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Proposal of Land Readjustment for the Netherlands: An analysis of its effectiveness from an international perspective

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ABSTRACT

Many believe that Land Readjustment (LR) can potentially resolve the stagnation of development that accrues from scattered ownership and improve the financing of public infrastructure. With this enthusiasm for LR, arguments are made that LR avoids the need to expropriate land, empowers landowners to develop their land and provides the necessary public infrastructure at a lower or even no cost to the public. This enthusiasm has recently drawn the attention of the Dutch government, who asked an expert committee to elaborate a draft proposal for LR regulation. In the summer of 2014 this committee submitted this draft proposal to the Dutch government, who since then is working on a draft for an LR act. However, LR does not always resolve the previously mentioned problems; in some countries, it is a "dead word" in legislation. Unfortunately, not many studies analyze the aspects of LR regulations that might be critical in practice. Based on other countries' experiences with LR (especially Germany and Spain), this paper develops a framework of analysis that concludes that the proposed Dutch LR regulation may not fulfill expectations in reality.

1. Introduction and theoretical background

Land Readjustment (LR)[1] is experiencing a revival in academic literature (e.g., Hong & Needham, 2007; Home, 2007; Van der Krabben & Needham, 2008) and is becoming popular with international development organizations such as UN-HABITAT (e.g., 2012), the World Bank (e.g., 2014) and the Lincoln Institute of Land Policy (e.g., Hong and Brain, 2012). LR is advocated as an important land management tool in developing countries, where rapid urban growth is making the need for large investments in public infrastructure more evident. It is also believed that developed economies can also profit from LR because it serves as an alternative to the traditional two ways of assembling land in an urban development: voluntary exchange and public expropriation.[2] In general, LR is conceived as more property-friendly and often as the only financially feasible alternative for local authorities to implement land use goals (Alterman, 2007: 72–74, 82–83; Hong, 2007: 10–12; Hong & Needham, 2007: XV–XIX; Sorensen, 2007: 110–111; Turk, 2008: 232–234). This enthusiasm is not new; at the end of the 1970s and in the 1980s, thanks to its successful application in the post-war reconstruction of Japan and South Korea, LR attracted attention from many international organizations, scholars and practitioners (e.g., Acharya, 1988; Archer, 1992; Doebele, 1982; Larsson, 1997; Shultz & Schnidman, 1990; Sorensen, 2000a). However, Land Readjustment for large-scale urban developments remained largely untested outside Asia, Germany, Spain and Israel, due apparently to the lack of an objective and trusted body of professionals in developing countries, the resistance of existing real estate interests and, in countries with concentrated private land-ownership patterns like Britain, the preference for large-scale public or private development (Alterman, 2007: 57–60; Doebele, 2007; Home, 2007: 469–478).

The same as happened in the 1970s and 1980s, some voices today are also critical about the practical possibilities of LR. LR does not always seem to be an effective and self-financing method of urban development, which is why it has sometimes been named a "sleeping beauty," potentially interesting but rarely useful in practice (Alterman, 2012: 765). Unfortunately, not many studies analyze the aspects of LR that may be critical in practice. This paper contributes to the scarce LR literature that aims to offer a more systematic and international comparative analysis of the effectiveness of LR regulations (e.g., Turk, 2008; Yilmaz, Çagdas, & Demir, 2015) through reflection on the effectiveness of an LR proposal for the Netherlands. In this paper, an LR regulation is considered effective when it provides serviced building plots with proper public infrastructure within a reasonable period of time with no or almost no need of public subsidization. The reflection supports the experiences with LR in other countries, especially Germany and Spain

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[1] Also called "land consolidation," "pooling," "replotting," "parcellation," "repartition" and "reconstitution."

[2] Expropriation is equivalent to eminent domain and compulsory purchase or acquisition.

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(*Umlegung* and *Reparcelación*, respectively). Both regulations have been extensively applied in these countries for decades now; cumulatively, they contain many potential lessons from which this paper evaluates the current proposal for Dutch LR regulations. As there is an almost dramatic lack of English-language scholarly publications on the Spanish LR, this paper will also contribute to fill this gap in the international literature.

Germany introduced LR at the beginning of the 20th century (Home, 2007: 464), and the regulation is currently applied with regularity, especially in small- and medium-sized urban greenfield developments. There have also been cases in urban regeneration areas. This article focuses mainly on the practice of LR in Frankfurt am Main (interview with Mueller-Joekel, 2014). Spain introduced LR for the first time in 1956, but it was not effective until the 1980s.[3] During the 1990s, following a reordering of competences in urban planning among the central and regional public administrations, each of the 17 Spanish regions developed its own variant of LR. This paper will focus on LR in Valencia[4] because here certain novel aspects were introduced in 1994 that extended to most other regions. In general, since the 1980s, LR has been improved and extensively used (Muñoz Gielen, 2010: 111–118, 2014). Almost all urban development in Spain (both greenfield and the redevelopment of urban areas), aside from strategic developments (e.g., large industrial sites, some public facility complexes, social housing and other individual cases) and main infrastructure (highways, railways, airports, seaports, etc.), has been developed through LR (Muñoz Gielen, 2010: 125–128; Muñoz Gielen & Korthals Altes, 2007: 69). This paper will refer to the LR regulations that were in force until the 1980s as "traditional LR," the LR regulation since then as "Spanish LR" and the LR regulation introduced in 1994 in Valencia as "Valencian LR."

Section 2 introduces the proposed new LR regulation in the Netherlands, and Section 3 discusses the methodological approach. Sections 4 to 8 reflect on separate aspects of LR based on the LR experiences in other countries: the agencies that are empowered to implement LR (Section 4), the enforceability of readjustment on opposing landowners (Section 5), financing mechanisms (Section 6) and the transparency and accountability of the LR procedure (Section 7). Finally, Section 8 draws general conclusions.

2. The Dutch LR proposal and its embedment in public value capture system

Since 1924, the Netherlands has used LR regulation to reassemble agricultural land into more efficient plots. Because of the significant difficulties experienced in urban development in areas with many landowners (especially the difficulties of financing the necessary public infrastructure), many scholars and practitioners, inspired by the international literature and the experience with the German *Umlegung*, have advocated in recent years the introduction of a similar regulation for developing urban areas. In 2013, the Dutch central government tasked a special committee (henceforth "LR Committee") with drafting an LR regulation proposal for urban development (henceforth "Proposed LR") that was offered to the Ministry of Infrastructure and Environment in July 2014 (Commissie Stedelijke Herverkaveling, 2014). Since then, the Ministry has been working on a draft for a law (henceforth "Draft LR act"). This paper thus reflects on the Proposed LR and, as far as some of its contents are known, on the Draft LR act.

2.1. The Proposed LR

The Proposed LR regulates the reallocation and realignment of all of the rights in rem pertaining to real estate (henceforth "properties")[5] within a development area (*blok*, following the terminology of the LR Committee). Second, the Proposed LR also regulates the construction of the necessary infrastructure. According to current Dutch legislation, the owners of the rights in rem of real estate can agree to Land Readjustment without any intervention from the public administration. However, if a minority of the owners opposes this, the Proposed LR gives the municipality the power to force the readjustment of the properties of the minority, provided that a majority of owners supports the plan, the intended plan is economically feasible[6] and all legal guarantees have been carefully fulfilled.[7] Although this statutory power does not conflict with other legislation it is however sensible from a political point of view.[8] The Ministry, which is ruled by a conservative liberal member of the governmental coalition, has recently announced that the Draft LR act will not include such a compulsory provision, leaving only the possibility of a voluntary readjustment that will require unanimous agreement of 100% of the owners (Minister I&M, 2015: 13–15).

The procedure in the Proposed LR follows these steps (see Fig. 1): after an implementing agency[9] submits a draft Readjustment Plan (*Ruilplan*) — provided that a majority of owners supports the Plan — the municipality publishes this draft, which will be available to the public. A Readjustment Plan consists of two sets of documents: a List of Owners (*Lijst van Rechthebbenden*) and a Distribution Plan (*Plan van Toedeling*). These documents prescribe and delineate the physical transformation of the development area to the new uses and functions and reassign and reallocate the properties. If these new uses and functions do not fit within the existing Land Use Plan, this plan will have to be modified. This paper focuses on LR plans that involve a modification of existing functions and uses such that there is always need for the modification of the Land Use Plan.[10]

Before the draft of the Readjustment Plan is approved and the Land Use Plan is modified, the municipalities must verify that all of the necessary development costs are secured. The costs are "secured" when there is certainty that there is, or will be, financial means available to pay them. This means that the implementing agency and the municipality have to sign a Development agreement (a civil law contract) in which the agency commits to bearing all development costs (in kind, or if the municipality has to invest in infrastructure, in funding). It is also possible for the municipality to subsidize the costs if it considers this necessary and is willing to do so. Development costs consist of the overhead costs of the municipality and the necessary infrastructure located inside the development area (see Section 6 for a definition of costs inside and outside the development area). If the agency refuses to sign

[3] Already in the 19th Century Ildefonso Cerdá (1815–1876) devised a sort of LR-regulation meant to facilitate the implementation of his ambitious 1860 Expansion Plan of Barcelona (*Plan de Ensanche*). In 1861 this proposal became rejected in the Spanish Parliament, but Cerdá applied it as a voluntary regulation and in 1889 it became prescribed in a local ordinance of the Municipality of Barcelona (García-Bellido García de Diego, 1998: 96).

[4] 1994 Ley de Regulación de la Actividad Urbanística de la Comunidad Valenciana.

[5] The most relevant "rights in rem" regarding real estate are property rights (*eigendomsrecht*), building leases (*recht van opstal*), flat or condominium ownership (*appartementsrecht*), usufruct (*recht van vruchtgebruik*), leasehold or enphyteusis (*recht van erfpacht*), use rights (*erfdienstbaarheid*) and mortgages (*hypotheek*).

[6] That is, provided that the economic value of the land increases due to the transformation from the previous uses to the new uses, which means that the owners must profit financially from the readjustment of their properties.

[7] Intervention in property rights is protected in the Netherlands by a variety of regulations and policies. In this case, it means, for example, that the Municipality must substantiate all requirements and that the decision-making procedure must be fair and transparent. For example, all landowners must be notified and have the opportunity to refute the plans, there must be public notification of the plans and a public hearing, and landowners must have the opportunity to challenge the plans in court.

[8] In the 1970s, the social democratic government collapsed because of the lack of parliamentary support for a proposal to delimit the rights of landowners to the economic value increase that accrues from urban development. Since then, no topic related to any fundamental delimitation of land property rights has gathered a majority in the usually atomized Dutch Parliament. It has become a sort of political taboo.

[9] See section 4 for a definition of "implementing agency"

[10] With a modification of the Land Use Plan, I refer to any land-use regulation decision of any kind (rezoning, additional development rights, relaxation of existing land-use regulations, etc.) that allows more economically profitable functions and uses.