

# How Much Does ‘Privatization of Land’ Mean for Developing a Cadastral System?

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**Key words:** cadastral system, land ownership, use perspective argument, classification perspective argument

## SUMMARY

In some countries such as Ethiopia and Vietnam land is still under public ownership. On the other hand, many countries have been making actual efforts and progress in providing a cadastral system regardless of the manner of land ownership. Even at a time when the system of registration of land is being carried out, it is common to face certain doubts on the part of certain sections of society. For example, with respect to the Ethiopian cadastral system which is arguably the largest land administration program carried out since towards the beginning of this century in Africa, and possibly the world (see Deininger et al 2011), I have encountered common opinions and questions such as “why do we talk about cadastre in Ethiopia where the land is owned by the government?” While the people who ask this question tend to be the favourites of private ownership of land, those who are against it also ask: “Why do we provide for a cadastral system?” “Does not this tantamount to allowing private ownership of land against the constitution?” From these contrasting concerns, I came to realise that there is something which is fundamentally misleading people. I think these dilemmas are common to many countries in a related or similar situation in land administration. I am also strongly convinced that these kinds of dilemmas would frequently trap with the efforts at establishing a sound cadastral system in a specific country, or its further development when it is already set up. With the view to share my views on these questions here, I tried to examine the questions from the perspective of what I call ‘the use perspective argument’ and ‘the classification perspective argument.’ Both arguments showed that a cadastral system does not considerably depend on the regime of ownership. I conclude that the system can well be established under different circumstances including under systems of public ownership of land.

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## 1. SETTING THE QUESTIONS AND METHOD

The questions I try to address are straightforward: does a cadastral system (system of land registration) depend on the type or system of ownership of land? If yes, to what extent? If not, what is the implication of the system of land ownership in relation to laying down a cadastral system in a particular jurisdiction? I think that the answer to these two questions could be found from the unleashing of the underlying knowledge of two scenarios. First, we need to undertake an open and wise investigation of the services which a cadastral system offers for a society. I shall elaborate this from a ‘use perspective argument’. Second, it could be found from a critical analysis of the classification of cadastral systems prevailing or that should prevail in the world. I shall call this a ‘classification perspective argument.’

## 2. THE USE PERSPECTIVE ARGUMENT

Literature widely shows that cadastral systems may be established with the view toward obtaining some or all of the following benefits to a particular jurisdiction (ECE, 1996; Reimers, 2009; Deininger, 2011; Miller and Eyob, 2008). Let us describe these benefits here.

### 2.1 First and foremost, a cadastral system enhances security of land tenure

Security of land tenure refers to the perception of the property right holder about using his land without any illegal eviction by any person, be it a government or a neighbour. In other words, it refers to “the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges” (FAO, 2002). Cadastral information provides formal identification and legal proof of the tenure to land. Not only the right holder, all interested persons should be certain as to which people have interests in the land parcel and to what extent (limitations). This makes the right holders feel secure about their relation to their land and carry out any activity they like on it; and they know that it is easy to defend their interest in case the unexpected comes. Needless to say, increasing tenure security is a key driver in land administration projects as an attempt to provide long-term certainty of people’s most valuable asset (Dalrymple, 2005).

### 2.2 Cadastre provides security for credit, investment and productivity

Certainty of tenure and knowledge of all the rights, restrictions, and responsibilities that exist in the real estate provides confidence for banks and financial organisations to provide funds. Mortgaging real estate is one way to acquire capital for investment. Real estate owners can

then construct or improve buildings and infrastructure or improve their methods and management of the land, for example, by introducing new farming techniques and

technologies (Lemmen et al, 2005) which activity in turn increases the productivity of their land. They are also encouraged to use the credit for investing in any commercial activities on their land thereby laying a solid foundation for home-grown commerce and entrepreneurial industry. On the other hand, the increase in tenure security in itself gives the land holder the necessary comfort and skill to make any valuable long term investments by way of building residential houses, planting useful trees, or like without necessarily resorting to banks or other lenders. In Peru a study showed that “the degree of increased investment tends to be two-thirds more than what the investment would have been without title security (Field, 2005)”. Similar evidences from Ghana, Guatemala, Manila, Honduras, and China also indicate the increase in investment (Trebilcock and Veel, 2008-9). This means where confidence is lacking in land tenure (ownership or possession), no investment will be risked, no improvement or development will be made onto the real estate, and consequently no economic or social benefit will be achieved (Manthorpe, 2003).

### **2.3 Cadastre helps develop and monitor land markets and increase property value**

As Hernando de Soto nicely puts, “Any asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the market” (De Soto, 2000). On the other hand, the introduction of a cheap and secure way of transferring property means that those who wish to transact in land can do so with speed and certainty. There is no way for dispossessing owners without their interest and knowledge as their property right is guaranteed. Cadastre allows a real estate owner or possessor as well as the larger public to see the status of his/her property right as publicity is an underlying principle of cadastre. Any person irrespective of who he is and where he comes can buy/lease a real estate with full confidence knowing that the person whose name is recorded in the cadastre is the only guaranteed and true owner/possessor.

Cadastre being the clear means of formally representing real estates, whether by paper or computers, helps all persons across the world convert their tremendous assets (e.g., houses, land parcels, forests, etc.) into a usable capital and wealth and this proves an increase in the market value of the property. A comparative study of four countries, namely, Indonesia, Philippines, Brazil, and Thailand showed titled land to be valued at 43-83% more per hectare than untitled land (Deininger, 2003). De Soto has adequately demonstrated that the major stumbling block that keeps the Third World, as clearly opposed to the West, from benefiting from capitalism is its inability to produce capital (Deininger, 2003). The reason for this inability is the failure to set an effective cadastre and land registration or formal representation. De Soto puts this in succinct terms:

Capital, like energy, is also a dormant value. Bringing it to life requires us to go beyond looking at our assets as they are to thinking actively about them as they could be. It requires a process for fixing an asset’s economic potential into a form that may be used to initiate additional production. (De Soto, 2000):

## **2.4 Cadastre highly enhances real estate taxation**

Effective cadastre will improve efficiency and effectiveness in collecting land and property taxes by clearly identifying the real estate owners and taxable properties. The more so because especially developing countries need to increase their tax-based revenue from land to reduce aid dependence. The system can provide information necessary to identify and punish tax evaders (Larsson, 1991). These new-found property tax revenues can be a further resource for further developing the cadastral system (Reimers, 2009). Fiscal cadastre has been historically the starting point for modern cadastres in many parts of the world since its inception in Egypt in the 3000BC (Larsson, 1991). But the focus of cadastral systems vis-a-vis fiscal systems largely varies from jurisdiction to jurisdiction. Thus Williamson notes:

One distinction between most European and common law jurisdictions is that in the latter the legal systems to support the alienation of land, and the transferring and recording of proprietary interests in land, came before the establishment of any fiscal systems. These quasi-legal systems have always been central to land administration in common law countries. Fiscal systems have been a more recent development. They usually have a secondary role in the land administration system and often have little or no links with the legal system. They have often developed their own mapping system and their own form of parcel (Williamson, 1985).

## **2.5 Cadastre helps reduce land disputes**

Cadastre involves adjudication, surveying of land boundaries and demarcation. This can reduce the dispute over land and its boundaries which otherwise gives rise to expensive court litigation thereby creating court congestion and eroding the resources of the parties to the litigation. In addition to helping reduce land disputes (preventive measure), cadastre also helps in the land dispute resolution itself also called curative measure (Melkamu, 2011). A case study in Ethiopia indicated that the cadastral system put in place has been considered highly useful in terms of providing the evidential information required by the courts to settle the disputes over rural land (Melkamu, 2011). Aside from this, the world has shown us live examples of large-scale conflicts over land resources which could easily have been overcome by sustainable cadastral system. Conflict has occurred, for example, in Afghanistan, Zimbabwe, Burundi, the Democratic Republic of Congo, and the Sudan (Wiley, 2006).

## **2.6 Cadastre plays quite a significant role in formulating, facilitating and monitoring land reform and land policy**

It provides excellent opportunities for identifying problems associated with the development and implementation of land policies. Land policies might need to focus on certain aspects of land management depending on the priorities set by the government. The FIG Statement on the Cadastre identifies many policy matters which can be monitored and controlled with the assistance of Cadastre (Fig, 1995):

- The size of parcels, both maximum and minimum, for instance to prevent excessive fragmentation,
- The shape of parcels, to avoid uneconomical subdivision design or inefficient road and water system, etc.,

- Reallocation of land rights to improve social and economic policies through subdivision, land consolidation, land reallocation, etc.,
- Land use, for instance agriculture or to ensure that low-cost public buildings are allocated to the right group of people,
- Control and measures taken to implement social programs to improve access to land ownership by women and minority groups,
- Valuation of land for the collection of government taxes and rates,
- Collection of contributions to improve common facilities, such as water systems, etc.,
- The value of land as a result of development, and
- Acquisition of land for public or common purposes.

## **2.7 Cadastre can effectively facilitate land use planning, housing and infrastructure development and protection of certain lands**

Urban centres need redevelopment and effective land use, housing construction, and infrastructure development planning. An effective cadastre should permit the integration of records of real estate ownership, land value and land use with sociological, economic and environmental data in support of physical planning (Lemmen, 2005) as well as infrastructure development such as roads, power and electricity, and provision of waste and sewerage services. Further, as cadastre is a comprehensive land information infrastructure, it provides information needed to preserve certain types of lands such as state lands, cultural heritage sites, reserves, parks, archaeological sites, and water bodies. This is also important especially with regard to two scenarios. Firstly, it helps to identify and wisely manage grazing or pastoral lands from other types of lands such as in Ethiopia where there is a lot of such land especially in the southern part of the country. Secondly, it can help governments to allocate land for investment purposes by domestic or foreign companies by identifying land for commercial and industrial purposes.

## **2.8 Cadastre supports environmental management and protection**

As Dalrymple aptly observed, “the earth is increasingly under the watchful eye of scientists, researchers, academics, international organizations and corporations to predict the future, manage risks and improve living standards” (Dalrymple, 2005). This increased awareness about the environment in which we live has resulted in several global commitments. The first conference was the United Nations Conference on the Environment, held in Stockholm in June 1972. It resulted in the ‘Stockholm Declaration and Action Plan’ which made recommendations regarding the conservation of natural resources, education, human settlements and pollution ((Dalrymple, 2005). In 1983 the United Nations established the World Commission on Environment and Development (UNCED). In 1992, the United Nations Conference on Environment and Development was held in Rio de Janeiro, Brazil. In this conference it was agreed that the protection of the environment and social and economic development are fundamental to sustainable development (UN, 2002). To achieve such development, the global programme entitled Agenda 21 and the Rio Declaration on environment and Development was adopted (UN, 2002). The Rio conference was, therefore, a significant milestone that set a new agenda for sustainable development (UN, 2002). After several other conferences, the

Johannesburg Summit was carried out reaffirming the earlier commitments made towards the environment and sustainable development (UN,2002).

Agenda 21 stresses the link between land management and the protection of environment (FIG, 2001). Further the Bogor Declaration which resulted from the joint UN/FIG Interregional Meeting of Experts on the Cadastre held in Bogor, Indonesia in 1996 raised the case of sustainable development in the context of land administration (Ting, 2002). This was taken farther in the Bathurst Declaration which was held in Bathurst, Australia in 1999 and which took a significant stand that sustainable development is not attainable without sound land administration (Ting, 2002). More specifically, the declaration found that land registration systems need to be expanded in order to support sustainable development (Ting, 2002). Many other conferences have already been undertaken which emphasize the high relevance of cadastral systems to environment and hence sustainable development. Cadastre can further be used in the preparation of environmental impact assessment and in monitoring the consequences of development and construction projects (Ting, 2002).

## **2.9 Cadastre can also help promote peace and stability**

The type of land tenure and land rights happens to be strong subjects of social and political debates (Kaufmann and Steudler, 1998). They have also a strong influence on the emotional feelings of individuals and organisations about the role they play within a society (Kaufmann and Steudler, 1998). As a result, no country can sustain stability within its boundaries unless it has a cadastre system that promotes internal confidence between its people, its commercial enterprises, and its public organs (Manthorpe, 2003). Critically analysing land related problems in South Africa, Atuahene says, “when either positive or negative freedoms arise, people are driven to the point at which they sincerely feel that they have little to lose in opposing the government and its laws (Atuahene, 2007).” Abdulai and others stated that “due to the importance of land as the primary natural resource that provides space for every human and economic activity, land disputes can lead to large-scale wars with devastating economic and social consequences (Abdulai et al, 2007)”. They further observed:

Contestation over landownership and control of land is the major cause of civil strife that has been reported in various countries (with devastating human and economic consequences), including Uganda, Angola, Tajikistan, Kyrgyzstan, Uzbekistan, Kazakhstan, Namibia, Papua New Guinea, Peru, Brazil, East Timor, Kosovo, Mozambique, Mexico, Iraq, Nigeria, Ethiopia, Nepal and Venezuela (USAID, 2005), Zimbabwe, Guatemala, Colombia and El Salvador (Deininger, 2003), Democratic Republic of Congo (Huggins et al., 2005), India (Conroy et al., 1998), Nicaragua (Powelson and Stock, 1990), Kenya (Lumumba, 2004; Okoth-Ogendo, 1996), Somalia (Farah, 2004), Sierra Leone (Richard, 2003), and South Africa (Bullard and Waters,1996) (Abdulai and et al, 2007).

Recognising that land is the source of all wealth and efficiently managing it lies at the heart of good government and effective public administration with strong legal and political implication.

## **2.10 Cadastral systems help strengthen good governance, democracy, and rule of law**

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An environment where good governance and democracy have strong roots is essential condition for cadastre. But here we are interested to see how cadastre itself helps governance, strengthen democracy, and hence the rule of law (Waldron, 2012). Many developing countries are nowadays grappling with the issue of good governance and democracy as a survival issue as indicated, for instance, by electoral debates and party system developments. For example, although feudalism was abolished since 1974 in Ethiopia, still the problems of inequality in land possession mainly between the politically powerful and the powerless, men and women, and adults and children prevail. Further, the problem of severe restrictions in the transfer of land for economic purposes, severe restrictions in the expansion of urbanisation, arbitrary practices of expropriation of private land by government, etc are simply the rule than the exception. Honestly, there is also a clear danger that land resource is used by governments as security or guarantee of re-election against the notorious rules of governance and democracy. In this way, it is inconceivable how governments protect the liberty, freedom, and property rights of the citizens which obligations they sworn to perform while making the ‘social contract’, if at all it existed. Joseph Singer aptly observes:

One way we exercise our liberties [e.g. the freedom to transfer one’s own land] is by enacting laws that establish minimum standards for property. Property law is the infrastructure of democracy. Democracies require legal regulations that ban forms of property rights that are incompatible with the democratic way of life. The American ban on feudalism is the earliest and, in many ways, the most fundamental of these needed regulations (Singer, 2011).

Cadastre certainly helps the efforts of good governance, democracy and rule of law by establishing the necessary land information infrastructure cheaply, efficiently and fairly (having also regard to the interests of women, children, etc). The right holders would in the first place develop legitimate trust on the government; and they know that they can always defend their rights when the worse comes thereby developing no fear of freely participating in any democratic activities such as participation in cadastral events and elect during election polls. The cadastral system shall further set up the needed institutional organisation for its operation including the mechanisms whereby corrupt officials and other offenders in those agencies will be easily and predictably questioned (held accountable) through political, administrative as well as judicial recourses. Bennett and others also observed:

The cadaster is thus an important tool in providing good governance: the parcel layer acts as conduit by delivering social, economic and environmental information to decision makers. While the underlying role of the cadaster will continue to be tenure organization and taxation, there will be more demand for the delivery of information for decision-making, ...(Bennett et al, 2011).

## **2.11 Cadastre promotes civic consciousness of society and government**

Certainly the civic consciousness of societies in the world varies across the globe. Education or the right kind of education provides the basis for this. Aside from that, cadastre helps this through empowering or enabling the right holders to know what is going on around their land. For example, it enables them to know the current market value of the lands in a certain village, the kinds of transactions being conducted, peoples who need land such as for investment, etc. As Bogaerts once mentioned, “Civilized life is based to a large degree on the

fact that people know who owns what” (Bogaerts, 1999). Such knowledge in turn helps them to make the right decisions about the use of their land. On the other hand, a government that does not know the type and nature of land resource in the country in a complete way is not only weak and undemocratic one; it is also very bad form of government.

### **2.12 Cadastre is used to produce statistical data**

Statistical data is important to decide for long-term strategic planning and short-term operational management. The cadastral information can serve this purpose either by its own right or by way of integrating and sharing the information with statistical agencies.

### **2.13 Cadastre positively affects the labour market as well as fertility rate**

Cadastre provides land and owners information easily, cheaply and securely. These helps the users save their time, energy and money needed for keeping their property. Economically, these savings will be passed on to the customers making products and services less expensive (Kaufmann and Steudler, 1998). As a result, they can reduce the labour required to perform these activities and the labour required to protect the boundary of the land. This has a positive impact on reducing fertility level.

### **2.14 Cadastral systems help land management activities of the government**

A government that does not manage its natural resources is the one that even does not worth its name. Quite crucially, cadastral systems are at the heart of land management and land administration. Land management is understood commonly as the process of managing the use and development of land resources. In this sense, and as shall be seen further below, cadastres are important and useful to all jurisdictions and all types of tenure systems. Sincerely, as long as developing countries fail to manage their land resources properly, the consequence might be far more devastating than merely immediate economic, social or political effects; it might lead to more serious problems of land grab, unfair land commercial interests under the guise of foreign investment and trade, violation of state sovereignty, and as consequence a circle of unprecedented large scale war and instability. Hence, owe can discern that effective cadastral systems are quite advantageous not only to citizens or companies but also to the mandates of national and local government (see also UNECE, 2005).

The above detailed analysis of the various benefits of a sustainable cadastre significantly sheds light on the use perspective argument. The argument is that cadastral systems play crucial role in extremely diverse ways, not in just one or two aspects, as described above. Even more crucial is the argument that cadastral systems produce benefits in both private ownership and public ownership systems. Indeed, some benefits resonate to private ownership, and other benefits to public ownership of land.

In the case of private ownership, we can produce the maximum amount of benefits of cadastre and land administration. In particular, tenure security is guaranteed at the highest level. Also credit, investment, and productivity are highly enhanced as there will be quite huge latitude of

freedom for economic performance. Equally importantly, land and building market is undertaken in a significant and proportionate or egalitarian manner. This in turn results in increased economic value of properties. Private ownership also enhances the wider possession and enjoyment of property by the local people as well as their stronger economic engagement with it.

Public ownership of land, on the other hand, allows so much scope for public discretion and power abuse as well as disregard of the land rights of the subjects. For instance, it may give government easier and wider opportunity to grant land for foreign people under the name of investment. Public ownership also readily fails with regard to securing tenure, enhancing credit, land market, and the like. Nevertheless, a cadastral system in such a system may still meet other crucial objectives of land administration. Cadastral system may be used, under the same system, to secure the tenure within the confines of the regime of public ownership. In Ethiopia, for example, subjects have a full entitlement of holding their land. Except selling and granting the land for security, they have all other available rights on the land. It is critical to secure their title under this consideration. Similarly, investment land that falls in the hands of investors- local or international- must be secured so as to achieve the desired legitimate ends of land investment. Apart from this, registration of land could be efficiently used to meet many other objectives. Thus the government can use the system of registration of land in order to increase its tax revenue relating to the possession of land or from the undertaking of any lawful transaction in relation thereto. As a government of developing nation, the importance of this is beyond doubt. The government can also use the system of cadastre to enhance its land reform and land policy. For instance, if the government intends to expand the urban territory in a certain jurisdiction, it can use the land data already secured by the cadastre for this end. Or if the government intends to enhance its environmental protection agenda or climate management, the contribution of the cadastral data would be immense. So also if the government wants to improve its land use planning be it in the rural or urban areas or improve the infrastructural development, the cadastral system is a key. Similarly, if the government wants to induce investment projects as the government is doing nowadays, a cadastral system will be a way forward to. The same argument can be made in relation to other benefits too.

To conclude, the various advantages outlined above imply that a cadastral system which, in fact, is set up under the appropriate conditions, significantly supports the efforts to create broader sustainable development in different circumstances, i.e. the circumstances of private ownership or public ownership alike. Indeed, even if the choice of land ownership is purely a political issue, it seems evident that under the normal circumstances cadastral systems could play a more complete significance under the regime of private ownership, as opposed to public ownership.

### **3. CLASSIFICATION PERSPECTIVE ARGUMENT**

The other argument that provides us with a fertile ground for looking at the role of a system of ownership of land in establishing a cadastral system is a classification perspective argument. Cadastral systems are classified into different categories based on various grounds.

One broad classification is that between cadastral countries and non-cadastral countries attributed to Larsson (Larsson, 2000). The first group covers the continental and Scandinavian European countries (also known as Civil Law legal systems) which mainly include France, Italy, Germany, Austria, Hungary, Switzerland, the Netherlands, Spain, Sweden, Finland, and Denmark. The cadastre was originally established for the purpose of public tax-based revenue although latter the purpose was extended to supporting and enhancing the land registration system and even more recently for land management and land use planning purposes, i.e, multipurpose cadastre. The French cadastre which was instituted by Napoleon I in 1807 involved the use of large-scale maps and a systematic cadastral survey for establishing a national cadastre completed in 1850 (Larsson, 2000). It soon became the model for the cadastre in other countries within the group (Larsson, 2000). It should be noted, however, that there is quite a great difference among the cadastral systems within these countries such as between that of France and Germany. The French land registration system is still based on the recording of all deeds or contractual documents called deeds registration (Zevenbergen, 2002); whereas the system in Germany is based on granting title upon registration of the parcel information called title by registration. In this sense, the title registration systems in this group share a lot with the land registration system in the non-cadastral countries.

The non- cadastral countries group covers the Anglo-Saxon world or traditionally better known as the Common Law countries which mainly include England, Australia, New Zealand, Canada, and USA. The non-cadastral countries are different from the cadastral group for two main reasons. Firstly, they did not develop the French cadastral model and the word cadastre itself was not generally known among them (Larsson, 2000). In this regard Williamson has observed:

A major difference between the Australian cadastral system and its European counterparts is that the Australian system is derived from individual surveys of individual parcels for individual owners in support of the legal land transfer system. It is not derived from a complete cadastral record of all land parcels as shown on a cadastral map having its genesis in a land taxation system, which is the case with most European systems (Williamson, 1994).

Secondly and more importantly, cadastral system developed among these countries for the purpose of expediting and securing land transactions especially private sale of land- an activity which the modern world considers as a foundation for wealth creation and economic prosperity; tax revenue being somewhat a secondary purpose to be served or just dealt with outside of the land register system. Williamson claims:

One distinction between most European and common law jurisdictions is that in the latter the legal systems to support the alienation of land, and the transferring and recording of proprietary interests in land, came before the establishment of any fiscal systems. These quasi-legal systems have always been central to land administration in common law countries. Fiscal systems have been a more recent development. They usually have a secondary role in the land administration system and often have little or no links with the legal system. They have often developed their own mapping system and their own form of parcel (Williamson, 1985).

This characterisation, however, does not mean that there is not any difference among the systems in this group. Especially the Torrens system of title registration which was first introduced in South Australia in 1958 by Sir Robert Torrens has a special place in this group as it is believed to have been a basis for title registration in all other countries in the group (Abdulahi et al, 2007; Zevenbergen, 2002). However, the level of its acceptance in different countries, namely, Canada, the United Kingdom, and the USA is not always massive and absolute although the trend is certainly in its favour. Nor is its acceptance always uncontroversial.

Although keeping the distinction between cadastral countries and non-cadastral countries is vital for completely comprehending cadastral systems, it is important to consider that there is always something in common among these two groupings. Except mainly the French system most cadastral countries namely, Germany, Sweden, Switzerland, and Austria-Hungary are following a title registration system. It is even believed that the Australian Torrens and the English system of land registration have roots in the German system of title registration (Cooke, 2003; Enemark, 2005). On the other hand, the non- cadastral countries have increasingly developed and used cadastre, at least, for the purpose of enhancing their land registration system.

As consequence, some people have come with a different classification. For example, Henssen and Simpson divide title/land registration systems in to three. These are the English group, the German/Swiss group, and the Torrens group (Zevenbergen, 2002). Enemark comes up with a bit more decentralised classification: French system, German system, English system, Torrens system, and mixed systems.

Although historically very much related, the German system deviates from the French system in that it constitutes a title registration system, and, is itself a model for other title systems. The German system is different from the English and Torrens system in that it clearly has followed, as we mentioned, dual systems of cadastre and land registration systems since from the beginning, i.e. since the 19<sup>th</sup> century. Although it is difficult to distinguish between the English system and the (Australian) Torrens system, one thing is quite sure- that title registration escalated quite quickly in all other parts of Australia and New Zealand after its initial introduction in 1958, and today almost all land (with the exception of native title lands) is covered by the system. Whereas in the United Kingdom, its coverage is still much more limited, and has only evolutionary developed towards a Torrens system. In any case the above classifications devised by Enemark and Henssen are very useful. However, take the view that still we can come up with a better classification: French system, German/Swiss system, Torrens –English system, Customary Systems, and mixed systems. This, I think, shows the reality worldwide better. But none of the classifications including mine are accurate as certain components of one system usually exist in the other and vice versa.

There are many other classifications narrower than the first one. Some are related broadly to cadastral systems; others are related narrowly to land registration. Discussion is in order for these aspects.

One classification is between those systems that handle cadastre and land registration systems by separate organisations, and those which handle these systems by a single organization. Many countries today are in the first group. The major examples include the Anglo- Saxon countries, Germany, France, and the Netherlands. Countries that represent the latter group include Sweden, Finland, Czech Republic, Hungary and Slovakia. It must be emphasized that there is a lot of research today that encourages the latter move for sake of efficiency and better use of land record.

The other classification which is most relevant to our discussion refers to those cadastral systems that operate under legal systems that recognize only public ownership and customary ownership of land and those which practice it under a private ownership legal system. Customary and informal systems seem to be the most common forms of tenure in public ownership systems, i.e. systems where transfer of land is restricted or prohibited. As De Soto aptly considered, the private systems of ownership are the characteristic features of the Western world- most of cadastral and non-cadastral countries mentioned above. Here capital and wealth has triumphed thanks to the centuries-old development of formal property system supported by cadastral system.

On the other hand, in the developing countries that are mostly found in Africa, Eastern Europe, Asia, and Latin America, property or land is handled under an informal, customary system, and mostly it is under public ownership of land where land holders are allowed only use right, as far opposed to sale right- the most important and basic property right (Wiley, 2006). Quite astonishingly, the development of cadastral system in this part of the world, where most of the world's population lives, is by far at its infancy stage. There is usually a rudimentary land registration system that works under informal and customary conditions. The reasons for this poor development of cadastre could be immense and their account is outside the scope of this paper. However, I want to put clearly that there is no reason for cadastral systems not to be improved or elevated to a robust level for the mere reason of the tenure system being public ownership or customary system. What is important is basing cadastral initiatives under appropriate knowledge base, legal, judicial, capacity, and governance conditions.

Another classification accounts for those countries that handle their cadastral system as separate for urban and rural lands, and those which handle them under similar organisation. In the former group usually fall the developing nations where urban and literate population is proportionately low such as in Ethiopia. These countries face a very complicated and expensive problem of handling peri-urban lands which extend as urban lands grow horizontally. The latter group, on the other hand, usually relates to the privatised and commercialised or industrialised world where formalisation of property is the rule rather than the exception.

Other classifications refer specially to land registration in most of the cases: deeds registration vs. title registration, systematic registration vs. sporadic registration, compulsory registration vs. voluntary registration, positive registration vs. negative registration, and static registration vs. dynamic registration.

One classification is deed vs. title registration. Deeds registration is by far older than title registration system although by no means it is outside of application not only in less developed countries but also in developed countries including the United Kingdom, Canada, and the USA. Its history can be traced back to the Romans, who introduced a form of land registration in England and Wales in 397 when Britain became part of the Roman Empire (Abdulai et al, 2007).

The differences between the two concepts relate to the degree of state involvement and judicial setting of the country (Enemark et al, 2005). In the deed system only the deed or document or transaction relating to a contract is registered. “A deed is a record of a particular transaction and serves as evidence of this specific agreement, but it is not itself a proof of the legal right of the transacting parties to enter into and consummate the agreement” (UN, 1973). Deeds systems provide a register of owners focusing on “who owns what” (Enemark, 2005). They are rooted in the Roman culture (France, Spain, Italy, Benelux, in South America, and parts of Asia and Africa which are influenced by this culture) and in most of the United States (Enemark, 2005).

On the other hand, in the title system, the title/ownership itself is registered and is itself a proof of ownership and its correctness is usually secured or guaranteed by the state (UN, 1973). While deeds registration focuses on the owner, the title system focuses on the land parcel and registers properties by presenting “what is owned by whom” (Enemark, 2005). The title system is rooted in the German and is found in central European countries –Germany, Austria, and Switzerland (Enemark, 2005). Different versions of this system are also found in Eastern European and Nordic countries, UK, and Australia (Torrens system) (Enemark, 2005).

Although deed registration can generally be implemented more quickly and cheaply than the other alternative and the laws and procedures of title registration systems (including examination of documents and cadastral plans) may be more complex, the latter systems are considered more useful (Fig, 1995). Thus the FIG statement on the cadastre provides:

...in principle, title registration systems have benefits in terms of greater security of tenure and more reliable information. Furthermore, users do not have to search through old documents to find information on ownership; they can rely on the information on the title register. This usually results in lower transaction costs (Fig, 1995).

Due to these and other reasons such as the progress of IT, the title system is being accepted as a better solution. It is also wise to note that there are countries which are said to have been successful with the deed system of registration mainly Scotland, South-Africa, France and the Netherlands (Zevnbergen, 2002).

Zevnbergen observed that deeds registration system exists in many varieties. He carefully states:

Some are simple, rudimentary collections of unorganized deeds like the ones in many parts of the United States. Others are well operating, improved deeds registrations (Zevenbergen 1994) like in

South-Africa, of which Simpson even said that it should be called a title registration (Zevnbergen, 2002).

So also title registration systems are not the same throughout the jurisdictions. Thus in Germany, unlike the case in Australia and England, there is no state guarantee of the correctness of the registration or the title. “For registration does not cure a defective transfer-eg one that is void or voidable; and the victim of fraud may apply to set a disposition aside (Zevnbergen, 2002).” In the US such guarantee is replaced by Title Insurance companies who compensate for a possible loss of property interest by a registered person (Bennett, 2007).

The classification between positive and negative registration is almost identical to the deed vs. title registration classification. Zevnbergen succinctly provides their meaning as follows:

Under a positive system the registrar or his or her employer (usually the State) guarantees the titles that are registered. Whatever is in the registration is –by law– regarded correct. Damage caused by mistakes is settled (financially) by the State (or the registry). In a negative system there is no guarantee regarding the actual title. Only mistakes by keeping the registers are redeemed, not the (mainly private law based) problems that might not appear from the deeds, but still exist (Zevnbergen, 2002).

But there seems little qualification compared to the deeds vs. title registration. Thus Germany, which is a title registration system, does not grant state guarantee for the correctness of the title, as was just mentioned.

The classification between systematic and sporadic registration is not difficult to apprehend. Systematic registration occurs when a certain part or territory of a country is chosen for undertaking land registration following the policy of the government for land reform or so, and then registration is carried out compulsorily for all the land parcels in that area taking years or decades or so (see Dowson & Sheppard, 1956). That is for example, what happened in Ethiopia in the last two decades or so; Kenya and Sweden also had a systematic land registration system (Larsson, 2000).

Sporadic land registration system occurs in a different way. It refers to “any process of defining parcels, of determining rights and interested parties, and of registering these effects, which is applied in a piecemeal manner, now here, now there, to scattered parcels over an indefinite and unpredictable period” (Dowson & Sheppard, 1956). Regarding its practical operation, Zevnbergen observed:

They [concerned government authorities] will set up an office and declare a certain area open for registration, after which people can come to apply for first registration. In theory right holders, realizing the advantages of the (new) system, should come quickly in great numbers. In practice they do not often bring their title up for registration (Zevnbergen, 2002).

This system of sporadic registration can be voluntary, compulsory, or a combination of the two (Dowson & Sheppard, 1956). As the voluntary form is usually unsuccessful due mainly to a lesser level of understanding the benefits of the system of land registration for the target society, “most jurisdictions make it obligatory to register in certain cases, which will at least

include a transfer due to a sales contract” (Zevnbergen, 2002) or any other contract for that matter, e.g. lease or rental transactions.

The last classification of land registration systems is the static vs. dynamic classification. The static system of land registration pertains to the right holder, the type of right held, and the property object or parcel to which these two apply (Zevnbergen, 2002). Therefore, in here the main function is the accurate identification of the owner or holder, the right (such as ownership or lease), and the parcel (Zevnbergen, 2002). The dynamic system of land registration is another important aspect or part of the land registration system. According to Harsono, it represents “the three main cadastral processes of adjudication of land rights, land transfer and mutation (subdivision or consolidation)” (Harsono, 1996).

Adjudication also called first registration or land titling ((Zevnbergen, 2002) is the “process whereby all existing rights in a particular parcel of land are finally and authoritatively ascertained” (Larsson, 2000). In this sense, there is no reason actually why it does not also fall under the static system of land registration. Land transfer and mutation represent what is most commonly known as updating of the land record. Land transfer in particular represents the changing of the land information or registration information, without, however, changing the size or boundary of the land parcel; whereas mutation represents the change in the content of land registration caused by the change in the boundary of the land parcel thorough what are also known as property formation measures-partition, subdivision, amalgamation, and land consolidation (Zevnbergen, 2002).

I suggest that the static vs. dynamic classification of land registration can also be used to characterize cadaster in a similar way. Because aside from its historical attachment to the English speaking countries (Lawrence, 1985) where land registration is more dominant, there is no reason why it cannot be used in a broader way.

A critical look at this typology or classification may provide us with a wider view of the different circumstances in which cadastral systems operate. The issue of ownership is just a drop of water in the ocean of the multiple things we need to consider in the broader spectrum of land administration and land management. In particular, private ownership is not a panacea to all problems that arise from lack of a cadastral system. From the perspective of establishing an efficient land administration system in a certain jurisdiction, what matters most is not private ownership but establishing a sustainable cadastral system that fits into the overall circumstances prevailing in that jurisdiction. No doubt, under the normal circumstances, a cadastral system under the regime of the private ownership provides for a greater degree of advantages than the one in the public ownership regime. But given the far wide scope of significance which land administration provides, and given that cadaster is the only efficient mechanism of land administration, it is highly commendable to apply it under various regimes of ownership. Of course, a cadastral system under a public regime of ownership may easily be adapted into one under a different regime when the need arises. Instead of tendering an unnecessary degree of importance to the ownership issue alone, it is essential to give appropriate attention to any other essential preconditions needed for a successful cadastral system- certainly having a regime of private ownership not one among them.

#### 4. CONCLUSION

The use perspective argument and the classification perspective argument highlight the degree to which a cadastral system is influenced by the nature of land ownership. A cadastral system has various uses. Further, it can be classified into various categories depending on different factors. Based on a wide analysis of these matters, the given perspectives show that the matters of land ownership in general and private ownership in particular have only little to do with establishing a sustainable cadastral system. A country such as Ethiopia which is in the process of an aggressive cadastral system reform should not find a legitimate reason to step back from the process merely on this ground.

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## BIOGRAPHICAL NOTES

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