Title or Deeds Registration

Is the ‘Better’ the Enemy of the ‘Good’?

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UN-Habitat / GLTN

- Global land tool network:
  - Poverty alleviation through
    - land reform
    - improved land management
    - security of tenure
  - Not only policies, but tools to implement at scale
  - Need innovative ‘pro poor’ land tools
GLTN themes

• 1. Land rights, records and registration *
  2. Land use planning
  3. Land Management, Administration and Information (STDM)
  4. Land law and enforcement
  5. Land Value Taxation
GLTN theme 1

- **Theme 1. Land rights, records and registration**
  1a. Enumerations for tenure security
  1b. Continuum of land rights
  1c. Deeds or titles
  1d. Socially appropriate adjudication
  1e. Statutory and customary
  1f. Co-management approaches
  1g. Land record management for transactability
  1h. Family and group rights
Deeds or Titles

- Words with a loaded meaning
- Expressing the two ‘ideal types’ of a wide spectrum of many (mainly legal) choices
- Day-to-day effects influenced by other elements like:
  - link to comprehensive cadastral/parcel mapping
  - quality of registrable documents (e.g. role notaries)
  - functioning of courts (in appeal)
  - capacity of agencies involved
Land Registration

- process of official recording of rights in land

- types of transaction evidence
  - (Oral agreement)
  - Private conveyancing
  - Registration of deeds
  - Registration of title
Private conveyancing

Diagram:

- **a**
  - State
  - A → B → C → D → E → F

- **b**
  - State
  - A → B → C → D → E → F → G → H

- **c**
  - State
  - A → B → C → D → E → F → I → J

 TU Delft
Registration of Deeds

- public repository of documents (deeds mortgages, survey plans)

- elements
  - logging of time
  - indexing of instrument
  - archiving of document or copy
Registration of Deeds

- core principles (compared to private conveyancing)
  - security
  - evidence
  - notice and priority

- legal documents are registered, not title to a property
Registration of Deeds

• improvements:
  • better records management
  • standardization of forms and procedures
  • realistic/flexible survey standards / exam
  • partial / sampling examination of documents
  • compulsory registration
  • automation of indexes
  • searchable/computerized title abstracts
Registration of Deeds

- improvements in Netherlands:
  - better records management +
  - standardization of forms and procedures (*)
  - realistic/flexible survey standards / exam *
  - partial / sampling examination of documents*
  - compulsory registration *
  - automation of indexes +
  - computerization of title abstracts +
Registration of Title

- overcome defects of registration of deeds
- simplify process of transaction
- the register describes current property ownership and charges/liens
- compulsory, examination, warranty
- register becomes ‘proof of ownership’
Registration of Title

• principles
  • mirror principle
  • curtain principle
  • insurance principle

• usually comprehensive surveying & mapping

• >> rudimentary deeds registers of 19th cent.
Torrens

- 1. register *creates* title (> evidence)
- 2. simple transaction procedures
- 3. reversal of effect of forgery + insurance
  - chance of risk aversion (instead of management):
    overly bureaucratic procedures a/o frozen titles
Registration of Title

- Critique:
  - expensive and cumbersome to implement (and for government to run)
  - often involvement needed of (expensive) private practitioners, like land surveyors, lawyers/notaries, planners, valuers
  - time required for state examination and approval of title and survey (boundary)
  - introduction of overriding interest ≠ mirror principle; title (certificate) does not reflect all rights on the ground
Continuum of Legal Consequences

- Effect of (non) registering:
  - just lack of informativeness
  - registered takes priority over non-registered
  - protection of third parties
  - registered assumed to be correct
  - registers guaranteed (with indemnification)
Continuum of Legal Consequences

- Status of issued documents:
  - proof of inspection
  - necessary base for transaction (extract)
  - proof of ownership (title certificate)
  - representing ownership (people might transfer paper and not register)
Title vs Deeds

• very unlikely to work:
  • ‘secret conveyancing’
  • verbal property descriptions
  • lack of cadastral/index map
  • person based records
  • many transactions staying out of the system
  • risk aversion with registrar (→ frozen titles)
  • ignoring earlier (partial) records
Title vs Deeds

- likely to be good:
  - comprehensive cadastral/index map
  - parcel based records
  - (nearly) all transaction recorded → incentives
  - affordable procedures
  - leave room for local knowledge, esp. in unclear situations (e.g. post conflict)

- registration is only part of wider land system
Title vs Deeds

- New Zealand Encyclopaedia 1966 (about mid 19th century)
  - Title to land has always been a matter of public record
  - In direct contrast to English system (at that time)
  - The deeds system provided a very necessary security of tenure for the early settlers
  - The deeds-registration system had the advantage of providing a maximum degree of elasticity, as almost every conceivable right or claim to a right in land could be registered
Title vs Deeds

- Wikipedia recorder of deeds:
  - Deeds recordation aims at providing a single location where information about real rights can be recorded and SEARCHED by all interested parties
  - Because estates in land can be held in so many complex ways, a single deeds registry provides some stability, even though it cannot “guarantee” those real rights
  - South African system of deeds registration hailed... through a juristic foundation and long-standing practice and procedures has the effect of “guaranteeing” title
Title vs Deeds

- Titling (first registration or adjudication)
  - complex, both legally and surveying wise
  - pushes towards ‘clear’, individual property rights (simplifies for instance family relations in relation to land)
- Best title systems are in places were land was assumed empty and taken by the Crown and than allocated to settlers (clean start to build on)
- Most countries have pre-existing tenure arrangements, partly statutory, partly not; how to capture in a fair way?
- How to keep up-to-date a complex system by poor tenure holders?
How forward?

• What (legal) elements of registration are needed and affordable to support a pro pool land tool for recording?

• What is a good risk management strategy?

• What should be mandatory, what voluntary?