Property registration

Challenges for the future

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- **Preface**
  - **The traditional systems**
    - The " Deed" system
    - The " Title" system
  - **Comparison**
    - What standards should a good system meet?
    - Strengths and weaknesses of all systems
  - **Challenges**
  - **Framework for possible sollutions**

- **Deed system**
  - The deed is "transcribed", not the title itself
  - Property transfer in a causal system
  - Registred deed ≠ surety of title
    - Only certainty on the existance of an agreement
    - Informing of the existance
  - Certainty
    - trace ownership till a good root is found
    - Is the alienator authorized?
  - Guarantee
    - for requested but not registered facts
    - Or not mentioned in excerpts

- **Deed system**
  - Role of legal practitioners- authenticity
  - Negative
  - Passive role of the registrar
  - little investigation at entry
  - Generally
    - Compulsory
    - Public
    - Often personal folio
    - 2 registers
      - Deeds register – Civilian
      - Cadastre   - Fiscal
  - Roots in Europe : French "Code civil"

- **Title system**
  - Also often called "Torrens" System

  - Inscription in the register = ownership

  - The "Mirror" principle

  - The "Curtain" principle

  - Authoritive record kept in a public office

  - Inscription is final

  - Active role of the registrar

- **Title system**

  – 3 sections: parcel/owner/encumbrances
  – Generally not compulsory
  – Insurance (sometimes) offered by the state
    - Correctness of the entire inscription
    - Facts that should be inscribed and are not
    - Not for "overruling intrests"
  – Also called positive system
  – Sometimes preliminary inscription possible

- **Public faith system**
  (Fides publica- offentlicher glauben)
  - The deed is registered
  - Guarantee
    - for as far as the authority of former known owner to alienate
    - and for facts that should be registred but are not

  - No insurance for other legal facts - Often extension of coverage

  - Active role of the registrar

  - Sometimes
    - opposition is possible (wiederspruch)
    - provisional registration is possible (vormerküng)

  - Parcel based documentation

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- **Comparing systems**

  – Strengts and weaknesses

  – There is no best system

  – Specific situation – appropriate system
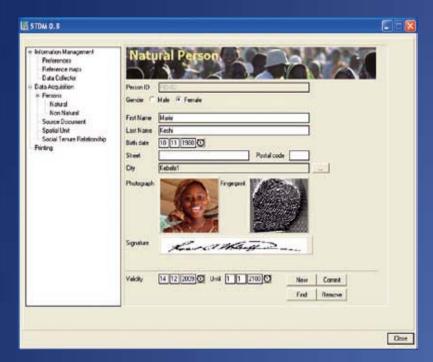
  – The standards a system should meet
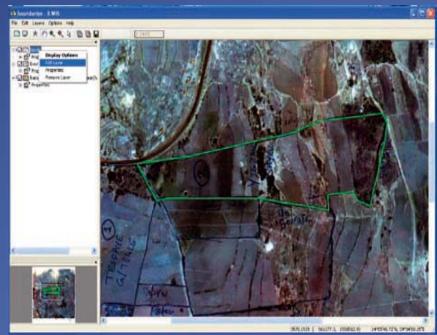
- **FIG statement on cadastre**

  - Security

  - Clarity and simplicity

  - Timeless

  - Fairness

  - Accessibility

  - Cost

  - Sustainability

- **Theory**
  - A parcel based title system gives most security

  - The curtain principle of title should make control easy

  - The deed system makes control necessary up to a good root of title

  - A title system should make conveyancing easy

  - Generally seen a title system offers more insurance

  - Archiving in a deed system is difficult

  - A title system is very good when clear canvas

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- Reality
  - The active role of the registrar in Title system
    - Costs time and money
    - Periods of uncertainty
    - Problems that are not likely to occur are solved
  - IT has solved a lot for Deed systems
    - Storage
    - Consultation
    - Transport
  - Importance of the contract behind the curtain

- Reality
  - Use of professionals
    - Very useful (but not indispensible) for deed systems
    - Often practised as well in Title systems

  - Research to the root of title
    - Easy in Title system
    - Standard description in Deed system

  - Deed systems are open to public

  - Title systems sometimes neglect former rights

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- Important technical evolutions

  - IT
    - Databases
    - Geo- spatial information

  - Surveying

  - Satellite photography

  - Mobile telephony & the internet

- Important social evolutions
  - Property registration has to adapt to society, not vice versa
    - There practically never is a clear canvas to start
    - Customary law, Islamic law
  - Urban drift
  - Western countries
    - want to cut costs
    - Are reluctant to offer guarantee
  - Failing states – alternatives for security
  - Increasing number of important parameters
  - Certainty or information?

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- How do we make decisions nowadays
- Static versus active information
- The deed system is more adaptable
- Property registration
  - Always/Everywhere/for everybody
- IT programs
  - Work with unique identifiers
  - Simple and cheap solutions
- Privacy
- Cadastre as a platform for geo- information

- Cadastre and property registration
  - A natural symbiosis
  - The best of both worlds
  - Each prevailing their own identity
  - Outsourcing the risk, yes but...
  - A possible model
    - Consumer friendly
    - Reliable

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- Framework conditions
  - Property registration is to be a merely administrative act
  - Unambiguous legislation
  - Flexible in accepting information
  - guaranteed versus non- guaranteed information
  - Easily accessible
    - Technically/financially
  - Fully public
    - Not free of charge

- Framework conditions
  - Full coverage & unique identification
    - Every parcel
      - Public/private property
      - Degree of detailing
    - Every owner of a right
      - Not necessary personal
    - Every transaction
      - Constitutivity
      - No taxes on transactions
      - Accepted (Information and capacity building)
    - Every relationship between the two
      - Also tenure rights

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- Framework conditions
  - National system
    - locally supported
    - Eventually locally detailed
  - Three/four dimensions
  - Easily reproducing history till root of title
  - Short period between conveyancing/registration
  - Cost reducing
    - Simple & consumer friendly IT sollutions
    - Contribution of the public & legal professionals
  - Fit for Purpose everywhere

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- Crises
  - Almost no traditional wars
  - The risk of evolving secundary crisises
  - Expieriences with "Post-crisis" management
  - Lasting crises
  - What about prevention?
    - Safeguarding documentation
  - How to provide security in an unstable market?

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