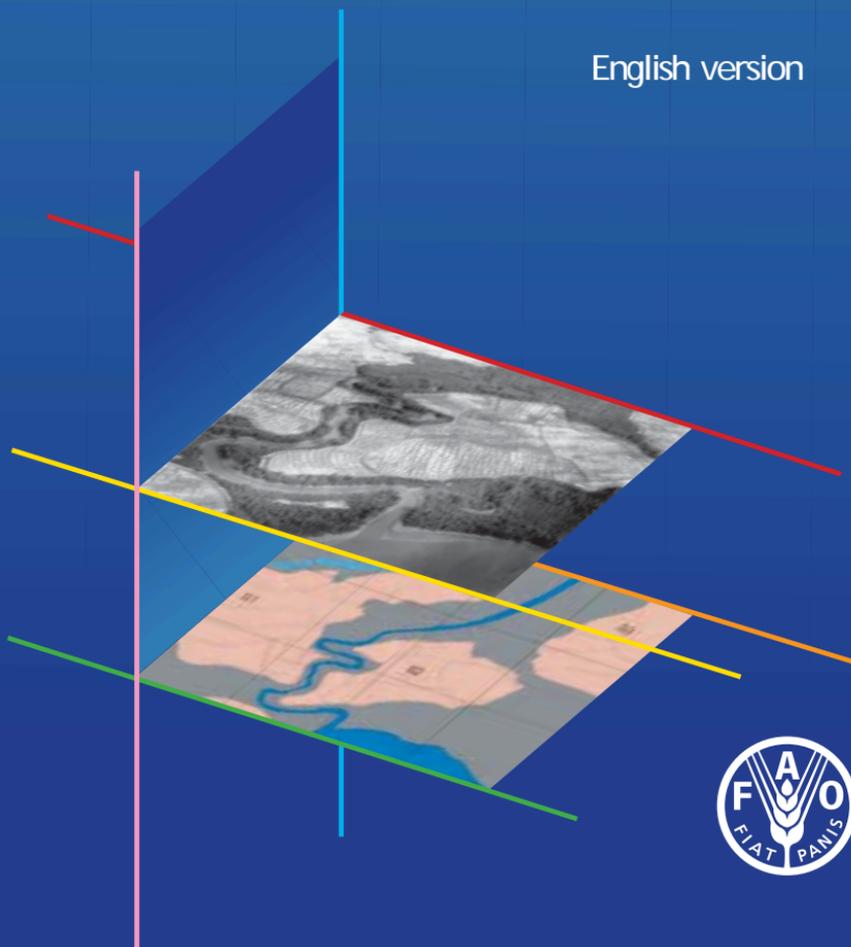


Multilingual thesaurus on land tenure

English version



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Edited by
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FOOD AND AGRICULTURE ORGANIZATION
OF THE UNITED NATIONS
Rome, 2003

This Thesaurus, published in the context of the World Food Summit five years later, has been prepared with the financial support of Belgian Technical Cooperation.

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ISBN 92-5-104283-7

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FAO 2003

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Foreword

In November 1996, during the World Food Summit, the Heads of State and Government who met in Rome committed themselves to promoting equitable access by all to resources, be it land, water, forest or pasture, with a view to achieving food security and rural poverty alleviation.

This is why many delegations underlined, during the April 1997 session of FAO's Committee on Agriculture and in the spirit of World Food Summit follow-up, the need to take advantage of renewed interest shown by many countries in land tenure reform and in the different modes of accessing their natural resources.

In reply to these comments, the Rural Development Division proceeded to put in place an unambiguous and unequivocal terminology of the subjects related to land tenure in order to contribute to clarifying the debates in this field and to make related field interventions more efficient.

For this purpose, the Land Tenure Service (SDAA) of the Rural Development Division embarked on the preparation of a land tenure "Thesaurus", mainly covering the following sectors: legal, institutional, historical, description of space, traditional or written land tenure regulations, topographical, land management, as well as land tenure related information techniques.

It is expected that the Thesaurus will serve as reference material both for the normative divisions at FAO Headquarters as well as for field experts engaged in the implementation of projects with a land tenure component.

It could also be useful for training in subject matters related to natural resources and their management, as well as for researchers in the field of rural development.

It was planned that the original French version of the Land Tenure Thesaurus would be adapted to the specific socio-economic, institutional and historical contexts of the Spanish and English-speaking worlds, thus covering the three official working languages of the FAO and other UN agencies.

Adaptation of the French edition and not translation: in general, the words related to land tenure, if literally translated, do not reflect the full reality - whether perceived or experienced - of a different linguistic context.

Passing from one language to another also means passing from one socio-economic and agrarian context to another, the historic, institutional and legal evolution of which has given a certain connotation to the term, expression or concept used. We are therefore trying to transpose the various terms, as satisfactorily as possible, in the cultural as well as linguistic contexts in which they are used.

Synoptic reading of the various versions of the Thesaurus in the main working languages of FAO also allows for an understanding of the evolution of the different land tenure realities described in each language and illustrates the shades of meaning and different uses and comprehension of these realities in the working languages of the Organization.

This does not mean that we cannot further adapt the Thesaurus to other languages and institutional contexts, especially since land tenure is increasingly being considered as an essential aspect of rural development and agro-industrial production, in whatever language it is treated.

The agrarian structures are under constant transformation, although these changes might seem very slow at a first glance. Our effort to establish a terminology base should in fact be seen as an appeal to land tenure specialists, researchers and practitioners to enter into a dialogue with FAO's technical services in order to improve the contents of the Thesaurus by taking into account present land tenure problems.

Maximiliano Cox

Director
Rural Development Division

ACKNOWLEDGMENTS

The English version of the Thesaurus is the result of three series of interventions: first, collaboration between several FAO technical services that were invited to participate in the elaboration of the French version of the document on the various aspects of land tenure, which led to an initial list of terms most of which were divided into thematic chapters.

Based on this provisional terminology, Catherine Goislard, Juridical Anthropologist, proceeded to edit the first draft of the initial chapters.

Second, a team of researchers at the Catholic University of Leuven, linked to the Institute of Development Studies took over and completed the manuscript under the scientific coordination of Etienne Verhaegen, Agronomist, and the general supervision of Paul Mathieu, Socio-economist.

Nevertheless, it would not have been possible to produce the French version without the collaboration of land tenure specialists from various scientific research Institutes.

Third, the adaptation of the French version to the different land tenure English speaking countries' contexts, its review and the addition of terms were completed thanks to Mr. Paul Munro-Faure, former Director of the Commission 7 (Cadastre and Land Management) of the International Federation of Surveyors (FIG) who benefitted from the collaboration of Professor Peter Dale, University College, London, UK, Dr. Frances Plimmer, University of Glamorgan, UK, Professor Sue Nichols, University of New Brunswick, Canada, Markku Villikka, Executive Secretary, FIG and the Commissions, FIG, David Palmer, Land Tenure Service (FAO, SDAA), Fernando Fernández Arriaga (SDAA) and Alessandra Zorcolo, SDAA editorial Consultant.

Our thanks go to each and everyone who assisted in their own way, in the elaboration of this version of the Thesaurus.

Needless to say that any shortcomings or lacunae in the present version should be attributed solely to the editor, who asks readers to bring to his attention anything they would like to see included in a revised version of this modest Land Tenure Thesaurus.

Communications regarding the present adaptation should be addressed to the Chief, Land Tenure Service (SDAA), FAO, Viale delle Terme di Caracalla, 00100, Rome, Italy.

ILLUSTRATIONS

1. Parcels in the region of Quito, Ecuador. .
2. A coastal zone in Sri Lanka, south of Colombo.
3. Zebra near the gates of Lake Mbuho National park, midway between Masaka and Mbarara in western Uganda.
4. A Global Positioning System, an instrument to determine the precise location of locust's infestation. This information is transmitted to a centre in Tulear, Malagasy, which then organizes their elimination.
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- 10.** Crop rotation in wetlands in Zimbabwe. Maize, rice and groundnuts are alternated and grown side by side with maize and groundnuts on raised ground. The water level is controlled by a sluice gate so the land is irrigated all year round. This has resulted in 8 tons per hectare yield instead of an average 2 tons per hectare before the project.
- 11.** Mariculture students in India cultivate mullet and prawns in the Institute of "wet lab" where physiology and nutrition experiments are conducted.
- 12.** Orchard of Golden apples in Afghanistan.
- 13.** Farmer with buffaloes grazing by a river at the edge of a rice field in Cambodia.

Introduction

The English version of the *Multilingual Land Tenure Thesaurus* is an adaptation to the English-speaking countries of the French version published in 1999¹. The publication includes key background information and references in addition to the basic definitions and provides examples where these help to clarify the sense and use of the term.

The English text follows the original French version's structure and includes a significant number of the equivalent terms that are used in common. Together with the Spanish version, these three versions cross-reference similar concepts and ideas to help readers understand the similarities and the differences between the three linguistic and legal traditions.

The entries are divided into chapters. Chapter I is general, and looks at the key players, the resources and the legal rights in land. Chapter II deals with issues of space, chapter III with policies, procedures and tools, chapter IV with information systems, chapter V with taxation and economics aspects, chapter VI with non-state regulation, and chapter VII with aspects of land that apply specifically to agricultural, pastoral and forestry activities.

The entries in each chapter are listed in alphabetical order. A general index at the end of the work brings together all of the principle entries in the thesaurus together with a number of secondary terms included in the entries.

Further development of this publication is planned to include additional initial versions in Chinese and Arabic. Following this, a process of assimilation and review will enable a substantially revised, Web-based, version to be developed for wider access and use.

¹ Thesaurus multilingue du foncier. Version française. FAO. Rome: 1999.

I. PLAYERS, RESOURCES AND RIGHTS

CHAPTER 1

Players, resources and rights

1.A.1 Adverse possession

Adverse possession is the possession of land as a trespasser or squatter.

A trespasser or squatter can gain the right to possession after a statutorily prescribed period of limitation. The owner or person who has the right to possess the land can recover possession from a trespasser or squatter but the principle of limitation restricts this in time. In most countries the relevant period of limitation will be statutorily defined.

1.A.2 Alienation

Alienation is the transfer of ownership of land.

The owner of a freehold (fee simple absolute) under the English legal system has the right of alienation of the property during lifetime or by will after death. This means that the owner can transfer ownership of all or part of the property as he or she wishes, whether by sale or by gift.

In some traditional societies where there has been limited experience of land markets, the concept of alienation of land may not exist. Land may be conceived of as being held by those currently living in trust for their ancestors and those yet unborn. The act of permanent alienation is against this fundamental link between people and the land. In several such societies, pressures for alienation through the commoditisation of land have led to complications over who has the right to alienate the land. A common approach in the past to enable restricted dealings with such land, and yet to retain its essential inalienable nature has been through establishing appropriate customary practices or, in some cases, to create statutory trusts for land administration purposes. These trusts usually have rights to deal with such land in limited ways, thus trying to satisfy the traditional and the market economy oriented members of society.

1.A.3 Ancient lights / Right of light

A right of light, “ancient lights” consists of the right of the dominant tenement to sufficient light through defined apertures “according to the ordinary notions of mankind”.

CARD, R., MURDOCH, J., SCHOFIELD, P., 1994

Ancient lights can only exist as an easement. The servient tenement cannot obstruct this right and thereby reduce the amount of light received. The rights to this easement may be created expressly or by implication, although most are acquired by prescription

The quantum of light required may vary according to the established use of the building in question. Industrial buildings, residential buildings and greenhouses have all been held to have different established requirements.

1.A.4 Assignment

An assignment is the transfer of a lease from the tenant to another party.

A tenant may be able to assign a lease to another party, although this right of assignment is likely to be constrained or prohibited by the terms of the lease agreement. By assigning the lease, the tenant transfers the entire remaining interest to another. This puts the new tenant, the assignee, in the same position vis-à-vis the landlord as the previous tenant.

A tenant has potentially very considerable rights of assignment and enjoyment associated with the leasehold interest that he or she enjoys, unless restricted by the terms of the lease. In circumstances where the tenant no longer wishes to hold the property there may be three choices available; assignment, sub-lease or surrender.

1.B.1 Beneficiary / Grantee

Attributaire (F); Asignatario / Adjudicatario (E)

A beneficiary is someone who derives advantage from something. A beneficiary under a will or a trust, for example, is someone who will have an interest under the will or trust.

1.C.1 Collective ownership

Propriété collective (F); Propiedad colectiva (E)

Collective ownership of a natural resource is where the holders of rights to a given natural resource are clearly defined as a collective group, and where they have the right to exclude third parties from the enjoyment of those rights. A collective farm such as the kolkhoz of the former Soviet Union involved a number of households working together in agricultural production.

1.C.2 Common property

Biens communaux (F); Bienes comunitarios (E)

Common property is typically land and other resources in which entitled beneficiaries, whether individual or community defined, have specific common rights. For example, community members can use a common pasture for grazing their cattle independently of one another. The community controls the use of the common property and can exclude non-members from using it.

Common property in this sense is distinct from “open access systems” where there is no control on access and no-one can be excluded.

1.C.3 Common rights

Common rights are rights held in common property.

1.C.4 Commons

Bien commun (F); Bien común (E)

The term “commons” is most frequently used to refer to those natural resources that are held in common by a community.

1.C.5 Communal ownership

Propiedad comunal (E)

“Communal ownership” is a commonly used term to describe those situations where rights to use resources are held by a community. It often includes communal rights to pastures and forests, and exclusive private rights to agricultural and residential parcels. In such community-based tenure regimes, people may not have the right to transfer their land to others, or may have strictly limited rights to transfer (e.g., transfers may be limited to heirs through inheritance, or sales may be restricted to members of the community.)

1.C.6 Concession

Concession (F); Concesión / Concesión inmobiliaria (E)

A concession is defined as the granting of a territory to a concessionaire for their occupation and use.

A “concession” is not a property right in English land law. There are, however, certain situations in some jurisdictions with an English law background where concessions are granted. It is common, for example, for oil and gas exploration and production licences in the UK and the US to be referred to as concessions, although both legally and in documentary terminology are licences.

*Concessions are granted in **Fiji** by the Native Land Trust Board for large scale indigenous forest exploitation. Since 1980 these long term concessions have included base annual rental payments, plus royalties based on the actual volume of timber extracted.*

1.C.7 Conservation easement

Conservation easements are partial interests in land designed to prevent development on conservation land.

Conservation easements have been developed principally in the US to protect land areas important for environmental reasons from development. They are typically long term, for example, 30 years, and are acquired in private land by government agencies and non-profit organisations for conservation purposes. They are typically negative, prohibiting certain actions, and are held “in gross”, rather than “appurtenant” as the right is not held in respect of neighbouring property. They represent a market-oriented approach to conservation where a landowner gives up development rights over a specific area in return for a payment. WEIBE, K., TEGENE, A., KUHN, B., 1996

1.C.8 Contract

Contrat (F); Contrato (E)

A contract is a binding agreement on the parties to the contract.

For a contract to exist there must therefore be an agreement, and it must be intended by the parties that this agreement should be legally binding. The agreement must also be supported either by a deed or by consideration. Consideration is a promise or an act made by the promisee in return for the promisor’s promise at the latter’s express or implied request.

Most transactions in land comprise two stages. The first of these is a contractual stage where the parties formally agree the basis and terms of the bargain (contract). Up to the point of such agreement, negotiations will generally be flexible and offer and counter-offer made specifically “subject to contract”. When the contract has been agreed, the second stage is the transfer or creation of the interest in land. Under some registration systems, transfer takes place on registration, and not on the execution of the contract.

1.C.9 Conveyance

The conveyance of land is the actual process of transfer of that land. A conveyance is a deed transferring land.

The legal definition of what is included in land is important as this governs what is conveyed. Fructus industriales (cultivated crops), for example, are typically excluded from a conveyance, but naturally growing things, fructus naturales, will be included. The procedures for conveyance vary according to the jurisdiction and according to the legal system for recording and transferring ownership.

Examples of the process of conveyance in a title registration regime include:

England and Wales: *The process of conveyance depends on whether the land being conveyed is registered or not.*

Where the land being conveyed is registered, the register of title maintained by HM Land Registry will be relied on, together with any further particulars arising from questions relating to the title. An official search of the register will generate an official certificate of search. This certificate provides a definitive statement of title and confers a priority period of 30 days from the date of application. The transaction should be completed and the purchaser should apply to be registered as proprietor during this period. It is this registration as proprietor in the Land Registry that vests in the purchaser the legal estate. The purchaser is indemnified against any error in the official search.

Where unregistered land is being conveyed the process is complicated by the need for the demonstration of a good root of title. This requires a clear tracing of all of the dealings in the land until the time of transaction for a period of at least 15 years. In this case, the completion takes place when the conveyance deed is completed and the purchase consideration paid, when the legal title passes to the purchaser. All sales of freeholds are now compulsorily registered, and the purchaser must apply for first registration to HM Land Registry within two months of completion, otherwise the legal estate reverts to the vendor.

1.C.10 Co-ownership / Undivided shares

Copropriétaire (F); Copropietario / Comunero (E)

Co-ownership is where two or more people have ownership together of a freehold or leasehold interest. The enjoyment of a property in co-ownership is said to be in undivided shares, in that each person has the same right to any part of the property.

There are two forms of co-ownership; joint tenancy and tenancy in common.

A joint tenancy exists where there is:

- > right of survivorship (on the death of a joint tenant their right passes to the remaining joint tenants, until only one remains as the sole owner)
- > unity of possession (no joint owner can exclude another)
- > unity of interest (each joint tenant is jointly entitled to the entire interest in the property)
- > unity of title (all joint tenants in a property derive their title under the same document)
- > unity of time (all joint tenants' interests must commence at the same time).

With a tenancy-in-common, by contrast, there is no right of survivorship as each tenant-in-common has a fixed, although undivided, share that at death can, for example, be passed on by will to any designated successor. Unity of possession is a characteristic requirement of tenancy-in-common and although usually present, the other unities are not essential.

1.C.11 Custom / Use / User

Coutumes / Coutumier (F);

Costumbres / Consuetudinario (E)

Custom results from practice since time immemorial.

Use rights can be created in land on the basis of custom. These rights are often created by the use of the land over a long period of time.

They are often the rights created by ancestral occupation and use of land by traditional societies. The creation and recognition of boundaries where these exist for such land will often use natural features, or planted trees or hedges.

Although custom and customary use rights are most frequently associated with traditional societies, western societies may also recognise such rights.

Examples of customary use right in a traditional society include:

Samoa: Customary land title is enshrined in the constitution and its alienation is prohibited, although leasing and taking for public purposes is allowed. Almost 80% of all land in Samoa is under customary tenure. Most of this is not surveyed or registered and is still held by the extended family group (aiga) under the control of the chief (pule). THOMAS, P., 1984

Examples of the recognition of a customary use right in a western society include:

England and Wales: General customs were typically absorbed into either judicial precedent (Common Law) or statute starting particularly in the seventeenth and eighteenth centuries. Local customs, however, still exist and are occasionally recognised by the courts as a variance of the general law. Such customs are now of very limited significance and generally relate to rights of way or of common. To demonstrate the existence of a customary right, it must be shown to:

- > have existed since time immemorial (taken as being since 1189, although generally presumed providing the oldest living inhabitant can affirm the right and that it could have been in existence in 1189)
- > have been continuous
- > not be unreasonable
- > be certain
- > be recognised as compulsory
- > not be contradicted by statute or a fundamental principal of the common law

1.D.1 Deed

A deed is a written or printed instrument that effects a legal disposition such as a contract for sale.

Traditionally under English law a deed was a document that was “signed, sealed and delivered”. Since 1989 these requirements have been relaxed, with the removal of the requirement to seal a deed. It must be clear that the document is intended to be a deed. For the deed to be executed it now requires simply to be signed the individual party to the deed in the presence of two witnesses who attest the signature. The process of delivery now no longer has to be a physical delivery, it is enough that there are acts to show that the maker of the deed intends to be unconditionally bound by it.

1.D.2 Dominant tenement

A dominant tenement is a property that enjoys the benefit of a right of easement. An easement often requires that there should be a dominant tenement that enjoys the right of easement, such as a right of way, over a servient tenement.

1.D.3 Dowry

Dot (F); Dote (E)

A dowry is the property that forms a part of a marriage agreement. The dowry is traditionally the property provided to the marriage by the family of the bride. The practice remains an important part of some cultures, particularly those that are based in the East.

1.E.1 Easement

Easements are rights exercisable by owners of one parcel of land over other land.

Easements fall into two groups, positive and negative. Thus easements include those where someone has a positive right to do something over

another person's land, such as exercising a right of way, and those where an owner has a right to stop someone doing something on their land, such as a right to light (ancient lights).

The creation of an easement often requires that there should be a dominant and a servient tenement. There should in other words be land that benefits from the easement, and land that provides the easement; the owners of the two tenements should be different. It is also important that the easement is capable of being the subject of a grant.

In some cases, such as with a conservation easement, there is a servient tenement but no dominant tenement as there is no requirement for the holder of the easement rights to own other land.

1.E.2 Encumbrance / Servitude Servitude (F); Servidumbre (E)

An encumbrance on the land is a right adversely affecting the land.

Encumbrances include a number of burdens. Many are registrable in formal real estate registration systems; such as restrictive covenants, easements, mortgages and registered leases. An encumbrance is broadly similar to a servitude, a term commonly used in continental European jurisdictions but infrequently used in English law.

Some such rights are not registrable under English law, and these overriding interests must be checked for by enquiry and inspection. They include legal easements, "squatters' rights acquired or being acquired under the Limitation Acts, rights of those in actual occupation or receiving the rents or profits from the land, and leases for terms of not more than 21years.

1.E.3 Entail

An entail in English law restricts succession to land to direct lineal descent and is intended to keep land in the same family.

A freehold property can be entailed by creating a fee tail. This form of inheritable ownership restricts succession to the land in question to direct lineal descendants of the original grantor. It effectively creates a succession of life interests. These interests were legal estates prior to the Law of Property Act, 1925, but since then are regarded as equitable interests. They are now relatively infrequently encountered.

1.E.4 Equitable interest

Equitable interests are interests in English law that derive from the law of equity.

English law is based on a set of canons of law; statute, Common Law and equity. Equitable interests in land include those interests that are not defined as legal estates in land, including those broadly speaking of a commercial nature, such as restrictive covenants and mortgages, and those of a family nature, such as life interests or interests in co-ownership. The Law of Property Act, 1925, defined only two statutory legal estates in land, the freehold and the leasehold. All other interests in land, such as those identified, therefore are, or became as a result, equitable interests.

1.E.5 Estoppel

Estoppel is the prevention of a course of action by a person or entity by their own prior action.

An interest in land can be created in equity where a landowner creates or encourages an expectation on the part of someone that he or she will have an interest in the land. Where that person takes possession of the land and subsequently invests money in the anticipation of that expectation, then, the courts in equity will give effect to the expectation. This creation of an interest in land in equity is known as proprietary estoppel.

1.E.6 Eviction

Déguerpissement (F); Desalojo / Despojo / Lanzamiento (E)

Eviction is the removal of someone from their occupation of land or property.

The term is very commonly used in connection with the eviction of squatters, but may also be used in the context of unlawful eviction and harassment. In the latter case, landlords have been held liable for attempting to drive out tenants in lawful occupation of a property. This has usually involved the landlord breaching the covenant, actual or implied by a tenancy, that the tenant should benefit from the quiet enjoyment of the property. The remedy of the tenant has generally been in damages, although statutory entitlements to damages may also be specified.

1.F.1 Fee simple absolute

The fee simple absolute, also known as the freehold, is full ownership of land in English law, providing the owner with the largest 'bundle of rights' of ownership.

1.F.2 Fishing rights / Piscary

Fishing rights are specified rights to fish, whether in freshwater or in marine areas. The nature of fishing rights varies according to the jurisdiction but distinctions are often made between rights for marine fishing and those for freshwater or inland fishing.

In the UK it is usual for fishing rights to be considered differently whether they are marine fishing rights or freshwater fishing rights. In the United Kingdom most offshore commercial marine fishing rights are controlled through the EU's Common Fisheries Policy. Some commercial marine fishing rights, such as netting for salmon, are controlled by the relevant government department, while others, such as fixed or estuarine coastal nets for salmon, are frequently privately owned. Fishing for marine shellfish is often free access. Freshwater fishing rights are usually an

integral part of the landowner's riparian rights that extend out to the middle stream of a river. They may also, however, have been separated from the landownership and be owned as a separate legal interest, or may exist as a distinct customary right.

Examples of reassertion of indigenous peoples' rights in fisheries in marine areas include:

New Zealand: *The government of New Zealand's proposals to issue fishing quotas under the Fisheries Amendment Act, 1986 resulted in claims that this would result in sales of fishing rights that Maori people had not relinquished. It was argued that this was contrary to the principles of the Waitangi Treaty, which envisaged the protection of Maori fishing interests. The claim was subsequently heard by the Waitangi Tribunal and the decision given that the Maori people could demonstrate their rights in relation to fisheries at the time of the Treaty and that they should therefore be entitled to the revenue from the quota. WAITANGI TRIBUNAL, 1988*

Examples of assertion of indigenous peoples' rights in fisheries in freshwater areas include:

Canada: *Representatives of the indigenous peoples of Canada, the First Nation peoples, signed treaties in the late 1800s and early 1900s with the government of Canada to protect the right of Status Indians to fish for food at any time of the year. In Manitoba, fish stock conservation to ensure resource sustainability, is the first priority for making management decisions. Following this, domestic fishing for food by First Nations peoples is given the highest priority for harvest of the fishery resource. These rights are protected under Canada's Constitution.*

1.F.3 Freehold

Freehold, the everyday equivalent of the technical legal term fee simple absolute, is full ownership of land in English law, providing the owner with the largest 'bundle of rights' of ownership.

1.F.4 Fructus industriales

Fructus industriales are cultivated crops. Generally speaking in English land law, fructus industriales will not be regarded as a part of the land in a conveyance, and will form a part of a tenant's claim for tenant right compensation at the end of a tenancy.

1.F.5 Fructus naturales

Fructus naturales are things that grow naturally on the land which do not require annual attention, such as apple trees.

Generally speaking in English land law, fructus naturales will be regarded as a part of the land in a conveyance.

1.H.1 Hereditament

A hereditament is real property that can be inherited, such as, for example, a freehold or a leasehold.

1.H.2 Hierarchy of courts

The hierarchy of courts is the structure of the legal administrative system of a given jurisdiction.

Examples of hierarchies of courts include:

England and Wales: *The lowest levels of courts are the magistrates courts and the county courts. The latter is particularly involved with land related issues with jurisdiction over actions in contract and tort, for the recovery of land and for certain types of equity including, for example, in administration of estates or in foreclosures on mortgages. A ceiling is set for the value of the action above which it is usually considered by the High Court. Appeals from the High Court are generally heard by the Court of Appeal.*

The High Court, the Crown Court and the Court of Appeal comprise the Supreme Court of Judicature, with the Crown Court having principally a criminal jurisdiction. The various divisions of the High Court deal with

various jurisdictions including those where real estate is an important element. Appeal from both of these courts is generally to the Court of Appeal.

The Appellate Committee of the House of Lords hears appeals from the Court of Appeal and in some cases direct from the High Court. The highest court of appeal since the UK joined the EU is the European Court.

Several specialist functions are fulfilled by specific tribunals. The Lands Tribunal, for example, deals with appeals from local valuation tribunals on rating issues, assessments of compensation where agreement cannot be reached, and other property related issues. Appeals from the Lands Tribunal on a point of law are generally heard by the Court of Appeal.

The Judicial Committee of the Privy Council continues to fulfil an appellate function for a limited number of Commonwealth countries, including for example New Zealand and Jamaica.

1.L.1 Land

Fonds (F); Fundo / Heredad / Finca (E)

Land in a legal sense is real estate.

1.L.2 Land law

Droit foncier (F); Derecho de tierras (E)

Land law is the body of law dealing with land, its definition, ownership and use whether urban or rural.

1.L.3 Land ownership

Land ownership in the English Common Law context is comprised of a set of rights in land held by the owner.

Technically in England and Wales land is held from the Crown as the ultimate owner. Land ownership rights include in this context the natural

rights of support, of a free flow of air and of water where appropriate. They also include the right to alienate or dispose of the whole or part of the interest to whomsoever, and on whatever terms as to sale, rent or gift the owner and acquirer please. The rights of enjoyment enjoyed by the owner of the freehold are the widest possible, consistent with not interfering with the rights of others or with statutory restrictions. The freeholder has the right to enjoy all that is on, beneath or above the land and has the right to use and even to waste the land if he or she wishes.

1.L.4 Land tenure system

Faire-valoir / modes de faire-valoir (F); Formas de explotación / modos de aprovechamiento (E)

The land tenure system in a given jurisdiction comprises the set of possible bases under which land may be used. As such this range encompasses both rural and urban tenures and includes ownership, tenancy and other arrangements for the use of land.

The land tenure system in an English Common Law based jurisdiction will, to a greater or lesser extent, usually comprise a range of different types of tenures.

Examples of a land tenure system where the tenure structure accommodates both English land law based tenure and indigenous land tenure include:

Fiji: *Around 88% of Fiji's land is held under customary tenure by the indigenous Fijian people. Ownership is determined according to a hierarchy of family relationships which are recorded by the Native Land and Fisheries Commissioners. Native land is inalienable and is categorised according to whether or not the land is in native reserve. Land is leased through the Native Land Trust Board which administers land under a statutory trust. Leasing of native reserve land is restricted principally to indigenous Fijians. Native land which is not leased is used by the owners following customary practices.*

The balance of land is either state land or freehold land. State land is administered by the government according to statute, and is usually leased to tenants.

All of these tenures are affected by overriding legislation affecting landlord and tenant relations. In particular, the agricultural sector has been greatly affected by the Agricultural Landlord and Tenant Act.

Examples of a land tenure system that has developed in the Common Law and has been largely formalised into statute include:

England and Wales: *The land tenure system is based on the freehold and leasehold system, although other informal and, less importantly, customary arrangements also provide flexible access to land. The keystones of this much simplified system date largely from 1925 and the passing of several pivotal pieces of legislation. These tenures were originally developed in the Common Law but are now enshrined in statute.*

1.L.5 Landlord

Propriétaire (F); Dueño / Dueña (E)

A landlord is a person or entity receiving rent from a tenant.

When an owner of land leases that land to another, the tenant is known as the lessee and the owner as the lessor or landlord. The term landlord is widely used to refer to any person leasing or subleasing land and may thus also refer to a tenant who is subleasing land to a subtenant.

1.L.6 Lease

Bail (F); Arrendamiento / Arriendo (E)

A lease is a contractual agreement between a landlord and a tenant for the tenancy of land.

A lease or tenancy agreement is the contractual document used to create a leasehold interest or tenancy. The period of the lease is known as the "term" of the lease. A lease requires the following as a part of the agreement. The lease should be for a definite period, or for a period that is capable of definition. The date of commencement should be fixed, and the date of termination either fixed, or capable of being fixed. The lease should provide to the tenant the right to exclusive possession of the land, thus giving the lessee the right to exclude others, including the

landlord, from the land. Where exclusive possession is not granted, the occupation will generally be regarded as a licence.

The lease will generally include a set of undertakings or covenants by the landlord and the tenant. These usually include tenant's covenants to pay rent and taxes, to keep the premises in repair, to allow the lessor to view the state of repair of the property and, on the lessor's part to allow the tenant the quiet enjoyment of the property. In addition, a condition of reentry will usually be inserted in the event of the tenant's non-payment of rent (forfeiture). There are in addition certain implied rights and obligations on the part of the lessee and lessor, including for example the right of the lessee to reap crops that have been sown (emblements). Express covenants in addition to the usual covenants that are likely to be included are those not to assign or sublet, and to insure against fire and other specified risks.

1.L.7 Legal
Légal (F); Legal (E)

The term "legal" describes an action or thing that conforms with the law.

1.L.8 Legislation
Législation (F); Legislación (E)

Legislation is the body of laws which make up the law and comprises the formal laws passed by the legislature together with any subordinate legislation, including regulations and statutory instruments.

1.L.9 Lessee / Tenant
Locataire (F); Arrendatario / Inquilino (E)

A lessee holds a lease or tenancy of land under a lease contract or tenancy entered into with a lessor or landlord.

1.L.10 Licence
Permis d'occuper (F)

A licence confers on the licensee a right to enter land but does not grant a legal interest in that land.

A licence covers a wide range of agreements. An example is a timber licence which grants a person the right to enter land to harvest timber.

1.L.11 Life interest

A life interest is an interest enjoyed for a life.

In English law a life interest is usually created by a settlement entailing the land or by a specific grant. Since 1925 in England and Wales, a life interest is an equitable interest. The tenant for life will generally be liable for waste, unless this is specifically excluded in the grant. The life tenant may sell the interest in which case it continues to be enjoyed for the life of the original life tenant and is said to be held *pur autre vie*.

1.L.12 Local community
Collectivité territoriale ou locale (F);
Colectividad territorial o local (E)

Local community has no standard definition. It will typically be defined according to the circumstances. These may be relatively informal where the management of common property resources is concerned. They may be formal, and statutorily based where dealing with planning issues.

Local communities are involved to varying degrees in decisions and activities relating to the use of land within their jurisdictions. The actual level of local community responsible for a given decision or activity will depend on how the local administration is structured and what powers are allocated to the respective tiers of the administration.

1.M.1 Management rights

Droit de gestion (F); Derecho de gestión (E)

Management rights are the rights of the owner to manage the interest in land in accordance with the limitations imposed by the interest.

The possession of land, whether under the legal estates of fee simple or leasehold, or in various interests in equity, such as a life interest, confers specific rights in relation to the management of that legal estate or interest. The rights associated with some estates and interests are wider than others. For example, the fee simple absolute has the greatest possible rights being perpetual, providing the widest scope for management. Leasehold interest rights are more limited, both in duration and the nature of the rights, as the lessee is liable for waste during the term of the lease.

1.O.1 Occupation / Possession / Squatting

Occupation (Envahissement / Appropriation) (F);

Ocupación / Invasión / Usucapión (E)

Occupation is the physical occupation of land.

Occupation is distinct in English law from possession. The latter may involve occupation, or it may simply be the right to receive rents or profits from the land in question. It is generally a matter of fact, although legally speaking the fact of occupation may, for example, be established by an employee or representative of the claimant.

The occupation of land may be significant in creating a number of interests in land. In particular it may create overriding interests that are not registered under the system of land registration. In order to identify any occupier's rights it is necessary to inspect the land and to make enquiries of the vendor about the situation.

1.O.2 Occupier

Occupant (F)

The occupier of land is the person who is in occupation of that land.

1.O.3 Owner / Proprietor
Propriétaire (F); Propietario (E)

The owner of land is the person who owns the relevant legal interest in the land as recognised by the law.

The owner does not necessarily possess the land, as for example, when it is leased or adversely possessed by another.

1.O.4 Owner-occupier

The owner-occupier of land is one who both owns and occupies the land.

1.P.1 Parcel
Parcelle (F); Parcela (E)

A parcel (or plot) of land is an area of land with a particular ownership, land use, or other characteristic.

A parcel is frequently used as the basis for a cadastre or land registration system.

“The basic spatial unit in a cadastre is known as a parcel. A parcel can be defined in many ways depending on the purpose of the cadastre. For instance, an area with a particular type of land use may be considered a parcel in some systems; in others it is defined as an area exclusively controlled or owned by an individual or group of individuals (e.g. family or corporation). In some systems a property may consist of several parcels of land which may be distributed over a small region such as a village. The flexibility in the definition makes it possible to adapt the cadastral system to particular needs and thus also to adapt the cost of the registration. If, for instance, the purpose is mainly to protect the ongoing traditional land use, larger parcels representing common interests can be defined as the basis for the system.” FIG, 1995

IMAGE 1



1.P.1 Parcel

Parcels in the region of Quito, Ecuador.

Photo: Yann-Arthus Bertrand.
La Terre vue du Ciel. Editions de La Martinière.

1.P.2 Party wall

Party walls are structures that may be used to define boundaries under a 'general boundaries' principle.

Under English law the definition of boundaries is usually under the "general boundaries" principle. Boundaries in such circumstances are not specifically surveyed but are marked on Ordnance Survey maps for conveyancing and registration purposes. In many cases some form of boundary structure is erected to mark the boundary. Some boundary structures are clearly on one side of the boundary and within that side's ownership. Others are over the boundary line and mark it directly. Where this is the case, the law usually divides the ownership vertically with each side having a right of support from the other. Such boundary structures, whether they are walls, hedges or ditches are known in legal terms as "party walls".

1.P.3 Periodic tenancy

A periodic tenancy is a monthly or weekly tenancy that continues indefinitely until proper notice of the relevant period is given.

1.P.4 Personal property / Moveable property / Chattel

Meuble / Mobilier (F); Mueble mobiliario (E)

A chattel, also known as a fixture, is a movable, personal property, such as cattle. It is distinct from the real property interest.

1.P.5 Planning permission

Planning permission is the grant of permission for a specified development under the relevant legislation.

Planning permission in the United Kingdom dates from the 1947 Town and Country Planning Act. Although this legislation has subsequently been revised and consolidated, it remains essentially the same, with

planning permission required for anything that constitutes “development”. This is defined as almost anything requiring building, engineering, mining or other operations, or material changes of use. The requirement for planning permission generally has extended down to the low water mark. Although agriculture and forestry were originally largely exempted from planning constraints, recent legislation has considerably reduced these exemptions.

Where planning permission is refused, appeals may be made to the relevant government ministry and will be heard by a planning inspector appointed for the purpose. Further appeal is available to the Court of Appeal on a point of law. Planning permission is distinct from building regulations approval which is administered under the Public Health Acts.

1.P.6 Possession

Possession (F); Posesión (E)

Possession of land may involve physical occupation with or without permission from the owner, or the right to receive rents or profits from the land.

1.P.7 Prescription

Prescription (F); Prescripción (E)

Prescription is the acquisition or extinction of rights by lapse of time.

Prescription is the way in which property rights may be legally acquired through possession for a period of time that is continued, peaceable, and without lawful interruption for the legally stipulated period. Under English Law, prescription is restricted to incorporeal rights such as easements. Under Roman law, prescription applies to ownership over parcels of land as well.

1.P.8 Private property

Propriété privée (F); Propiedad privada (E)

Private property is property that is held privately, whether individually, jointly or corporately. Private property and the associated rights of

ownership are a keystone of market economies. In those countries that have written constitutions, the right to hold private property is usually enshrined as a fundamental human right.

Although different economic systems have different attitudes to the private ownership of real property, the human right to hold private property is generally acknowledged. The Universal Declaration of Human Rights of the UN includes at Article 17 that (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

1.P.9 Property law (real / immovable)

Droit immobilier (F); Derecho inmobiliario (E)

Property law is the generic term within which falls all of the legal framework dealing with property, its use, ownership, regulation and disposition. As such, property law applies both to real property and personal property, and is distinguished from land law, which applies only to real property.

1.P.10 Protected tenancy

A protected tenancy is one that enjoys the protection of statute under the relevant landlord and tenant legislation.

1.R.1 Real property / Immoveable / Real estate

Propriété immobilière (F); Raíz / Inmueble /
Bienes raíces / Bienes inmuebles (E)

Real property or real estate is a generic term for land and buildings.

The terms, real property and real estate, arise from the concept of a “real” action which allowed an owner who was wrongly deprived of land to recover it. In contrast, in the case of moveable or personal property, a “personal” action allowed for compensation for wrongful dispossession and not for the return of the object.

1.R.2 Reform
Réforme (F); Reforma (E)

A reform is a modification of an existing law or institution, either by the revision of an existing law or by the enactment of a new law.

Reforms are the expression of changing technical, economic, social and political perspectives and preferences through the legislature. The process of reform in a parliamentary democracy on the lines of the Westminster parliament involves a series of stages whereby a proposal for a law moves towards effective enactment.

1.R.3 Regime
Régime (F); Régimen (E)

A regime is the general system of government of a country or an organisation, comprising the laws and administrative institutions viewed as a whole.

1.R.4 Rent
Redevance / Loyer (F); Canon / Renta / Renta fija (E)

The rent is the periodic sum, often weekly, monthly, quarterly or annually, paid under a lease or tenancy agreement in return for the use of the property.

Rentals may be fixed according to the prevailing market values, which tends to encourage more efficient use of the property because the more efficient tenants will be able to afford the higher rents. It is common practice for there to be regular revision of rents. Although the arrangements vary from market to market, two common approaches are for regular reviews to the current full rental value based on comparable rentals recently agreed, or for rents to be reviewed on the basis of changes in the retail prices index.

It is often the case for rents to be fixed administratively where publicly owned land is leased, or for rents to be controlled below market rental values as the result of protective landlord and tenant legislation.

Rents that are currently at the full market rental value (broadly the rental that would reasonably be expected to be agreed between a willing lessor and a lessee) are referred to as rack rents, and such properties are rack rented.

Where the existing rent, or rent passing, is less than the full rental value, a profit rent is said to exist, and this creates value in the leasehold interest, varying according to its duration.

In some cases the landlord may demand or decide to accept a capital sum from the tenant in lieu of rent at the outset of the lease. This is known as a premium, and the rent will often be referred to as a ground rent. Where the rent is negligible it is commonly referred to as a peppercorn rent.

1.R.5 Restrictive covenant

A restrictive covenant as defined in English land law is a restriction in favour of the dominant land which imposes a burden on the servient land.

A restrictive covenant has to be negative in substance, restricting the servient land in some way, very commonly as regards its use. Restrictive covenants may range from restrictions on types and sizes of buildings to prohibiting the hanging of clothes washing outside.

1.R.6 Reversion

The reversion of a property is enjoyed by the freeholder, as original grantor, on the death of a life tenant. The term is also used to describe the landlord's interest in the land for the period after the term of a lease has expired. This is the point at which the freeholder is entitled to regain occupation at Common Law. In practice statute law, through relevant landlord and tenant legislation, has modified this right considerably, thus restricting the ability of the freeholder or landlord to remove a tenant.

1.R.7 Right of enjoyment / Usufruct

Droit de jouissance / Droit d'usufruit (F);

Derecho de usufructo o goce (E)

The rights of enjoyment of the owner of the fee simple are very wide and include the right to do whatever he or she wishes on the land providing it doesn't interfere with the legal rights of others. The owner is further restricted in the unfettered enjoyment of the land by statute, most significantly as to use by the Town and Country Planning Acts, as to building by the Public Health Acts, and as to landlord and tenant relations by a string of relevant laws.

A life tenant has more restricted rights of enjoyment of the land and would generally, for example, be liable for waste unless specifically excluded in the grant.

1.R.8 Right of pre-emption

Droit de préemption (F);

Derecho de preferencia / Prelación (E)

A right of pre-emption is the right of first refusal enjoyed by the holder of the right which requires the vendor of the land to give the holder the first opportunity to buy on agreed terms.

In effect, the right of pre-emption becomes an option as soon as the owner takes steps showing a desire to sell.

Statutory rights of pre-emption are not a typical feature of land management regimes based on English Common Law. In France, and French law influenced regimes, the right of pre-emption in favour of neighbouring farmers is a common provision. These are administered in France, for example, by the rural SAFER organisations.

1.R.9 Right of way

Rights of way may be either private or public. A private right of way is an easement, conferring the right of way only on the owner of the dominant tenement over the servient tenement. A public right of way is a right of "highway" enjoyed by the general public.

1.R.10 Rights

Droit (F); Derechos (E)

Rights are defined by the legal framework and provisions under a given regime.

Different societies have different attitudes and so the nature of these rights varies, notwithstanding that there are some rights that are fairly universally acknowledged under declarations such as the Universal Declaration of Human Rights.

The owner of real estate enjoys a wide range of rights including, where appropriate; natural rights (support, air), rights of alienation, rights of enjoyment (freedom of use, everything in, on or above the land, waste). Where property rights are infringed it is common for there to be some form of compensation.

1.R.11 Riparian rights

Riparian rights are those rights in respect of the use and entitlement to water enjoyed by a riparian owner whose land is contiguous with a river or stream.

A riparian owner under English land law has the right to a flow of river or stream of substantially unaltered quality and quantity. A riparian owner may take adequate water for domestic purposes and the watering of cattle. If water is taken for any other purposes, a similar quantity and quality of water must be returned to the watercourse. The riparian owner also enjoys the rights to fish in non-tidal waters. Where opposite banks are in different ownership these rights extend to the middle of the stream.

1.S.1 Servient tenement

A servient tenement is a property that is subject to a right of easement.

An easement requires that there should be a servient tenement that is subject to a right of easement, such as a right of way, enjoyed by a dominant tenement

1.S.2 Squatter

A squatter is a person who takes unauthorised possession of unoccupied premises. Under English law, a squatter may acquire title to the property by adverse possession and the operation of Limitation Acts.

1.S.3 State property

Propriété de l'Etat / étatique (F);
Propiedad fiscal / Propiedad pública (E)

State property is property owned by the State. Different regimes adopt different approaches to the identification of state property.

The feudal system from which English land law stems identifies the Crown (the personification of the State) as the source of all land ownership, as the ultimate owner of all land. In another sense the State is an owner of land as property in the same way as any other owner, public or private, and will acquire or dispose of land and enjoy the same rights as any other land owner. In a third sense the State's over-riding capacity to control land through, for example, town and country planning, reflects the fact that the rights of the land owner may be limited by the State.

1.S.4 Statute law

Droit écrit (F); Derecho escrito (E)

Statute law is that part of the legal system that is delivered by parliament, and is distinct in English Common Law countries from judicial precedent in which law is developed by the decisions of the Courts.

1.S.5 Subtenant

Subarrendatario (E)

A subtenant is the lessee of a tenant where the tenant chooses (usually with the required permission of the landlord) to create a smaller leasehold interest.

A subtenant's interest must be for a period less than that enjoyed by the tenant, and is often for the remaining term less a few days. The tenant in such an arrangement retains the rights and responsibilities of a tenant to the landlord rather than assigning the whole remaining tenancy to another and passing on those rights and responsibilities as far as the law allows. It is therefore possible for a chain of tenancies to develop out of the original freehold.

1.T.1 Tenancy

A tenancy is a lease or a periodic tenancy.

1.T.2 Tenant / Tenant farmer / Lessee Tenancier (F); Tenedor (E)

A tenant is a lessee who has the exclusive right of possession of premises under a lease. The lease is granted by the landlord or lessor.

1.T.3 Tenant right

Tenant right, in an agricultural context, is a specific group of rights of a tenant to compensation from the landlord at the end of a tenancy.

Examples of tenant right include:

England and Wales: *The agricultural tenant under the Agricultural Holdings Act, 1986, has specific statutory entitlements in respect of disturbance and improvements. The tenant has in addition compensation payable in respect of tenant right. These include:*

- > *for any growing crops or harvested crops and products having been grown or produced on the holding during the last year of the tenancy (excluding those which the tenant is allowed to sell or remove from the holding)*
- > *seed sown, cultivations, fallows, and other acts of husbandry at the expense of the tenant pasture laid down at the expense of the tenant, unless agreed as an obligation with the landlord, or paid for by the tenant on taking entry of the holding*
- > *hefting (acclimatisation) of hill sheep on hill land in certain circumstances any residual manurial/ fertility value of the soil.*

1.T.4 Tenure

Tenure (F); Tenencia (E)

Tenure is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions.

1.T.5 Timeshare

Jouissance à temps partagé (F);

Posesión compartida por tiempos limitados (E)

A timeshare is a means of dividing a property on the basis of time, most commonly on a weekly basis.

A timeshare is a means of dividing a property to make it more marketable and to realise greater proceeds from the sale than if sold as a whole. In principle it is a form of multiple ownership. It is for example quite possible to have a leasehold timeshare, in which case the lease is of the specified period, usually by the week, over the term of the lease. This approach is particularly commonly used in the sale of holiday properties.

1.T.6 Title

Titre foncier (F); Título de tierras / Escritura pública /

Título de propiedad (E)

The title to a property is the basis of its ownership.

In the context of English land law this is a function of the doctrine of estates and the doctrine of tenure. In order to prove title under the pre-registration title deeds system or in unregistered land in England and Wales, it was necessary to be able to demonstrate a clear root of title going back at least 15 years. With registered land, the fact of registration acts as proof of title in the quality registered. Appropriate searches and enquiries still have to be made, however, to ensure that there are no over-riding interests that may affect the title.

1.T.7 Transaction costs

Coûts de transaction (F); Costos de transacción /
Compromiso o promesa de compraventa (E)

Transaction costs are the costs associated with the transaction of property. Transaction costs include both time and money. Time involved in some of the processes may be considerable, particularly for example where registration is undertaken personally. The money costs will generally include some or all of the following:

- > agent's fees for the sale of the property (usually expressed as a percentage of the transaction sum)
- > lawyer's fees
- > stamp or transaction duty or tax
- > value added tax
- > registration fees

1.T.8 Trespasser

A trespasser is generally defined as someone who goes onto land without any invitation of any sort and whose presence is either unknown to the proprietor or, if known, is practically objected to. The distinction between a trespasser and a lawful visitor may be important in identifying liability in the event of misadventure.

1.U.1 Unclaimed land

Terres vacantes (F); Tierras vacantes / Baldíos (E)

Unclaimed land is land for which there is no owner or claimant. The concept of unclaimed land does not practically arise in England and Wales because all land is owned, as there will always be someone with the superior title, if only the Crown. The idea has, however, been of particular significance during the process of colonisation by the European powers. A common approach in such circumstances in Africa, for example, was for the colonising power to enact legislation extinguishing customary claims over land deemed unoccupied and to then issue leasehold or freehold titles to new occupants, generally colonist settlers. BRUCE, J. W., and MIGOT-ADHOLLA, S., 1994

In the former French colonial territories, where the concept of *terres vacantes et sans maître* remains often a part of the legal framework, it is now considered that there remains effectively no basis for such a claim as all land, whether fallow, reserve or bush will usually be under some person or group.

Examples of the use of the concept of unclaimed or vacant land include:
Australia: *The original settlement of Australia in the late 18th Century was based on the concept of terra nullius, in that there did not appear to the first settlers to be any established system of law on the continent. A system of law based on English practice was therefore established and freehold grants and leasehold interests were created. In 1992 the High Court established in the Mabo Judgement that native title had in fact existed in 1788 and that it has survived in those areas where it has not been extinguished by freehold.*

1.U.2 Use right

Droit d'usage / Usus (F); Uso / Usuario (E)

The use right or right to use land is one of the essential rights of land ownership.

In some continental European jurisdictions the usufruct is the right to use and take the profits from immovable property as though the owner, but with a duty of preservation. The usufruct may endure for life, or it may be for a specified number of years. In the latter case it is terminated on the death of the beneficiary. In some jurisdictions the right may be transferable. The nearest equivalent in English law is the life interest where the life tenant will be liable for waste.

1.V.1 Vacant possession / Vacant

Bienes mostrencos / Bienes vacantes / Cosas de nadie (E)

Vacant possession property is property with no one in occupation or possession. A property for owner-occupation is generally sold with the benefit of vacant possession. In other words, the present owner will ensure their own or other occupier's removal on or before completion of the sale and leave the property vacant.

1.W.1 Waste (Abuse)

Droit de disposer/Abus (F); Abuso (E)

The doctrine of waste, technically refers to the owner's right to change the nature of the land, whether for better or for worse, although the most common interpretation is of abuse of the land.

Under English Common Law, those with restricted interests in the land such as tenants under a lease, are liable for waste. The owner's interests are usually protected directly by specific covenants in the lease contract.

1.W.2 Wayleave

A wayleave is the right acquired in order to route something through the land of another.

The term is commonly used in respect of gas and other pipelines and electricity and other cables. In legal terms a wayleave is in effect an easement.

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II. ELEMENTAL DESCRIPTIONS OF SPACE

CHAPTER 2

Elemental descriptions of space

2.A.1 Agrarian Agraire (F); Agrario (E)

Agrarian is almost synonymous with the term “agricultural” in the English language. An agrarian society is one in which agriculture plays a large role in defining economic, political and cultural values.

Agrarian has strong overtones relating it to land ownership, but it is not exclusively concerned with land issues. Agrarian reform includes reforms to the production structure, the service structure and the land tenure system. Such reforms are often redistributive and are invariably politically contentious.

2.A.2 Airspace

Airspace is the area above the physical surface of the earth.

The possession of land brings with it the possession of the surface, together in principle in some jurisdictions that derive their legal philosophy from English land law with all that is beneath the surface and the column of airspace above. Some jurisdictions restrict these rights. Any use of the defined airspace unauthorised by the possessor is a trespass. This would include projections from neighbouring buildings or structures. Flight over the land would generally not give rise to a trespass, as long as the flying height was reasonable in the context of current wind and weather conditions.

2.A.3 Area Espace (F); Espacio (E)

Area is the measurement of a specified physical surface of an object. In the context of land it is usually defined as within delineated boundaries and expressed in measures, such as hectares, acres or

parts thereof. With buildings it should be defined specifically according to the purpose, for example, whether for insurance or for rental assessment. The measurement of the area will be expressed in measures, such as square metres or square feet.

2.B.1 Brownfield sites

Brownfield sites are potential development sites that involve the redevelopment of urban land.

They are frequently found in areas of existing towns and cities where changes and transfers in technology have altered transportation methods and the locations of industrial processes. Common areas subject to brownfield site redevelopment are port and harbour areas. Formerly extensive docking, warehousing and accommodation facilities have been rendered largely redundant by the development of large scale container-based transportation which has involved relocation of port facilities to sites with more appropriate land and sea access.

Although the development of such sites is often viewed as politically, economically and environmentally desirable, they often pose significant problems for developers. These may range from the need to change the public perception of the desirability of the area, through reorientation of transportation links between the brownfield area and other urban areas, to requirements to deal with issues of contaminated land. Development of greenfield sites that are previously undeveloped does not pose the same difficulties, although it does involve the conversion and loss of agricultural land.

2.C.1 Coastal zone

The coastal zone is the zone of transition from land to sea in physical, legal and usually land ownership terms. It is a complex area of particular administrative and planning concern.

There is no standard definition of what a coastal zone is. Although there is an understanding of what it constitutes, precise boundaries used vary between jurisdictions and for different purposes. A longstanding and practical definition is "... the part of the land affected by its proximity to the sea and that part of the sea affected by its proximity to the land as

the extent to which man's land-based activities have a measurable influence on water chemistry and marine ecology." USCMSER, 1969. Characteristic problems in this area include coastal erosion, habitat loss and degradation, contamination and coastal pollution. As a result many jurisdictions deal specifically with the issues of the coastal zone. STANNERS, D., and BORDEAU, P., 1995

2.C.2 Communal territory Finage (F)

The concept of communal territory is principally related to agrarian economies based on peasant agriculture where there has been a strong identification of the land within a commune's area with the peasants of the commune working that land. (The commune is the smallest administrative district in several countries, especially in Europe.)

In fact, even in such circumstances in the agricultural areas of France it is becoming increasingly difficult to make any meaningful observations because the land administratively identified as that of the commune often no longer coincides with the agricultural areas worked by the inhabitants. It is not a term that has any specific meaning in the context of England and Wales.

2.C.3 Conservation areas

A conservation area is an area, usually designated under a planning system, where conservation of existing characteristics is given a strong weighting in development decisions.

*A conservation area is a planning designation introduced under the Civic Amenities Act, 1967, in **England and Wales** for areas of architectural or historical importance in built-up areas. The designation gives an element of protection to the whole area from unsympathetic development. It recognises that it is frequently the overall assembly of buildings, rather than their individual qualities, that make an area culturally important. These designations therefore fulfil a different function than the protection of listed buildings. Local authorities can designate such areas using their protective powers under the act to preserve and enhance an area*

IMAGE 2



2.C.1 Coastal zone

A coastal zone in Sri Lanka, south of Colombo. C. Sanchez,

FAO photo.

2.C.4 Convention sites

Convention sites are conservation areas established following international conventions to conserve the features identified in the specific convention.

Examples of international conventions resulting in the designation of specific sites for nature conservation include:

Ramsar Convention: *The Convention on Wetlands of International Importance, 1971 (named after the Iranian city hosting the convention) is a global agreement for the protection of wetland sites in the around 70 signatory countries. The convention is backed by the International Union for the Conservation of Nature and the International Wildfowl and Wetlands Research Bureau. The total area of sites designated globally is around 36 million hectares. In the UK for example there are 57 sites totalling 215,000 hectares. The Ramsar Convention achieves its aims by monitoring wetlands and assisting in their conservation, by provision of detailed guidance on making rational use of the natural resource, and assistance with financial support to developing countries through a fund set up in 1990.*

Examples of international conventions resulting in the designation of specific sites for heritage conservation include:

World Heritage Convention: *This 1972 convention is supported by UNESCO and aims to designate sites of outstanding universal value, both natural and cultural. At present in Europe for example there are around 20 natural and 120 cultural sites on the list.*

2.D.1 Domain / Estates / Property

Domaine / Propriété (F); Dominio (E)

Under the French Civil Code, and in countries influenced by French legal development a distinction is drawn between the public and private estates.

In other countries, contrasts can be drawn between the public domain (public lands, or land held by the state), and private domain.

2.E.1 Eminent domain Domaine éminent (F)

The term “eminent domain” is used in some jurisdictions, such as the United States, to describe the process of compulsory acquisition or expropriation. The term derives from the state’s position as having ultimate power over the land.

2.E.2 Environmentally designated areas

An environmentally designated area is designated under a planning system to enjoy increased protection against development.

Most countries employ a range of different legislatively defined designations to provide protection to areas that are of particular environmental importance. There are often international designations for the most important sites overlaying the national hierarchy of protected sites.

2.F.1 Foreshore

The foreshore is the area between high water and low water mark.

In jurisdictions with law derived from English law, the foreshore commonly identifies an area of specific, frequently state, ownership, although this is not always the case.

2.G.1 Greenfield sites

The term greenfield site is used in respect of potential development sites that involve the development of agricultural or undeveloped land.

Development of greenfield sites that are previously undeveloped does not pose the same technical development difficulties as “brownfield” development, although it does involve the conversion and loss of agricultural land.

2.H.1 High water mark

The high water mark is the line of the highest tide and is often used legally to define the seaward limit of ownership of land in jurisdictions derived from English common law, although this is not always the case.

2.L.1 Landscape Paysage (F); Paisaje (E)

The landscape is a product of the interaction of human beings with the natural environment often over a period of many centuries. The landscape therefore reflects the impacts of social, economic and political changes on the natural environment.

2.L.2 Low water mark

The low water mark is the lowest mark that the tide regularly reaches. The low water mark is the seaward boundary of the foreshore and in many cases in jurisdictions derived from English common law delimits both an ownership boundary and the seaward boundary of planning jurisdictions.

2.M.1 Marine park

Marine parks are statutorily designated and protected marine areas of high conservation value where conservation is promoted particularly through controlled use and access. Marine parks are generally established with similar aims of conservation and public access to those applied in conventional land-based national parks.

Examples of an internationally known marine park include:

Great Barrier Reef, Australia: *The Great Barrier Reef Marine Park Authority operates through a comprehensive system of zoning plans covering its designated area and identifying appropriate uses for mapped zones. The zoning provisions assume that the Park is to be conserved as a multiple use resource and cover a wide range of permitted activities. The broadest definition of these is found in the*

general use zones in which reasonable uses consistent with conservation of the reef are allowed. The zones become progressively more restrictive with defined protective marine national park zones and scientific research and preservation zones. The latter is the most restrictive of the zones identified, preventing use and entry of both the marine space and the first 500 feet of air space without the required permit.

2.N.1 National domain / State land / Public lands

Biens domaniaux / Domaine national / Domaine foncier national (F); Bienes fiscales / Dominio nacional / Dominio de tierras nacionales (E)

State land in some jurisdictions is a distinct class of land owned by the state.

2.N.2 National / regional park

Parc national ou régional (F); Parque nacional (E)

National parks are statutorily designated and protected areas of high conservation value where conservation is promoted particularly through controlled use and access. National parks fall within the IUCN definition of protected areas managed mainly for ecosystem protection and recreation.

- > Natural area of land and/or sea, designated to
- > protect the ecological integrity of one or more ecosystems for present and future generations,
- > exclude exploitation or occupation inimical to the purposes of designation of the area and
- > provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible. IUCN, 1994.

Regional parks are usually of more limited conservation value and are often designated more as small scale recreational reserves. The conception of national parks and regional parks differs significantly as between one another, and as between different jurisdictions. They tend to have in common the aims to conserve areas of land from development and to provide access to land for the public.

IMAGE 3



2.N.2 National / regional park

Zebra near the gates of Lake Mburo National park, midway between Masaka and Mbarara in western Uganda.

K. Dunn, FAO photo.

2.O.1 Open space / Green belt

Espace vert (F); Espacio verde / Área verde (E)

Land designated as “green belt” is land that is protected by town planning against urban development. It is generally found on the urban periphery and was intended to reduce or prevent urban sprawl.

2.P.1 Peri-urban area

Espace périurbain (F); Espacio periurbano (E)

A peri-urban area is an area on the periphery of the urban area of the town and its suburbs.

The peri-urban area is typically very dynamic and is under the most pressure for transformation of greenfield sites into developed urban areas. Planning systems often try to limit the free spread of urban development to reduce the conversion of agricultural land into non-agricultural use and to encourage the efficient use of urban space. These aims are usually supplemented by a range of other initiatives. These include, for example, the designation of green belts to reduce development on urban fringes, and the planning and creation of new towns to try to divert development pressure from existing towns.

Periurban areas in developing countries are very commonly the sites of unregulated and extensive settlement by squatter households moving from rural to urban and from small to large urban areas. Policies for upgrading these areas are a major challenge in development.

2.R.1 Rural / urban

Rural / urbain (F); Rural-urbano / Rurbano / Rururbano /
Rurbanización / Rururbanización (E)

The terms rural and urban have their own individual meanings. Rural relates to the countryside and includes typically agricultural and forested areas and landscapes. Urban areas relate to settlements with their characteristic concentrations of residential, commercial and industrial developed property.

In practice these distinctions are less absolute than might be supposed from such definitions. Rural areas also contain settlements, commercial and industrial properties and uses. Urban areas may well contain typically agricultural and forestry related properties and uses. Small “urban farms” are often found in cities in developed countries, and small scale agriculture is a common feature in cities in developing countries.

2.S.1 Seabed

The seabed is the bed of the sea below low water mark. It is to the seaward side of the foreshore. It is very commonly in the exclusive ownership of the state.

2.S.2 State land regime Domanial / régime domanial (F)

The state land regime is the legislative framework that defines how state land can be allocated and managed.

The legal regime governing state land will cover specific aspects of its management and mode of exploitation. This may include defining the organisation responsible for managing the land, and stating the general principles, and in some cases the detailed basis for its use.

2.T.1 Territorial sea Mar territorial (E)

The territorial sea includes the area from the high water mark out to 12 nautical miles from the shore baseline over which the coastal state has sovereignty of the territorial sea and the seabed, including the airspace above.

2.T.2 Territory

Territoire (F); Entidad territorial / Territorio (E)

Territory may be viewed in legal, social and cultural contexts as the area where an individual or community lives.

It is generally contended that human beings are territorial, and that territoriality is therefore an innate characteristic of individual and social

organisation. In practical terms territoriality is expressed in the different forms of property ownership enjoyed by individuals and groups, and by the different ways in which the use of real estate is regulated at different levels of social and political organisation.

Territory ranges from the level of the state, where the state's territory includes all of those areas on land and sea where the state has jurisdiction, through the intermediate levels of local government where democratic responsibility ensures a dimension of social accountability within the relevant administrative boundaries. At the lowest level, each individual will identify an element of personal territory.

Territory is distinguished from the concept of space by this social dimension.

2.T.3 Town / Urban planning

Urbanisme (F); Urbanismo (E)

Town planning is the planning framework within which decisions are made about how urban land is to be used.

Town planning is often used as shorthand to denote the statutory planning of land use. The statutory planning of land use, whether urban or rural, whether town planning or rural land management, is based on the principle of rationality, the balancing of conflicting claims on the use of resources taking a comprehensive view of the matters to be taken into account.

2.U.1 Urbanization

Urbanisation (F); Urbanización (E)

Urbanization is the process of development of towns and cities where population growth and population drift typically result in rapid acceleration in the size of the urbanized population.

2.Z.1 Zoning

Zones / Zonage (F); Zona / Zonificación (F)

Zoning is a planning procedure where a designated zone is allocated for a specified use or uses.

Zoning is a commonly used approach to planning which identifies the uses to which the zoned land may be put and specifies the type, amount and location of that development. It is planned to promote orderly development and to reduce or avoid inconsistent uses adjacent to one another.

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**III. POLITICAL, PROCEDURAL
AND PRACTICAL TOOLS/TERMS
OF THE LAND**

CHAPTER 3

Political, procedural and practical tools/terms of the land

3.A.1 Aerial photography

Photographie aérienne (F); Fotografía aérea (E)

Aerial photography is the process of photographing the earth's surface from the air, usually from a specially fitted aircraft using high precision photographic equipment.

The large majority of topographical maps are based on aerial photography and photogrammetric methods. The height of the aircraft and the characteristics of the camera and film/sensitivity (black and white, colour, infra-red, digital, etc) determine the scale and character of the photograph. The nature of the photograph results in distortion around the edges of photographs which needs to be corrected using appropriate photogrammetric techniques to make maps. Although vertical photography is the most useful in its applications in mapping, non-vertical or oblique photographs may also be useful for other purposes, including for recording the condition of specific objects or areas.

As with a map, an aerial photograph is an historical document, recording characteristics of the subject area at a specific time. The technique is valuable not just for conventional topographic mapping, it is also used for a wide range of activities and surveys including for scientific research, archaeology, the environment, vegetation cover, and land management. For certain functions it may be necessary to conduct ground surveys in photographed areas for ground referencing of particular characteristics. DALE, P. F., and MCLAUGHLIN, J., 1990

3.A.2 Agrarian reform

Réforme agraire (F); Reforma agraria (E)

An agrarian reform is a collection of activities and changes designed to alter the agrarian structure of a country and the ways of using the land

It invariably has political, economic and social / cultural dimensions.

The objectives of an agrarian reform are generally to improve both qualitatively and quantitatively the levels of agricultural production and to improve the standards of living of agricultural producers. Such reforms will often involve elements of redistribution of land and changes to the land tenure system.

3.B.1 Boundary marking

Bornage (F); Deslinde / Amojonamiento (E)

Boundary marking is an operation that consists of fixing the boundaries of a parcel of land.

“Most parcel boundaries are defined by stable marks or visible features on the ground, which can be natural or artificial. They can be represented by lines on maps, often described by bearings or azimuths and distances, or by coordinates. If the representation on the map has legal priority over the marks on the ground in cases of dispute, the demands for survey accuracy are usually higher than if the case is the opposite. Physical demarcation on the ground is important because it provides actual notice of the boundaries to the landowners.” FIG, 1995

In many countries, and for the fixing to have legal validity, the boundary marking must be done by a qualified surveyor.

In situations where systematic registration is taking place, the process of boundary fixing will involve adjudication. Where agreement cannot be reached the decision on boundaries will usually be referred to the courts

3.B.2 Building regulations approval

Permis de construire (aménagement) (F)

Building regulations approval is the process of approving the construction quality of proposed constructions and of their execution.

3.C.1 Charter Charte (F); Carta (E)

A charter is a formal and fundamental statement at a governmental or inter-governmental level.

Historically the term charter was reserved for a grant or agreement between a monarch and a representation from the subjects. Perhaps the best known charter in English history is the Magna Carta, 1215. This charter is viewed as an important document defining the English constitution, provided significant restrictions on the power of the king and included guarantees of the right to trial for all freemen and justice for everyone.

Charters more recently continue to have some relevance for land related issues. The Royal Institution of Chartered Surveyors (RICS) for example, the professional body under which all qualified "Chartered Surveyors" practise, is enabled by the grant of a Royal Charter from the Queen's Privy Council.

There are other charters of significance that may provide an opportunity for the defence of property as a fundamental human right. The European Charter of Human Rights, judicially administered by the European Court of Human Rights, for example, periodically hears appeals against national legislatures and judiciaries on property related issues.

3.C.2 Code Code (F); Código (E)

A code is a coherent body of law which pulls together all of the laws relating to a specific field.

It is a common approach to law making in many countries influenced by Roman law, including for example those influenced by the French legal system. Codification has been a particular feature of the law since the Code Napoleon, the first modern codification of French law, was introduced between 1804 and 1810. Codification of laws is also, for example, a common feature of the former Soviet Union republics where, in some cases, developing an effective Land Code has been an important priority.

The terms code and codification are not characteristic of the legal system in the United Kingdom, although it is an approach used to a greater or lesser extent in several states influenced by English law. In English law it is reasonably common, however, for “consolidating laws” to be passed. Although not the same as codification, such laws bring together in one place all of the legislation dealing with a particular issue rather than materially changing the law.

3.C.3 Codification

Codification (F); Codificación (E)

The process of codification is the development of a coherent legal code from an existing body of law.

3.C.4 Compulsory acquisition / expropriation

Expropriation / expropriation pour cause d'utilité publique (F); Expropiación/ Expropiación por causa de utilidad pública (E)

Compulsory acquisition or expropriation is a procedure by which public needs for land or property rights in the pursuit of government policy are met.

Processes of compulsory acquisition and needs vary from country to country. The processes of acquisition are statutorily defined, and will include detailed requirements and timetables for procedures and notices on the part of both parties. The processes will also include a basis for setting compensation for the loss of the owner expropriated.

Common requirements for the compulsory acquisition of land include for public infrastructure such as construction of roads and railways, for easements for power cables and pipelines, for hospitals, schools and public housing. In some countries, it may also for example form a part of land reform policy to compulsorily acquire land for redistribution.

The philosophical justification for the compulsory acquisition of land is that the private owner of land enjoys the benefits of living in society.

The owner accordingly should accept that if the public can legally establish a need for the land then it should be entitled to acquire the land in return for appropriate compensation. The issue of compensation and the right of citizens not to be arbitrarily deprived of their property is one that is often dealt with in principle in national constitutions.

The equivalent of compulsory purchase in England and Wales, is “expropriation” in continental Europe, “taking” in North America, and “resumption” in Australia.

3.C.5 Conservation management Gestion patrimoniale (F)

Conservation management is an extension of land management that emphasises the need to protect and safeguard natural resources.

Conservation management may take a wide variety of forms, although it is increasingly widespread for there to be a strong element of local, or decentralised, input into implementation. The need for this has been repeatedly emphasised in UN conferences starting with the Rio Summit in 1992, and has been taken up by communities around the world.

3.D.1 Decentralisation Décentralisation (F); Decentralización / Decentralización de los procesos administrativos (F)

Decentralisation is a process of moving from the centre to the periphery. In governmental terms decentralisation is likely to involve the shifting of decision-making and executive powers to lower tiers of government and particularly to local government.

Decentralisation has become a significant issue of policy particularly since the 1980's when the World Commission on Environment and Development laid emphasis on the importance of bringing environmental and economic issues more effectively into decision-making. This emphasis on local responsibility has been repeated through successive UN conferences starting from the Rio Summit in 1992.

3.D.2 Development plan

Development plans identify proposed land uses adopted by the relevant planning authority in a given area. They are usually associated with urban or town and country planning.

3.G.1 General development order

A general development order identifies permitted development in a town and country planning system.

The general development order (GDO) is a provision in the planning system in the United Kingdom under the Town and Country Planning Acts to identify those developments that do not require planning permission, although they may require building regulation approval and listed building consent depending on circumstances.

The function of the GDO is to define a class of “permitted development”. This takes out of the development control system those actions that would come within the definition of development under the Act, but which are effectively marginal.

3.G.2 Geomatics Géomatique (F); Geomática (E)

Geomatics is commonly defined as a ‘discipline aimed at managing geographic data by means of the science and technology used to acquire, store, process, display and distribute them.’ (Canadian Institute of Geomatics – the first professional institution to make the change from, in this case, Surveying and Mapping.)

It is “ ... a field of activities which, using a systemic approach, integrates all the means used to acquire and manage spatial data required as part of scientific, administrative, legal and technical operations involved in the process of the production and management of spatial information. These activities include, but are not limited to, cartography, control surveying, engineering surveying, geodesy, hydrography, land information management, land surveying, mining surveying, photogrammetry and remote sensing. “WILLIAMSON, I., P., et al., 1994

3.G.3 GIS (Geographical Information System)
SIG (Système d'Information Géographique) (F);
Sistema de Información Geográfica (SIG) (E)

GIS is: "... a set of computer tools for collecting, storing, retrieving at will, transforming, and displaying spatial data ...". The development of computers and appropriate software has enabled maps to be transformed from a static past to a dynamic future. The uses to which GIS can be put reflect its capacity to model the real world and for the constituent data to be selected, interrelated, analysed and used for a specific set of purposes.

BURROUGH, P. A., and MCDONNELL, R. A., 1998

3.G.4 GPS (Global Positioning System)
GPS (Système de positionnement universel) (F);
Sistema de posicionamiento por satélite (GPS) (E)

The global positioning system consists of 24 satellites orbiting the earth in six orbital planes. Locations on the ground can be fixed and their coordinates calculated on the basis of signals picked up from these satellites by receivers. The high degree of accuracy and consistency of measurements using this positioning capability make it an excellent option for almost all types of geodesy and surveying, including cadastral work. UNECE, 1996

3.I.1 Integrated coastal zone management

The complexities and frequent overlaps of the processes, ownership, and administrative structures in coastal zones, coupled with their physical and environmental fragility, have led to the common recognition that they require careful integrated planning, referred to as integrated coastal zone management.

IMAGE 4



3.G.4 GPS (Global Positioning System)

A Global Positioning System, an instrument to determine the precise location of locust's infestation. This information is transmitted to a centre in Tulear, Malagasy, which then organizes their elimination.

A. Proto, FAO photo.

3.L.1 Land consolidation

Remembrement (F); Concentración parcelaria (E)

Land consolidation is a sequence of operations designed to reorganise land parcels in an area, regrouping them into consolidated holdings of more regular form and with improved access.

Consolidation of parcels of land into a single holding, whether voluntary or enforced, is intended to provide a more rational distribution of land to improve the efficiency of farming. Each agricultural enterprise, consisting prior to the consolidation of many parcels spread over a wide area, will consist afterwards of a small number or perhaps a single parcel. Land consolidation operates on the basis of assessing the quality of land and providing owners with equivalent land in exchange. Once the consolidation scheme is agreed, the proposals are made available to the public for a period of notice to enable any appeals to be made. The consolidation process should not therefore affect the size or number of agricultural enterprises. UNECE, 1996

Land consolidation schemes are increasingly associated with other improvements, for example, highway and access road layouts, removal of hedgerows, drainage or irrigation systems, and wildlife and conservation projects.

3.L.2 Land development

Land development is the application of resources to improve land that should enable it to be used more efficiently. These resources may include capital (constructing buildings), labour (clearing or draining land for agriculture) or enterprise (securing or revising planning permissions).

Land development is a facet of land management, and applies to both rural and urban land. Development may result in increased value of the land, and where properly managed will release an element of development value enabling the developer to recoup investment and other costs and make a profit. In some circumstances this may be referred to as betterment and may be subject to a special tax.

This is distinct from the French use of the term “aménagement foncier” now based on the “droit de l’aménagement foncier rural” which aims to

improve farm working conditions and productivity and is integrated with urban planning schemes in mixed farmland and urban development land reallocations. LORVELLEC, L., 1992

3.L.3 Land management

Gestion de terroir (F);

Decentralización de la gestión territorial (E)

Land management is identified by the International Federation of Surveyors as follows: “Land management is the process of managing the use and development of land resources. Some of the critical, and sometimes conflicting, objectives that must be addressed by land management policies today include:

- > improving the efficiency of land resource use to support the rapidly growing population of many countries;
- > providing incentives for development, including the provision of residential housing and basic infrastructure such as sewer and water facilities;
- > protecting the natural environment from degradation;
- > providing equitable and efficient access to the economic benefits of land and real estate markets;
- > supporting government services through taxation and fees related to land and improvements.” FIG, 1991

Land management is distinct from farm management. The latter deals with issues such as what to produce, how much to produce and how to produce. The land manager, on the other hand, focuses on the management of the land, whether urban or rural. Land management in its broadest sense deals, therefore, with issues relating to:

- > the achievement of an acceptable return from the land interests owned.
- > the maintenance or enhancement of the value of the land interests owned.
- > such returns and values are likely to include a mixture of financial/economic, social and environmental (including sustainability) qualities.

NIX, J., HILL, P., WILLIAMS, N., and BAUGH, J., 1998

The land manager is the person undertaking such management, whether as an owner or agent, and whether in the public or the private sector. This area of land management is often referred to in United Kingdom practice as estate management.

3.L.4 Land policy

Politique foncière (F); Política agraria (E)

Land policy is the set of intentions embodied in various policy instruments that are adopted by the state to organise land tenure and land use.

Land policy will usually be guided by a set of basic principles, some of which owe their origin to international agreements, others to specific national circumstances. These principles may include:

- > encouragement of efficiency and promotion of economic development
- > promotion of equality and social justice
- > preservation of the environment and sustainable patterns of land use GTZ, 1998

Not all countries have a coherent, consciously integrated and formally stated land policy.

3.L.5 Land reform

Réforme foncière (F); Reforma agraria (E)

Land reform is the generic term for modifications in the legal and institutional framework governing land policy. Land reform is intended to implement changes in land policy that are designed to realise desired changes in a changing political, economic and social environment. The most common types of land reform are probably those dealing with reallocations of land and those redistributing legal rights of ownership. Land reform is invariably a part of agrarian reform. There is a common perception that land reform is the prerogative of developing and transforming economies. The reality is that land policy and the legislative and institutional framework implementing that policy are constantly changing in all societies as political, economic and social circumstances change.

3.L.6 Land system

Système foncier (F); Sistema de tierras (E)

“Land system” is synonymous with “land tenure system”. It provides the basis for access to land and natural resources. It defines the ways in which land and natural resources can be held and the security of those rights. The system comprises the legislative and administrative frameworks relating to land and natural resources and to their application.

3.L.7 Land use plan

Plan d’occupation des sols (F);
Plan de ocupación del suelo (E)

Land use planning is “The systematic assessment of land and water potential, alternative patterns of land use and other physical, social and economic conditions, for the purpose of selecting and adopting land use options which are most beneficial to land users without degrading the resources or the environment, together with the selection of measures most likely to encourage such land uses.”

CHOUDHURY, K., and JANSEN, L. J. M., 1999

Land use planning in its statutory sense is undertaken under the Town and Country Planning legislation in England and Wales through its structure and local plans. The main focus for this planning is to control the current and future development of the defined areas.

This is distinct from the French approach where around half of the 36,000 French municipalities have formally adopted a zoning map (Plan d’occupation des sols – POS). Under the latter, land is divided into urban districts (“U” zones) and natural districts (“N” zones): NA for future urbanisation, NB with existing settlement frozen, NC with just agricultural use, and ND with environmentally sensitive areas. A local farmers’ “parliament” is involved in the drafting prior to final approval by local government. LORVELLEC, L., 1992

The term land use plan is also used in the context of a tool for the management of land within a specific ownership.

3.M.1 Maps / Mapping / Cartography

Carte / Cartographie (F); Mapa / Carta /

Generalización cartográfica / Cartografía (E)

Traditionally, maps represent physical, vegetational or political features of a spatially defined area on paper or some other flat medium. Such maps have been a vital part of development and of all aspects of land management and administration since earliest records began. They are, however, relatively static and are difficult to change and update compared with modern digitally based GIS.

3.O.1 Orthophotography

Orthophotographie (F); Ortofoto (E)

Orthophotography is a process that creates undistorted photographic images using stereo pairs of aerial photographs.

Orthophotography has been developed to maximise the potential use and accuracy of aerial photography. It achieves this accuracy by using stereo pairs of photographs mounted in a special machine which enables the distortion that is inherent in aerial photographs to be minimised, maintaining a constant scale across the image. These distortions result from the effects of terrain and the perspective effects inherent in the use of the camera. The digitised image is processed into a particular map projection giving a uniform scale and known accuracy. A mosaic of such photographs is used to build up an orthophotomap. GIS often uses orthophotographs to provide a rich visual context, integrated with other geographic information.

DALE, P. F., and MCLAUGHLIN, J., 1990

3.P.1 Parcel plan / Cadastral plan / Map

Plan parcellaire (F); Plan parcelario / Carta predial (E)

A parcel plan is generally a large scale map of an area showing all of the property parcels and their use, the boundaries and the distances between them and the buildings and improvements. Generally the parcel plan includes a register of the parcels. In the context of land administration, a cadastral plan is a parcel plan. The nearest equivalent in land management in jurisdictions influenced by English practice is termed an estates terrier.

3.P.2 Perimeter / Boundary Périmètre (F); Perimetro (E)

A perimeter is a boundary.

3.P.3 Photogrammetry Photogrammètrie (F); Fotogrametría / Restitución (E)

Photogrammetry is the set of measurement techniques by which aerial photographs, converted into orthophotographs, are analysed and converted into maps and geographical information.

Photogrammetry measures position and altitude from stereo aerial photographs or images using a stereoscope or stereoplotter.

3.P.4 Photomapping

Photomapping is the analysis of aerial photographs to provide the information for creating maps and geographical information.

This is generally undertaken by assembling orthophotographs from stereo pairs of aerial photographs, and using photogrammetric techniques to create the maps.

3.P.5 Photoplan / Orthophotoplan Photoplan / Orthophotoplan (F); Fotomapa (E)

A photoplan is an assembly of enlarged aerial photographs. An orthophotoplan is an accurately scaled photoplan that has had any distortions corrected.

An orthophotoplan is made by assembling accurately positioned and geometrically corrected aerial photographs. An orthophotoplan has the characteristics of a map, with orientation, a scale and a key to identify relevant features. It combines the accuracy of a map with the ease of understanding of a photograph.

3.P.6 Plan Plan (F); Plano (E)

A plan is a representation of an object in a horizontal projection, for example, of a building or group of buildings, of a farm, or of a land parcel.

A plan is also used in a town and country, or other planning context. Local plans in England and Wales, for example, are based on a large scale map, usually with a descriptive statement of the planning policies for a given area. A plan differs from a map typically in its scale.

3.R.1 Regularisation of ownership / Formalisation of ownership Régularisation foncière (F); Regularización de tierras (E)

Regularisation of ownership is where informal or illegal occupation of land is legalised by statute, giving occupiers the legal right to private ownership of the land.

Regularisation of ownership usually occurs where there has been a large amount of irregular settlement, and there is a need to preserve the investments made by the illegal occupiers. It is therefore a policy that retains the population in place and minimises displacement. The approach favours the rehabilitation and integration of an illegal settlement rather than its systematic destruction. This results from the size of these illegal settlements and because governments can neither afford the financial costs of the classical solution of resettlement, nor the political cost of destruction of the illegal settlements.

3.R.2 Remote sensing Télé-détection (F); Teledetección / Percepción remota (E)

Remote sensing is the set of techniques used for gathering information about the environment without being in direct contact with it.

These techniques extend human perception by recording in different ways the radiation emitted or reflected by objects, and using the characteristic radiation patterns of individual objects that enable their identification. Remote sensing techniques are extensively used to

record physical and biological characteristics of objects as the basis for thematic mapping and for measuring change. These include for the mapping of urban, agricultural, forestry and aquatic themes. Remote sensing techniques are particularly closely associated with satellite imagery range but also range from aerial photography, through radar, to sonar. DALE, P. F., and MCLAUGHLIN, J., 1990

3.R.3 Reserve / Land reserve / Nature reserve

Réserve / réserve foncière / Réserve naturelle (F);
Reserva de bienes raíces / Reserva natural (E)

The word reserve signifies a defined area of land set aside for a particular purpose. The term is commonly used in the following contexts:

- > reserve land: land reserves may be identified and set aside for specified public purposes in some jurisdictions
- > nature reserve: land may be designated and set aside as a nature reserve for the purposes of protection of valued fauna and flora
- > native reserve: land may be designated and set aside for the exclusive use of indigenous peoples

Examples of the use of the term “reserve” in the context of reserve land include:

Malaysia: Article 62 of the National Land Code empowers the State Authority to gazette any state land as reserved for any public purpose. The land reserved cannot thereafter be disposed of by the state, and cannot be used for any other purpose than that which it was reserved for.

Examples of the use of the term “reserve” in the context of native reserve include:

Fiji: Around 88% of Fiji’s land is held under customary tenure by the indigenous Fijian people. Native land is inalienable and is categorised according to whether or not the land is in native reserve. Land is leased through the Native Land Trust Board which administers land under a statutory trust. Leasing of native reserve land is restricted principally to indigenous Fijians. Native land which is not leased is used by the owners following customary practices.

IMAGE 5



3.R.2 Remote sensing

FAO expert discusses mapping and analysis of remote sensing data.

Students are learning to use a mirror stereoscope (left) for aerial photos, and a stereopret (right), an instrument for topographical and contour-mapping use

. I. de Borhegyi, FAO photo.

3.R.4 Right of abode

Permis d'habiter (F); Permiso para habitar un lugar (E)

A right of abode is an administrative authorisation given by the municipal or local authority to the occupier of an area, restricting the right of abode to that area.

3.S.1 Scale

Échelle (F); Escala (E)

The scale is the relationship between the representation of an object on a plan or map, and its size in reality. A graphic scale is a graduated line, divided into equal sections, indicating the relation between the distances marked on the map or plan and the distances in reality.

A numerical scale is the mathematical relation between a distance on the plan or map and in reality, for example 1mm on the map represents 100m in reality at a scale of 1:100,000. Scales are classified into three categories. Large scales are those up to 1:25,000; medium scales are between 1:25,000 and 1: 100,000; small scales are those in excess of 1:100,000. The more detailed a map, the larger its scale.

3.S.2 Secure tenure

Sécurisation foncière (F);

Legalización y reconocimiento de la posesión de tierras (E)

Secure tenure is related to the degree of recognition and guarantee of real estate rights.

Improving security of tenure is seen as necessary:

- > to encourage investments to improve the productivity of agriculture;
- > for conservation and the sound use of natural resources;
- > to encourage the use of temporary rights for the use of land including leasing
- > to reduce the number and the intensity of conflicts relating to the use and transaction of real estate.

Conversely, insecurity of tenure is characterised when the users and holders of land, whether rural or urban, consider that their rights on the land are at risk to other actors and uncertain in their duration.

3.S.3 Structure plan

Structure plans are plans developed by planning authorities to provide a strategic policy framework for local planning and development control.

3.S.4 Subdivision / Mutation

Subdivision is the process of demarcation of parcels when an area of land is divided.

The process is closely regulated in many jurisdictions. Examples of subdivision procedures include:

Malaysia Part 9 of the National Land Code of Malaysia regulates subdivision. It lays down the conditions for approval of a subdivision, including for example that the shape of the parcel should be suitable for the intended purposes in the opinion of the State Director or Land Administrator, and that satisfactory means of access must be available. It also provides for how applications are to be made and what fees are to be levied.

3.S.5 Surveyor / Land surveyor / Cadastral surveyor Géomètre (F); Geómetra (E)

A surveyor is defined as follows by the International Federation of Surveyors (FIG):

“A surveyor is a professional person with the academic qualifications and technical expertise to practise the science of measurement; to assemble and assess land and geographic related information; to use that information for the purpose of planning and implementing the efficient administration of the land, the sea and structures thereon; and to instigate the advancement and development of such practices.

“Practice of the surveyor's profession may involve one or more of the following activities which occur either on, above or below the surface of the land or sea and may be carried out in association with other professionals.

- 1 The determination of the size and shape of the earth and the measurement of all data needed to define the size, position, shape and contour of any part of the earth's surface.
- 2 The positioning of objects in space and the positioning and monitoring of physical features, structures and engineering works on, above or below the surface of the earth.
- 3 The determination of the position of the boundaries of public or private land, including national and international boundaries, and the registration of those lands with the appropriate authorities.
- 4 The design, establishment and administration of land and geographic information systems and the collection, storage and analysis of data within those systems.
- 5 The study of the natural and social environment, the measurement of land and marine resources and the use of data in the planning of development in urban, rural and regional areas.
- 6 The planning, development and redevelopment of property, whether urban or rural and whether land or buildings.
- 7 The assessment of value and the management of property, whether urban or rural and whether land or buildings.
- 8 The planning, measurement and management of construction works, including the estimation costs.
- 9 The production of plans, maps, files, charts and reports.

In the application of the foregoing activities surveyors take into account the relevant legal, economic, environmental and social aspects affecting each project. FIG, 1991

3.T.1 Topography

Topographie (F); Topografia (E)

Topography is the set of methods used to enable the nature of the land to be identified, measured and shown.

The topographic map represents the detailed physical attributes of the area using conventional signs and methods. Height, for example is commonly shown using contours or spot heights, and more rarely, for example, using shading. A topographic map usually uses colours which allows a diversity of topographical features to be shown.

3.T.2 Town and country planning Urbanisme (F); Urbanismo (E)

Town and country planning is the planning framework within which decisions are made about how land is to be used.

The concept of town and country planning varies between cultures and differs significantly between jurisdictions. There are two significantly different broad approaches. A more flexible system developed in the United Kingdom and has been applied in many of the countries influenced by British legal and administrative systems. This approach seeks to reconcile conflicts in land use and allows both discretion and flexibility in the implementation of planning to try to achieve development that is in the public interest.

This contrasts with the relative inflexibility of the zoning and related systems of planning typically found in United States and continental European jurisdictions which focus principally on the establishment and protection of property rights.

The statutory planning of land use, whether urban or rural, is based on the principle of rationality, the balancing of conflicting claims on the use of resources taking a comprehensive view of the matters to be taken into account.

3.U.1 Urban parcel map / Cadastral map Parcelaire urbain (F); Parcelario urbano / Carta o mapa catastral / Plano catastral (E)

An urban parcel map is a map identifying the ownership parcels in an urban area.

Urban parcel maps may form the basis of a number of functions including particularly, for example, in relation to real estate taxation and planning.

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**IV. LAND INFORMATION SYSTEMS:
SERVICES AND TOOLS OF PUBLIC
LAND ADMINISTRATION**

CHAPTER 4

Land information systems: services and tools of public land administration

4.A.1 Adjudication

Adjudication is the process of final and authoritative determination of the existing rights and claims of people to land. This may be in the context of first registration of those rights, or it may be to resolve a doubt or dispute after first registration. Adjudication is also a standard procedure prior to the operation of a land consolidation scheme.

The process of adjudication should simply reveal what rights already exist, by whom they are held and what restrictions or limitations there are on them. In practice, of course, the mere fact of a final and definitive recording of these rights is a significant change in those jurisdictions where previously there had been uncertainty.

The process of adjudication may be sporadic or systematic, as with registration. Sporadic adjudication is a parcel by parcel approach, usually triggered by some specific event, like the sale of the property. Depending on the jurisdiction sporadic adjudication will then involve demonstrating that the title is basically sound before it is accepted and entered into the registration system. UNECE, 1996

4.B.1 Boundary / Perimeter Périmètre (F); Perímetro (E)

The International Federation of Surveyors (FIG) defines boundaries as follows:

“Boundaries of parcels can be defined by physical demarcation on the ground or by a mathematical description usually based on a co-ordinate system. The accuracy and cost of cadastral surveys is dependent on the accuracy needed for boundary descriptions. The accuracy should reflect factors such as the value of the land, the risk and cost of land disputes and the information needs of the users of the cadastre.”

FIG, 1991

It is often the case that the boundary will be physically demarcated (e.g., by markers such as pipes, pegs, etc.) even when a jurisdiction uses a coordinate system to describe the position of the boundary. Coordinates tend to refer to physical objects on the ground and not to abstract positions.

A principal difference between boundaries is whether:

- > the entire length of a boundary is demarcated by a physical feature (e.g., a river [centre or either bank], ridge, wall, or hedge, etc.)
- > only the bend points of the boundary are demarcated by physical points (often referred to as monuments, beacons, etc).

This difference is often raised as the clash between “general” and “fixed” boundaries in a debate that has long plagued the English-speaking community. This debate often ignores the fact that so-called “general” boundaries such as rivers do exist in so-called “fixed” boundary jurisdictions. In one sense, fixed boundaries are no more fixed than general boundaries; they are merely delimited more precisely.

Regardless of the nature of the boundary, the documentation of the boundary position should be sufficient to allow the boundary to be relocated should it somehow be destroyed.

4.C.1 Cadastral administration

Administration du cadastre (F); Administración catastral (E)

The cadastral administration in any given jurisdiction is the organisation (or organisations) responsible for creating, maintaining and dealing with the cadastre.

There is a wide range of experience throughout the world. Although it is most common for the administration to be established and managed by traditional government departments, there are instances where such agencies have become self-financing, such as the Netherlands Kadaster. In some countries cadastral issues are the responsibility of local governments, in others they are national, but may be administered under one or more different ministries. The most common ministries with cadastral responsibilities are probably the Ministries of Justice, of Finance and of Agriculture. MANTHORPE, J., 1997

4.C.2 Cadastral register

Registre cadastral (F); Registro catastral (E)

The term “cadastral register” may include registers for any of the different types of cadastral system identified in the definition of the cadastre.

4.C.3 Cadastre

Cadastre (F); Catastro (E)

The International Federation of Surveyors (FIG) defines the cadastre as follows:

“A cadastre is normally a parcel based and up-to-date land information system containing a record of interests in land (i.e. rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, and ownership or control of those interests, and often the value of the parcel and its improvements. It may be established for fiscal purposes (e.g. valuation and equitable taxation), legal purposes (conveyancing), to assist in the management of land and land use (e.g. for planning and other administrative purposes), and enables sustainable development and environmental protection.” FIG, 1991

Different countries use the term cadastre differently and this is a cause of real confusion. UNECE, 1996

4.D.1 Decentralised resource management

Instances décentralisées de gestion des ressources (F);

Instancias descentralizadas de administración de recursos (E)

Decentralised resource management is the principle of delegating policy-making in resource management to the lowest effective local levels of public authority.

The concept of decentralised resource management is one that has been significantly promoted as a result of the UN Commission on Sustainable Development’s Agenda 21, and is being taken up increasingly around the world.

4.D.2 Deeds registration

Deeds registration is a system of proof of property ownership and interests based on the registration of transfer and other deeds.

In an official deeds registration system, a copy of the relevant deed, for example a transfer deed, is deposited in the deed registry. An appropriate entry is then made into the register of the time, date, parties and transaction, as may be required by the particular jurisdiction. The documents generally require to be checked by a notary or an authorised lawyer to assure the validity of the transaction and entry.

This transaction reference, together with the supporting deeds, then provides evidence of the vendor's right to sell the property. The deeds registration system is limited in that it does not provide a guarantee of title. It does not provide the clarity, certainty or guarantee required for an ideal system. All that it typically provides is access into the chain of transactions that can be used to prove title.

4.L.1 Land Book

Registre ou livre foncier (F); Registro (E)

The Land Book system (Grundbuch), most commonly associated with Germany, is a system of title registration that is broadly followed in the German states, in Austria and Hungary and in those regions influenced by their respective former empires. The Grundbuch is under the administrative responsibility of the district judge, and is implemented by a full-time professional registrar. Each folio of the Grundbuch, as found in Bavaria, for example, consists of four parts, comprising respectively a description of the property, the name of the proprietor and how the parcel was acquired, details of any servitudes, and, finally, details of any charges such as mortgages. ROWTON SIMPSON, S., 1976

4.L.2 Land certificate

A land certificate is a certified copy of an entry in a land title system and provides proof of the ownership and of encumbrances on the land at that time.

4.L.3 Land charge

A land charge is a right in respect of land.

A land charge is registrable in England and Wales under the Land Charges Act, 1972. This is intended to reduce the number of interests affecting the land which would otherwise fall out of the registration system. The charges that are registrable include:

- > *puisne mortgages (generally second and subsequent legal mortgages which cannot be protected by deposit of the title deeds because the first mortgage is secured by this right) and equitable mortgages (failing to comply with the legal formalities for creating a mortgage)*
- > *various forms of limited owner's and estate contract interests*
- > *Inland Revenue charges for inheritance tax*
- > *restrictive covenants and equitable easements*
- > *registration of spouse's interests under the Matrimonial Homes Act*

CARD, R., MURDOCH, J., SCHOFIELD, P., 1994

4.L.4 Land commissions

Commissions foncières (F); Comisiones de bienes raíces (E)

Land commissions are formally constituted bodies to investigate land related issues, or to implement some aspect of land policy, such as adjudication.

4.L.5 Land dispute

Conflicts fonciers (F); Conflictos de tierras /
Problema de la tierra (E)

A land dispute is a disagreement over land. A land dispute occurs where specific individual or collective interests relating to land are in conflict.

Land disputes can operate at any scale from the international to those between individual neighbours. At whatever scale, the dispute is likely to owe as much to the general nature of neighbourly relations as to actual problems relating to the land.

Land disputes may arise from a wide range of different situations and are commonly found where there is intense population pressure on land, where different types of land use abut or overlap one another, and where boundaries are not well demarcated. The following are cited as possible causes of land conflicts in HUSSEIN, K., 1998: over access to pastoral resources and damage to crops between herders and farmers; over grazing and watering areas between different groups of herders; where customary boundaries are poorly defined between neighbouring communities; between migrant and indigenous farmers; where expanding cities place pressure on peri-urban areas between the urban elites and peri-urban populations; where population pressure reduces the sizes of holdings below uneconomic levels; and where state allocations of land for forestry or large scale development schemes conflict with customary landholders interests. LEONARD, R., and LONGBOTTOM, J., 2000

Land conflicts may be resolved in a variety of ways. In parts of South Asia, for example, in Sri Lanka, land conflicts may be the subject of court cases that are inherited from generation to generation. In parts of the Highlands of Papua New Guinea, physical conflict between tribes may evidence land conflicts. In parts of Africa the land chief may have an important role in resolving land disputes.

4.L.6 Land Information System (LIS)
Système d'Information Foncière (SIF) (F);
Sistema de información de bienes raíces (E)

Land Information Systems (LIS) have been defined by the International Federation of Surveyors (FIG) as follows:

"... a tool for legal, administrative and economic decision-making and an aid for planning and development. A land information system consists, on the one hand, of a database containing spatially referenced land-related data for a defined area and, on the other, of procedures and techniques for the systematic collection, updating, processing and distribution of the data. The base of a land information system is a uniform spatial referencing system, which also simplifies the linking of data within the system with other land-related data."

UNECE, 1996

4.L.7 Land register

Registre de la propriété (F); Registro de la propiedad / Certificado de tradición y libertad / Tracto sucesorio o sucesivo (E)

The land register is the definitive record of all registered properties, and comprises the registered details for each property.

In the land register for England and Wales, there are three registers or parts to the register; the Property Register, the Proprietorship Register and the Charges Register. These contain respectively:

- > *a clear identification of the parcel and of the right owned, both in the parcel itself and in any other property, including a plan of the parcel*
- > *the names of the owners and their addresses, together with any caution or restriction on the owner's right to dispose of the property*
- > *any interests adversely affecting the property, including leases, charges, mortgages, restrictive covenants and easements over the property.*

ROWTON SIMPSON, S., 1976

4.L.8 Land registration

The International Federation of Surveyors (FIG) defines land registration as follows: "Land registration is the official recording of legally recognised interests in land and is usually part of a cadastral system. From a legal perspective a distinction can be made between deeds registration, where the documents filed in the registry are the evidence of title, and registration of title, in which the register itself serves as the primary evidence." FIG, 1991 The benefits brought about by instituting a system of land registration need to be viewed in context. "Land registration must be kept in perspective. It is a device which may be essential to sound land administration, but it is merely a part of the machinery of government. It is not some sort of magical specific which will automatically produce good land use and development; nor is it a system of land holding (land tenure); it is not even a kind of land reform, though it may be a valuable administrative aid to land reform. In short, land registration is only a means to an end. It is not an end in itself. Much time, money and effort can be wasted if that elementary truth is forgotten." ROWTON SIMPSON, S., 1976

4.L.9 Land registry / Registration office

Bureau de l'enregistrement des titres (F);
Oficina de registro (E)

The land registry is the institution or office responsible for land registration. The title of the office and the responsibilities vary considerably between jurisdictions, as, accordingly, does the staffing and equipment of the office. Titles of the officer in charge of land registration include:

- > Chief Land Registrar (England & Wales, Kenya)
- > Keeper of the Registers of Scotland (Scotland)
- > Registrar-General of Lands (New Zealand)
- > Registrar-General, Registrar of Titles, Commissioner of Titles (variously in the states of Australia)

The responsibilities range from, for example, England & Wales, where the Chief Land Registrar has extensive judicial powers, to Kenya, where applications to resolve or correct problems must be referred to the court in the first instance. ROWTON SIMPSON, S., 1976

4.N.1 Notary

Notaire (F); Notario (E)

The notary is both a conveyancing lawyer and a public official responsible for seeing that the conveyance is properly undertaken.

The notary is a vital part of the system of land transactions in many jurisdictions in continental Europe. It is not a feature of systems of title registration under the Torrens System. The notary is bound by a strict code of ethics, enforced by the relevant national bodies.

ROWTON SIMPSON, S., 1976

4.P.1 Property files / records

Fichier immobilier (F); Fichero inmobiliario/
Archivo inmobiliario / Archivo de la propiedad inmueble (E)

Property files are more associated in an English context with real estate management than with registration activity. In such a context, each property will have on file a documentary record of accounts, correspondence, agreements, contracts and other pertinent matters in relation to its management.

4.P.2 Public access to information Acceso público a la información (E)

Public access to information is a feature of public policy by which each society defines what information, particularly about private citizens and corporate entities, should be available to the public.

Public access is an important issue in relation to land information as such information can form a very significant part of decision-making for individuals, corporations and governments. It is an area of rapid development as computer and internet technology increase capabilities to access, distribute and analyse data.

Jurisdictions vary in their approaches to the ownership and protection of data within registries. The UNECE Land Administration Guidelines recommend that laws should contain the following:

- > the extent of legal liability for the accuracy of the data;
- > the extent of rights of privacy over land and property information;
- > who owns the copyright to data within the registers;
- > who may have access to data;
- > who may alter entries in the registers

UNECE, 1996

4.P.3 Public notice Publicité foncière (F); Edicto de bienes raíces (E)

Public notice defines the process and period by which the administrative system can be legally assumed to have properly informed the public, for example in connection with issues such as adjudication.

A characteristic of the processes of land adjudication and registration, and land consolidation schemes is that they involve the definition and redefinition of rights of owners of the parcel in question, and of other owners of adjacent parcels. A common characteristic of these processes is for there to be a period of public notice of adjudication or consolidation schemes in the area to allow any appeals before they are crystallised into the law. Public notice helps to ensure success of the scheme by encouraging public acceptance and support.

4.R.1 Register
Registre (F); Registro (E)

A register is a facility for recording specified matters.

A register may be a paper based record, kept in loose leaf files or bound into books. It has moved rapidly in the 1990's in sophisticated economies to electronically recorded data, using computer technology. It is becoming increasingly accessible by the internet, for example, for on-line conveyancing.

There may be several registers associated with land and property within one jurisdiction, including for example those related to land taxation and valuation such as the traditional cadastre, and those related to ownership, such as the land register or land book. In some jurisdictions these registers are being integrated with other land information to enable many purposes to be fulfilled.

4.R.2 Registration
Immatriculation (F); Matrícula inmobiliaria / Registro de la propiedad inmueble / Registro esporádico o sistemático (E)

Registration is the process by which rights and interests are recorded in registers. The process of registration in relation to land may follow a range of different options depending not least on the purpose and particular circumstances of the jurisdiction. These may include some at least of land registration, deeds registration, title registration, sporadic registration, systematic registration and registration of transactions.

4.R.3 Registration of transactions
Enregistrement des transactions (F); Registro de transacciones / Registro de instrumentos públicos (E)

Registration of transactions is the process by which transactional changes in rights and interests are recorded in registers.

Registration of transactions is often a legal requirement supporting a registration system. Without such compulsory registration requirements it is often argued that the system would become out of date and thus of

progressively reduced value in fulfilling its tasks of maintaining an up to date record of ownership and related land rights. Registration of transactions will usually have a cost associated with it in fees, stamp duty and other transaction costs. In order for a registration system to succeed, whether it is “compulsory” or not, these costs must be sufficiently low to make the registration process viable for the registrant, otherwise alternative markets and unofficial transactions will occur and again undermine the registration system.

4.S.1 Sporadic registration

Sporadic registration of land is the process of registering land on a case-by-case basis usually as the result of a specific trigger such as the sale of the property. When introducing new systems of land registration or land titling it is usual to consider whether the most appropriate approach is for systematic or sporadic registration.

Sporadic registration is usually based on a specific action or actions of the owner of the property to trigger bringing it into the registration system. The most common action used to trigger sporadic registration is the sale of the property. This was, for instance, used as the main trigger for compulsory registration in defined registration areas in England and Wales after 1925.

Sporadic registration has the advantage that it may be less expensive in the short term than systematic registration and that it tends to target most economically active property first. It has the disadvantage that it will take much longer to achieve complete coverage of all titles within the jurisdiction. FIG, 1995

If the intention is to register all (or even most) parcels, then sporadic registration cannot be cheaper, and will likely be more expensive because of lack of economies of scale (e.g., neighbours all having to survey their parcels separately.)

Sporadic registration can also be criticised because the claims of each case are determined separately. Typically, public notice of the claim is a legalistic notice published in a newspaper. The process is not always very transparent. In contrast, systematic registration brings all claims in an area to light at the same time. It allows the population at large to scrutinise the claims being made.

4.S.2 Systematic registration

Systematic registration is the systematic approach to adjudicating, surveying and registering parcels on an area by area basis.

When introducing new systems of land registration or land titling it is usual to consider whether the most appropriate approach is for systematic or sporadic registration.

Systematic registration is relatively expensive in budgetary terms because of the typically large numbers of parcels being dealt with, although on a per parcel basis the average cost per parcel may be significantly lower than with sporadic registration as a result of economies of scale.

Systematic registration has the advantage that it will provide more comprehensive land information within a given time frame. It will also give more people improved rights more quickly, thus supporting the general development impact of increased security of ownership and reduced transaction costs. FIG, 1995

4.T.1 Title deed

Titre foncier (F); Título de tierras / Escritura pública /
Título de propiedad (E)

A title is a right of ownership in real property. The title deeds of a property are the documents which evidence or prove ownership of the property.

Under a deeds system of conveyancing, the proof of title is through the demonstration of an unbroken thread of ownership through the sequence of deeds over the requisite number of years.

Under a title registration system, the land certificate may be referred to colloquially as the title deed, although in reality it is a certified copy of an entry in the title register.

4.T.2 Title insurance

Title insurance is an insurance service offered by companies to property purchasers under a deeds based system.

The title insurance underwrites any losses that may result after purchase of the property from discovered defects in the title. The purchaser pays a premium to the insurance company for this service. The service is available both to lenders under a mortgage arrangement, and to property purchasers.

4.T.3 Title registration

Title registration is a system for improving the quality of ownership and proof of title.

There are broadly speaking two parts of the register. The first is a map on which each parcel is demarcated and identified by a unique parcel identifier. The second is a text which records details about the title, the owner and any rights or restrictions associated with the parcel's ownership such as restrictive covenants or mortgages. Under a title registration system a transfer of the property simply results in a change in the name registered. A division of the land or alteration of the boundaries requires amendment to the plan and the issue of new documents or certificates. The official title registration record is definitive. UNECE, 1996

4.T.4 Torrens System

Système Torrens (F); Sistema Torrens (E)

The Torrens System is a system of title registration.

The concept of a "Torrens System" of title registration poses problems as there is no single such system, nor are its characteristics explicitly defined. Even in Australia, the home of the "Torrens System" there is a remarkable diversity of registration systems in the different states. The Torrens System of title registration is named after Sir Robert Torrens who introduced a system of title registration into South Australia in 1858.

The key features of title registration are security, simplicity, accuracy, expedition, cheapness, suitability to its circumstances and completeness of the record.

Three fundamental principles for the success of a title registration system proposed by Ruoff, RUOFF, T., 1957, and generally accepted are:

- > The mirror principle – that the register reflects accurately and completely all of the current facts material to the title.
- > The curtain principle – that the register is the sole source of information necessary for a purchaser.
- > The insurance principle – that anyone who suffers a loss should be compensated.

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