

“the Deed System compared” by Jan Moerkerke

**4th IMOLA Seminar
Cracow, 15th – 16th October 2015**



Preface

- The “ Deed” system
- The “ Title” system
- The “ Public faith” system

- Comparison
 - What standards should a good system meet?
 - Strengths and weaknesses of all systems

- The Belgian system
 - Main characteristics
 - Interesting changes

- Imola for deed and personal systems



Deed system

- The deed is “transcribed” in the register, not the title itself
- Property transfer in a causal system
- Registered deed \neq surety of title
 - Only certainty on the existence of an agreement
 - Informing of the existence
- Certainty
 - trace ownership till a good root is found
 - Is the alienator authorized?
- Guarantee
 - for registrable but not registered facts
 - Or not mentioned in excerpts



Deed system

- Role of legal practitioners- authenticity
- Negative
- Passive role of the registrar
 - Little investigation at entry
- Generally
 - Compulsory
 - Public
 - Personal
 - 2 registers
 - Deeds register - Civilian
 - Cadastre - Fiscal
- Roots in Europe : french “Code civil”



Title system

- Also often called “Torrens System
- Inscription in the register = ownership
- The “Mirror” principle
- The “Curtain” principle
- Authoritative record kept in a public office
- Inscription is final
- Active role of the registrar



Title system

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



Public faith system (Fides publica- öffentlicher glauben)

- The deed is registered
- Guarantee
 - for as far as the authority of former known owner to alienate
 - and for facts that should be registered but are not
- No insurance for other legal facts - Often extension of coverage
- Active role of the Registrar
- Sometimes
 - opposition is possible (widerspruch)
 - provisional registration is possible (vormerkung)
- Parcel based documentation



What standards a system should meet ?

- Why do we register?
 - A mirror for immovable goods
 - Support economy
 - Mortgages, banks, loans, priority as a debtor
- There is no “ Best” system
- Specific situation – appropriate system
- Important role of boundaries

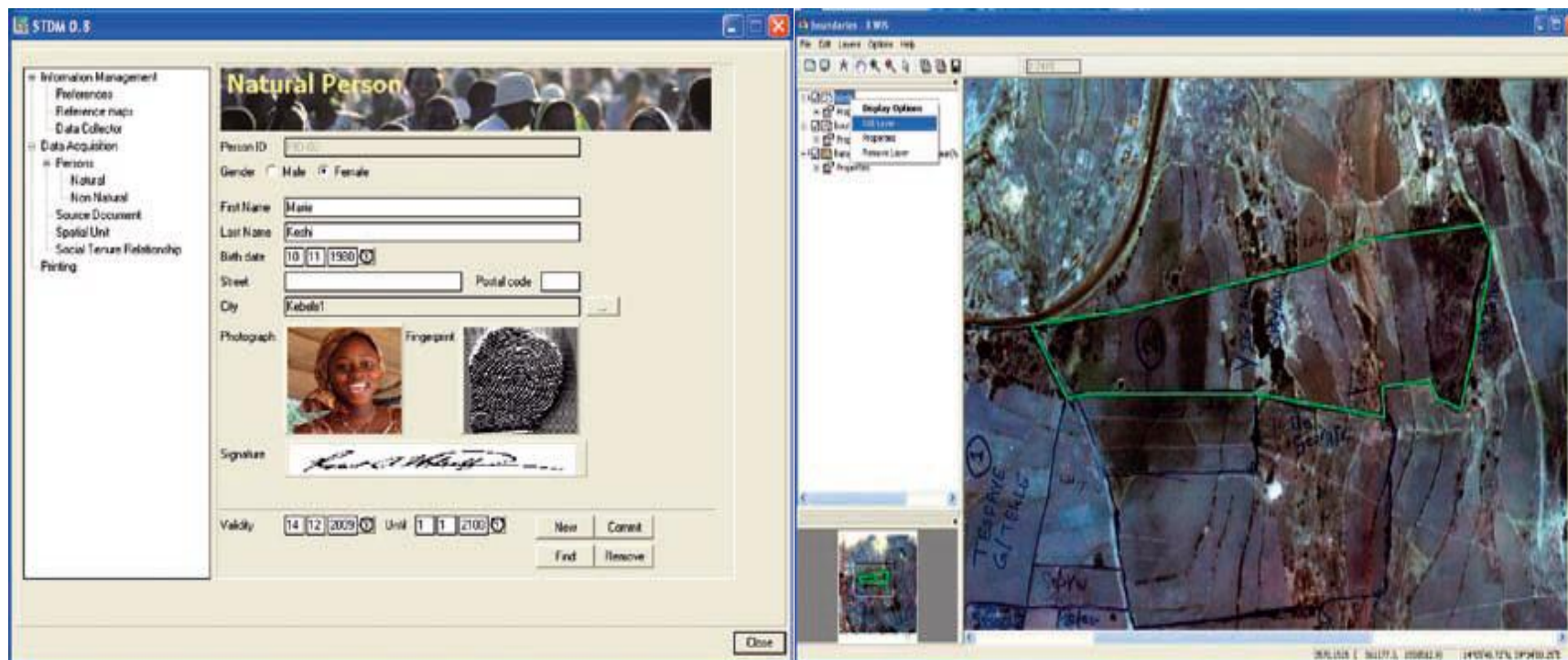


FIG statement on cadastre

- Security
- Clarity and simplicity
- Timeless
- Fairness
- Accessibility
- Cost
- sustainability

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Theoretically

- A parcel based title system gives most security
- The curtain principle of title should make control easy
- The deed system makes control necessary up to a good root of title
- A title system should make conveyancing easy
- Generally seen a title system offers more insurance
- Keeping up the documentation in a deed system is difficult
- A title system is very good when clear canvas



Practically

- **The active role of the registrar in title system**
 - costs time and money
 - periods of uncertainty
 - problems that are not likely to occur are solved
- **IT systems solve a lot for deed system**
 - Storage
 - Consultation
 - transport
- **Who's central the parcel or the person**
- **Importance of the contract, behind the curtain**



Practically

- **Use of professionals**
 - almost indispensable in deed systems – authenticity & extra's
 - not necessary but usual in Title systems also
- **Research of the root of title**
 - easy in title system
 - evolution of property in deeds – standard description
- **Deed systems are open to public**
- **Title system- sometimes neglecting former rights**



- **Conclusion:**
 - not the system but the way it is organized matters
 - a parcel based system remains the best choice
 - The system has to adapt to reality, not vice-versa
- **Suggestions for improvement**
 - Unambiguous description of goods/ parties/ encumbrances
 - Detailed and fully covering cadastre
 - Registration compulsory
 - For all transitions
 - Registry should happen fast
 - Every period has his relevant information – try to include it
 - Assistance of a legal expert is a plus- value
 - Make consultation easy and inexpensive
 - Too much IT- too expensive



The Belgian system

- A deed system
- Person based research in documentation –use of national ID
- Affects third parties
- Specific extra protection
- Generally passive role of the registrar
- Public (but not free)
- Active role in the protection of the unpaid seller
- Personal responsibility of the Registrar
- Only contracts under living
- Only deeds enjoying authenticity can be entered



The Belgian system – recent evolutions

- Restructuring to “agency of patrimonial documentation”
- Use of unique databases (Patris) (Urbain)
- Centrally storage of documentation
- Professionals send documents electronically
- Analysis of the deed by the notary in a strucured way
- Deeds inform about more than ownership
- Important role of notaries and surveyors
- Strict identification of parcels and persons



IMOLA for deed & personal systems

- a disclaimer concerning the given guarantees
- Person based indexation is a bigger problem
- **Belgian situation as an example**
 - Research by parcel is possible **but not reliable enough**
 - An interface through cadastre is possible, **but also no 100% surety**
- Questions should be posed in a different way
 - 2 questions?
- The outcome is totally different



General conclusion:

There is still a lot of work to do