

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure & Development” Technical Committee

Cadastre: as much a land tool as a fiscal tool

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The French land cadastre has greatly evolved since its creation in the 19th century, both in its method and in its uses. Designed today by the administration to be more and more accurate, up-to-date and easy to access, it is an essential foundation for land use planning and for both private and public owners. A fiscal tool in the first place, the land register serves also as a tool of common interest for new public policies such as the measurement of soil artificialisation or the localisation of compensatory measures for biodiversity. Its adoption in the global South appears to be a valuable contribution to the ongoing land reforms, yet it must be adapted to take into account local features.

Land appropriation by private individuals in France and other European countries is regulated by mechanisms for the disposal or ‘acquisitive prescription’ of land. The State’s main interest in land ownership has long been its potential to generate tax revenues, which first entails identifying and describing the tax base. The first modern cadastres were introduced to this end at the end of the 18th century, initially in the kingdom of Savoy and then in France after the Revolution. Property rights were recognised under the Civil Code of 1804, and in 1807 Napoleon I and his Finance Minister Gaudin started developing a cadastre whose primary function was to provide the basis for a new property tax. However, political instability, strong opposition from royalists and various technical and methodological difficulties delayed the introduction of the first cadastre until 1850.

The cadastre remained a purely fiscal tool until 1955 (except in one territory, see Box page 2), when a land register linking the cadastral system with the Mortgage Registry was introduced. Under Article 516 of the Civil Code, deeds relating to all existing real rights over immovable property (easement, mortgage, usufruct, etc.) were filed with the Mortgage Registry under their cadastral number. In 2013 the Mortgage Registry became the Land Reg-

istry Office, which is responsible for publishing and keeping records that can be accessed by third parties.

The cadastre is a tool that can be used to identify plots of land across almost all of France (Figure 1), apart from most public land and certain spaces such as mountains. The administration describes cadastral documentation as “all the documents that make it possible to identify, describe and evaluate properties in France.”

Nowadays, the administrative authorities and individuals who consult the cadastre expect it to fulfil four types of function: fiscal, land, technical and documentary.

Some figures from France



Source: 2019 land statistics

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THE ALSACE-MOSELLE CADASTRE: A SPECIAL CASE INFLUENCED BY THE SO-CALLED GERMANIC LAND SYSTEM

The 'land register' in the three French departments of Bas-Rhin, Haut-Rhin and Moselle is a registration service overseen by the Ministry of Justice. It dates back to the period 1871-1918, and differs from the French system in that it provides the kind of constitutive land registration found in the so-called Germanic land system. Registration in the French cadastre is not equivalent to a title deed, as it is in the more precise and consistent German cadastre – although this was proposed when the French system was designed, as its creators wanted to establish one big land register, and remains a talking point today. It is also worth noting that it is this kind of land register (based on the constitutive rather than the declarative model of land registration) that has been exported to countries in the global South.

At the end of the 19th century, the so-called Germanic land system shifted from a longstanding practice of gradually establishing ownership according to strictly private principles, as in other European countries, to administrative management of legal proof of ownership. With the introduction of communal 'land registers', a property's status was recorded when it moved from one system to the other, and then managed by the administration. This is the kind of system that operates in Alsace-Moselle, whose distinctive cadastre stems from the German annexation of eastern departments of France.. In addition to its fiscal function, the cadastre was intended to give ownership titles legal value by recording title deeds in a land register. This register is kept by a special magistrate working under the auspices of the Ministry of Justice, rather than at the Mortgage Registry, which operates under the Ministry of Economy, Finance and Recovery. Records are based on the physical demarcation of property boundaries (markers or reference points) and detailed scale drawings from field surveys.

The current form and function of the cadastre also applies at an international level, as many countries base their land registers on the French model, which is still primarily a fiscal and land tool.

THE CADASTRE, FIRST AND FOREMOST A FISCAL TOOL

The cadastre provides the basis for two main property taxes in France: the tax on undeveloped properties (TFPNB) and the tax on developed properties (TFPB). The fact that the former only relates to land that can be or is registered has raised questions about

whether public property is taxable, and led to the practice of distinguishing between granted and ungranted public land. Granted land may be subject to tax because it generates income.

In fiscal terms, the function of the cadastre is to identify who is liable to pay tax and determine the cadastral rental value of properties each year. As such, it is central to the principle of equal taxation enshrined in the 1789 Declaration of the Rights of Men and Citizens. Interested parties are supposed to notify the cadastral services of any property transfers and ensure that changes are recorded in the Land Registry. This means that pre-

vious owners will continue to be taxed until changes have been registered, and that they or their natural heirs will be liable for property tax until this has been done.

Cadastral data are mainly updated on the basis of the information that owners give the tax authorities when a property is sold or inherited, or as part of an 'upgrading' procedure initiated by a commune or the State. Updating cadastral plans is not a speedy process, and sometimes requires a coordinated procedure. Although the decree governing this procedure allows for the cadastre to be updated with a simple revision or through a full overhaul (see Table page 3), the tax administration now only does full updates. It should also be noted that if the area covered by the plan has been restructured for agriculture, forestry or environmental purposes (AFAFE), all of the cadastral plan within the agreed perimeter will be updated. This does not apply to urban areas, which are generally excluded from such developments.

The cadastre has a clear fiscal value as the information it provides on properties and owners is invaluable in raising property taxes. And although there are questions about its real legal value, it still plays a key role in the French model of securing land tenure.

DOES THE CADASTRE HAVE ANY LEGAL VALUE?

It is generally accepted that the French cadastre has no legal value. Although this is true in the sense that it does not in itself constitute proof of private ownership, it can be used as an element of such proof as the Civil Code does not list every possible form of evidence of property ownership, and the Court of Cassation oper-

Procedure for a full cadastral update

FULL UPDATING PROCEDURE

Cadastral data	New parcel surveys.
Governance	Land Registry Office. Boundaries Commission. Directly implemented or overseen by an approved company.
Owners' information	Individual notification.
Public information	Plans and ancillary documents filed at the town hall for at least 30 days.
Claims	Within 30 days of plans being made available: <ul style="list-style-type: none"> - either in writing to the mayor, - or verbally to a representative of the Land Registry Office who works at the town hall during public opening hours.

ates on the principle of freedom of proof. For over a century the judicial courts have held that while an entry in the cadastre does not amount to a title, it can be considered a rebuttable assumption of ownership in the absence of any title and evidence to the contrary.

The cadastre also plays a key role in securing land tenure, providing (1) the freedom to draw up agreements and contracts for property transfers that are (2) formalised in deeds authenticated by a notary and sent to the land registry, and (3) surety for mortgages, which makes it possible to identify parcel owners. Property boundaries are established through (4) amicable demarcation, and formalised in reports prepared by land surveyors (which may sometimes differ from the 'apparent' boundaries shown in the cadastre). In this context, the cadastre provides a synoptic plan showing the location of plots in a hierarchy of communes,

sections and localities. A cadastre covering all the communes in France (5) is now stored in the Digital Cadastral Database (PCI), which is managed by the Directorate General of Public Finances (DGFiP). The PCI contains around 600,000 pages, each representing a section or part of a cadastral section. Through its articulation with the Land Registry, the cadastre is inextricably linked with land registration in France, which is a declarative process that aims to publicise changes in holdings and make them binding on third parties.

In addition to this legal dimension, the cadastre fulfils multiple functions in daily life and in the implementation of public policies.

USES OF THE CADASTRE

Because cadastral documentation is used for many purposes other than taxation, it is important to both the

general population and the public authorities.

Its lack of formal legal value does not mean that the cadastre has no bearing on legal matters. It plays an important role in public law and is often called upon in other procedures, especially to provide information required by the Environmental Code or Rural Code, etc. As such, it undoubtedly serves the general interest.

Virtual cadastral plans can be consulted at the town hall, or viewed free of charge on the website www.cadastre.gouv.fr. The Computerised Cadastral Map (PCI) database has been available as open data since 2017. It is mainly used for business applications, and can provide detailed territorial information when cross-referenced with other geo-localised data (such as the location of environmental compensation sites).

Among other things, the cadastre is known for its value in preparing maps and parcel plans of normal communication channels, railways, etc. It is also used to implement public and private works, and widely deployed in agriculture (to monitor the perimeters of protected designations of origin, for example) and during land developments. These multiple uses highlight some of the important issues that need to be addressed in cadastral mapping, particularly the accuracy with which land boundaries are represented. One complementary tool that could be used to ensure that boundaries are accurately represented in the cadastre is the Unified Land Reference System (RFU), a geo-referenced geographic reference system with centimetric resolution that can be viewed on the GeoFoncier portal. First adopted by French land surveyors in 2010, the RFU aims to cen-

tralise all land boundaries identified by surveyors (demarcation, division, subdivision, etc.). Once it is established (which could take several decades), it will be possible to provide accurate representations of land boundaries.

CONCLUSION

The cadastre in France is a generalised parcel survey document. Although it has little or no legal value in terms of delimiting properties, it is widely used by property owners (especially in rural areas) to identify parcels and determine their boundaries with neighbouring properties. It is also routinely consulted as an online reference document, although problems updating parcel plans mean that it is of limited use and does not always reflect recent building or construction works. Nowa-

days it is mainly used for tax purposes and registering changes in holdings.

The cadastre has attracted criticism from many quarters, especially regarding its use in countries in the global South. Its detractors argue that the formalisation process associated with a cadastre diminishes complex land relations by recognising a single right holder – the owner – at the expense of others. Critics also condemn the restrictive definition of private property based on land surveys, and the ‘corporatist’ practices of formalisation professionals (especially notaries and surveyors). The fact of the matter is that the cadastre in France is a fiscal and land tool that has outgrown the purpose for which it was initially designed over 200 years ago. What is needed now is a new legal framework that reflects its increasingly widespread and

diverse private and public uses; along with much more accurate cartography that would not only enhance its value in the eyes of the courts, but also increase its effectiveness when used in combination with Geographic Information Systems (GIS) and other documents and databases (orthophotographs, network plans, etc.). ●

REFERENCES

- >> **Open cadastral data:**
<https://cadastre.data.gouv.fr>
- >> **Description, use and distribution of cadastral documentation:**
<https://bit.ly/3dMV7aR>

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This paper is not intended to promote a particular technique or tool, or encourage the application of similar technologies in Southern contexts. The aim is to provide some insight into their origins and the conditions for their implementation in very specific contexts, remembering that efforts to secure land tenure in Africa should support the local management and State regulation of existing practices. This may require different types of tools that need to be invented on a case-by-case basis.