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ECONOMIC COMMISSION FOR AFRICA

Seminar on Cadastre

Addis Ababa, 25 November - 9 December 1970

REGISTRATION OF TITLES TO LAND AND
THE CADASTRE IN TUNISIA
(Submitted by the Government of Tunisia)

REGISTRATION OF TITLES TO LAND AND THE CADASTRE

There are two systems of land registration in Tunisia. The optional system introduced by the Land Law Act of 1 July 1885 (abrogated and substituted on 12 February 1965 by the "Code des droits réels" (Real Property Act) and the compulsory system promulgated by decree of 20 February 1964, introducing "Compulsory land registration free of charge."

I. OPTIONAL SYSTEM

Immediately following the creation of the Protectorate, the colonial authorities set about the task of organizing real property to meet the requirements of organized credit, so as to facilitate settlement of the country by providing ready means and the security for land transactions. The existing system of land records, based on the authority of the Moslem Courts (Charâa) which enforced Islamic law, was not likely to encourage settlers to acquire land, all the more so since the titles of the owners were either imperfect or rather uncertain, providing very little detail as to the boundaries or the legal status of the property.

For these reasons land law was drafted and promulgated on 1 July 1885; it only came into force on 15 July 1886, but was not widely used until after it had been amended by the decrees of 15 and 16 March 1892 introducing fiscal exemption and a reduction in registration charges for the applicant.

Main Characteristics of this system of land records
where registration is optional

This procedure is based on Australian law (Torrens Act), the Algerian Act of 28 July 1873 (abrogating previous rights) and the French Civil Code (with reference to the law on real property).

Only real property may be registered.

For this purpose, the law adopted a system of establishing a land register (a system for providing real public information) in which only the property is taken into consideration and not the owner, and each successive transfer is recorded. It should be noted that the land register is a public register in which each unit of real estate, recorded on a separate folio, is established in accordance with the following three important principles:

- (1) "Legality, any title registered must be carefully checked and full responsibility must be borne by the State";
- (2) "It should be detailed: on each sheet, all restrictive agreements and history of the registered property must be evidenced therein, it should also be clear and easy to consult";
- (3) "It should provide conclusive evidence, irrefutable and absolute".

Registration procedure

The responsibility for registration is shared by three different departments:

- (1) The land tribunal receives the request for registration and appoints a magistrate to undertake the necessary investigation to verify the title of the applicant, so as to allow the tribunal to decide whether the request should be admitted or rejected partially or completely. The final decision as to registration, therefore, rests with the tribunal. It must see that the rights of counterclaimants, third parties, whether present or absent, minors and incapacitated persons are respected.

The decision ordering registration is absolute and final. It should be noted, that on this point the law stipulates: "any person whose title may have been usurped as a result of registration or record will have no right to rectification of the title, but in case of fraud, is entitled to bring an action for damages against the perpetrator of the fraud."

- (2) The Department of Topography and Cartography is responsible both for noting the boundaries of the property to be registered, and for preparing a map of the property in accordance with topographical methods thus making it possible to establish accurate boundaries at any given moment. The keeping of archives of the technical documents used for preparing the map is the responsibility of this department.

- (3) Keeping records of real estate falls to the Land Registrar (Conservateur). The Registrar is responsible mainly for:

- (1) registration of property;
- (2) preparation of titles to the property;
- (3) keeping records of all instruments concerning the property registered;
- (4) record of duties and charges accruing on registered property.

In addition, he must see to it that the titles are up to date.

We pointed out earlier that the land register (livre foncier) is based on the principle of providing full and complete information, since it is open to public inspection, and all legal action taken in respect of the property as well as all real rights to the property are recorded, so that all charges on the property would be brought to the notice of any buyer or creditor. Similarly during the registration operation (submission of applications for registration, establishing the boundaries, closing-off the boundaries, etc.) maximum publicity is given at each stage of the procedure so that all who may have a title or claim to the property to be registered may come forward.

Results

The total area registered to date by the land law procedure, is about 3 047 000 hectares (see table appended).

90 950 applications for registration were received and 167 260 titles to property established. The latter stem mainly from allotments made within the last few decades in the interior of the country and on the outskirts of towns as new areas came under construction.

The area likely to be registered was established by an inquiry in 1962 at about 7 000 000 hectares.

Therefore, 4 000 000 hectares approximately remain to be registered.

Thus the area now controlled by the land at the end of 90 years, hardly approximates 43 per cent of the total registrable property. In other words, registration is taking place too slowly. The reasons for this are to be found in the optional character of this system, the result is that topographical surveys to prepare title maps are only carried out when there is a request for registration. This is not likely to stimulate great activity.

Nevertheless, it should be acknowledged, that the reorganization of real estate brought about by this procedure has been very important. Registered rural and urban property represent a major part of the real estate wealth of the country. Nearly all the property on the market has been registered. Nevertheless, not yet registered are almost all of the small agriculture holdings, and the vast uncultivated lands of the centre and south, which certainly have potential value, but have not been developed for demographic, sociological or climatic reasons.

II. COMPULSORY SYSTEM

Tunisia is mainly an agricultural country, thus it has been imperative since independence (in the hope of fostering economic growth) to help land-owners who have not been able to take advantage of the existing system of land registration, in the majority Fellahs with small holdings, who, therefore, do not hold titles which permit dealing in the land or the raising of bank loans. For this reason, the decree of 20 February 1964 was promulgated, which made land registration compulsory in order to carry out a systematic and general cadastral survey of the entire country.

Main characteristics of the cadastral survey

Compulsory registration was fixed for all property not yet registered, in accordance with the provisions laid down by the land law and the special conditions laid down in the decree, which at this preliminary stage only applies to rural property.

The regional unit for the survey is the "Cheikhat" which is usually subdivided into several sectors. The average area of a sector is about 1 000 hectares.

A judge is appointed for carrying out a legal inquiry in respect of all the properties in each sector, and is assisted in the process of demarcation by a sworn-in official from the Department of Topography.

The registration is notified, immediately the legal inquiry ends.

As in the procedure of optional registration, so too, in the procedure of compulsory registration each stage is preceded by wide publicity.

This cadastral survey is free of charge.

It should be pointed out that the system of normal and optional registration continues in rural areas as well as those areas on the outskirts of the towns which have not yet been affected by a decision to make them the subject of a cadastral survey.

Thus, this cadastral survey is purely legal in character, it is equivalent to the systematic and general application of the system of registration introduced by the land law of 1885. It is quite distinct from the French cadastre which is primarily fiscal in character, the primary aim of which is not to establish the real owner for the purpose of registration, but the "apparent owner", that is, the "person having the legal responsibility of paying the land tax".

Four months after the promulgation of the decree of 20 February 1964, the first operations were started.

The Land Tribunal set up seven cadastral commissions for this purpose, the number soon increased to twenty.

Each of these commissions had a magistrate among its members, who was responsible for its activities, and was assisted in its demarcation operations by a sworn-in official of the Department of Topography.

The problem which the Department of Topography had to resolve, due to the enforcement of this decree was twofold:

- (1) The appointment of sworn in officials of the department to assist the magistrates of the land tribunal in the work of demarcation;
- (2) Drafting a topographical map of all the parcels established by the cadastral survey in as short a time as possible, in order to give the survey its expected effectiveness, while aiming at maximum accuracy, the plans being the final document to be joined to the deed.

Having to group several commissions in the same zone while carrying out cadastral operations at a rather rapid pace has caused the Topographical Department responsible for submitting the plans as soon as registration is declared, to revise their traditional methods of surveying.

For this reason normal surveying with a tachometer and steel tape, the sole method used under the optional registration procedure, because of its accuracy, was abandoned, (because of the slowness of this method and its high cost), and replaced by the methods listed below:

- (1) Direct surveying by using a plane-table and a self-reducing alidade or a tachometer and level rod. 145 000 hectares were dealt with by these methods which proved rather encumbrous;
- (2) Rectification, used only in flat zones or for slightly sloping ground. Plans drafted in this fashion covered approximately 30 000 hectares, but the results were not satisfactory; the procedure was simply abandoned;
- (3) Photogrammetric plotting, but without presignalling the boundaries. This procedure proved unprofitable because of the long and arduous work of preparation.

In short, none of the methods lived up to expectations (especially from the point of view of accuracy); nevertheless their rapidity of execution was appreciable.

After this experiment carried out from June 1964 to June 1970, which permitted the cadastral survey of the entire governorate of Nabeul (160 000 hectares for 135 618 parcels) and a part of the governorate of Sousse (26 000 hectares for 23 000 parcels) the Department of Topography and Cartography began, as from September 1970, a second phase of cadastration, for which the procedure adopted for the survey was photogrammetric plotting, with presignalled boundaries for the parcels and the use of the method of overflying for aerial coverage (photographing the area to be surveyed twice using two different scales).

The Department of Topography and Cartography plans, moreover, to undertake as from 1973-1974 a numerical cadastral survey. For this purpose, all arrangements have already been made for the acquisition of suitable equipment, and for training the specialized staff.

Difficulties encountered at the different stages of the
cadastral survey and registration

1. Delays in the successive cadastral operations

The topographical operations of the cadastral survey consistently lagged behind the legal operations (in the case of Cap-Bon, a delay of nine months). This delay is normal, taking into the consideration the rapidity of legal operations which in the field is limited to one of demarcation and inquiry, whereas the topographic operation is much more time-consuming and arduous.

But, in the follow-up to the cadastral survey (see synoptic chart appended): handling and decisions on cadastral applications by the Land Tribunal, preparations of plans of the applications by the department of topography, and finally the handling of applications by the Land Registrar (this operation consists of establishing the title to the property), there has always been a more or less considerable delay between the respective stages.

The following table drawn up on 15 November 1969 shows the delay between successive stages in the cadastral survey of Cap-Bon.

Total number of applications in the governorate	Applications dealt with by the judges and the Land Tribunal	Applications dealt with by Topography and Cartography Dept.	Applications dealt with by the Land Registrar
54 745	34 885	16 673	13 232
Delay in respect of decisions of Land Tribunal		18 212	21 653

These cumulative delays at the various stages of the procedure of course entail delays, also as long, in the delivery of deeds of title to the owners. The first titles delivered by means of this procedure were officially distributed on the 23 June 1965 at a ceremony presided over by the Secretary of State for Justice (at El Haouaria, governorate of Nabeul). The delivery of these titles therefore, took place one year after the beginning of demarcation operations. But since then, delays have grown longer and in many cases exceed three years.

Now, in order to have the land owners give full support to the cadastral survey, it is essential that the titles be delivered to them within a reasonable time. Therefore, if the situation is to improve, the problem of catching up on the existing backlog within the shortest possible time, is an acute one.

The Department of Topography and Cartography has, as far as it is concerned, found a preliminary solution to the problem, by instituting a revision in its traditional methods of preparing cadastral requests; it has simplified them and has also increased the staff responsible for this task.

2. Difficulties arising from the system of records

Among the difficulties which impede dealing in and the circulation of registered property and, as a result, the development of the registration system, is that caused by frozen titles.

A frozen title is one which is not up to date from the legal point of view (no records can be entered concerning this property while this is so).

Usually, any dealing in land (sale, division, exchange, etc.), the object of which is to transfer the property registered either totally or in part, which is not entered in the public register leads, more or less in the long run, to the freezing of the title thus preventing any official dealing in the property. To illustrate this, here is an example: if a piece of registered land passes either through sale or inheritance from one owner to another without the Registrar being informed of the transaction in order to make it official and to keep the register up to date, the title appearing on the sheet in the register will still bear the name of the former owner, and no other title may be registered (either by transfer, inheritance etc.) as long as the legal situation of the property is not clarified. The title is therefore frozen.

Bringing a frozen title up to date implies the reconstitution of the entire sequence of transfers concerning the property. Such an operation is very difficult (and sometimes impossible). Indeed it necessitates the production of all the bills of sale, in proper form, appropriate to each transfer (probate, bills of sale, search certificates, etc.) as well as the fees of registration and record due for each operation. This is likely to lead to expenses far in excess of the market value of the property which has been frozen.

For these reasons a frozen title is likely to remain that way a long time and may even do so indefinitely. On this point, it should, however, be pointed out that article 16 of the Act of 21 February 1964 introducing the reorganization of the recording of land, stipulates "that as a temporary measure, the land tribunal, may of its own accord, or at the request of any person concerned begin proceedings to bring titles up to date and carry out the necessary checks." But, to date no such proceedings have been attempted.

Moreover, the causes which are likely to bring about the freezing of a title are innumerable; the example given is only one of many.

The exact number of frozen titles is rather difficult to establish. A distinction is made between frozen titles which have been submitted to the Registrar for checking, estimated at about 8 000, and those frozen titles which have not been submitted to the Registrar, their number easily exceeds 10 000 and are to be found mainly in the region of Sfax.

Thus of a total of approximately 167 000 titles recorded in the land register, approximately 18 000 are frozen and therefore withdrawn from circulation.

When one considers the cash value dealing in land (sale, division, mortgage, etc.) brings to the Treasury (the equivalent of 14 per cent of the sum involved), it can be seen that this mass of frozen titles represents a loss to the State, and fetters to some extent growth in that sector of the country's economy which is connected with dealings in land, (a sector in which the contribution to the coffers of the State is large).

Moreover, one of the major factors in favour of the establishment of a cadastral survey of a country, is precisely the possibility of recuperating the costs of the survey and registration by introducing a land tax for the fiscal type of survey, and registration fees and stamp duty on land transactions for the legal type of survey.

In addition the repercussions of instituting archives (e.g. keeping the land register up to date) or those of an economic nature (withdrawal of the title from the circuit of land transactions), and the effects of a frozen title on the cadastral map, often results in the cutting up of the land in extremely small lots, shared by several owners (unknown to the law), lots which of course do not appear in the cadastral survey, and cannot be brought up to date until the legal situation of the property has been clarified.

Evidently, the cadastral survey is an essential tool in the service of economic development; but the condition necessary for introducing it, and its success if it is to cover the entire country (whether it be of a fiscal or legal nature) is the existence of a law of real property, with all the property rights that this implies.

If this is so, the introduction of a cadastral survey, which would meet modern needs in the sphere of the social and economic implications of land, raises basic problems of training and infrastructure.

(a) Training: This concerns both field staff and those at management and middle-management levels for the different techniques and stages of the cadastral survey:

- Demarcation and establishment of the cadastral plan;

- Keeping and preservation in archives of the files and documents concerning the cadastral plan;
- Opening a land register for the registration of title -deeds and recording the relative charges and fees;
- Keeping and preservation in archives of the land register, title-deeds and relative bills and instruments.

(b) Infrastructure equipment and the material necessary for the operation of the various cadastral services

Moreover, the development of the cadastral system, provided all the necessary conditions are met, for the management and suitable preservation of the records of the cadastre (the organization of which falls mainly on the State) depends on the proprietor, holder of the title to the land, and therefore on his degree of social evolution.

The latter should be aware of the legal, technical, and economic value of the cadastral documents (title-deed or map) which he holds.

APPENDIX

SITUATION OF LAND REGISTRATION IN TUNISIA

Governorates	Area registrable	Area registered	Percentage	Number of Requests	Number of Titles
Tunis	208 900	141 100	67.5	18 807)	124 927
Nabeul ^{1/}	430 300	415 700	96.6	54 125)	
Bizerte	489 700	230 240	47	4 049	10 311
Beja	557 800	374 500	67.1	824)	9 230
Jendouba	313 200	140 800	45	1 048)	
Le Kef	806 000	266 800	33.1	1 950)	2 197
Kasserine	904 000	152 900	16.9	697)	
Sousse	547 200	148 700	27.2	3 918)	9 667
Kairouan	715 500	392 700	54.9	567)	
Sfax	887 000	278 430	31.4	2 877)	11 930
Gabes	217 000	48 940	22.6	485)	
Gafsa	595 400	439 910	73.8	554)	11 930
Medenine	328 000	15 890	4.8	346)	
	7 000 000	3 046 610	43	90 947	167 262

^{1/} These figures include the recent cadastre which covered the entire rural area of this governorate.

SYNOPTIC CHART OF THE CADASTRAL OPERATION

