

INNOVATIVE LAND ADMINISTRATION APPROACHES FOR SUSTAINABLE DEVELOPMENT: BELARUSIAN SUCCESS FACTORS

Authors:

Dr. Nikolai Siniak

Associate professor, Chairman of Production Organization and Real Estate Management department, Belarusian State Technological University, Member of gif German Society of Property Researchers

Address: Belarusian State Technological University, Organization of Production and Real Estate Management department, 220006 Minsk, Sverdlov St., 13a, Republic of Belarus

Telephone: (0375) 017 2277117, Mob.: (0375) 29 5674132, Fax: (0375) 017 2276217, www.bstu.unibel.by, E-mail: siniakn@mail.ru

Kiryl Saltykou

Senior researcher, Economy Research Institute of the Ministry of Economy of the Republic of Belarus
Building 1, Slavinskogo Street, Minsk, 220086

skssaltykou@rambler.ru

“Paper presented at the 21th European Real Estate Society Conference”, Bucharest, 25-28, June, 2014

Keywords:

Sustainable development, land administration, land governance, global drivers, Bathurst Declaration

Abstract

Belarus has preserved its third position in Registering Property in the World Bank's Doing Business 2014 report. Constant improvement of property registration procedures has allowed Belarus to achieve that. The Registering Property indicator takes into account three factors: the number of procedures required to transfer rights to property, the time spent on completing all the necessary procedures and the cost of procedures.

From "The Earth Summit" in Brazil 1992 sustainable development recognized by almost all societies as one of the major global goals. In a broad sense it's incorporates economic, social and environmental concerns in decision making for development which thereby should meet the needs of the present, without compromising the ability of future generations to meet their own needs. Till nowadays sustainable development continued to be a driving force in land administration, which is about processes of determining, recording, and disseminating information about the ownership, value, and use of land, when implementing land management policies. UN-FIG Bathurst Declaration, 1999 established a strong link between land administration and sustainable development, outlines its significance in poverty reduction, social, environmental and economic development. The article provides basic innovative approaches on land administration in the Republic of Belarus, discusses main sustainability issues and challenges to resolve in a forthcoming period to meet the international trends in cadastral reform.

1. LAND ADMINISTRATION

Land administration (LA) is about processes of determining, recording, and disseminating information about the ownership, value, and use of land, when implementing land management policies” (UN-ECE 1996). LA encompass following for functions, which are normally undertaken by a mix of professionals, including surveyors, engineers, lawyers, valuers, land economists, planners, and developers(Enemark, 2010):

land tenure: the allocation and security of rights in lands; the legal surveys of boundaries; the transfer of property through sale or lease; and the management; adjudication of disputes regarding rights and boundaries.

land value: the assessment of the value of land and properties; the gathering of revenues through taxation; and the management and adjudication of land valuation and taxation disputes.

land-use: the control of land-use through adoption of planning policies and land-use regulations at various levels; the enforcement of land-use regulations; and the management and adjudication of land-use conflicts.

land development: the building of new infrastructure; the implementation of construction planning; and the change of land-use through planning permission and granting of permits.

Despite the actual processes of land valuation and taxation, as well as the actual land-use planning processes, are often not considered part of land administration activities, which are traditionally centered on cadastral activities in relation to land tenure and land information management, modern land administration systems designed as described in figure 1 deliver an essential infrastructure and encourage integration of the four functions.

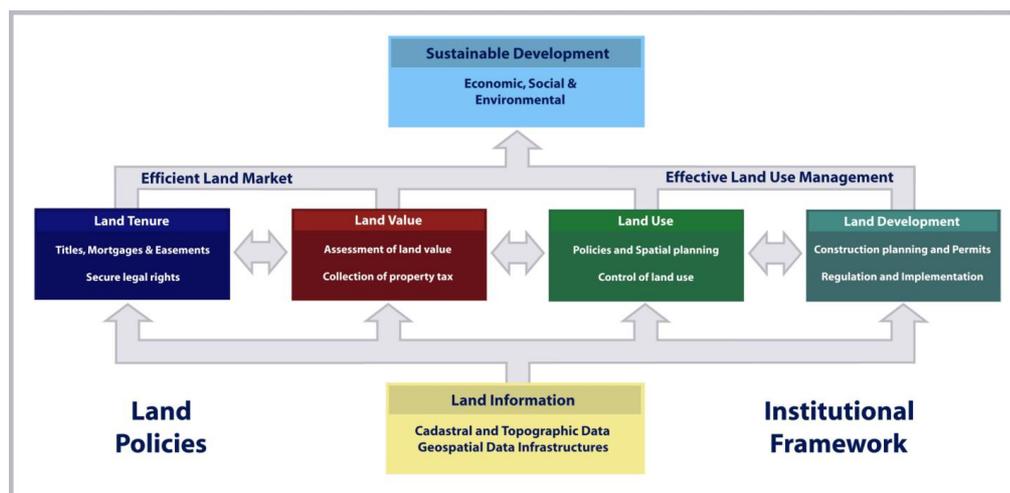


Figure 1. A global land administration perspective (Enemark, 2004)

All four functions are interrelated. The interrelations appear because the conceptual, economic, and physical uses of land and properties serve as an influence on land values. Land values are also influenced by the possible future use of land determined through zoning, land-use planning regulations, and permit-granting processes. And land-use planning and policies will, undoubtedly, determine and regulate future land development.

Recognition that these functions share common information requirements led to the concept of the multi-purpose cadastre (LIS) as a community-oriented, parcel based system for integrating land related information collected and managed by different agencies (Dale,P., McLaughlin, 2000).

LIS (land information system) is a general, collective, term for all land related data banks or systems. It is a genus indication for all the systems that have one point in common: the data is relevant to a fixed location on, in, or under the surface of the earth (the geographic unit).In such system cadastre play role of a canvas to which many other system can add or connect their particular data (Henssen, Williamson,1998).

Land information should be organized to combine cadastral and topographic data and to link the built environment (including legal and social land rights) with the natural environment (including topographical, environmental, and natural resource issues). Land information should, in this way, be organized through an SDI (Spatial Data Infrastructure) at the national, regional, federal, and local level, based on relevant policies for data sharing, cost recovery, access to data, data models, and standards (Enemark, 2010).

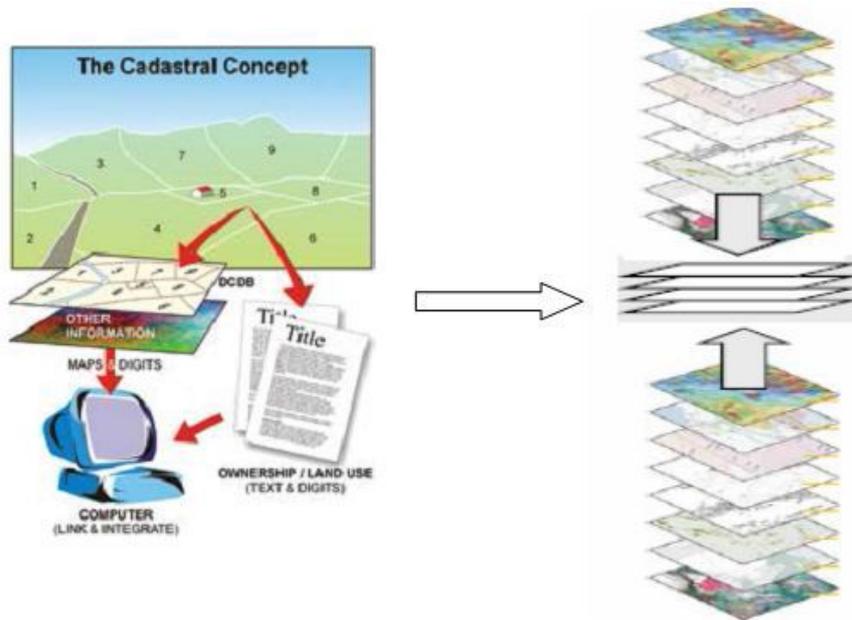


Figure 2. Land information system concept

In LIS concept *the principles of booking, of consent, of specialty, and of publicity* supplemented with *the principle of legal independence* (Kaufmann, Steudler, 1998). The principle of legal independence is a key item in the realization of Cadastre 2014. It stipulates that:

legal land objects, being subject to the same law and underlying a unique adjudication procedure, have to be arranged in one individual data layer;

for every adjudicative process defined by a certain law, a special data layer for the legal land objects underlying this process has to be created.

Land administration systems (LAS) designed in this way forms a backbone for society and is essential for good governance because it delivers detailed information and reliable administration of land from the basic foundational level of individual land parcels to the national level of policy implementation. Benefits arise through guarantee of ownership, security of tenure and credit; facilitating efficient land transfers and land markets; supporting management of assets; and providing basic information and efficient administrative processes in valuation, land use planning, land development and environmental protection.

The Bathurst Declaration on Land Tenure and Cadastral Infrastructures for Sustainable Development (UN-FIG, 1999) established a powerful link between good land administration and sustainable development. One of the main principle of the declaration is shown in figure 3, where land information interact with land policy, land management and land use.

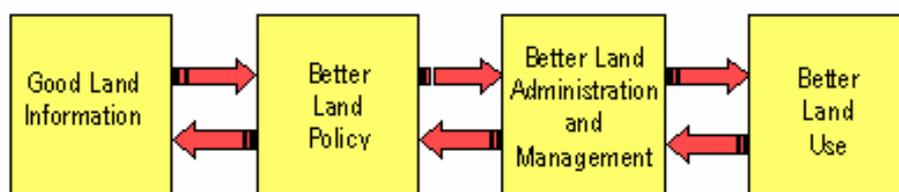


Figure 3. Land information, land policy, land administration and land use

2. SOME ASPECTS OF LAND ADMINISTRATION IN BELARUS

Land administration in Belarus is based on the following main legal instruments: the Civil Code, the Land Code, the Law "On state registration of immovable property and transactions therewith", the Presidential Decree "On Valuation Activities in the Republic of Belarus", the Presidential Edict "On Expropriation and Allocation of Land Plots".

According to the Land Code land users may have land plots with the following rights: of state and private ownership, as well as of ownership of foreign states, international organizations;

- of lease (sublease).
- of lifetime inheritable possession;
- of permanent use;
- of temporary use.

According to the Presidential Edict "On Expropriation and Allocation of Land Plots" land plots are allotted:

- to citizens on the right of temporary use, lifetime hereditary possession, private ownership or lease;
- to individual entrepreneurs, on the right of lease;
- to legal persons of the Republic of Belarus, on the right of permanent or temporary use, private ownership or lease, to legal persons – not being residents of the Republic of Belarus – on the right of lease.

Ownership to Land, Land Plots. Ownership to land, land plots may be a state one and a private one. Lands, land plots which are not privately owned by the citizens of the Republic of Belarus, privately owned by foreign citizens and stateless persons who are relatives of the legator in the case of acquisition by them through inheritance of the land plots which are allocated to the legator into the private ownership, privately owned by the non-state legal persons of the Republic of Belarus and are owned by foreign states, international organizations are owned by the state.

A land plot may belong on the right of common (shared or joint) ownership to several owners.

In the private ownership of citizens of the Republic of Belarus may be land plots allocated for:

- construction and/or maintenance of a dwelling house;
- maintenance of the apartment in the blocked dwelling house, registered by the organization on state registration of immovable property;
- keeping personal subsidiary husbandry;
- collective gardening;
- summer-cottage construction.

Non-state legal persons of the Republic of Belarus may be allocated the state-owned land plots into the private property by the results of the auction or without holding an action (in the cases established by the legislation and in the other cases determined by the President of the Republic of Belarus. Land plots are allotted from the state ownership into the private ownership of non-state legal persons of the Republic of Belarus without holding auctions on the cadastral value of these plots effective on the day of submission by the non-state legal person of the Republic of Belarus of the application on allotting a land plot into the private ownership, unless otherwise determined by the President of the Republic of Belarus, with the exception of land plots not intended to be allotted into the private ownership. When allotting land plots into the private ownership to such persons via holding an auction on sale of land plots into the private ownership, their value shall be determined on the results of the auction and may not be less than their cadastral value.

For placing diplomatic representation, consular office of a foreign state in the Republic of Belarus, the foreign state as well as international organization for placing its representation may

acquire a land plot into the ownership in the order established by the President of the Republic of Belarus.

Land plots, relating to the lands of the following categories and types, are not subject to allocation into the private ownership, the ownership of foreign states, international organizations:

lands of agricultural purpose;

lands of nature protection, health-improving, recreational, historic-cultural purpose;

lands of the forest fund;

lands of the water fund;

lands under roads and other transport communications;

lands of common use.

Land plots are not subject to allocation into the private ownership, the ownership of foreign states, international organizations:

on which objects of immovable property being only in the state ownership are located;

on lands affected by radioactive pollution (evacuation zone, zone of primary resettlement and subsequent resettlement area from which the population was resettled);

on the surfaces of bedding of proven territories of minerals. The List of settlements, gardening partnerships, summer-cottage cooperatives located on surfaces of bedding of proven territory of minerals is determined by the council of Ministers of the Republic of Belarus;

which in accordance with approved general plans of towns and other settlements, urban planning projects of detailed planning and land management documentation are provided for designated use which exclude their allocation into ownership.

Lease of Land Plots. Land plots may be allocated into the lease to the citizens, individual entrepreneurs, legal persons of the Republic of Belarus, foreign legal persons and their representations, foreign states, diplomatic representations and consular offices of the foreign states, international organizations and their representations in accordance with the Land Code and other acts of legislation on land use and protection.

Lessors of the state-owned land plots are the state bodies carrying out state regulation and administration in the sphere of land use and protection in accordance with their competence stipulated by the Land Code and other acts of legislation.

Lessors of the state-owned land plots may be the administrations of free economic zones in the case of allocation of land plots to the residents of respective free economic zones, special tourist and recreational parks, governing by the administration of the free economic zone, within the borders of the given zones, parks with implementation in the case of necessity of the transfer of land plots from some categories into the others, including conclusion of lease contracts of those land plots if that rights are delegated by the respective local, Minsk City Executive Committee and city (region-subordinated cities) executive committees in accordance with their competence specified by the present Code.

The citizens, non-state legal persons of the Republic of Belarus having land plots in the private ownership may be lessors of those land plots under the condition of observance of their intended purpose.

Terms and other conditions of lease of a land plot are determined by the lease contract of the land plot. The term of lease of the land plot for keeping agriculture may not be less than ten years. The term of lease of the state-owned land plot allocated for the purposes related to the construction and/or maintenance of capital structures (buildings, constructions) shall be not less than the normative term for the construction and/or exploitation of those capital structures (buildings, constructions). Allocation of land plot for a shorter term may be performed only with consent of the persons which are allocated. that land plot. The term of lease of a land plot may not exceed ninety-nine years. The term of lease of a land plot allocated for the use of the leased water body (or part thereof) shall not exceed the term of the lease of the water body (or part thereof).

It is allowed to build the capital structures (buildings, constructions), to create wood-shrub vegetation (plantations) or plantations of herbaceous perennial plants on the land plots which are

state-owned and allocated into lease if it corresponds to the intended purpose of those land plots and to the conditions of their granting into lease specified in the decisions of the state bodies carrying out state regulation and administration in the sphere of land use and protection and in the lease contracts of land plots.

In the case of location of dwelling houses, apartments in the blocked dwelling houses registered by the organization on state registration, summer-cottages, garden lodges other capital structures (buildings, constructions) on the land plots allocated into the private ownership, the allocation of such land plots into lease is allowed only jointly with those capital structures (buildings, constructions) with reservation of intended purpose of land plot and if there are documents which certify rights to those objects of immovable property.

In the case of inheritance by minor heirs of the land plots which are privately owned by a citizen, the allocation of the land plots into lease to the citizens by the legal representatives of the heirs in agreement with the Minsk City Executive Committee, city (region-subordinated cities), district, rural, settlement executive committees is allowed prior to obtainment the capacity in full.

The construction by lessees of the capital structures (buildings, constructions) and placing other objects of immovable property on the leased land plots which are privately owned are not allowed with the exception of the cases when the construction of capital structures (buildings, constructions), creation of wood-shrub vegetation (plantations) or other mastering of land plots correspond to the intended purpose of those land plots and the conditions specified in the lease contracts of land plots.

Lifetime Inheritable Possession of Land Plots.

Land plots may be allocated into the life inheritable possession to the citizens of the Republic of Belarus:

for the construction and maintenance of a dwelling house – in the cases established by the president of the Republic of Belarus, while land plots are allocated without holding an auction;

for the maintenance of the dwelling house, apartment in the blocked dwelling house registered by the organization on state registration which are belonged to them under the right of ownership;

for keeping personal subsidiary husbandry in the agricultural settlements, urban-type settlements – being registered at the place of residence in those settlements;

for keeping peasant's (farmer's) household;

for the collective gardening;

for the summer-cottage construction;

for traditional national trades (crafts);

in the case of inheritance of the land plot which has been allocated earlier to the legator into the lifetime inheritable possession.

Land plots may be allocated into the lifetime inheritable possession of foreign citizens and stateless persons who are relatives of the legator, in the case of inheritance of the land plot which was allocated to the legator into the lifetime inheritable possession, including inheritance of the located on a such land plot dwelling house, apartment in the blocked dwelling house registered by the organization on state registration, summer-cottage, garden lodge, unless otherwise established by the legislative acts.

Permanent Use of Land Plots. Land plots are allocated into the permanent use (use without a pre-established term) to:

state bodies, other state organizations (with the exception of allocation of land plots for the construction of the refueling stations) – for the implementation of tasks and functions specified by the legislation;

non-state legal persons of the Republic of Belarus – for maintaining objects of immovable property which are owned by the state;

agricultural organizations, including peasant's (farmer's) households, other organizations – for keeping agriculture, including peasant's (farmer's) household, as well as for keeping subsidiary agriculture;

scientific organizations, institutions of education – for research or educational purposes in the sphere of agriculture or forest husbandry;

state forestry institutions, organizations of local executive committees within competence of which falls keeping of forest-park husbandry – for keeping forest husbandry;

religious organizations – for the construction and (or) maintenance of and burial places, cult structures, including buildings of diocesan offices, monasteries, religious educational institutions;

legal persons - for the construction of a apartment block (except deluxe buildings according to the criteria defined by regulations), maintenance of a apartment blocks, construction and (or) maintenance of dormitories, garages and car parks;

gardening partnerships and summer-cottage cooperatives – for keeping collective gardening and summer-cottage construction (land plots of gardening partnerships', summer-cottage cooperatives' common use);

legal persons, if they are required to provide another plot of land instead of land plot, allocated to such legal persons on the right of permanent use;

legal persons of the Republic of Belarus – for the renovation of existing objects, if changing of the purpose and (or) the plot size required, when land plot was allocated to such legal persons on the right of permanent use;

legal persons of the Republic of Belarus – for construction and (or) maintenance of transport and engineering infrastructure and roadside service;

owner associations, authorized persons on joint ownership property management - for maintenance of a apartment blocks with a joint household.

Legislative acts and President decisions may also establish other cases of allocation of land plots into the permanent use.

Temporary Use of Land Plots. Land plots may be allocated into the temporary use to:

persons and for the purposes specified above for the permanent use;

the citizens of the Republic of Belarus for gardening, haying and pasture of agricultural animals - for the period of up to ten years;

the citizens of the Republic of Belarus specified in part two of Article 41 of the Land Code, for the construction (installation) of temporary individual garages in the settlements – for the period of up to ten years;

cessionaires on the basis of the concession contracts – for the period of up to ninety-nine years in accordance with the Land Code and other acts of legislation on land use and protection and on concession activities.

Legislative acts and President decisions may also establish other cases of allocation of land plots into the temporary use.

Land Easement. A land user is entitled to demand from the land user of an adjacent land plot or in necessary cases also from the land user of another land plot to establish a land easement.

Encumbrance of a land plot with a land easement does not deprive the land user of the right to possess, to use and to dispose of that land plot.

Land user of the land plot encumbered with a land easement is entitled, unless otherwise established by the legislative acts, to demand from the person in favor of which the land easement is established, payment for use of the land plot the amount of which is determined in agreement with parties and in the case of non-achievement of the agreement – by the court.

Table 1 – Availability and distribution of land according to their types and categories of land users, 1000 ha

Land users	State ownership	Lease	Lifetime inheritable possession	Permanent use	Temporary use	Ownership
Agricultural organizations	8949,6	308,3	0,0	8604,6	36,7	0,0
Peasant's (farmer's) households	164,9	34,4	74,2	56,3	0,0	0,0
Citizens	867,9	17,1	682,9	1,0	166,9	78,5
Industrial organizations	65,6	2,1	0,0	46,1	17,4	0,0
Organizations of railway transport	52,9	0,0	0,0	52,8	0,1	0,0
Organizations of road transport	153,8	0,0	0,0	152,1	1,7	0,0
Defense organization	159,7	0,2	0,0	158,7	0,8	0,0
Organizations on communications, energy, construction, trade, education, health and other land users	182,3	16,0	0,0	156,8	9,5	0,0
Organizations of environmental, health-improving, recreational and historic-cultural destination	927,8	0,2	0,0	927,6	0,0	0,0
State forest institutions	8451,4	0,0	0,0	8451,4	0,0	0,0
Organizations, operates and maintains hydraulic and other hydroeconomic constructions	39,8	0,0	0,0	38,0	1,8	0,0
Other lands	665,8	0,0	0,0	11,7	0,1	0,0
Total	20681,5	378,3	757,1	18657,1	235,0	78,5

Table 1 indicates that only 78500 ha of land are in private ownership (0.4% of the total territory of the Republic of Belarus). Other land rights are not transferrable, besides right of lease, which can be transferred only if the payment for the right to conclude the lease contract of the land plot was collected. These are serious problems in land market development.

Another problem associated with the real estate rights market development is low data coverage indicator. Despite the 3rd place of the national land registration system in the World Bank report "Doing Business - 2014" there are about 1.9 million land parcels were registered since the beginning of land reform in 1991. Taking in account that average number of parcels per million people is just under 630000, or 1.6 persons per parcel (Williamson, Enemark, Wallace, Rajabifard, 2010) it's only about 30 % of the total amount of land parcels which seems to be about 6 million parcels.

In contrast to land registry, which didn't necessarily require a complete coverage for spatial data, land information systems now need complete data coverage over the whole territory in order to be operational and useful. Complete data coverage is needed as soon as possible as the real benefits of digital spatial data cannot take effect without that (Steudler, 2010). Benefits arise through its application to: asset management; conveyancing; credit security; demographic analysis; development control; emergency planning and management; environmental impact assessment; housing transactions and land market analysis; land and property ownership; land and property taxation; land reform; monitoring statistical data; physical planning; property portfolio management; public communication; site location; site management and protection (Dale,P., McLaughlin, 2000).

Such situation occurred due to only *sporadic approach* in land adjudication from the beginning of the land reform. That's why further land adjudication on a basis of *systematic approach* should be prioritized.

3. LIS CONCEPT IN BELARUS

As was mentioned above LIS is a concept: it is a network attempting to integrate all kinds of land related data (cadastral, infrastructural, environmental, socio-economic). Within such a LIS-network land registration can play the role of a canvas to which many other systems can add or connect their particular data. Thus the land recording can be a link between many land information systems. According to "Cadastre-2014" (Kaufmann, Steudler, 1998) the *booking principle, the consent principle, the principle of publicity, the principle of specialty* and the principle of legal independence are key items in LIS concept.

By the law land-information system of the Republic of Belarus – complex of program-technical means, spatial-attributive databases, information exchange channels and other resources which ensures automation of accumulation, processing, storage and providing with the data about condition, allocation and use of land resources in the electronic form, including means of geoinformation technologies.

Unfortunately, Byelorussian LIS doesn't correspond to these principles and it's not a cadastre-based system. Therefore it's also not correspond to the principle of *mirror, curtain* and *guarantee*, which are of crucial importance for title registration systems. The mirror principle, means that the register is supposed to reflect the correct legal situation, the curtain principle, which means that no further (historical) investigation beyond the register is necessary, and the insurance or guarantee principle, which means that the State guarantees that what is registered is true for third parties

In Figure 2, the Byelorussian LIS concept is seen as a set of local land information systems which are going to be produced for every district (118).

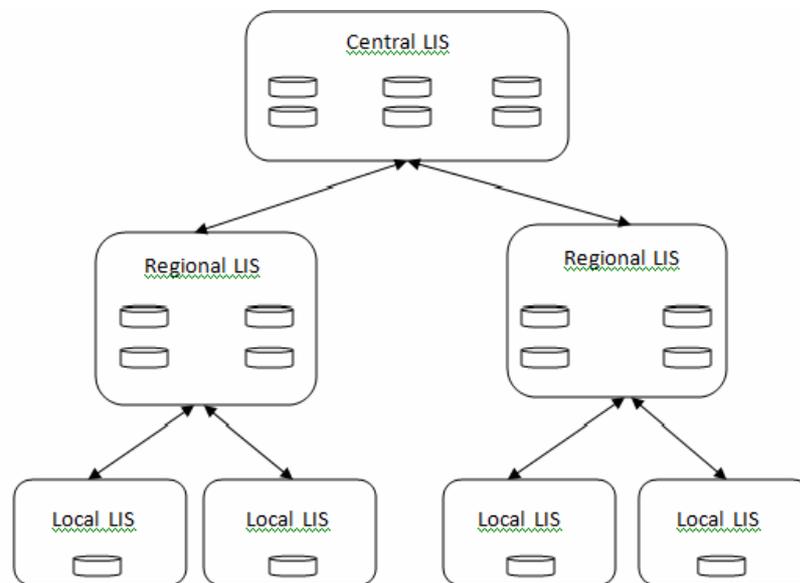


Figure 2 – Byelorussian LIS concept

Realization of this concept took place in early 2000s and is still going on as a parallel process to land registration system. Thus, it still the case for our country to implement best international experience in land administration to be able to achieve it's real benefits (economic, social and environmental) through proper land management policy, better land use and better decision making processes.

CONCLUSION

In a past decades building and maintaining of land administration systems forms a serious government activities for all nations with the primary objective of supporting an efficient and effective land market, environmental protection and sustainable development. It's very important for developing countries to take best from the international practice and theory to develop their land administration systems and avoid different mistakes which will hamper it's further development and reduce real benefits from it's usage. Systematic approach in land adjudication seems to be the best practice for countries in transition to achieve complete data coverage, which is needed as the real benefits of digital spatial data cannot take effect without that. Another important factor is that national LIS has to be designed as a parcel based system, were cadastre play role of a canvas to which many other system can add or connect their particular data. Such a system has to correspond to the principles of booking, of consent, of specialty, of publicity and of legal independence. In a case of title registration system the principles of mirror, of curtain and of guarantee should be also considered.

REFERENCES

1. Country Profile on the Housing Sector: Belarus. UNECE, New York and Geneva, 2008. <http://www.unece.org/fileadmin/DAM/hlm/documents/Publications/cp.belarus.r.pdf>
2. Enemark, S., From Cadastre to Land Governance: The role of land professionals and FIG., Annual World Bank conference on land policy and administration., Washington D.C., 26-27 April, 2010. [Electronic resource]. - Mode of access: http://www.fig.net/news/news_2010/washington_april_2010/washington_paper_enemark_april_2010.pdf. - Date of access: 29.10.2010.
3. Hensen, J., Williamson, I., Land registration, cadastre and its interaction - a world perspective, 1998. [Electronic recourse] – Mode of access: www.oicrf.org. – Date of access: 06.02.2003.
4. Williamson, I., Enemark, S., Wallace, J., Rajabifard, A., Land administration for sustainable development/TS 3A- Land governance for sustainable development. - FIG Congress "Facing the Challenges – Building the Capacity“, Sydney, Australia, 11-16 April 2010. [Electronic resource]. - Mode of access: http://www.fig.net/pub/fig2010/papers/ts03a/ts03a_williamson_enemark_et_al_4103.pdf - Date of access: 29.10.2010.
5. Williamson, I., Enemark, S., Wallace, J., Rajabifard, A., Land administration for sustainable development. ESRI Press Academic, Redlands, California. – 487p. – ISBN 978-1-58948-041-4. [Electronic resource] – Mode of access: <http://www.esri.com/landing-pages/industries/land-administration/e-book#sthash.Lp4BYcKW.QUvSTNhZ.dpbs>. – Date of access: 05.08.2013.
6. Enemark, S., Facing the Global Challenges: the Importance of Land Governance and the Significance of the Cadastre. [Electronic recourse] – Mode of access: http://www.fig.net/commission7/malaysia_2009/one_day_symposium/keynote/enemark_paper.pdf. – Date of access: 20.07.2013.
7. UN – FIG: The Bathurst Declaration on Land Administration for Sustainable Development. Report from UN-FIG Workshop on Land Tenure and Cadastral Infrastructures for Sustainable Development [Electronic recourse]. – Mode of access: <http://www.fig.net/pub/figpub/pub21/figpub21.htm>. – Date of access: 11.08.2013.
8. UNATED NATIONS: Land Administration in UNECE Region – Development Trends and main Principles / Economic and Social Council, Commission for Europe, Economic

- Commission for Europe, ECE/HBP/140, New York and Geneva, 2005.
9. UNATED NATIONS: Innovation Performance Review of Belarus / Economic Commission for Europe, New York and Geneva, 2011. – Mode of access: <http://www.uncece.org/fileadmin/DAM/ceci/publications/icp4.pdf>. – Date of access: 27.04.2014.
 10. Kaufmann, J. and Steudler, D. (1998). Cadastre 2014. FIG Office, Copenhagen. <http://www.fig.net/cadastre2014/>
 11. Steudler, D., Country Report 2010. Switzerland. [Electronic recourse]. – Mode of access: <http://www.cadastraltemplate.org/countryreport/Switzerland-8Jun2003.doc>
 12. Dale, P., McLaughlin, J., Land administration. [Electronic recourse]. – Mode of access: <http://fdslive.oup.com/www.oup.com/academic/pdf/13/9780198233909.pdf>