop the land-and real estate markets in the same time to implement sustainable development in rural and urban area as well. Why is it important to register land tenures and guarantee the security of tenures ? Because without this no long term economic development.

Land tenure means the mode by which rights to land are held. The tenure can exist through customs and traditions, legal developments of case law (common law) or statute.
Ref. "Bathurst Declaration"

Land tenure, through law, statue, has been generally registered in land registry and cadastre in developed countries although the principles for land registrations are varying in different countries. There are many countries world wide with non registered existing informal land tenure and customary tenure. To support the economic development it should be essential to extend land registration systems and cadastre and register informal land tenure, customary tenure.

3.1 Informal Land Tenure

Informal land tenure usually exists in urban areas where there is no sufficient land for housing. These informal tenures represent an occupation of state or local government owned land. Informal land tenure can also exist in rural areas as a result of the development of land use without any specific planning or legal action by government or a land owner. Often informal land tenure is considered to be illegal, it is not recognised either by customary or by statutory law. (ref. Bathurst Declaration)

3.2 Customary Tenure

Customary tenure is in principle a legal tenure system based on customary law. It is formal in the sense that it may be consistent with oral or written law. Often customary tenure is connected to land use by minority ethnic groups. (ref. Bathurst Declaration)

Formalisation of informal tenure, registration of customary tenure and other information requires establishment of legal and institutional framework, creation of land administration or needs extension of the existing land registration systems and legal changes which allows to register other forms of rights and information may not be parcel based, etc.

It is also very important that the demand for formal land tenure, demand for registration of customary land tenure should come from the people in the area. Of course people should be convinced that the formalisation and recording will provide benefits. These steps provide benefits not for the people in certain area but for the whole society and the state.

4. ROLE OF COMMISSION 7. WORKING GROUP 1.

What can be the Commission 7. in particular Working group 1. on “ Creation land administration in formal and informal environment” role in development of land administration in developing and transition countries, in post conflict areas as well. Of course our tools and capacity are limited because of our voluntarily based activities but there are many fields where we can contribute. The Working group worked out its work plan for the period 2002-2006.

4.1 The Policy Issues of the Working Group

The terms of reference are as follows

- identify how customary and informal land tenure can be integrated in land administration system
- identify when customary and informal land tenure should be recorded, registered
- identify land management requirements to land administration systems in a formal and informal environment, with focus on land use
- contribute to access to land by women and vulnerable group
- develop guidelines
- identify good practises
- organising and contribute to regional conferences

The Working group decided about topics to be investigated

- customary tenure are different in each country- even within country itself-common elements are to be identified
- problems in land restitution/ redistribution
- informal settlement
- definition of restitution / redistribution of land to be defined more precise

- problems in restitution, land privatisation
- fragmentation of land
- preparation of guidelines for registration of customary rights. It is important to justify why it's essential to prepare guidelines. It could be the alleviation of poverty.
- Valuation is a precondition for land restitution. Compensation is another issue that should be investigated.
- Land reform process are too slow
- lack of financial and human resources
- even good existing law cannot be implemented
- there is no political decision for comprehensive land reform

During the achievement of Commission 7 work plan we found a new topic to be investigated, Land Administration in post conflict areas.

The Commission 7 Working group “ Creation land administration in formal and informal environment “ can't achieve its goals without collecting information from different countries and contribution by professionals from countries where they are facing the task to develop land administration.

The Working group is looking for solution to find contact persons and collecting true information about the legal and institutional situation of land related activities from interested countries. We found circulating questioners expecting answers is not the efficient way because of poor communication network and sometimes lack of interest.

We suppose that organising regional conferences, workshops are the effective way to invite professionals from the region discussing about land related matters. All participants should be obliged to present papers about topics of land administration matters and other land related activities in their countries during the regional conference. Of course we also expect active contribution and support by United Nations organisations, FAO, HABITAT, etc. and also professionals who are experts in these topics. We intend to collect all of the papers and publish them in booklet or brochure with comments, guidelines, recommendations.

The Working group prepared a scheduled time table and venue of regional symposiums, workshops, meetings for the 2002-2006 period. Of course during the implementation of our plan we had to modify our program due to the changing circumstances and other problems but I think we achieved quite a lot, first of all thanks for Paul van der Molen, the chair of Commission 7. playing a key role in organising these events. UN organisations, UN Habitat, FAO and others also help and contribute to the success of symposiums, meetings.

Commission 7. has organised the “Symposium on Land Administration in Post Conflict Areas” in Geneva, Switzerland, UN European Headquarters on 29-30 April 2004. It was a great success with more then 50 participants and many presentations from all over the world. Presentations about land administration projects in post conflict areas from South- and Latin America, former Yugoslav states, Asian region, etc.

The Commission 7 has been organising a regional symposium on “secure land tenure, new legal framework and tools “ in Nairobi, Kenya on 10-12 November 2004 at the offices of the UN. The UN Habitat and the Institute of Surveyors of Kenya (ISK) co-organise the event. It was advised by them not to organise a big open conference because the subject is still unexplored in the region.

In respect of the circumstances, it has been decided to organise rather an expert meeting with limited number of, 75, people participation, on invitation.

Commission 7 has always made a major contribution to FIG events, presenting papers, chairing sessions.

FIG Regional Conference Marrakech, Morocco December 2003

FIG Working Week Athens, Greece 22-27 May 2004

FIG Regional Conference Jakarta, Indonesia 3-7 October 2004

In 2005 Jordan would like to organise a regional symposium. Mr. Abed El-Munem Samara Jordan delegate to Commission 7 made a short presentation during our Annual meeting in 2003, Krakow about the proposed symposium. The recently established Arab Federation of Surveyors should also help and contribute to the success of the events.

FIG Commission 7 welcome every proposals and supporting the organisation of regional events but countries in the very region must contribute because without their efforts the Commission 7 and its working groups will not able to achieve their goals.

5. CONCLUSIONS

- The importance of existing and operational land administration is increasing world wide
- The operational land administration is the basic infrastructure for the active land- and real estate markets in the developed countries and establishment or modernising of land administration is precondition to develop the market economy in developing and transition countries.
- To create land administration in informal environments is essential to formalise informal land tenure and registering customary tenure in land register and cadastre
- The demand for formal land tenure and registration of customary land tenure should come from the people in the area.
- Creation of land administration is a common interest of each countries to support the sustainable development but the way of implementation, the type of legal and institutional framework depends on their traditions, political and historical background. There is no single recipe, solution. Professional organisations, experts can give advises, recommendations, guidelines only.
- FIG, particularly Commission 7 makes all of its efforts to promote the importance of operational land administration systems to improve the economic development and support the sustainable development
- Sustainable development is not attainable without sound land administration

– (Ref. “Bathurst Declaration”)

REFERENCES

Paul van der Molen : FIG Commission 7 Work plan 2002-2006
András Oskó: FIG Commission 7. Working group 1. Work plan 2002-2006
Bathurst Declaration 1999

BIOGRAPHICAL NOTES

András Oskó

Academic experience	Dipl. Ing. Land surveyor MSc. Budapest Technical University Dipl. Certified Engineer Budapest Technical University
Professional experience	Head of Survey department Budapest Land Office 1971-77, 1987- International expert in Nigeria 1977-79, 1982-86
Practical experience	cadastral surveying and mapping 1966- International expert on cadastre, large scale mapping, land registry matters
Activities in home and International relations	Member Hungarian Society of Surveying and Remote Sensing Member Chamber of Juridical Experts 1996- FIG Commission 7 Hungarian delegate 1995- Chairman FIG Comm. 7 Working group 3. On Land Markets 1998-2002 Chairman FIG Comm. 7 Working group 1. Creation Land Administration in formal and informal environment 2002- Chair elect FIG Commission 7. 2006-2010

CONTACTS

András Oskó
Budapest Land Office
Sas u 19
1051. Budapest
HUNGARY
Tel. + 36 1 354 2967
Fax + 36 1 354 2952
Email: foldmeresv@foldhiv.hu