

Debate continues over land registration

LAND information systems — whether in the developed or developing world — are seen by many as vital to economic growth.

For the most part, however, efficient systems are rare in Third World cities. Instead, they tend to be incomplete and greatly outdated; frequently, urban maps are 20 or 30 years old, lacking any description of entire sections of cities, particularly of the burgeoning peri-urban areas.

Few publicly question their merit; most agree that current systems should be improved or new ones introduced. In fact, because most urban areas are battered by the twin problems of exploding populations and dwindling resources, proponents say the systems assume a critical role; in theory, they can produce badly needed revenues.

Debate exists, however, on the level of sophistication needed in any given system, since the greater the precision and amount of information collected on each piece of land, the more expensive is the process. The deciding factor, say critics, should be the use for which the systems are intended; moreover, they insist that extremely complex (and therefore extremely costly) systems are probably unnecessary in any case.

While they come in various forms, land information systems involve recording some or all the facts about a parcel of land: what are its boundaries; who has tenure; what rights are associated with a property — for example, who can mine it, cut down the trees on it, subdivide it, rent it, or sell it; who owns the rights; who leases or occupies the property; and which financial institution has a mortgage on it?

The more comprehensive systems

involve legal registering of land and issuing titles; and those who promote such systems for urban areas insist that legal records benefit both cities and residents.

According to Lynn Holstein, a land information specialist at the World Bank, land that is registered is easier to transfer and therefore more saleable. It can also be an important source of revenues for debt-ridden governments and municipalities.

He maintains that if the land market is to work properly, land and transactions should be registered. Once facts are recorded and individuals are given titles or documents, land will be bought and sold with fewer obstacles, and this helps the pace of development. Further, land registers, besides being associated with property tax systems, can also bring in substantial transaction fees. Moreover, they are potentially invaluable to agencies responsible for infrastructure and services, as information gathered for the registry becomes the basis for maps.

In Thailand, Mr Holstein notes, the government spent roughly \$20 for each parcel of land it registered in nine provinces (in a World Bank-supported land-titling project). It charged property owners only a small fee (about \$US4) at the time of the action, thus heavily subsidising the effort. But authorities correctly saw that the government could gain a great deal later, by charging transfer fees at the time of subsequent land transactions, as a percentage of the sale price.

"On average, 10% of urban properties in Thailand are sold every year," Mr Holstein notes. Because of this high turnover, the Thai government brought in \$200 million in 1988 alone — the bulk from transfer fees

amounting to about 10% of the sale price on each transaction — against an agency overhead of \$24 million.

He adds that, "if they didn't have a good registration system, there wouldn't have been as many sales, which in turn would have meant less in transfer fees. But with the system set up to issue documents quickly and efficiently, and with the housing finance system operating, more people got access to credit than ever before, as they could produce the documents they needed for collateral. These and other elements were in place to have a land boom, and that's exactly what happened."

Land developers favour an efficient land registration system because it reduces their transaction costs. They do best when they can buy and develop the land quickly, and they have less difficulty getting subdivisions titled and loans approved.

In a broader sense, an efficient system helps establish order. "In small rural communities everyone knows who owns what, and if disputes arise they can be readily resolved. But in urban environments, where there's less of a sense of community, it's important to have some system to confirm rights. Without it, there can be chaos — corruption, forgery, family feuds, even killings — over who owns what. And feuds are not uncommon. Sometimes they reach the courts. But in many developing countries, where there are backlogs of hundreds of thousands of court cases, it can take a generation before they are settled," Mr Holstein says.

For individuals, he continues, land registration is both a type of protection and means to obtain credit. While it would seem to benefit

mainly the middle and upper classes, it helps the poor as well.

"Titles are particularly important for the poor because if they have no way to prove their rights, as is usually the case in the informal land market, they can't show they bought a piece of property or land, are very vulnerable to those with false or competing claims, and can be evicted. Once people can prove legal title, however, it becomes more difficult for others more powerful, even governments, to deprive them of their rights or get rid of them. They also have a better chance of getting a fair price for their land if the government needs it for public works.

"Further, because individuals feel secure in their rights, they invest in their properties, adding rooms and making other improvements. These improvements have a multiplier effect, increasing values and the supply of rental housing — which again means more housing for the poor," he says.

He adds that individuals are more likely to get bank loans approved if they have proof of their rights. Banks are more apt to lend to those who want to build homes, for example, and to give credit, say, to open a business, if a title can be produced as collateral — something the bank can claim if the lender does not repay a loan.

Not everyone stands to gain, however. Mr Holstein says that, while no one openly opposes the idea of introducing land registration, various groups have a vested interest in maintaining the status quo.

Lawyers, for example, benefit from the confusion when no system of titling exists. "In the absence of an efficient registry, people purchasing properties must hire lawyers to figure out who has the most concrete rights," he explains.

Opposition also comes from the various institutions and agencies that play a part in any registry system. Often they view collaboration as a loss of status, resources and

control.

In addition, large landowners — who may often be high government officials — oppose any scheme that makes the land market more visible and easier to deal in. "They don't want the public to see the extent and location of their land holdings," Mr Holstein says.

The land registration process

Occasionally, complexities arise in the steps associated with registering land. The first stage has two parts: one involves identifying the location and boundaries of the land parcel and describing it — usually with a diagram. The other part attempts to document the legal rights associated with the land — who has the rights, and whether they are freehold or leasehold. Problems surface, says Mr Holstein, although this process seems straightforward. "It could be that the data for the two different parts are collected by two different agencies, say, the department of justice and the department of lands. And it could also be that they don't work well together. If a conflict arises, the project will be stalled."

'Maintaining the status quo'

Once this stage is accomplished, the document containing the information is entered into the record, legally registered, and the owner is presented with a title. Here again, difficulties appear. Frequently, owners do not pick up titles because regulations may require that before the documents can be presented, people must pay a fee, transfer taxes, or any back taxes that are owed. Further, registry offices may be located far from where the poor live, which could translate into loss of a half or full day's work.

According to Mr Holstein, the operation can hit other snags as well, because all the actors — lawyers, government officials, and

surveyors — argue about which type of land registration system is best. In a number of countries, the issue is whether to improve the existing deeds registration or to introduce a new system based on the registration of titles; and the debate continues after 100 years of experience.

He emphasises that land registration is a continuing process, not an event that, once accomplished, is completed.

"After the land register is created, all subsequent sales must be recorded or the whole effort will be wasted. Over the years, it will become outdated and the documents that are registered won't reflect reality, since 10% of property in urban areas changes ownership each year." He points to Belo Horizonte, Brazil, where the government issued 3,000 documents of ownership (as part of an upgrading project) in 1986-1987. Since then, not one of these owners has applied for permission to sell or list a new owner on the registry.

"If we assume that Belo Horizonte is no exception to the 10% annual turnover average, then many properties have been sold informally and the register is now well out of date," Mr Holstein says.

He stresses that if people are to be encouraged to register and become part of the formal system, they must be convinced such actions are in their interest. "Somehow, a balance must be maintained between what a government hopes to gain and individual property owners' benefits, because if the charges are too high, these will act as deterrents. So authorities should have a clear idea of what people are prepared to pay in return for what they perceive as benefits," he notes.

Office vs. field approach

Once authorities agree to create a systematically compiled legal land register, they must decide which approach they will use to accomplish it. According to Mr Holstein, the task can be performed in the office or on

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site. In the former (as is done in the Philippines), the agency responsible publicises it will accept claims; and individuals who want to register their land and obtain titles must send in various forms. The office then processes these claims, checking to see if they are complete and if conflicting claims exist.

In the field approach (as is done in Brazil and Thailand), notices are placed in local newspapers that an inventory of land parcels will be made and property rights (freehold or leasehold) will be determined. For the benefit of absentee owners,

some of whom live abroad, notices are also placed in newspapers in expatriate communities. Meetings are held in neighbourhoods to explain the procedures and documents that must be produced, and the evidence people will need to prove their rights.

Next, adjudication teams set up temporary offices in neighbourhoods for a month or so, and go door to door with community leaders. First, they identify a property (walking around the boundaries, marking

them on a map) and meet with owners of adjacent properties to reach an agreement that the boundaries are acceptable. Markers are then placed on the ground and numbers are assigned to each plot. The staff write a claim, on the spot, and the property holder signs — agreeing that these are indeed the boundaries.

"It becomes a community phenomenon. If a dispute arises between neighbours, it's usually resolved quickly, because the community leaders are watching," says Mr Holstein.

After this is accomplished, prop-

Malawi's land registration moves forward

BEFORE the 1970s, land transactions in Malawi were handled in the traditional way: deeds were exchanged at the time of sales, confirming that land or a building had been transferred. These deeds, however, did not stipulate to whom the land belonged; rather they stated only that a deal had occurred.

The problem with such a system, says R. C. Makono, Malawi's deputy commissioner for lands, is that someone else could have an earlier deed and claim to be the rightful owner. In fact, there were many conflicting claims.

Because of the ambiguous nature of the system, transactions were quite costly, as lawyers were required to search the deeds registry. According to Mr Makono, "lawyers' fees were very high and this meant that only wealthy people could afford to be involved in this system."

The deeds system was also a problem for the government: maintaining the registry was cumbersome, since large facilities were needed to store the files, which had become unwieldy.

"We needed some sort of land registration system that could bring together in one document all the important history and information about a parcel of land — like evidence that a sale had been transferred, the details about the property such as its size, location, liens, and if it enjoys rights of way over other land. If we had this, all that would have to be changed at the time of a sale is the name of the new owner," Mr Makono says.

Under the new system, property owners were supposed to fill out claim forms that would provide details on the properties and allow the land department to convert the latest transaction into a title. But the public resisted, since the government attached a 40 Kwacha fee (about US\$15) to filing the claim. "People didn't see any need to register and they didn't want to pay the fee. So they continued to sell land under the old system. And what developed was a situation where we were running two systems at once," explains Mr Makono.

As part of a 1985 World Bank-supported urban housing project, all the land in the city of Blantyre was to be registered. Landowners were to take surveyors around their properties, and together they would plot the area on a map and place markers on the boundaries. Problems arose again, however, this time centred on the project staff: surveyors who were expected to go to the field to identify boundaries were employed at another agency, where they had other responsibilities. Moreover, people were rotated, which did not allow for a permanent staff to follow through. Further, the project lacked an adjudication officer who could oversee the registration process and settle boundary disputes. Finally, there was only one vehicle for demarcation officers to take to the field.

"Blantyre properties were supposed to be registered in five years, but after four years, not one property had been identi-

fied and not one map had been plotted. Frankly, there was not much incentive for staff to work on the project, since they already had another job from which they were not relieved. And the extra work didn't bring extra pay," says Mr Makono.

Roberto Chavez, a senior urban planner at the World Bank, notes that to correct these problems, additional funds were included to hire a demarcation/survey/recording officer, appoint two surveyors, and hire additional temporary staff (labourers) to help mark the boundaries. Equally important, bicycles and other vehicles are being bought to take adjudication teams to the field.

Moreover, as it is felt that not all property owners can afford to pay claim fees, the law is being amended to eliminate this provision. "We have learned that if the project is to involve low-income people, we shouldn't saddle it with a claim fee. As long as it won't cost people anything, they'll take part," Mr Nyirenda says.

To publicise the registration activity, notices are being run in newspapers and on radio, and are being posted in schools, churches and district offices. Although publicity of this sort was attempted before, it stated that claim fees would be charged, so people didn't respond. Mr Chavez notes that the area of Mapanga, in Blantyre, has now been surveyed and the next step will be to adjudicate the claims and record the titles. In addition, another area of the city, Soche East, is being surveyed.

LAND REGISTRATION

erty holders take the form to the temporary field office, resolve any conflicts, and within six weeks the agency issues their documents (called either titles or land certificates) which contain all the important information.

He notes that the field approach is superior, since, with economies of scale, a registry for an entire neighbourhood can be compiled systematically. Each team can adjudicate and survey about eight properties a day (up to 160 a month), plot them (with diagrams) on a map which, in turn, becomes part of a city's record. In this way, a map of the area is built progressively, as each new parcel is added.

According to Mr Holstein, the problem with the office approach, which is the one most commonly used, is that "it is hard to resolve conflicting claims and boundary disputes solely from the information on forms people have submitted. So the claims become backlogged, the person who filed one dies, and someone else must start the process all over again. It can go on for years. It has the advantage, however, that the process is propelled by the users or beneficiaries, which means less government interference and that the users pay for the registration."

Some argue that deeds registration, rather than title registration, is adequate and far less costly to administer. But, Mr Holstein maintains that in a number of countries, bribes are paid to have false deeds placed on file; and unless a copy of the true deed is entered on to microfilm or a similar register that is difficult to alter, or many copies are made and placed in many files — to ensure that they can't all be removed surreptitiously — the deed system is readily open to fraud.

William Dillinger, a municipal tax specialist at the World Bank, notes that the registration of titles does bring security to property owners and allows them to use land as a commodity — selling, mortgaging it, or using it as collateral. As a means for municipalities to collect property

taxes or fees, however, it is useful but not essential.

To begin with, he says, it is very difficult to determine the legal owners of property. Often, people simply will not give this information or will purposefully misinform authorities.

"If the purpose of registering land and establishing legal title is to impose property tax, there is a simpler way to achieve that end. And this involves using a broad definition of liability."

He notes that developing countries generally opt for the latter method and bypass the time-consuming legal registration system. Instead, they send staff to neighbourhoods to make street maps and create lists of those who are liable for the tax, knocking on doors to find out who owns or lives in a unit, or is the agent for an absentee landlord.

However, problems arise after the list has been compiled, when authorities have no way or are unwilling to enforce penalties for non-payment.

"If they won't put a lien on a legal title or fine the liable person, then merely having records won't help the government collect revenues."

"An interesting case is Brazil. Property tax yields were quite low, so beginning in the early 1970s, the government sent staff to nearly 2,000 municipalities to administer a programme — mapping neighbourhoods, valuing properties and printing bills. But once the process was completed, local officials decided it was politically unwise to impose a high tax rate on a few big property owners or go after many small owners. So, while the scheme was well designed and technically successful, the taxes were still not collected, because the programme ran aground on the politics," Mr Dillinger says.

The lesson, he observes, is that large sums should not be invested in developing a fiscal cadastre if it is politically unfeasible to put into practice.

He also stresses that where a municipality intends to impose a tax, because its citizens have made it clear they want certain services and are willing to pay for them, then a tax base can be created inexpensively and quickly. "One should avoid waiting until tenure has been established on all properties, with precise boundaries and thorough determination of ownership. If you want a comprehensive legal cadastre, you will wait for ever." Further, if the process is very expensive, then authorities will have to raise property tax rates which people will resent.

Mr Dillinger adds that these reservations about fiscal cadastres also offer a strong argument against attempting the even more detailed cadastre that combines both legal and fiscal objectives.

Some observers state that, in many poor developing countries, where there is a chronic shortage of trained staff, even simple fiscal cadastres are difficult to produce. Thus, they argue for a scaled-down, incremental approach that involves simply naming streets (since many are unnamed) and assigning numbers to properties on each block. Once this is accomplished, a list of those occupying each unit can be compiled and tax bills sent (if that was the purpose of the exercise). Then, only after this effort has been completed and authorities have found it politically acceptable to impose property taxes, should they consider moving to anything more elaborate.

Those advocating the minimalist approach also point out that most countries do not make housing loans, so the process of creating a fiscal cadastre (of any complexity) should only be undertaken if housing finance is available. ■

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