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John McLaughlin

LAND ADMINISTRATION

Land Administration

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Land Administration

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Preface

Land Administration is a successor to our book on *Land Information Management* published by the Oxford University Press in 1988. It builds on the earlier text, developing a number of ideas embedded in that work but placing them in the context of contemporary land resource management. The present work is intended for developing countries, countries in economic transition from a command to a market driven economy, and developed countries reviewing their land administration systems in the light of modern attitudes and technologies.

Like its predecessor, this book has been written for students and administrators. It focuses on the administrative environment, only discussing technical matters to a depth appropriate for managers. There is of course a danger of taking too broad an approach and hence moving into too shallow waters. There is however need to examine the management of land and property resources from a broad perspective rather than to deal with the tenure, value, and use of land in isolation. All these components of land resource management are interrelated and are affected by information technology and other factors in the environment.

In the intervening decade since the publication of our earlier book, there has been an unprecedented revival of interest in land tenure reform and associated land management activities. This has largely been brought about by the end of communism in Eastern Europe and by the break-up of the former Soviet Union. It has a parallel with the processes of decolonization in the 1960s when Britain and France responded to the so-called winds of change that were then blowing through much of Africa, resulting in major shifts in the relationship between people and their land.

The transition process today is however markedly different from that of thirty years ago, in part because of the speed with which political power was handed over and in part because of the current objectives of land reform. In the land tenure reforms of the 1960s, the main objective was to create stability and to provide security of tenure in order that farmers in particular could remain on their land without fear of eviction. Today, the objectives are in part to meet the call for social justice, and in part to stimulate economic development. In particular, those responsible for providing financial assistance to countries in economic transition have been concerned primarily with the creation of land markets.

The world is also witnessing a massive migration from the countryside to urban areas. In 1970 an estimated two-thirds of the world's population lived

in rural communities; today the figure is about half. By about AD 2030 two-thirds of the world's population are likely to be living in towns and cities and 80 per cent are likely to be living within 50 kilometres of the coastline. In the words of the Preamble to the Habitat Agenda that resulted from the Habitat II Conference in 1996:

The most serious problems confronting cities and towns and their inhabitants include inadequate financial resources, lack of employment opportunities, spreading homelessness and expansion of squatter settlements, increased poverty and a widening gap between rich and poor, growing insecurity and rising crime rates, inadequate and deteriorating building stock, services and infrastructure, lack of health and educational facilities, improper land use, insecure land tenure, rising traffic congestion, increasing pollution, lack of green spaces, inadequate water supply and sanitation, unco-ordinated urban development and an increasing vulnerability to disaster. (UNCHS 1996)

Access to land and security for credit underpin the solutions to most of these problems. There is a need for all States to ensure that good land administration mechanisms are in place. This book examines why and how this may be done. In particular, it

1. provides an introduction to the role that property plays in social and economic development;
2. focuses more specifically on the role and importance of property infrastructure (and especially on the significance of land administration functions);
3. briefly reviews the nature and function of land administration systems;
4. identifies some of the more significant trends and issues associated with modern land administration;
5. highlights selected trends and issues in detail (such as the concepts of re-engineering, technology developments, economic issues, etc.); and
6. examines some recent case studies in the land administration field.

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December 1998

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- UNCHS (1996), *Habitat Agenda and Istanbul Declaration* (Nairobi: United Nations Centre for Human Settlement).

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Introduction and Overview

1.1 Land and Society

1948 saw the Universal Declaration of Human Rights. All governments that signed the Declaration formally recognized that human beings have a right to adequate shelter as one component of their right to an adequate standard of living. In 1996, at the Habitat II Conference, many countries committed themselves to ‘Promoting optimal use of productive land in urban and rural areas and protecting fragile ecosystems and environmentally vulnerable areas from the negative impacts of human settlements, inter alia, through developing and supporting the implementation of improved land management practises’ (UNCHS 1996).

Access to land and security for credit are vital components of sustainable development and good land management practice; every State needs to ensure that efficient and effective land administration mechanisms are in place. Land is a physical thing that encompasses the surface of the earth and all things attached to it both above and below. It is also an abstract thing that is manifest as a set of rights to its use with a value that can be traded even though the physical object cannot be moved. The term ‘land administration’ is used here to refer to those public sector activities required to support the alienation, development, use, valuation, and transfer of land.

The relationship between human beings and the land is of fundamental importance in every society and is evident in the form of property rights. This relationship has evolved in many different ways, from full state control, through communal forms of tenure, to the individual property rights. In the land reform programmes of the 1960s, especially in Africa, new land tenure arrangements such as the granting of individual freehold rights were introduced, often contrary to traditional custom and practice. In the reforms of today, especially in east and central Europe, the land restitution programmes have reprivatized land previously owned by individuals. They have also granted first-time rights of private ownership to what was formerly state-owned land, on the basis of the traditions of the past, thus reinforcing old land tenure arrangements.

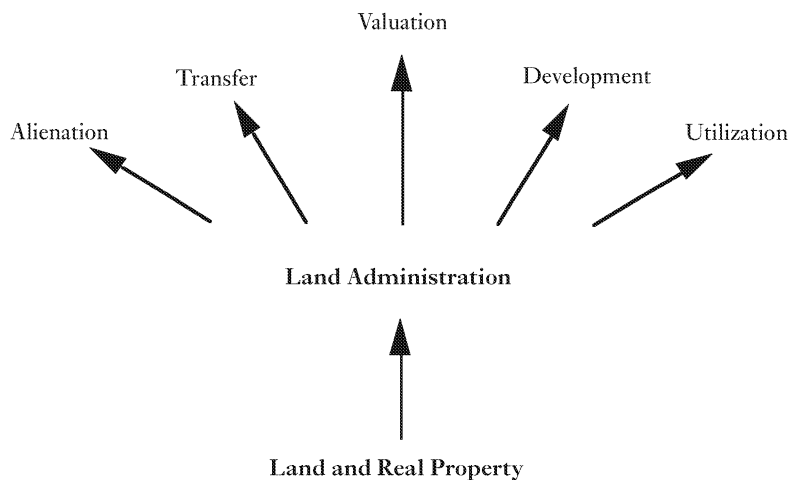


FIG. 1.1 Land administration

1.2 The Importance of Land and Property

The careful management of land and property is fundamental to economic development and the sustainability of the environment, fostering of good governance, and the protection of civil societies. Arguments for the importance of good land administration include:

- Assurance. The more clearly a person's property rights can be defined, the more easily that person will be able to defend those rights against the claims of others (Johnson 1972).
- Social stability. Accurate public records prevent some disputes from arising, and help to resolve others more quickly since property ownership and boundaries can be readily ascertained (Simpson 1976).
- Credit. Accurate public records reduce uncertainty in information by allowing creditors to determine more easily if a potential borrower has the right to transfer property offered as collateral (Feder and Feeny 1991).
- Improvements to the land. Enhanced assurance of property rights increases the certainty that a person will be able to benefit when making investments in buildings, equipment, or infrastructural improvements including land conservation measures. Improved access to credit provides financial resources for improving the land (Feder et al. 1988).
- Productivity. The factors described above combine to ensure that land goes to its highest and best use. As a result, for example, commercial

agriculture is adopted by innovative and energetic farmers who are able to acquire more land; bad farmers end up holding less land (Swynnerton 1955).

- Liquidity. When property rights are formal, assets can be exchanged rapidly on a massive scale and at low cost. In developing countries, most property rights are held informally and so cannot enter the formal market place as negotiable assets (de Soto 1993).
- Labour mobility. Opening up land markets facilitates geographical mobility in the work force; people are able to move from their land in order to benefit from social and economic opportunities offered elsewhere (OECD 1986). The ability to defend rights legally rather than physically allows people to leave their land to take advantage of short-term opportunities.
- Land and property values. Improvements to the land and improved production are reflected in higher land values. Increased labour mobility and liquidity allow values to be defined by the market rather than arbitrarily. Clearly defined property rights reduce the costs of discovering who holds rights to any area of land and the scope of those rights. Lowering the cost of finding information about land and property increases the incentive for potential buyers or lessees to make a higher offer for the land or property (Johnson 1972).
- Land and property taxation. The increased value of the land with clearly identified owners makes the collection of land and property taxes feasible (Dorner 1991).
- Public services. Increased revenues from taxes, together with better information about the land, enable governments and utilities to provide more effective services and utilities (Cymet 1992). Infrastructure such as street lighting, paved roads, and water and sewerage in turn raise property values.
- Resource management. Increased information about the land and property rights allows public agencies and private corporations to plan the management of resources more effectively and enables governments to enforce environmental and other regulations. It acts as a 'meta institution', that is as an enabling mechanism that allows other functions (such as the building of power, communication, and water systems) to be undertaken more effectively (McLaughlin and Nichols 1989).
- Social Development. The role of property in social development is increasingly viewed as being of even more long term importance than its economic contributions (Putnam 1992).

There are however counter-arguments put forward that detract from the importance of land and property. These include:

- Security. Indigenous land and property systems often provide greater security of tenure than previously recognized (Palmer 1996). Claims of subordinate right holders to limited or common access tend to be neglected (Attwood 1990) and tensions can remain between de jure and de facto rights to land, leading to an increase in the number of disputes (Haugerud 1989).
- Incentives. The rights to agricultural land allocated in indigenous property systems need not constrain incentives to invest in improvements (Binswanger and Deininger 1994).
- Credit. Credit is not necessarily related to formal property rights; also, credit institutions simply may not exist for the poor (Migot-Adholla et al. 1991). Where available, political influence may be more important than secure titles (Shipton and Goheen 1992) and credit obtained for agricultural purposes (using the land as collateral) is often diverted for other purposes (Haugerud 1989).
- Optimal land use. Land may already be used for its highest and best purpose, hence consolidation following the formalization of property rights may not lead to more effective farming practices; rather the land may be accumulated for speculation or for future subsistence and security for heirs (Haugerud 1989).
- Costs. The costs of building and maintaining the property infrastructure can be considerable; devoting scarce resources to these activities, especially in very low-income countries, will prevent their use in what may be more important areas (Attwood 1990).

Whereas the good management of land and property is an essential component of economic and social development, land administration must not be treated in isolation from other activities (such as banking and the provision of credit). Land reform in particular is a complex process in which other institutions and functions may be more important than property at any given stage in the development cycle. Good land administration is necessary but not sufficient to ensure that development is beneficial and sustainable.

1.3 Land and Economics

Land, together with its associated buildings and construction, is one of the most important financial assets in any country. Every investment is in some way or another dependent on land and property. Without land no shop or factory can be built, no road or railway constructed, there can be no schools or hospitals, and there can be no government or private sector buildings. Without the security of title to land or buildings it is difficult to obtain investment funds and venture capital. Poor land administration is an impediment to the growth

of an economy—banks for example are hesitant to meet the needs for financing without security of title, because of the higher costs and more significant risks. Legal security of land tenure facilitates mortgage-based investment financing for small and middle-scale businesses and underpins the physical infrastructure of almost all commercial operations.

Good land administration contributes to economic development in a number of ways. It provides security to investors and permits real estate to be traded in the market place. It also allows governments to raise taxes on the basis of the value of land and property, either at the time of land transfer (in the form of Stamp Duty or a transfer tax) or directly and annually on the estimated worth of the land or property. This is tantamount to a tax on wealth and has the further advantage that unlike personal income, buildings and the land on which they stand cannot easily be hidden from the tax collector. With good land administration, land and property taxes are easier to administer and can lead to the collection of substantial revenue.

Land and property are financial assets in their own rights and can attract significant amounts of inward investment. A study by the Economist Intelligence Unit into global direct investment noted the importance of real estate and the property sector in foreign direct investment (FDI). It suggested that:

While there is no doubt as to the importance of FDI in the world economy, the importance of real estate in FDI is difficult to gauge . . . Statistics on foreign direct investment flows into real estate are not standardized. Sectoral breakdowns of FDI flows largely ignore the property market, as most statistical agencies regard real estate as a special case . . . However, a rough estimate on the basis of existing data would imply that the real estate component of FDI could be anywhere between 5–20% of the total. Either way the real estate sector is significant: at the low end of the estimate it attracts more FDI each year than the whole of Eastern Europe and the former USSR, at the high end it attracts nearly double the FDI of China (EIU 1997).

One of the conclusions of the report was that:

There is a danger of a mismatch between a liberalized global economy with strong free capital flows and a heavily restricted real estate sector burdened by country-specific restrictions. The result will be barriers to FDI and trade. Global harmonization of property markets and standardization of rules and regulations governing real estate are necessary steps to boosting investor confidence and allowing transparency in the FDI regime governing real estate (EIU 1997).

1.4 Land Market Development

One of the key elements in the moves by former communist countries towards a market driven economy has been the privatization of land and buildings and

the creation of land markets. In some jurisdictions buildings are regarded as an integral part of the land while in others they are treated as separate entities. In the present context, land will generally be assumed to include buildings. Private ownership of land includes the rights to dispose of it, to use it as collateral for mortgages, to buy and sell it, and to use it subject to certain private and public encumbrances.

The land market operates to encourage mobility such that people can obtain employment in locations beyond the range of their current residential area; it also helps to encourage optimum profit from the land. In many countries land markets are more buoyant in urban than in rural areas. This is in part because those who live in rural communities tend to be more conservative and are more closely attached to the soil. Many farmers for example rate the social value of their land more highly than its market price—their need for land is as much psychological as financial. Urban populations on the other hand tend to be more dynamic than those living in rural areas and are more focused on the economic rather than cultural aspects of landholding. Urban people are also less committed to staying in one place since many are already migrants from other areas of the cities or the country. They are therefore a more mobile workforce and, subject to appropriate economic incentives, are more likely to buy, sell, or rent property than their rural counterparts.

Legal security of ownership with the clear identification of owners and what is owned, mechanisms for efficiently transferring rights in real estate and the provision of effective public access to land information are important prerequisites for developing land markets. Sound land administration within an appropriate institutional regime is essential for these developments. It is not necessarily the function of government to operate these land administration arrangements but it is the responsibility of government to ensure that they are in place and ultimately to be the guardian of the quality of service provided.

Land markets promote the efficient distribution and use of land. Within open markets, owners of land or buildings surplus to their needs can sell them to anyone who can use them more profitably or more efficiently. Thus in theory, over time, market mechanisms should ensure that land moves to its optimum use. The land market (and its associated legal foundation) is thus an instrument of land management policy and as such has a far-reaching economic impact.

It is however a blunt instrument. In the case of rural land reform, and in particular land consolidation, there is a growing awareness that existing markets may be too cumbersome to facilitate change at the pace that is necessary. Concerns for family inheritance and the social rather than the economic value of land may encourage land fragmentation and inhibit land reassembly. Governments therefore need mechanisms to intervene when the market cannot on its own achieve the desired social and economic objectives.