

UNITED NATIONS
**ECONOMIC
and SOCIAL
COUNCIL**

49190

Distr.
LIMITED

E/CN.14/CART/258
5 October 1970

Original: ENGLISH



ECONOMIC COMMISSION FOR AFRICA

Seminar on Cadastre

Addis Ababa, 25 November - 9 December 1970

LET US HAVE A CADASTRE

(Submitted by the Government of Uganda)

LET US HAVE A CADASTRE

by

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The decision to start or maintain a system of records showing the extent, value and ownership of land for whatever purpose introduces with it a number of issues which must be very carefully evaluated and fully taken into account. The introduction of a cadastral system in complete ignorance or oblivion of the major issues relating to the people's political, social and economic way of life can easily lead to catastrophic upheavals or stagnations. The dangers of social unrests breaking out as a result of a cadastral system designed to perpetuate or introduce an unjust and irrelevant way of life are higher in developing countries than in parts of the world which are normally regarded as developed. Developing countries have one characteristic in common; because the level of industrialization is low, the majority of people depend on the land for earning a living. For a cadastral system to be accepted as equitable in developing countries, this fact must be recognized and accommodated as far as possible.

"I want to emphasise the importance of land in our economic development. Land in our time is not only an economic but also political resource. In both aspects its natural tendency is to act as prop for those who survive under the principle of 'survival of the fittest'. Uncontrolled land acquisition in complete oblivion of the needs of the community can give rise to the phenomenon of very wealthy landlords at whose mercy those who are unfortunate either by absence or inability to win the land race, must live. In such a situation a land magnate enjoys not only inordinate wealth, but in the arena of politics his weight is heavier than that of the landless. In a society so dependent on agriculture like ours, and in which industry is yet in its infancy, the gulf that can be created between the wealthy landlord and the landless can be very frustrating and politically explosive, and such a situation is not in line or consonant with the equality and the dignity of citizens."

The preceding quotation is from the speech delivered from the Chair of the National Assembly of Uganda by His Excellency the President. It summarizes in very clear terms the need to have a clear policy based on the need to ensure that while some form of cadastre is desirable for land development, registration of land ownership should not bring along with it social injustices.

Fore-runners of a Cadastre

A system of recording land ownership is generally not introduced for its own sake. Underlying the fairly simple act of introducing a cadastre, there are always definite objectives and motives that are desired to be achieved.

Probably the oldest reason for introducing any system of cadastre was to enable tax collectors to assess the tax liabilities of landlords. A cadastre with this objective in mind concerned itself with recording the status quo in land ownership. There was no question of allocating land to people who might have been landless at the time of the introduction. Thus we read of what is the first European fiscal survey to determine the extent of individual land holdings. Following Diocletian's reform taxation (about AD. 287) a land survey became necessary for the collection of the land tax. Very little seems to be known of the methods of investigations, assessment and entry of the resulting fiscal record. It is likely, however, that the record must have been compiled from many local enquiries carried out on the ground by persons with local knowledge. It is probable that the compilers worked under the immediate supervision of local authorities which reported to provincial officers of the Roman Empire Treasury. Under this system the unit of the new tax jugum was a parcel of land of variable extent, but which an able-bodied peasant caput was declared capable of cultivating and living on. Thus a property of 100 juga meant a property of 100 labourers or capita. It is generally accepted that the term cadastre is derived from capitastrum, which is a register of capita, juga or units of territorial taxation into which the Roman provinces were divided for the purposes of the capitatio terra or land tax.

A cadastre introduced purely for the determination of a landlord's tax liability appears to be particularly suitable for countries whose economies are predominated by agriculture. Inasmuch as the tax liability is assessed on the amount of land held, and not what is actually produced from it, this system of cadastre could encourage the full utilization of land by all holders. Where an individual is not able to put all the land he holds to good use, the system of capitatio terra could force him to give up any derelict estates. Such estates, when surrendered, could then be allocated to other persons who are more likely to make good use of them.

A system of recording land ownership can be introduced for the purpose of enhancing the economic, social and political status of a few selected individuals. When land ownership is geared to achieve this end, recipients are picked by an overall master - a king, an emperor or some such other person in similar position of authority.

Early history of land ownership in Europe is characterized by this feudal system. It is beyond the scope of this paper to deal with the origin of private land ownership in various countries of the world. It is however relevant to examine the effect of European feudalism on the origin of early private land ownership in Uganda, which was under the rule of a colonial European power.

The imposition of foreign rule over people always inspires resentment and opposition. In order to obtain acceptance, it is necessary to get the rulers and prominent people in the colonized country to co-operate with the colonizers. Having recognized this fact, the British Government entered into agreements with three of the former kings in Uganda. The agreements dealt with many aspects of administration. Important provisions were also made about the division of land among the kings, chiefs and certain selected individuals. In the 1900 Agreement between the British Government and the Kabaka (King) of Buganda, land was divided as follows:

<u>Allottees</u>	<u>Type of Holding</u>	<u>Amount in sq. miles</u>
Forests - Uganda Administration	Freehold	1,500
Waste and uncultivated land - Uganda Administration	"	9,000
Plantations and other private property of the Kabaka (King) of Buganda	"	350
Plantations and other private property of the Namasole	"	16
Plantations and other private property of the Namasole, mother of Mwanga	"	10
Princes	"	32
Princesses	"	90
To the Chiefs of the counties (20 in all) 8 sq. miles each (private property)	"	160
Official Estates attached to the posts of the Chiefs - 8 sq. miles each	"	160
3 Regents (Private)	"	48
(Official)	"	48
Ibogo (the Muhammedan chief) will receive for himself and his adherents	"	24
Kamuwaga (Chief of Koki) will receive	"	20
1,000 chiefs and private landowners will receive the estates of which they are already in possession, and which are computed at an average of 8 sq. miles per individual, making a total of	"	8,000
3 Missionary Societies in existence in Uganda (as private property, and in trust for the native churches) as much as	"	92
Land taken by Government for government stations prior to the present settlement at Kampala, Entebbe, Masaka, etc.	"	50
	Total	19,600

Insofar as land was concerned, the provisions of the 1900 Agreement between Britain and Buganda were repeated in similar agreements between Britain and Ankole, and Britain and Toro. The implementation of the Agreements resulted in the introduction of a cadastre in Uganda at the beginning of this century.

At the time of signing the 1900 Agreement, there were definitely more than 1,000 people in Buganda. The motive for introducing a system of private land ownership was therefore not to give every person land. Today there is enough evidence to show that the only justification for introducing private land ownership into Buganda was a deliberate device of the British to "bribe" the Kabaka and his chiefs as well as certain important individuals. Having thus received substantial gifts from the British, the beneficiaries co-operated with them and ensured that everyone else did. Having obtained the sole right of ownership over land which was regarded as the people's property, they turned the people into their tenants. Because the tenants depended entirely on the land as a means of earning a living, they had to obey the orders of their new landlords. The landlords themselves carried out the instructions of their donors - the British colonizers.

When it came to the actual allotment of land, it was discovered that far more than 1,000 people had legitimate claims to land. Thus the final allottees numbered well over 4,000. Although the final beneficiaries were four times the number mentioned in the 1900 Agreement, there were many people whose claims to land were merely brushed aside. Against their own will, those whose claims were rejected became tenants of the selected few who acquired political, economic and social status; which status was used for furthering the interests of a foreign power.

Although the example cited above has a foreign regime as the principal mover, there is nothing to prevent the nationals of any country deciding on the introduction of a cadastre for a similarly unjust and irrelevant purpose.

When there is no Cadastre

The evils which could exist in a country with no system of registering land ownership are likely to be as serious as those arising from a cadastre introduced in complete ignorance or oblivion of the need to take into account the political, social and economic thinking of the people. The vacuum which exists because of the absence of a cadastre is normally filled by a phenomenon of insecurity of land tenure. In fact it would not be an overstatement to say that insecurity of tenure on the land is generally a characteristic feature of developing economies. Unfortunately the insecurity tends to be hidden under the cover of customary tenure. Insofar as customary tenure is governed by unwritten statutes, the security it offers is bound to dwindle and become less acceptable as the need to invest in the land becomes a pre-requisite to economic development.

Individual ownership of land based on the customs of the people is generally not recorded anywhere. Under such a system one cannot know the average size of holdings nor the extent of fragmentation of holdings. In the absence of this type of information, a land tenure system which militates against economic development can persist indefinitely.

The absence of permanent and scientifically surveyed monuments delineating the extent of customary holdings exposes customary land-holders to perpetual boundary disputes. The settling of such disputes always results in many man-hours being used in attending court cases. It becomes obvious that output from land, the boundary of which is the subject of interminable litigations, cannot be directly proportional to its size. The existence of disproportionate number of land cases in the courts of any country has two main significances:

- (i) It shows that the people no longer consider that customary tenure offers them the security they want. In short, it is an indication that people are ready to accept an alternative land tenure system which is more secure than that which is enjoyed currently;
- (ii) Because of the importance which land has in the life of the people, cases of land disputes make it difficult for magistrates to hear other cases which may have greater real importance.

Design and Form of Cadastral Boundaries

Having taken a decision to introduce a system of keeping a record of the extent and ownership of land, it is essential that the methods for ascertaining and recording the extent of an individual's land should be economic and easily understandable by the people whose rights of ownership are being recorded. Often when a decision is taken to record and register land held by various individuals under customary tenure very little attempt is made to regularize the boundaries. The boundaries tend to be more irregular if the rights of ownership originate from the custom of the people and the types of crops they grow. The diagram of the Appendix indicates the complexity of a cadastral survey done with a view of respecting the customary ownership of people living in an area where a decision was taken to introduce a cadastre.

It is obvious that the expense involved in surveying a parcel of land in the various shapes shown in the diagram is enormous. Notwithstanding the fact that it has been expensive, the accomplishment of this form of survey has been the delight of the land surveyor. In circumstances of this nature, it would have been advisable of the people having common boundaries were persuaded to agree to a straight line which would have given a solution resulting in no loss of land to either of them.

Even where boundaries are generally in the form of straight lines, ground surveys are normally more expensive than aerial surveys. Provided the need to introduce a cadastral system is accepted as a pre-requisite for economic and social development, it should be fairly easy to persuade landowners to plant hedges along their boundaries. With the advice of agricultural experts suitable fast-growing hedges can be used. When the hedges have grown to such an extent that they are air visible, the whole area would be flown and mapped photogrammetrically. The hedges are picked up in the plotting machines and these then form the cadastral boundaries. The determination of which plot belongs to whom can be done cheaply by field enquiries. Even where air visible boundaries have been decided upon, it is still necessary to persuade landowners to accept straight boundaries rather than boundaries which might more accurately reflect the limits of what they previously held under customary tenure.

It would be too optimistic to hope that air visible boundaries would solve problems connected with the introduction of a cadastre in all cases. In rural areas where land is already settled, the nature of the crops grown on such land must be taken into account. It would, for example, be impossible to introduce air visible boundaries in areas where bananas are grown. It is also difficult to introduce air visible boundaries with any measure of success in urban areas. In both these instances, the most practical method of obtaining cadastral boundaries would be by ground methods. The need to obtain these boundaries as economically as possible must, however, always be borne in mind.

Review and Maintenance of a Cadastre

It has already been mentioned elsewhere in this paper that a cadastre is generally not introduced for its own sake. The reasons which call for the introduction of a cadastre have been shown to be either political, economic or social.

A people's way of thinking in all these matters is never static. Any path which a nation decides to follow in its development must have a strong foundation on the land of that nation. This means that once a cadastre has been introduced, its existence must always be viewed against the background of current development.

The presence of a system of recording and registering land ownership always brings with it the marketability of land. Once land acquires a monetary value, it starts to change hands either in individual portions or very minutely sub-divided quantities. A cadastre which sets no limit to the minimum below which no parcel of land shall be divided is clearly disadvantageous. The evils of having small plots of land in an agricultural area should be obvious. Modern agriculture is now a highly developed science. The use of sophisticated farm machinery is now rapidly taking the place of the hand hoe. These machines, coupled with other techniques of farming, enable higher yields to be obtained from the land. However, machinery cannot be used on minute plots of land. Not only in the case of farm land is there a need to set a minimum acreage below which no land shall be sub-divided. Even in urban areas plots of land once surveyed for various purposes must not be allowed to be sub-divided any further, without the consent of the relevant planning authority.

The marketability of land which comes as a result of introducing a cadastre could lead to another form of uneconomic land holding known as "fragmentation". Although it may not be necessary, it may nonetheless be expedient to point out that fragmentation has nothing to do with the size of individual holdings or estates. Insofar as land holding is concerned, fragmentation is the term used to describe the peculiar condition which exists when one landowner has several estates scattered in different parts of the country. All the estates can be economically viable units individually. However the one landowner cannot give equal attention to all the estates; and because of lack of supervision, output from the estates fall below what is possible. Although the owner of estates may appear to be making a good living of his land, at the national level there is low production from the different parcels of land which he holds.

Unless care is taken a great discrepancy can develop between a record of land ownership as it is kept in the office and what actually exists on the ground. The people whose rights to land are registered must be made to understand that when land changes hands, the changes must not only be limited to physical occupation, but must also be recorded in the appropriate plans and register. This entails a lot of persuasion and explanation. Legislative measures can be very poor substitutes. It is important, for example, to let landowners appreciate that when they inherit, purchase, or donate land, full details of the transactions should be given to the registry. Only when all transactions in land are reported to the correct authority, will it be possible to detect some of the bad land tenure practices already alluded to in the earlier part of this paper.

The machinery for administering and maintaining a cadastre can do a great deal in encouraging landowners to report all transactions. Apart from persuading people to bring to its notice all changes in land ownership, the people must be encouraged to make such reports by the nearness of the places at which reports can be made. In countries where public transport is not yet developed to a very high level, long distances can be a definite factor working against the maintainance of a cadastre.

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