

Good Governance in Land Tenure and Administration

Willi ZIMMERMANN, Germany

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SUMMARY

The dynamics of globalisation are showing positive as well as negative impacts to nearly all aspects of life and in politics. At least since the UN declaration of the Millennium Goals for Development in 2000, Global Governance occupies a central stage in the development discourse but is also considered as crucial element to be incorporated in the development strategy. The concept of bad governance and corruption has likewise changed from being 'unmentionable' in development assistance to be one of the keywords used to describe the obstacles to good governance and development. Good governance in the context of development cooperation means favourable political framework conditions for social, ecological and market-oriented economic development as well as responsible use of political power and public resources by the state.

Secure land tenure, fair access to land and resources and efficient management of land are of fundamental significance for poverty reduction, building peace, applying the rule of law and for sustainable development. Good governance and anti-corruption measures in land tenure and administration can take a variety of forms, and their adequacy will depend on the prevalence of the respective types of governance and corruption and on the political and institutional environment of the country in question. FAO land tenure service has initiated a program (2006 to 2009) on good governance in land tenure and administration as component of FAO SDAA's normative programme for creating awareness and for developing norms and guiding principles.

Governance capacity in the land sector is best built by a fusion of democratic and technocratic elements, both normatively and conceptually. The paper is highlighting the impact of global governance aspects on the land sector and informing on challenges to be met and relevant initiatives currently underway.

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1. GLOBAL GOVERNANCE ISSUES

We are at a critical moment in the international system and in the debate over international development policy. “Pure” development, that is development abstracted from global policy concerns in the real world and the new challenges they present, is not likely to be sustainable. We now realise that life in times of globalisation and interdependencies depends crucially on

- transforming the troubled regions of the world
- promoting stability and governance in fragile and failed states
- improving disaster response and recovery
- promoting sustainable management and preservation of the scarce natural resources
- assessing the long-term impact of industrialisation on the biosphere
- providing access to education and information for all people
- generating partnership and solidarity on a global scale

At least since the UN declaration of the Millennium Goals for Development in 2000, Global Governance occupies a central stage in the development discourse but is also considered as crucial element to be incorporated in the development strategy.

The aim of global governance is to reduce poverty worldwide, to build peace and to promote equitable forms of globalisation.

Global governance takes its cue here from the shared goals of the international community: the Millennium Declaration and the eight Millennium Development Goals (MDGs) derived from it, the Monterrey Consensus and the Johannesburg Plan of Implementation determine the direction.

Global governance nowadays is global structural and peace policy based on an understanding of security that comprises political, economic, ecological and social stability. This is because, in the long term, there can only be peace if human rights are respected, if poverty is reduced, if economic and social injustices are removed, and if natural resources are preserved as the vital foundation for all life on earth. There is growing recognition of the threat to international security posed by failed and fragile states. The inability of their governments to provide basic services is considered a significant contributory factor. As globalisation and interdependence increase, the threats posed by fragile and failed states intensify. The international community has a practical and a humanitarian responsibility to take co-ordinated action and to tailor specific international development efforts to halting or reversing their decline. Conflict prevention must be considered a global public good warranting global cooperation and action. Reconciliation, the fair resolution of disputes over land and resources and access to land for the poor are essential preventive measures among other actions.

A global partnership of this kind can create the conditions needed if all people are to be able to make use of the opportunities offered by globalisation. Global partnership requires an evolutionary process from mainly country- or institution centric behaviour to a world-centric view and vision. Operating within such a global partnership-model means grouping together the specific competences, skills and experience of the different players, development organisations, private sector, civil society organisations and education/research.

The innovative concept of sustainable development (UNCED Agenda 21 1992 and Johannesburg summit on sustainable development 2002) has been expanded by global poverty reduction strategies (UN-Millennium Goals 2000), good governance agreements (UN convention against corruption 2005) and a set of complementary conventions and summits. The interrelationship between the global policy framework and land-related issues is expanding rapidly. Awareness concerning this dynamic and complex interrelationship has been mobilised by international and bilateral organisations, including FIG. Land issues, tenure security and access to land are of crucial importance to global governance, to poverty reduction and growth, to good governance and rule of law. A comprehensive global policy framework has been developed and adapted during the last 15 years (table 1). The challenge is now to build land-related good governance capacities on the ground and to evolve from rhetoric to effective action and commitment.

Tab. 1: The expanding interrelationship between global governance and managing land and spatial information

| <i>Year</i> | <i>Global policy framework</i> | <i>Milestones for land management and managing spatial information with global impact</i> |
|-------------|---|--|
| 1989 | Fall of Berlin wall Collapse of socialist systems | New challenge of land policy and property reform in countries in transition |
| 1992 | Rio Declaration, UNCED Agenda 21 | Land management procedures and tools for national and local Agenda 21 |
| 1995 | UN Earth summit on social development UN World women's conference | |
| 1996 | UN Habitat II Istanbul UN FAO, World Food Summit | UN ECE : Land administration guidelines with reference to countries in transition |
| 1998 | UN convention on climate change (Kyoto protocol) | GTZ guiding principles: Land tenure in development cooperation |
| 1999 | UNISPACE conference III, Vienna declaration on space and human development | UN – FIG Bathurst Declaration on land administration for sustainable development. UN-Habitat : Secure urban tenure campaign |
| 2000 | Declaration of the eight UN-Millennium Development Goals, targeted at 2015 | Declaration of related land tenure principles in Urban 21 and Rural 21 |
| 2001 | Global consequences of Sept. 11, 2001 on development cooperation in terms of redefining security policy, conflict prevention and reconstruction | UNISPACE III Action committee COPUOS on GNSS, natural resource management, environmental monitoring, disaster management and satellite communication. UN-Habitat/FIG conference on land administration in post-conflict countries |
| 2002 | World summit on sustainable development WSSD, Johannesburg | WB and partners: Regional land policy conferences in Africa, Eastern Europe, Asia and Latin-America |

| | | |
|------|---|---|
| 2003 | UN-Convention against corruption (effective since Dec. 2005) | WB: land policy for growth and poverty reduction, global report FIG conference urban-rural interrelationship |
| 2004 | | EU guidelines on land policy FIG conference on secure land tenure Africa |
| 2005 | OECD-DAC: Paris declaration on aid effectiveness World conference on disaster reduction, Japan World Summit on the Information Society Tunis G8 Gleneagles declaration on debt cancellation | FIG conference on secure land tenure Asia GSDI 8 – FIG: Global spatial data infrastructure |
| 2006 | World Urban Forum III, Vancouver FAO: International conference on agrarian reform, Brazil | FAO normative land tenure programme FIG congress Munich: Shaping the change |

2. GOOD GOVERNANCE IN DEVELOPMENT COOPERATION

2.1 New Awareness and Trends

Governance nowadays occupies a central stage in the development discourse but is also considered as crucial element to be incorporated in the development strategy. The emphasis given to different aspects of sound governance will vary in different settings because societies value outcomes differently. For example, in more utilitarian Western cultures, great store may be placed on efficiency. Elsewhere, a desire for harmony and consensus may override this value. Similarly, some cultures will give primacy to individual rights whereas others will place more stress on communal obligations. Some will accord priority to the 'objective' application of the rule of law, while others may accord more weight to tradition and clan in decisions.

The issue of governance and corruption changed considerably over the last 20 years. It used to be taken for granted and certain bribes were even tax deductible. However, the macroeconomic and political environment has also changed considerably. The concept of bad governance and corruption has likewise changed from being 'unmentionable' in development assistance to be one of the keywords used to describe the obstacles to good governance and development. Bad governance and corruption is now perceived a 'global public bad'.

Good governance in the context of development cooperation means favourable political framework conditions for social, ecological and market-oriented economic development as well as responsible use of political power and public resources by the state.

The OECD Declaration endorsed in Paris in 2005 is an international agreement promoting a model of international partnership that improves transparency and accountability on the use of development resources (www.oecd.org). It recognises that for aid to become truly effective, stronger, more balanced and harmonised, accountability mechanisms are required at different levels.

Too many resources and too much time have been wasted because of ego-centric donor and institutional behaviour and as well local partners playing one donor off another. The time has come for donors to harmonise their approaches, to link their recourses and strategies for joint action at global and partner country level in the management of land and the management of spatial information and to considerably improve the effectiveness of international cooperation. The time has also come for partner countries to apply and enforce good governance principles and capacities as fundamental cross-cutting issues under effective leadership and partnership models. The way forward might include respecting the ownership and national leadership principles and generate a new commitment culture between donors and country institutions, redesigning strategies from donor focus to partner country focus, supporting the development of a country-wide development strategy in the land sector and the national spatial data infrastructure and assessing new options for co-financing, parallel financing or basket funding for national programmes

2.2 Consequences of Weak Governance and Corruption

Weak governance and corruption are damaging primarily because it distorts the decision-making process of public officials entrusted to act in the people's best interest. Resources are directed to non-productive uses and political repression can ensue as elites consolidate their gains. Weak governance and corruption undermines basic human rights: inequality increases, services are withheld and too often people die. The poor bear the brunt of corruption's detrimental effects.

In the following part, specific consequences of weak governance and corruption on various sectors and issues are explored; on economic development, poverty alleviation and on development cooperation.

Consequences for economic development: One of the things that we definitely know from research is that corruption impedes economic development, mainly due to the fact that corruption leads to a waste of public resources, reduces foreign investments, increases capital flights, creates less efficient markets and results in an adverse allocation of state revenues.

Several studies describe corrupt countries as unable to attract foreign direct investment (FDI) because property rights are not secure and contracts not protected. Private firms hesitate to enter a market when the costs involved are difficult to calculate. The demand for bribes is often unpredictable and corruption cannot merely be considered as an additional tax. This uncertainty is intensified when corruption increases the number of bureaucratic rules and reduces the consistency with which they are applied. If this is combined with organised crime or a judicial system unable to protect property rights and enforce business contracts, a resulting lack of enthusiasm by foreign firms should not come as a surprise.

The World Bank Group has developed a data base and information service called "Doing Business" for economy ranking covering 155 countries.

Doing business records for example the full sequence of procedures necessary when a business purchases land and a building to transfer the property title from the seller to the buyer. The table below shows the main indicators, which include:

Number of procedures legally required to register property, time spent in completing the procedures, and the costs, such as fees, transfer taxes, stamp duties, and any other payment to the property registry, notaries, land administration services or lawyers.

| Some examples from 155 country survey | Number of procedures to register property | Time spent (days) | Cost (% of parcel value) |
|---------------------------------------|---|-------------------|--------------------------|
| Bangladesh | 11 | 363 | 11,0 |
| Lithuania | 3 | 3 | 0,8 |
| Paraguay | 7 | 48 | 2,0 |

Tab. 2: Country examples from World Bank database “Doing Business”

A land transfer process that takes several months and involves more than 5 steps is an indicator of problems. The delay might be contrived and create incentives to pay up while each step is a potential squeeze point for extortion.

Consequences for the poor: Some economists argue that corruption is efficient since it can “oil the wheels of bureaucracy” by circumventing inflexible bureaucratic procedures; that it can remove government rigidities, which hinder investment and distort economic decision-making in a way that is detrimental to growth. Bribery can be seen as efficient to the extent that it minimizes waiting costs for those who value the most. Bribes can also be used to supplement the income of low-paid civil servants in land administration.

However, most researchers and observers hold that corruption, as an aggregated phenomenon, tends to benefit power holders more than the poor, and that poor people actually suffer the consequences of corruption to a disproportionate extent. Weak governance and corruption have both direct and indirect impacts on poverty. The poor are dependent on common property arrangements and informal settlements for their livelihood. But common property and informal settlements are very much under pressure from corrupt land management practices. The poor can not afford defending their rights in court in an environment of rule of power and corruption. Weak governance and corruption also contributes directly to poverty by depriving the poor of public services, social and legal rights and by distorting development priorities.

Consequences for development cooperation: Weak governance and corruption undermines the impact of international assistance to developing countries. It may also decrease development aid’s legitimacy in the eyes of donors and the public in donor countries. It is important to realise that corruption endangers aid at all stages of development cooperation; from project design, to procurement and finally implementation.

Development aid is more exposed to corruption and thus less effective in a weak governance environment where funds are likely to leak due to corruption. In post-conflict countries for example aid is the most important source of cash for the purchase of public commodities and services. Paradoxically, increasing the flow of aid can in certain cases increase the levels and

negative consequences of corruption. In post-conflict situations weak governance and corruption might double or triple the time normally required for reconstruction and recovery.

2.3 Measuring Governance and Corruption

Obviously it is a challenge to measure a phenomenon that is both vague and concealed. There are nevertheless several serious efforts to assess the level of weak governance and corruption across countries. These assessments are mainly based on perceptions, ranking countries according to their estimated level of governance. The construction of governance indices is a very valuable contribution to the debate and for understanding the phenomenon. There are several important attempts at measuring governance and corruption across countries:

- The World Bank Institute (WBI) identified and quantified governance indicators for 209 countries and six dimensions: Voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, control of corruption, www.worldbank.org/wbi/governance/govdata
- The Corruption Perception Index (CPI) has been developed by Transparency International and is updated on a yearly base. www.transparency.org/policy_and_research/surveys_indices/cpi
- The Bertelsmann Foundation Transformation index BTI is measuring the status of governance in 119 countries and visualising as an interactive global map www.bertelsmann-transformation-index.de/atlas
- Measuring governance has traditionally been an elusive challenge, but one that is crucial in understanding the link between governance and development, and for enabling countries to monitor their performance.

2.4 Major International Players and Actors

The UN Convention against Corruption (UNCAC) adopted in 2003 by the General Assembly of the United Nations, is the most comprehensive global effort to address corruption thus far. It officially went into force in December 2005. UNCAC's wide-ranging provisions include measures on prevention, criminalisation, international cooperation, asset recovery, and technical assistance. It covers both public and private sector corruption and is open to both state parties and international economic organizations.

The World Bank Institute (WBI) divided the concept of good governance into six categories aimed at capturing how governments are selected, monitored, and replaced; a government's capacity to formulate and implement sound policies and the respect of citizens and the state for the institutions that govern them. WBI has operationalized governance, by unbundling its definition into components that can be measured and analyzed in concrete fashion.

Transparency International (TI) is the largest and most influential international non-governmental organization devoted to combating corruption, and it brings together civil society, business and governments in a powerful global coalition..

The U4 Utstein Anti-Corruption Resource Centre is a web based resource centre established by the Utstein Group to strengthen their partnership for international development. In 1999 the ministers of international development from Germany, the Netherlands, Norway and the United Kingdom met at Utstein Abbey in Norway, to form a partnership for concerted action to reduce the damaging effects of bad governance and corruption. In 2003, Sweden and Canada also joined the Utstein Group of ministers.

UN-HABITAT launched the Global Campaign on Urban Governance in 1999 to support the implementation of the Habitat Agenda and contribute to the elimination of poverty through improved urban governance. Urban good governance is characterized by sustainability, transparency, and accountability, civic engagement and citizenship and security and that these norms are interdependent and mutually reinforcing.

FAO SDAA's normative programme is called *sustainable and affordable systems, including security of tenure, for access to land and natural resources*. The four main areas that will be focused are (1) good governance in land tenure and administration, (2) low cost land tenure security, (3) post emergency land institutions and (4) land information for the poor. Norms for good governance in land tenure and administration are currently being developed and widespread at global level.

G8 SUMMIT in 2005 agreed to link decisions on debt cancellation for developing countries to real good governance reform processes.

3. GOVERNANCE PROBLEMS IN THE LAND SECTOR

National governments and the international community invest heavily in improving land administration systems in the developing world aiming to improve the security of tenure that will have a positive impact on sustainable development, poverty reduction and to the social status of the poor. While the technical solutions have become accessible, affordable and appropriate, the problems caused by widespread corruption, the general lack of law enforcement and order, and the poor public sector management have become recognised as the bottlenecks hindering change. Apart from public, statutory, land administration systems also informal, communal and customary tenure arrangements and administration suffer from governance problems. There is a notable absence of quantifiable data and knowledge on the significance, issues, types, impact and potential solutions to problems related to the governance in land administration systems; perhaps given the associated sensitivities. FAO and its partners will fill this gap in 2006 – 2009 through a series of activities and outputs.

The concept of bad governance and corruption in the land sector has changed from being 'unmentionable' in development assistance to be one key issues to describe the obstacles to social and economic development. Governance problems in land tenure and land administration are common to a certain extent in all countries.

In advanced countries land rights are secure, institutions strong and officials are generally held accountable, but there are strong connections between wealth and power and influential lobbies are intervening in law and rule making, government contracting and zoning/building regulations.

In developing countries there is often a lack of clarity about land rights and use rights, legal inconsistency, weak law enforcement, obsolete institutions and limited access by the poor.

3.1 Wide Range from Bribery to the Violation of Human Rights

Weak governance and corruption in the land sector reflects the range of problems seen throughout societies. There is bribery as well as political corruption in capture economies, in many cases there is no enforcement of administrative laws and land legislation and in post conflict situations we are confronted with human rights violations through forced evictions of people from their land as well as impunity practices of government officials.

Typically in countries with political corruption and in post-conflict countries minimised law enforcement and impunity practices are not just a capacity problem but are quite often essential element of a “bad governance strategy” for capturing resources from people and the state in a highly efficient and nearly undisturbed manner. Fast liberalization of the economic sector and land market without strong and accountable institutions for securing land rights and institutions for enforcing contracts often turns into choices for a powerful few and insecurity and deprivation for poor.

3.2 Facing Realities

Example (1) on human right violation: Global survey on forced evictions, Centre for Housing Rights and Evictions, COHRE

The forced evictions covered in the Global Survey occur largely as a result of development projects, discrimination, urban redevelopment schemes, delineation of national parks, land alienation in both rural and urban areas and in situations of armed conflict and ethnic cleansing, or in their aftermath.

| <i>Region</i> | <i>Persons</i> |
|-------------------------------------|------------------|
| Africa | 4 086 971 |
| The Americas | 692 390 |
| Asia, the Pacific & the Middle East | 1 787 097 |
| Europe | 172 429 |
| Total Evicted | 6 738 887 |

Tab. 3: Estimated Number of Reported Forced Evictions by Region: 2001-2002

The Global Survey examines cases involving nearly seven million persons in 60 countries who were forcibly evicted from their land in 2001-2002, and more than six million others in 38 countries under threat of forced eviction at the time of compiling this report.

Example (2) on human right violation: Human Rights Watch, Kenya's unfinished democracy, (2002)

The irregular and illegal privatization of public land in rural and urban areas, politically connected individuals, including government ministers, other politicians, senior civil servants, and their relatives, have appropriated great tracts of land that were once used as pastures, villages, playgrounds and other public spaces for generations of poor people. Land grabbing has deprived thousands of agrarian people of their livelihoods, and thousands of squatters of shelter. Throughout his tenure as president, Moi has consolidated his power through a combination of patronage and violence, and land has been used as an instrument of both. Increasingly, the government has used land as a source of patronage instead.

Land disputes have also been an important means of instigating ethnic conflict in the run-up to all three multiparty elections

Example (3) on bribery in Thailand: The WBI governance team (WBI diagnostic surveys) has been involved in several countries. Country links and survey reports are accessible. The office where visitors are most likely to be asked for a bribe is the land office. 12 percent of all who visited a land office in the past year had been asked for a bribe on at least one occasion. Other offices where bribe solicitation is common are the customs (10 percent of visitors), police (9 percent) and the driving/auto licence issuers (8 percent). In Bangkok the highest frequency is at customs. In the provincial urban and rural areas, it is at the land office.

Example (4) on lack of rule of law and human rights violation Cambodia: Achievements of the Office of the UNHCR, Report Cambodia 2003.

Land continues to be a major source of conflict and of human rights violations in Cambodia, where over 80 per cent of the population is dependent upon agriculture for their livelihood. The UN Special Representative continues to question the Government's policy of granting large-scale agricultural, forestry and other concessions to private companies, in particular their adverse effects on the livelihood based on common property rights and fundamental human rights of affected communities.

Enforcement of the law also remains a continuing problem. Individuals in positions of power and State authority, particularly in law enforcement and the armed forces are rarely held accountable for their actions, even when serious crimes are involved, and corruption continues unchecked.

Example (5) on violation of rule of law in disaster management: Tsunami Relief Operations ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and TI Curbing Corruption in Tsunami Relief Operation

In the immediacy of disaster, many of the systems normally used to encourage accountability and thus reduce the opportunities for corruption break down. Disasters often exacerbate

existing disparities in wealth and power, thus increasing the likelihood of corruption. Local officials are killed, offices are destroyed, records— bank records, land titles, work permits— are lost. In post-tsunami Sri Lanka for example, the imperative to seek a quick technical solution to the interface of coastal hazard and human vulnerability has led to the imposition of a 100– to 200– meter deep coastal no-construction zone, with an overall proposal for a kilometre (km)-deep development zone along the 260 km coastal belt around the island. A new act passed by the Parliament has given the 100–200 m setback provision the force of law. It will delay the resettlement of the displaced people and cause them to lose the asset value of their housing and land properties. There are high risks for eviction of the poor (especially widows) but at the same time exemptions made for building permits linked with capital intensive tourist projects.

3.3 Critical Areas where new Innovative Approaches are Required

Discussions on weak governance and corruption in land tenure and administration are generally emphasizing bribery (petty corruption) much more than political corruption (systemic corruption), violation of human rights and rule of law. The consequences of bribery in land administration are relatively easy to identify. The analysis of the consequences of systemic corruption and capture states practices in land tenure and administration is highly complex and generally underestimated.

Common property rights still form the tenure base for about 30 % of the population worldwide. Common property rights are under increasing pressure and uncertainty, especially in Africa. Land administration systems generally are not inclusive in terms of securing “all” land tenure rights and have done little to care for common property rights, possession/occupation rights and indigenous land rights in a systematic and rule-based manner. Land administration projects often disregard the need for securing and regulating common property rights. The positive example of the Ghana Land Administration project can be regarded as an exception to the rule.

Millions of women around the world suffer abuses of their equal rights to own, inherit, manage and dispose their land. Across the world demands for women’s rights to land have frequently met with formidable resistance because they challenge patriarchal control. Changing laws is important, but changing social norms and awareness in land administration institutions is even more so. Information is indeed power, but experience suggests that ultimately there is no substitute for political struggle in the fiercely contested arena of women’s land rights. The staggering number of HIV/AIDS affected (especially in Africa) is resulting in millions more women becoming widows at a younger age, often being excluded from inheriting the husbands land and evicted from their land and shelter.

Violation of good governance principles is most common in managing public land. Large scale allocation of state land to agri-business or mining sector but ignoring existing common property rights, indigenous land rights and local resource rights on public land is reported from many countries through human right organisations. Public officials (including government ministers and officials in land administration) in a number of partner countries

privately sell state land or transfer it for their own use. A society's state property (generally between 40 and 70 % of all land) is one of its most powerful assets for economic growth and for social, environmental and political development but in reality is often wasted. This suggests that government develop as soon as possible its state land policy. The impact of illicit misappropriation of state land on development processes and poverty reduction is enormous. It has both direct and indirect impact on security of land and resource tenure, access to land and revenue generation. Too often state land management has not been included in land administration projects for political and efficiency reasons (for example Thailand).

The approach to state building and good governance in post-conflict countries is often ineffective. "Quick results" through massive influx of foreign aid raises unrealistic expectations that are difficult to fulfil. Implementing projects in such an environment takes much more than money, most importantly it needs competent institutions, people's participation, an enabling environment and competent international and local advisors with a new profile for managing the desired change. The task is huge and generally totally underestimated in terms of the required human and financial resources, the time frame and the risks involved. The experiences in land tenure recovery projects for example in Kosovo, Bosnia, Cambodia, East Timor, Palestine, Angola, Guatemala or Afghanistan clearly indicates the challenge, the scope of the task and the enormous land-related governance problems associated. There are no "best practices" and only few "good practices" or "good enough" practices if we realistically assess the bigger governance picture. Typically countries in conflict and post-conflict are governed by rule of power and only to a low extent by the rule of law for quite some years. International experts and national professionals are confronted with a huge task that requires specific professional knowledge in terms of building an enabling framework, tackle critical governance issues, institutional re-engineering, situation-specific sequencing and prioritising and the design of a long term programme in the land sector. Conventional professional knowledge and concepts lead to limited and quite often inefficient priority setting and sequencing of action and even sometimes to counterproductive measures. The international community is short of governance responsive "post-conflict" land experts and can not yet sufficiently meet the challenge on the ground.

4. TOWARDS A GOOD GOVERNANCE STRATEGY IN LAND TENURE AND LAND ADMINISTRATION

Good governance and anti- corruption measures in land tenure and administration can take a variety of forms, and their adequacy will depend on the prevalence of the respective types of governance and corruption and on the political and institutional environment of the country in question. This is particularly important where institutional capacity is likely to be weak and where consequently the timing, sequencing and design of reform is crucial to ensure the feasibility and sustainability of the reform process. In many countries the design and implementation of good governance and anti-corruption strategies is a politically sensitive issue, with powerful interests standing to lose out in the process and with results manifesting themselves in the medium to long, rather than in the short term. Governance capacity in the

land sector is therefore best build by a fusion of democratic, technocratic and legal elements, both normatively and conceptionally.

The need for re-engineering land administration systems is still obvious for facilitating the flow and management of information relating to land and property and “all” associated rights, easy access to information for the public, dedicated agencies with clear rules and regulations, enhancing the management capacities, adequate delegation of power to decentralised services, transparent rules for private / public partnership, efficient service functions for local government, the public, the judiciary (especially for just dispute resolution) and sustained education and capacity building.

Another area is the need to curb high levels of administrative discretion which, coupled with a lack of clear rules and regulations, is conducive to the persistence or facilitation of phenomena like land capture, the corrupt allocation and management of public land and land allocation more generally. Most of the causes and conditions contributing to weak governance and corruption in these areas are best and most sustainably addressed by comprehensive institutional reform and capacity-building. However, the extent to which public officials dispose of discretionary powers can be substantially reduced by the establishment or strengthening of a specialised agency whose sole aim is the administration land (private land, public land, and common property arrangements) in a transparent, inclusive and effective fashion.

Many problems related to weak governance and corruption in the land sector are rooted in insufficient or incoherent and improperly enforced legal provisions, such as the lack of a comprehensive and unambiguous regulatory framework governing security of land tenure, access to and use of land (in particular in national contexts where statutory and customary laws co-exist), confusion over existing rules (in particular in transition economies where laws are subject to frequent change) and failure to enact those rules and regulations whose presence is likely to reduce corrupt opportunities. The result is an institutional environment in which uncertainty and confusion facilitate the exercise of corrupt practices and where the risk of detection is reduced due to the insufficient nature of law enforcement agencies.

While regulations relating to issues like rights of ownership and land use are likely to be different depending on the national context, three areas often missing from the legal dispositions - and complementing efforts to streamline legal provisions - are access to information provisions, conflict of interest legislation and whistleblower protection schemes. Access to information provisions is the basic prerequisites for citizens to hold public officials accountable for their actions. Information is central to effective civil society participation and monitoring of government activities. Free access to information enables citizens, the media and law-enforcement agencies to uncover cases of corruption and maladministration. More importantly, however, the transparency herewith achieved acts as a deterrent to bad governance as the risk of detection of illicit or otherwise questionable practices, like for example the preferential treatment of government employees and their cronies in the distribution of land, increases. Freedom of information is thus an essential element of sustainable corruption control in the land sector.

Conflicts of interest arise when the private interests of a public official clash or coincide with the public interest and potentially inhibit the official's objectivity in the exercise of his or her tasks and duties. As such, conflicts of interest rules explicitly demand the establishment of openness and transparency measures designed to limit corrupt opportunities, such as the declaration of interests and the interdiction of parallel activity of public servants in the political and business sectors, which is of particular relevance in areas such as the illegal use of land and concessions for the use of public land.

Whistleblower protection schemes i.e. the development of procedures to facilitate the reporting of actions perceived to be against the standards set in, for example, a code of conduct are important in that they reflect a commitment to openness and transparency, and a willingness to take action against those in breach of the rules.

Weak institutional capacity is an impediment to good governance and can seriously endanger the effective implementation of national policies and consequently of good governance strategies. Capacity-building aims at enabling organisations to handle increasingly complex tasks, such as the implementation of large-scale redistributive land reforms or reforms of land administration systems, by equipping them with the necessary technical and human know-how as well as with adequate resources.

Measures typically include agency-specific codes of conduct and awareness building. Further measures include the strengthening of internal accountability mechanisms, through, for example, the establishment of clear reporting lines and responsibilities, internal and external audits, as well as through the elimination or simplification of arbitrary or inefficient regulations. Finally, watchdog institutions like anti-corruption agencies, ombudsman, and supreme audit institutions can - if implemented properly - greatly contribute to an increase in overall public sector accountability.

Civil society is one of the most important actors in the fight for good governance and against corruption, and has great potential to bring forward a government's reform agenda. Public awareness campaigns (of the costs of corruption, of the benefits of anti-corruption reform, etc), anti-corruption education and training of citizens in the exercise of their rights are crucial in bringing about lasting change in the way business and government are conducted. One of the most powerful tools an empowered civil society can use is the monitoring of state institutions or state activity through a citizen card system or customer surveys.

Model codes of conduct have been developed by the relevant international associations (for example FIG Pub. No 17) and could be adapted to national requirements, especially for:

- associations of licensed surveyors
- associations of real estate agents
- bar associations
- associations for the protection of land owners rights

The active involvement of the private sector in anti-corruption programmes can positively contribute to reducing corruption in the land sector. Examples on the national and firm level include adherence by companies to no-bribery, the issue and enforcement of company codes of conduct and corporate guidelines, as well as the establishment of means to encourage compliance by employees to company policies, like confidential help lines, whistleblower protection and training.

On the international level, the subscription by firms to voluntary codes of conduct like the TI Business Principles for Countering Bribery or to sector-specific initiatives like the Publish What You Pay campaign can complement the need for compliance to the requirements of the OECD Convention on Combating Bribery and the accompanying national implementing legislation.

FIG has an important role to play in enhancing the tool box for good governance in land tenure and administration, in specific knowledge management, in building land-related good governance capacities and in creating awareness on enabling impacts and positive consequences of good governance for sustainable land administration systems.

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BIOGRAPHICAL NOTES

Academic experience: Land surveyor MSc., University of Karlsruhe

Practical experience in Germany: State of Baden-Wuerttemberg, Government agency for land development and land consolidation

International experience: 25 years in development cooperation for GTZ and other organizations as land policy / land reform / land management advisor: Short term and long term assignments in Southern and South Eastern Europe, Africa, Asia and Latin America

CONTACTS

Willi Zimmermann
International land policy advisor
Am Mühlbach 5
79312 Emmendingen
GERMANY
Email: wita21@gmx.net