

The UN ECE (MOLA) initiatives for Europe and their potential impact on international land administration

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**Presented at the UN-FIG Conference on Land Tenure and Cadastral Infrastructures for Sustainable Development Melbourne, Australia
24 – 27 October 1999**

ABSTRACT

The UN Economic Commission for Europe (ECE) established in 1996 the Meeting on Officials on Land Administration (MOLA), to facilitate co-operation between land administration institutions in Europe. In this respect land administration includes primarily the following five issues; cadastre, land registration, land consolidation, land valuation and land information systems. MOLA is a meeting place for representatives of land administration institutions, and priority is on assisting countries in transition in implementing sustainable land administration.

MOLA issues technical guidelines, arranges workshops etc.. MOLA has a particular focus on the needs of countries in transition who are undertaking major projects to establish legislation, systems and organisations for land administration. But also countries in West-Europe are currently modernising their legislation and registers, which makes MOLA relevant to all European countries.

MOLA follows the collapse of the socialistic regimes in Central and East Europe. Recognising the importance of private and secured ownership in land as a foundation for the introduction of market economy in the related countries, it was obviously relevant for the ECE to embark on an activity on land administration.

Keywords and phrases: land registration, land consolidation and land information systems.

1. MOLA FRAMEWORK

1.1 Establishing MOLA

The Economic Commission for Europe (ECE) is a regional United Nations organisation for countries in Europe, but includes also Canada and the United States. Corresponding UN economic commissions also exist for other regions of the world. The ECE was initially set up for helping in the economic development and co-operation throughout Europe after the second World war. For a long time the ECE was an important arena for economic co-operation across the iron curtain. When the curtain was removed, ECE engaged in other issues of importance for the economic and social development in Europe. Turning to market economy in east and central Europe, privatisation of land and development of an infrastructure for a functioning land market, obviously became two basic issues.

The particular ECE activity on land administration came out of the preparatory process leading up to the Habitat II Conference in Istanbul in June 1996. As a contribution to the Habitat II Conference, an ECE Task Force, chaired by professor Peter Dale (President of FIG), prepared the so called "Guidelines on Land Administration", on which a new ECE activity called Meeting on Official on Land Administration (MOLA) was founded.

MOLA is however also the result of a strong interest among some of the national mapping and surveying authorities in Europe in creating a pan-European activity in the field of land administration. There has since long existed an organisation for the mapping and surveying authorities in Europe, called CERCO. CERCO has traditionally been dealing with issues related to geodesy and cartography. Several of the CERCO members wanted that CERCO should take up land administration issues, but this was finally rejected by the majority of the members. As a result of this, the interested countries turned to the ECE as a natural platform for bringing the land administration authorities in Europe together.

Within the overall structure of the ECE, MOLA belongs to the ECE Committee on Human Settlements. No specific membership or membership fee is required to take part in MOLA; all ECE member states are automatically also entitled to participate in MOLA activities. So far approximately half of the ECE member states have been active within MOLA, which actually is a high figure compared with many other similar activities of the ECE. It is anticipated that MOLA takes all decisions by consensus, and no detailed administrative terms of reference are formulated.

1.2 What's Land Administration

Land administration refers to the process of recording and disseminating information about ownership, value and use of land and its associated resources. Land administration includes, *inter alia*, cadastre, land registers, land consolidation, valuation and land information systems.

The terms of reference identifies the following work areas for MOLA:

- (a) Basic land management legislation (legislation concerning legal rights in real property including ownership, registration of real property, ownership and mortgages, transfer of ownership, security of ownership, adjudication of land rights and resolution of disputes, land use restrictions, etc.)

- (b) Land administration measures (real property formation, land registration, cadastral mapping, real property valuation, etc.)
- (c) Land information systems (real property registers, land registers, assessment data, land use data, cadastral maps, etc.)
- (d) Organisation and management issues (institutional matters, management, financing of operations, data policy and pricing of services and cost-recovery requirements, development of professional skills, privacy, citizen participation, etc.)

1.3 Working within a political framework

It should be understood that MOLA is obliged to work within the framework of policies and guidelines as adopted by the ECE in general. In this respect MOLA shall contribute to the implementation of the ECE Plan of Action as adopted by its fifty-second session. The following issues of the Action Plan are particularly relevant for MOLA:

- To undertake activities within the context created by the adherence of the whole region to the market economy system, *for which a functioning land market is a prerequisite*
- To contribute to the development of standards and norms relevant to land administration
- To respond to the needs and priorities of countries in transition
- To strengthen co-operation with other international organisations active in the region
- To co-operate with and involve the business community relevant to land administration
- To contribute to environmentally sound land management, *for which knowledge about land ownership, land use and land use changes are of vital importance, and to which contemporary land information systems can play an important role.*
- To contribute to the creation of a clear, predictable and supportive environment for industrial and enterprise activities, and to facilitate investments across national boundaries, *for which systems that guarantee security of ownership and allow the use of land as collateral, are indispensable.*
- To contribute to housing reform and housing privatisation, urban renewal and sustainable human settlements development, *for which systems that provide adequate access to land and a working land market, as well as adequate private financing through mortgaging in land, are of vital importance.*
- To contribute to mainstreaming of the gender perspective, *for which the development of legislation which gives women equal rights to buy, inherit, own and possess land is an important issue.*

Within its Terms of Reference MOLA shall also contribute to the implementation of The Habitat Agenda adopted by the UN conference in Istanbul in 1996. In this respect MOLA shall, inter alia, contribute to:

- promoting efficient land markets and environmentally sustainable use of land
- eradicating legal and social barriers to the equal and equitable access to land, especial the access of women, people with disabilities and those belonging to vulnerable groups
- facilitating access to land and security of tenure for all socio-economic groups

1.4 Being a part of the UN

As mentioned, some countries tried to make CERCO engage in land administration, in the end without success. However, belonging to the UN has shown beneficial, in particular when it comes to assisting countries in transition. UN has still a strong position in many transitions countries. That gives MOLA a stronger position than it possibly would have had as a part of a separate non-UN organisation.

Financing MOLA is a particular problem. As is the case for UN in general, the ECE can only provide limited financial assistance. The ECE is providing a secretary devoting 1/5 of his time to MOLA, and the ECE is also providing some printing, translation etc. Further the UN system does not allow that MOLA introduces member fees. So far MOLA activities have been financed through volunteer contributions from countries. It has been very encouraging to experience that several countries have been ready to provide significant resources in undertaking surveys, printing and publishing inventories, hosting meetings, providing experts for missions, etc.. In the future, however, MOLA will need a more solid financial foundation. One will have to look for volunteer contributions from countries to a trust fund, or similar solutions.

Encouraging dialogue has started with the World Bank, FAO, the Austrian government and other parties in developing the so called “Vienna Initiative on land Administration”. This can possibly turn into a much stronger activity than MOLA can manage alone.

Considering the experience from Europe, it seems relevant that other regional UN economic commissions should consider establishing similar activities to that of MOLA. I know that this is already considered in Africa.

2. RESPONDING TO A GROWING IMPORTANCE OF GOOD LAND ADMINISTRATION

2.1. The European Agenda

Land is often referred to as the “ultimate” resource for human well-being on earth. Saving land for production of food to the growing world population is of course of immense importance. But so is also land for human settlement. Making sustainable cities in developing countries, as they grow with a pace previously never seen, is a question of making and implementing a sound land use through appropriate planning. We all know the close linkage between ownership and land use.

To Europe in particular, privatisation of land and security of ownership is increasingly stressed as a prerequisite for a successful introduction of market economy in former socialistic countries. Hence there was definitely a mature market for establishing a Pan-European activity to assist countries in transition in developing sustainable legislation, systems and institutions for land administration. In addition almost all countries in West-Europe are simultaneously engaged in modernising their land administration systems, for which information and experiences from other countries is a valuable source for domestic developments.

Reflecting the massive need to improve the land administration infrastructures in the former communist countries in Europe, MOLA has very much focused on the basic issues for securing tenure, facilitating mortgaging and supporting taxation in these countries. Sustainable land use and land use planning are other urgent matters in these countries, which MOLA will have to address in the near future through its own agenda or in partnership with other international bodies.

Countries in West-Europe with a developed economy are generally modernising their land administration infrastructures, characterised by digitalisation of registers and maps, outsourcing and more use of private sector in general. Combination of data from several sources into an integrated user friendly service is an up-coming issue in these countries, and Internet is becoming a vital part of the data distribution services. Few of these countries currently seem to really consider merging the cadastre and the land title register, which however should become an issue in the future. In my mind, there are few reasons why a land title register should continue to belong to the legal sector. In addition there is a need to develop the cadastre to incorporate information on land use restrictions etc. stemming from public planning and a continuously stronger focus on environmental issues. To many users of land information, data on public restrictions are becoming just as important a private rights registered in land title books.

Land administration has so far been regarded as a national responsibility, where very little co-ordination has taken place across national boundaries in Europe. Even within the European Community harmonising the legal and institutional framework for the land markets has never really been put on the agenda. However as land markets are liberalised, and increasingly larger investment in land are made in other countries than the investors own country, the market will slowly demand a harmonisation of the cadastres, land registries and of the legislation for transactions in land. MOLA has so far hesitated to enter into making model legislation, as many of the member states still stress the national differences in land policies, land history etc.. It is however a tradition within the ECE to make model legislation in other fields, and I believe the issue rather soon will be on the MOLA agenda as well.

Land administration is also globally a fast growing field of interest. This is clearly visible in the growing number of projects assisted and financed through national aid programmes or international developing banks and programmes, like the World Bank, regional developing banks and the European Community. It is clearly communicated from international funding institutions that a better co-ordination of projects is needed. Also the recipient countries need to strengthen their capabilities to deal with foreign assistance. Too often it seems that the project premises are formulated by aggressive foreign consultants and companies, bringing hard currency, rather than by the country's own authorities. MOLA should in particular assist both donor countries, international banks and programmes, as well as the recipient countries in dealing with foreign assistance to land administration projects. As indicated below, MOLA has already arranged the first meeting between donors, lenders and countries to sum up experiences. During this meeting the first guidelines for foreign assistance to land administration projects were drawn up.

2.2. Towards sustainable land administration in transition economies

Through its various activities MOLA has collected information about the status, and the major challenges and obstacles to the development of an efficient land market in the transition countries in Europe. Based on this MOLA has produced a number of recommendations and practical guidelines to assist the related countries in implementing appropriate legislation, registration systems etc..

2.2.1. Status of land administration in the transition countries in Europe

First of all it should be underlined that restitution of former ownership, or first time distribution of land to private owners, is indeed a huge task. In most transition countries there are literally millions of parcels, buildings and persons to be registered. Applying west-European standards it will take decades to identify and document all plots and all owners. On top of that the countries have to cope with a number of particular problems resulting from the communist confiscation of private properties, and the subsequent change of the former land pattern and land use.

In general the countries with the strongest links to a functioning pre-communist land market, including countries like Poland, Hungary, East-Germany, the Czech Republic, Slovenia and the Baltic states, have implemented the basic land legislation, registration systems etc. and are able to sufficiently support a new land market within a limited number of years. However, with some exemptions, a real land market as we know it in the west, is not yet in operation.

The further one moves eastwards, in particular into the former Soviet republics, the less the basic concept for, and the subsequent legislation of private ownership to land, is defined and implemented. In countries like Russia, other Soviet republics, Bulgaria, Romania, it will take many years to develop private ownership and a viable land market. However there are possibilities to implement legislation and technology which significantly can speed up the process of facilitating a land market also in these countries.

2.2.2. Obstacles and opportunities

MOLA has repeatedly identified the lack of a consistent and firm policy from top political level as a major issue. In many transition countries disputes between different ministries and agencies have seriously hampered the restitution processes. MOLA has recommended that one single ministry or central committee should have the lead role.

Some of the transition countries have used the opportunity to implement modern integrated registration systems, combining the cadastre and the land title register in one register and one institution, whilst other countries have reverted to the before World War II situation with two separate registers. Both solutions can work if the legal and the surveying sectors can agree on co-operative measures. That is not always the case. It is also very important to see the two registers as complementary when it comes to financing, because the registration of documents in the land title register, in particular mortgage documents, is the real “money maker”. It is much more difficult to finance the maintenance of the cadastre from user fees only.

MOLA is promoting the use of private sector in the restitution or privatisation processes, through outsourcing or other forms of public private partnership. However, the general opinion is that the registers themselves need to be under full governmental control, whilst surveying and other technical and legal operations creating data for the registers may well be undertaken by private sector.

Many countries would have benefited from focusing on supporting basic needs, in particular on measures and areas which would stimulate economic growth. It seems that many countries have put large efforts into restitution of private ownership in the rural areas, whilst the major economic development takes place in the cities.

The communist countries had very good maps and a detailed registration of soil land use for statistical purposes and for providing data for agricultural production etc. Many transition countries would have benefited from giving up converting this tradition into their new land registration systems. In the current situation, the idea of making a multi-purpose cadastre has done more harm than good. Both the land market and taxation can survive with less sophisticated registration.

Many transition countries have embarked on implementing too sophisticated registration systems, frequently inspired by the central-European tradition for very exact surveying and mapping of boundaries, and collection of very detailed information for taxation and other purposes. Frequently they have adopted far too demanding standards on geodetic precision in boundary surveys. New techniques like satellite positioning and offer opportunities for a more rapid and low cost approach to surveying and mapping, if somewhat less geometric precision are accepted. Securing tenure, facilitating mortgaging and land taxation can function very well without very precise surveying of boundaries.

Many countries have embarked on a systematic surveying, mapping of parcels and registration of ownership. There is a clear need to develop instruments to also facilitate a sporadic adjudication and registration, where and when needs occur.

Several transition countries have opened for separate ownership to buildings and to the related land parcel, thus created a very difficult situation in respect to facilitating a land market. MOLA has clearly recommended not to allow separate ownership unless legislative measures are implemented to ensure a clear relationship between the owner of the building and owner of the land parcel.

Some of the transition countries have privatised flats giving them to the former tenants, without arranging for the ownership to the common parts of the building and the related land parcel. The absence of appropriate legislation for condominiums is a major issue in the majority of the transition countries.

It is a major problem that land parcels frequently are restituted to the former owners with its pre communist boundaries even when this is in serious conflict with the current land use. The initial restitution, which may be well understood and justified for political reasons, have without doubt created a massive need for land consolidation. In many cases the current land parcel pattern is far from facilitating efficient land use and a viable land market. Some of the transition countries have issued bonds and arranged for auctions instead of a precise geographic restitution, but this approach has also produced a very inefficient land parcel pattern in some regions. There is a clear need to develop and implement practical and fast working instruments for land consolidation.

Another important issue in restitution of private ownership, which may hamper the development of a land market, has to do with the establishment of a large amount of co-ownership in real estates, as ownership naturally is given back to the currently living heirs to the single person who owned the property at the time of confiscation or collectivisation. In many cases the heirs, or some of them, are not living in the area any longer, hence there is often troublesome to identify and even to find those who can legally represent the property in legal transactions. One need to develop some new legal instruments to deal with this problem in a practical way.

The above are only a few, but probably the more serious challenges to overcome. There are several others of practical, political and cultural nature. A reliable and efficient system of local courts to deal with land disputes is much needed. Not to mention the financial problem There are huge amounts of money needed to complete restitution and privatisation of real property, and to build the infrastructure needed for a working land market. The general opinion is that the initial restitution and consequent identification and formal registration of land parcels and owners mainly will have to be financed from public sources, whilst the following maintenance of the registers may be fully covered by user fees. One should however also look into possibilities that when a sporadic approach to first time restitution is accepted, those who need a fast formal and secure registration of title could influence the prioritisation by paying higher fees.

The majority of transition countries need foreign assistance to accomplish the restitution and privatisation.. There are some optimistic signals that the World Bank and the EU, as well as national aid programmes are focusing more on the land issue. However there is also a need to better co-ordinate foreign assistance and projects. There are several examples of parallel not co-ordinated projects going on in one country at the same time, frequently driven by foreign experts bringing hard currency, rather than by a coherent policy by the recipient country. It is on the agenda of the MOLA meeting in November this year to bring donors and recipients together to share experiences and make appropriate guidelines for assistance and projects. A first such meeting was arranged in 1997.

A big challenge is also to overcome the cultural barriers. The understanding of what land, property and ownership really are in a market economy versus in a socialistic economy is something which can not be developed over night. This understanding includes, inter alia, the understanding of the need for land use planning, appropriate legislating for expropriation, the need for legislation controlling sale and subdivision of land, the use of real property as collateral etc, etc. .

2. INFLUENCING INTERNATIONAL TRENDS IN LAND ADMINISTRATION

MOLA's four cornerstones are:

- Providing a meeting place for experts and managers
- Raising awareness
- Facilitating access to information
- Developing guidelines

MOLA can possibly influence, or inspire, regions and countries outside Europe in all these four areas.

Firstly, I believe it can be said that MOLA, however only in its infancy, has met a demand for a meeting place for land administration experts to come together, exchange experiences and opinions, and build official and personal networks. I do not hesitate to recommend other regions of the World to consider establishing a similar activity, and I believe it is valuable to do it under the umbrella of the UN.

It is important that MOLA and its future parallels, try to bring together experts with different backgrounds. It is remarkable that land administration internationally is very much dominated by surveyors, and that lawyers are almost absent. While encouraging more lawyers and other professions to take part in the activities, it is equally important to promote the development of the "land administration surveyor", a new type of surveyor being much more than a geodetic expert; more like a "terrain going lawyer" with profound expertise in land law, land use planning and land management as well as in surveying and mapping. MOLA is encouraging governments, universities and the professional associations to change standards and relevant curricula in that direction.

Widespread private ownership, secured tenure, financing through using land as collateral, and other important aspects of land administration has for a long time been largely underestimated as vital issues for social and economic development. As socialist ideas of centrally planned and controlled economies are losing foothold, and more countries are turning to market based economies, land administration is again becoming an important issue for governments, international organisations and banks and agencies providing assistance to developing countries. However, there is still a great need for raising awareness of the importance of good land administration infrastructures. MOLA has tried to reach politicians and top managers, *inter alia*, by issuing a pamphlet on the social and economic benefit of land administration to governments. Much more initiatives in this direction are however needed. Inspired by the series of UN global conferences on climate, women's rights, biodiversity and human settlements, to name some, and reflecting the immense importance of land administration for sustainable development: Isn't due time for a UN World Summit on land administration issues? The Bathurst declaration could be one platform for developing a World Charter on land administration.

However, MOLA having a European mandate only, I do believe that a major portion of our findings and recommendations will have global relevance, and that both other regions and Europe could benefit from having them tested elsewhere. It should be underlined that issues of land administration of particular relevance to indigenous people and customary land rights are only limited represented in Europe.

Among the MOLA recommendations of global interest, I would like to highlight the following:

- The need to have a top level commitment and agreement on concerted and co-operate investment in land administration
- The need to ensure close co-ordination between the cadastre and the land title register
- The need to focus on servicing basic user needs and geographic areas of importance to economic growth and social stability
- The need to adjust standards for surveying and cadastral mapping to what is actually needed to service the basic needs
- The benefit of developing a new "land administration surveyor"

4. MOLA's CURRENT ACHIEVEMENTS

To further explain what MOLA is doing, some examples are given below.

MOLA has, *inter alia*:

- Prepared an Inventory of Land Administration Authorities and Agencies in the ECE Member States. It contains names and addresses for national authorities, as well as key characteristics concerning land and title registration, national topographic surveys and recording of parcel boundaries, valuation of land, land use records, and current and future development projects.
- Prepared an Inventory of Land Administration Projects in the ECE Member States, with particular focus on projects in countries in transition with foreign financial assistance.

- Arranged a seminar on financing land administration projects in countries in transition, with particular focus on financing through international and national aid programmes, the needs and constraints of the donors and as well as the recipient countries, and published guidelines as resulting from the discussions at the seminar.
- Arranged a technical seminar on the definition and identification of objects in land registers and cadastres.
- Organised a work-shop on the impact of good land administration to government.
- Prepared and published a statement on the social and economic benefits of good land administration, including the importance of this for a functioning land market.
- Initiated a study of the current situation concerning the structure of land ownership in the ECE member states, and on legislation and practises to restrict/limit the sale of property, in particular regarding agricultural land.
- Initiated the preparation of a pamphlet on market driven solutions for land administration
- Undertaken a mission to Albania and Kyrgyzstan to evaluate their land administration programme.

The following major documents as resulting from the ECE activity on land administration, are currently available:

- The Land Administration Guidelines, available in 8 languages (1996)
- Statement on Land Administration and Terms of Reference of the ECE/MOLA (1996)
- Memorandum on Habitat II in relation to land administration (1997)
- Report from workshop on definition and numbering of objects in Cadastres and Land Registers (1997)
- Statement on financing Land Administration Projects in Countries in Transition (1997)
- Reprint of the New Delhi Declaration on Access to Land and Security of Tenure as a Condition for Sustainable Shelter and Urban Development (1996)
- Statement on the social and economic benefit of good land administration (1998)
- The Land Administration Inventory in Europe
- The Documentation of Land Administration Projects in Europe

The documents are available on the MOLA homepage:

<http://www.sigov.si/mola/>