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CADASTRAL SURVEYS AND THE SYSTEM OF LAND REGISTRATION
IN MADAGASCAR
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CADAstral Surveys and the System of Land Registration in Madagascar

by

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"The word cadastre is the technical term signifying the surveying of parcels of land, establishing their area, value and ownership (or any other title of occupancy)."

This definition seems to deal only with the topographical aspect of the system, in other words, the demarcation of a group of parcels with their area, their boundaries and the name of the owner. In Madagascar, in addition to this demarcation, the owner must establish his title by an official instrument. That is to say, that his rights to the specific parcels are recorded in a public register called the (matrice foncière) land register.

Under the Act of 25 May 1929 the "cadastre indigène", native cadastral register, was introduced. Nevertheless introduction of this system of land registration was only envisaged for certain regions of the island: the provinces of Tananarive, Fianarantsoa and of Tamatave. The principal characteristic of this cadastral register is that the land thus registered is governed by the customary law of Madagascar.

If we use the words cadastral register in their widest sense, there exists in Madagascar another "cadastral system" which brings the ancestral Malagasy lands under the system of modern law: this is the system of land registration, laid down by the Act of 9 March 1896, which will be abrogated in 1973. In later legislation, mainly the Act of February 1911, passed during the colonial period, and Statute no. 60-146 of 3 October 1960, passed after independence, the procedure to be followed in the registration of the ancestral lands concerned was laid down.

Not only do these two systems of land tenure differ in terms of the law but they also differ in terms of the procedure to be followed under each system. The land registration procedure is left to the initiative of the persons concerned (Malagasy) while the cadastral system is ensured by the Public Authorities. The first is, therefore, optional, except in two cases: land acquired by a foreigner, and that granted by the State. The second is compulsory in the sense that the burden of proof and the production of evidence of ownership is required of the owner.

Nevertheless, there is a common thread running through both systems of land tenure: that of the absolute and indefeasible character of the title established through the respective procedures. This is so because the system adopted in Madagascar is based on the Torrens Act.

In this respect, it should be pointed out that the absolute and indefeasible nature of these titles concern the original establishment of these titles and not subsequent registration subject, as this is to change and rectification.
These two systems of land tenure, although satisfactory in principle, carry with them problems, which retain, more or less, the close attention of Public Authorities: e.g. "difficulties arising out of the nature and practices of traditional systems of land tenure", or those stemming from the "factors which exercise some influence on the systems of land tenure in semi-urban and urban zones". To these various problems are added others concerning the availability of "staff" as well as the "organization and administration of the related technical departments which are required to ensure a good system of registration". But it is not sufficient to mention these problems; one must look further and inquire whether research has been undertaken to find solutions to them.

The above shows that a cadastral register exists in Madagascar (customary and modern). Nevertheless, if it exists, it is because it was created, and once created it must "live", evolve. The creation and evolution of the cadastral register are those aspects, in the context of which, the problems mentioned above will be discussed.

I. CREATION OF THE CADASTRAL REGISTER

In Madagascar and perhaps in other developing countries, the problem of a shortage of staff is of major concern to the governments who try to give some attention to the land policy in their countries. Indeed, owing to the lack of staff, it appears that the acceleration of the surveying of the parcels and the registration of titles, is proving a difficult task. For example, the registration of rights established during the course of demarcation in the cadastral zones in some regions of Madagascar, referred to above, is still incomplete.

For all of these zones, only one special tribunal has been set up, called the Circuit Land Tribunal. The role of this Tribunal is to rule on the claims to the parcels surveyed. After the legal decision becomes final, the Registrar of Lands prepares the deed and completes the land register, which besides identifying the owner and the situation of the property (sector, canton, district and province), puts the parcels belonging to the same person in a special numerical order (area and boundaries). Where they exist, the legal or equitable charges on the property are also mentioned.

A copy of the deed or extract from the land register (to which is attached the plans of the parcels in question) is given to the owner.

The period required for the ratification of rights is rather long, 20 to 30 years, between the time of demarcation carried out by the surveying party and the hearing by the Circuit Land Tribunal. To this must be added a further rather long delay between the Tribunal's decision creating the title, and the preparation of the deed, so that those owners who get their deeds during their lifetime are the exception rather than the rule.

Just before independence, during the fifties, the French Authorities decided, on the proposal of the Deputy Ranaivo Jonah, to study the extension of the "cadastre indigène" throughout Madagascar. But, they no doubt came up against the lack of funds for recruiting and training staff, and acquiring the necessary equipment for this extension.
In this respect, it is worthwhile reproducing here, by way of information, with reference to the Survey Party responsible for the demarcation of parcels, and the Officials responsible for registering the rights, the list of staff and equipment submitted, on 23 March 1954 by the Secretary-General of the Government, to the House of Representatives of Madagascar.

1. STAFF (Survey Party and Registration Officials)

"A standard Survey Party should be made up of the following:

1 Engineer ................. head of the team responsible for triangulation
1 Surveyor (chief) .............. reconnaissance, minor control, general surveying
1 Senior official
12 Draughtsmen ............... operators
1 Chief clerk ................... head of records
1 5th class clerk .............. secretary-typist
7 Draughtsmen ............... drawing of plans and calculations
15 Permanent chairmen
45 porters ...................... field operators

In addition, provision must be made for, at the initial stage, a minimum of "five clerks from the Department of Lands", who shall be responsible for, in respect of each Survey Party, the establishment of land registration, deeds, and the keeping of proper records.

2. EQUIPMENT

a) - Transport equipment, instruments and machines

1 Jeep with trailer,
2 Theodolites and levelling rods,
14 sets of plane-tables, levelling rods and steel tapes,
2 Planimeters
1 Typewriter.

b) - Office supplies

"Drawing paper, tracing paper, china ink, pencils, forms, etc......

c) - Vehicle maintenance

"Chauffeur's wages, petrol, oil, repairs and other expenses.

d) - Party accommodation

"Rental of premises.
"Purchase of office furniture (in metal for the parties working on the Coast).

This list is obviously an ideal to be aimed at, considering the lack of funds in developing countries like Madagascar. Nevertheless, it should be given serious consideration by those responsible for carrying out the survey and registering rights, if it is desired that the cadastral register become an instrument of economic development."
It should be mentioned that, as a result of this financial handicap, the system set up in 1930 to establish the "native cadastral register" was halted for a few years in order to register and grant state lands. Surveyors and survey operators were assigned to these operations; in addition, since the "native cadastral register" was not extended to the whole island, the Malagasy people, concerned with having a title either to their land or to the land they wished to work, quite naturally sought either registration or a land grant from the State, it having been pointed out that the latter was a means of becoming a registered holder.

But the difficulties mentioned are not the only obstacles to be overcome in carrying out the surveys and, consequently, in the establishment of titles. A major one as far as land grants by the State is concerned, is the lack of co-ordination between the departments which participate in the investigation of applications.

Although in Madagascar the Department of Lands is mainly responsible for the conduct of the investigation procedure, it becomes sometimes necessary for them to have the opinion of other technical departments before submitting the titles of the competent authority for approval. These opinions, in most cases, are only given after a long period.

In short, the lack of co-ordination between the different Departments and the shortage of staff are the reasons for the delay in the functioning of the system for the establishment of the cadastral register.

II. THE DEVELOPMENT OF THE CADASTRAL REGISTER

It would be a mistake to believe that once the cadastral register was established, that should be enough. The title in question does not remain indefinitely in the hands of the owner. There will be a transfer of rights either by contract or by inheritance.

One of the common points between the "native cadastral register" and land registration, is that Malagasy heirs, in particular those in rural areas, in the case of transfer on death are often unable to institute such a transfer owing to the fact that they lack the financial resources to pay the costs required, so that "titled" property, in most cases, falls outside the economic circuit.

Continuing in the same vein, the title resulting from the "native cadastral register" is special because of the difficulties involved in its transfer, on one hand, the indefeasible and non-attachable nature of the title, and on the other, the paucity of information concerning the civil status of the owner in whose name the title was originally registered.

In accordance with the provisions of Article 19 of the Statute of 25 August 1929 concerning the "native cadastral register", the parcels which have been registered can neither be alienated nor attached for a period of thirty years. Nevertheless, this restriction could have been partially or totally lifted by order of the then colonial administration in the case of certain cadastral zones.
This arrangement was justified by the concern to protect the Malagasy people from themselves, that is from trying to get rid of their ancestral lands for the sake of some illusory gain. Without stressing the expediency of such a measure, taken for reasons which are perhaps worthy of praise, it is nevertheless certain that the Malagasy people holding cadastral titles cannot mortgage them in order to obtain the funds necessary for the improvement or intensive cultivation of their land.

Of course the statute of 21 March 1955 further to that of 25 August 1929 makes it possible to mortgage lands in the cadastral register, however, the possibilities of raising funds, which are open to the owners, are very limited.

As far as the civil Status of the owners, originally registered, is concerned, it is a source of difficulty in the transfer of rights. Many Malagasy people have the same names in common even though they may not be blood relations. There is, therefore the risk, if there is limited information on the civil status of the owner, of transferring rights to the advantage of persons who may not be the rightful heirs. Wherein lies the reason for the onus placed on the registrar of lands to request from heirs, in addition to the statutory evidence of kinship, other documents establishing proof of identity concerning the person registered as holder, together with that of the person named in the documents of succession.

The procedure to be followed in such cases often proves too much for illiterate successors, and they are forced to have recourse to more or less dishonest persons, who do not hesitate to exploit them.

The origin of these difficulties can perhaps be ascribed to the owners who happened to be absent at the time of demarcation of the land by the survey party in spite of the wide publicity given to the operation. The result was, of course that the survey teams had to be content with incomplete information, supplied by neighbours who happened to be on the spot.

In short, the cadastral title is difficult to place in the market either because of the documentary evidence to be produced, or the lack of resources of the successors, or due to the paucity of information concerning the civil status of the owner. If it is true that the Malagasy people should no longer live as their ancestors did, it is also true that consideration should be given to providing the cadastral register with a new structure.

In this connection, it should be mentioned that the whole of Malagasy Land Legislation (customary and modern cadastral registers) has given no consideration to providing for changes in the titles or in the plans concerning them. Here it is not a question of the usual changes in title, the removal or the recording of land charges, or the incorporation of boundaries in the plans following parcelling, the changes concerned deal with the improvement effected on the land.
In the urban and semi-urban zones where the population increase, the development of urbanism, roads and rail, commerce and industry are all of recent date, the primitive description of a piece of land as a "claim" is no longer realistic. Although in the beginning the property may have boasted no more than a dwelling house, varying in size from the small to the average, it may at present be occupied by a large five or then storey building.

The construction of roads, new buildings, manufacturing plants are among the changes which should be noted on deeds and plans. Owing to the lack of this information, of course, unrevised land documents would soon be obsolete. The cadastral register would remain, in some way, "frozen" in the state in which it was established. These observations are also valid as far as rural areas are concerned, to the extent that cultivation and permanent equipment have modified the terrain.

In taking into account the necessities of a modern economy, there is the need to make the cadastral register "live" to make it grow, so that it may become "workable" for the good of all.

CONCLUSION

Since independence, high Malagasy officials have been studying the problem of land tenure. Their research, to begin with, deals with the establishment of titles: emphasis is placed particularly on accelerating this procedure which is too lengthy. But the necessity to unify the two systems of land registration which exist in Madagascar is also being borne in mind.

As its first step, the Government has instituted a series of urgent measures which will gradually speed up the process. Pursuant to this, the Minister of Agriculture decided to set up new offices and land tribunals: these have been in operation since August 1970 in some of the main towns. The main concern of the Authorities is to bring the Department into closer contact with its users, and secondly, to complete the ratification of rights concerning the cadastral zones which were formerly demarcated.

Parliament, for its part is anxious to put an end to the dual system of land registration, one subject to customary law, and the other to modern law, and has since 1960 abrogated the "native cadastral register" although maintaining the former procedure until the land concerned is re-registered. A single system of land tenure, that of land registration, having thus been instituted in Madagascar, the law has, in addition, set up in 1967, the system of compulsory land registration: that of collective registration or "cadastral record", thus opening the way to the demarcation of the entire island.