

Is *Good Governance* in Land Administration Measurable and Comparable?

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Ist *Good Governance* in der Landadministration messbar und vergleichbar?

1 Introduction

The economic performance of a society is highly correlated with the efficient use of available human and natural resources. Normally, decisions on the use of these resources are taken by public authorities. The system of decision-making and implementation of decisions is called governance. Good governance defines the ideal status (UN-ESCAP, 2010) of using sparse resources efficiently. Good governance is necessary to avoid poverty and to enable a sustainable environment. According to the United Nations, the definition of good governance in the field of land administration includes having a formal system of registration for land and property rights. Such a system has to secure ownership of land, investments and other private and pub-

lic interests in real estate (UNITED NATIONS, 2005). The performance of land administration systems was identified early as an important issue. BENZENBERG discussed parameters of performance, quality, and training and concluded that first of all the implementation of the cadastre has to be completed (BENZENBERG, 1824).

Good governance as a goal for public administration has an impact on organisational processes and on institutional set-ups. In many European countries new public management and impact-oriented approaches were introduced to improve the quality of governance. This led to conceptual changes towards efficient, customer- and business-orientated processes, performance monitoring, and the installation of modern information and communication technology (ICT).

Zusammenfassung

Good Governance ist ein wesentliches Ziel in der öffentlichen Verwaltung. Dies führt automatisch zu folgenden Fragestellungen: Wie ist *Good Governance* definiert und wie kann *Good Governance* gemessen und quantifiziert werden? Der vorliegende Artikel versucht Antworten auf diese Fragen zu geben. Allerdings beschränkt sich die Diskussion auf einen speziellen Bereich der Verwaltung, die Landadministration. Nach einer Beschreibung der Begriffe *Landadministration* und *Good Governance* werden Parameter und Indikatoren aufgezeigt, mit welchen derzeit die Bewertung für den Grad der *Good Governance* durchgeführt werden kann. Abschließend wird die Machbarkeit des Vergleichs von *Good Governance* auf nationaler und globaler Ebene diskutiert – anhand der vom Land Governance Assessment Framework beschriebenen Parameter.

Schlagworte: Good Governance, Landadministration, Kataster, Grundbuch.

Summary

Good governance is a fundamental goal in public administration. This raises the following questions: How to define *good governance* and how to measure and quantify the level of *good governance*?

This paper tries to address these questions. However, the discussion is focused on a specific part of public administration, the administration of land. After describing the terms *land administration* and *good governance* there are parameters and indicators presented which are used to measure the level of *good governance*. Finally, the feasibility to compare *good governance* on national and global level is discussed – using the indicators described in the Land Governance Assessment Framework.

Key words: Good Governance, land administration, cadastre, land register.

An important question connected to this topic is how to measure, how to quantify and/or how to compare good governance (between countries). These activities are required to control and to monitor public administration, especially when introducing new managing systems.

Although the necessity for good governance in land administration is clearly understood, the fund of proven strategies, of detailed guidelines, and of proper procedures to achieve good governance is still limited: On the one hand the existing land administration systems are not comparable due to their different historic developments and their various legal and technical implementations. On the other hand the quality of governance is defined by interacting and sometimes mutually contradictory principles. Thus the weighting of specific principles and with it the definition of good governance is a subjective process. However, it should be possible to identify general guidelines to improve governance for countries with similar economic standards, comparable legal systems, and similar types of land administration (FAO, 2007).

2 Land Administration

Land administration is defined as the operational implementation of land management and also as “*the processes of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies*” (UNITED NATIONS, 1996). “*Land management is the process whereby the resources of land are put to good effect*” (DALE and MCLAUGHLIN, 1988).

Land administration consists of three interrelated parts: (1) the legal framework, (2) the data, and (3) the processes to access and change these data. “*The legal framework protects private land rights and sets out the role of the state, the terms under which compulsory purchase can be carried out and the means by which conflicts can be resolved*” (FAO, 2007). The data can be grouped into physical data describing the physical properties of the land or the real property, legal data documenting the rights and duties to the real property, and finally data about the stakeholders.

Land administration systems can be implemented in different approaches, as shown by BOGAERTS and ZEVENBERGEN (2001). A systematic classification does not yet exist, as decision criteria are not always independent from each other. However, it is a fact that there are legislative, institutional, financial, procedural, managerial, and service oriented issues,

which have to be considered during the design and implementation phase of land administration systems.

Land administration systems are typically grouped into registration of deeds or registration of title. In the systems of *registration of deeds* the notary/lawyer is responsible for the legality of the document and related rights. The registration office only processes the documents without checking the legality. In systems of *registration of title* the register itself becomes the authoritative record of the legal interests and takes the place of the document. This avoids extensive examination of prior deeds during a purchase of land. Thus the data stored in the two systems are fundamentally different. Although in practice there is a gradual transition between these systems (ZEVENBERGEN, 2002), some effects are still visible, e.g. in the protection of third party rights.

The type of the geographical reference and geometric representation of the administration units is a more technical question. Possible solutions range from a simple set of coordinates defining the centre point of a piece of land to a precise definition of boundary points within a global reference system. Verbal or graphical descriptions of boundaries or the use of local coordinate systems are solutions between these extremes (NAVRATIL, 2011). General boundaries define the boundary out in the field by visible barriers and fixed boundaries use boundary markers like stones or metal marks. The definition of fixed boundaries may then depend on coordinates of – visible or invisible – boundary points in a national reference frame.

Traditionally land administration systems are modelling the data within a planar coordinate system. However, intensified use of space in cities requires extended functionalities. Constructions are piled on top of each other and lead to situations where different objects like railways, public shopping areas, and private apartments are stacked on the same piece of land. This led to 3D systems for land administration (VAN OOSTEROM et al., 2011).

Real property rights are always applicable to a certain limited space – usually a parcel (compare PERMANENT COMMITTEE ON CADASTRE, 2007). Additional aspects are real property rights with temporal limitation including time sharing or periodicity like grazing rights frequently required by nomadic societies.

Public-right restrictions of landownership are an additional category of real property rights to be considered. Public-right restrictions define the limits of power that the right of property provides to its holder because property rights do not exist in the abstract but are only defined within a spe-

cific society, which itself is defined by legal regulations (compare FREYFOGLE, 2007).

3 Good Governance

Good governance is well-known as an important goal of governments to achieve prosperity for the country. But it is more difficult to define it exactly and to describe its characteristics. Criteria as introduced in the last section help to classify systems, but they cannot be used to assess the level of quality of land administration issues. Quantifiable indicators are necessary for such an assessment. However, the challenge is to find proper indicators for monitoring the quality of governance in specific countries and for comparing the level of good governance between countries.

“Governance is the process of decision-making and the process by which decisions are implemented” (UNESCAP, 2010) or “governance is the exercising of authority or control” (BELL, 2007).

Good governance is the result of a successful implementation, a proper arrangement, and an optimal interaction of policies, laws and institutions by guaranteeing the following principles (TÖRHÖNEN and GROVER, 2006): transparency and impartiality, legal security and rule of law, predictability and traceability, effectiveness and efficiency, equity and fairness, integrity and accountability, consensus orientation, civic engagement and public participation.

The provision of evidence for good governance can be achieved by indicators. An overview of the scientific work contributed by several public, private and non-governmental institutions to identify proper indicators for good governance is given by ZIMMERMANN (2006):

- The World Bank Institute (WBI) identified and quantified governance indicators for more than 200 countries, describing voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, control of corruption.
- The Bertelsmann Foundation Transformation Index is quantifying the status of governance in approx. 120 countries and visualising it on an interactive global map.
- TRANSPARENCY INTERNATIONAL (2009) publishes the Corruption Perception Index (CPI) of 180 countries and updates these data every year.

Additional performance indicators for good governance are publicly accessible:

- The World Bank ranks economies on their ease of doing business based on 10 parameters (<http://www.doingbusiness.org/EconomyRankings>). These performance figures are yearly updated and the change of rankings is documented. There are criticisms about some simplifications in measuring economic development (KERN, 2009).

Indicators and the comparison of indicators with others (benchmarking) also enables an improvement of governance by

- helping to identify strengths and weaknesses of the characteristics of governance outlined above, and
- enabling changes, innovations and increased performance needed to deliver modern civil services.

4 Good Governance in Land Administration

The terms *good governance* and *land administration* are defined and described in Chapters 2 and 3. The pending questions are: (1) How is good governance in the field of land administration defined? (2) Is there a possibility to quantify good governance for land administration systems by using indicators which describe the principles of good governance outlined above? (3) Is it possible to monitor the development of good governance within a country? (4) Can levels of good governance be compared between different countries? The following subchapters approach these questions.

4.1 Definition of Good Governance in Land Administration

According to the definition, governance in land administration can be defined as the bundle of all processes of decision-making and of all implementations of decisions regarding land. Governance in land administration covers a very wide spectrum, ranging from land tenure, land use, land taxation, and land market, to land development. Governance in land administration has a political, a legal, a social, a technical, an ecological, and an economical dimension covering the following elements: land policy, land laws, and all involved institutions.

Many investigations (e.g. FAO, 2007; BELL, 2007; ZAKOUT et al., 2007) have been done to define good governance. The quality of governance in land administration can be specified in

- a target-orientated way by comparing predefined objectives in land administration with the achieved outcomes, and/or
- a process-orientated way by analysing the quality of the processes and methods used for governance in land administration.

The predefined objectives or processes/methods can be defined in different levels of detail. They can be defined in a very high level of abstraction, e.g. by defining aims like the achievement of human rights in respect of freedom of property or equity in land distribution. It can also be done in a very concrete and detailed manner, e.g. by analysing the processes. This can address the number of steps required for registering a land transfer, the time necessary, or the costs.

In 2007, FAO published the following criteria and features that describe good governance in land administration (FAO, 2007):

- (i) The distribution of land rights is balanced between all citizens. There is no discrimination on basis of race, gender, or religion.
- (ii) The national policy framework on land tenure and land rights issues is appropriate and the system for recording and communicating land rights is legally based and accessible.
- (iii) Land agencies serve all citizens.
- (iv) The legitimacy of land agencies and land administrators is recognized by citizens.
- (v) The processes for public land management, disposal, and privatization, as well as for expropriation or eviction for public purposes are transparent, fair, and accountable.
- (vi) The system for property valuation and taxation is transparent, equitable, and accountable.
- (vii) Services of land agencies fulfil the needs of customers and they are provided efficiently, effectively, and competently as well as with integrity, transparency, and accountability.
- (viii) The results of the services of land agencies are consistent, predictable, and impartial.

The list covers a great range of good governance elements, but it does not claim completeness. Good governance can be defined on a global level, on a regional level, or on a local level. Therefore also the objectives, criteria, and features are varying. Additionally, the definition and perception of good governance is a subject of change and therefore depends on the spirit of age (e.g., the degree of involvement

of private companies – Private-Public-Partnership; the consideration of gender issues in land aspects, the relevance of ecological matters in land management).

4.2 Measurement of Good Governance in Land Administration

The measurement of governance in land administration can be characterized by (TÖRHÖNEN and GROVER, 2006)

- qualitative analysis (relationship between results of governance and defined aims)
- quantitative measures (use of indices and quantitative analysis).

Indicators allow the comparison of services, products, processes, and methods between similar organisations. Indicators about good governance in land administration have to provide maximum evidence by minimising the resources for their acquisition and analysis. Indicators also allow to outline the trends of performance changes within a country for a time period (FAO, 2007).

The acquisition of indicators has gained importance in land administration institutions. Indices or measures are used to quantify (FAO, 2007; MANSBERGER et al., 2009)

- the degree of development of the political and legal framework,
- the performance of processes provided by the land agencies,
- the quality of services,
- the quality of the results of services (products),
- the level of satisfaction of customers, and
- the level of civil engagement and public participation.

Proper indicators have to be accessed at the right moment, in useful time intervals, with an appropriate quality, with high significance, and finally with low resource input for data capturing. Based on the published criteria and features of FAO (see Chapter 4.1) some difficulties and challenges for the assessment of good governance are discussed in the following paragraphs.

- (i) *The distribution of land rights is balanced between all citizens. There is no discrimination on basis of race, gender, or religion.*

A countrywide land administration system documents all persons and their land rights. This allows nationwide statistics on the distribution of land rights. Discrimination of specific groups can be easily outlined.

There may be a mismatch between the legal basics and regional tradition, e.g., in countries of the south often land rights are defined gender-neutral, but due to traditional law, women are often discriminated (ENGLERT and MANSBERGER, 2008).

(ii) *The national policy framework on land tenure and land rights issues is appropriate and the system for recording and communicating land rights are legally based and accessible.* The existence of an appropriate policy framework can be verified. Problems can appear in the executive power to implement these ideas enabled by the wide spectrum of possible interpretations. This complicates the comparison of quality of land policy between different countries. Even more difficult is the assessment of accessibility of the system for the local people, as social-economic issues – like educational deficits (like analphabetism, ENGLERT and MANSBERGER, 2008), travel expenses, or the availability of required technology (e.g. internet) – may bias the results.

(iii) *Land agencies serve all citizens.*

(iv) *The legitimacy of land agencies and land administrators are recognized by citizens.*

These issues can hardly be assessed, as it is difficult to find proper performance indicators to measure the percentage of citizens supported by the system. Problems can rise by the definition of representative citizens, by identifying the degree of support, and by quantifying the degree of legitimacy. A measure for the recognition could be the level of civil engagement and public participation. But how is the optimum defined? Is, e.g., a clearly structured administrative process without any kind of public participation worse than a chaotic realisation of public participation?

(v) *The processes for public land management, disposal and privatization, as well as for expropriation or eviction for public purposes are transparent, fair and accountable.*

(vi) *The system for property valuation and taxation is transparent, equitable and accountable.*

The design of processes can be described. Indicators for integrity and accountability, transparency and impartiality, predictability and traceability can be defined. The performance of processes provided by the land agencies can be investigated by indicators describing effectiveness and efficiency.

However, the challenge is the deviation between design and daily routine. Corruption may compromise the design significantly, whereas the temptation for corruption increases with complexity of processes (GURIEV, 2004).

Although the level of corruption itself can be measured, as by the CPI of TRANSPARENCY INTERNATIONAL (2009), the impact of corruption to the quality of the land administration processes can hardly be assessed.

(vii) *Services of land agencies fulfil the needs of customers and they are provided efficiently, effectively and competently as well as with integrity, transparency and accountability.*

(viii) *The results of the services of land agencies are consistent, predictable and impartial.*

These criteria are usually addressed by customer satisfaction surveys. Customer Satisfaction Indices (CSI) are strongly related to the experiences of citizens with their local authorities. Therefore CSI is a good indicator within an institution. Cross-country comparisons are limited, as expectations of citizens in their respective countries can be different. Assessed results can therefore lead to wrong conclusions.

Land Equity International developed a systematic guidance on governance in land administration with the aim to provide World Bank staff and development partners a proper diagnose and benchmark tool. This land governance assessment framework defines in a hierarchic order five thematic areas with – in total – 21 indicators and 80 dimensions. The level of good governance has to be assessed by a panel of experts in land tenure, land use/policy, public land management, and land registry – based on the scoring of the predefined indicators and dimensions (DEININGER et al., 2010). A pilot study for testing this framework was successfully outlined for 5 countries (BURNS et al., 2010).

4.3 Comparability of Good Governance in Land Administration

A periodical assessment of land governance within a country would enable the detection of changes, would identify weaknesses of processes, products, and institutional set-ups, and would outline potentials for optimisation and/or improvements.

Cross-border comparisons would identify countries with good governance. The benchmarking process would enable people or institutions involved in land administration to learn from those who are at the leading edge. Additionally the comparison of good governance with other countries also would provide a feedback to the own performance.

This raises the question of this paper's title if good governance in land administration is measurable and comparable. The possibility to define and describe good governance quantitatively and/or qualitatively by proper indicators is sketched in Chapter 4.2.

But what about the comparability of good governance in land administration? Appraising the degree of good governance of a country or the comparison and ranking of countries on the topic of good governance is a more difficult task due to the following facts:

- Good governance is not an absolute condition. There is rather a continuum between weak and good governance (FAO, 2007). The definition of *good* and *weak* is often subjective and depends on personal experiences, cultural background, and political ideology.
- Throughout the globe, land administration is organised in different ways (see Chapter 2). Different systems are used and due to the complexity of the systems different processes are required to achieve the defined goals.

Table 1 helps to estimate the comparability of good governance. The definition of good governance in land administration, as outlined by FAO (2007), is linked to the indicators of the Land Governance Assessment Framework (DEININGER et al., 2010). Column 2 of the table illustrates that LGAF indicators cover – more or less – all the eight criteria and features.

Based on their national and international experience, the authors classified the degree of comparability for all defined indicators. The estimations were outlined for three different cases:

- *Identical Legal and Administrative Systems:* Due to the individual history of countries there is no identical legal and administrative system around the world. Therefore this case only exists for the periodic assessment of indicators in a specific country (country-orientated comparison).
- *Similar Legal and Administrative Systems:* Countries to be compared have similar land administration systems including the political and legal framework, the institutional set-ups, the processes, and the products.
- *Different Legal and/or Administrative Systems:* Countries to be compared have completely different political, legal, and administrative systems.

The results outline the excellent feasibility of a periodic benchmarking of good governance within a country. This enables also a country-specific characterizing of good gov-

ernance by the definition of target values for each of the indicators.

A lower degree of accordance between legal and administrative systems constrains the use of quantitative indicators and with it the comparability of good governance. Particularly affected are indicators describing responsibility, efficiency, and transparency. Possible solutions to meet these challenges are the restriction to specific (identical) sectors of land administration, categorizing indicators, or substituting quantitative by qualitative indicators.

5 Conclusions

It is accepted beyond dispute, that a well-functioning and effective land administration is a substantial ingredient for good governance. It is also fact that good governance in land administration is closely linked with good governance of other public sectors (FAO, 2007) and with the stability of a political system.

A country-optimized detailed toolset of indicators and performance parameters allows the monitoring of developments in land administration activities within specific states. But it has to be considered that all the selected parameters as well as the method of measuring the parameters have not to be changed during the period under review.

A comparison between countries with similar political and economic structures and with similar land administration systems is acceptable. Copying countries with a good performance initiates learning processes and enables investigations on potential improvements. In this way, selected global indicators as proposed in several studies (e.g. DEININGER et al., 2010) make sense for external benchmarking and shall be used to initiate improvements.

But the comparison of the quality of governance between countries has to be handled with care, as predefined performance indicators cannot cover all the differences of land administration processes and of the habit of stakeholders.

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Indicators (as defined by Land Governance Assessment Framework, Deininger et al. 2010)		corresponding with Criteria and Features as outlined in FAO, 2007	Comparability		
			Identical Legal and Administrative Systems	Similar Legal and Administrative Systems	Different Legal and Administrative Systems
Thematic Area 1: LEGAL AND INSTITUTIONAL FRAMEWORK					
	Recognition of continuum of rights	i, ii, v	***	***	*
	Enforcement of Rights	ii	***	**	*
	Mechanisms for recognition of rights	ii, v	***	**	**
	Restriction on Rights	ii, v	***	***	*
	Clarity of mandates and practice	ii, iv	***	**	**
	Equity and non-discrimination in the decision-making process	i, ii, v	***	**	**
Thematic Area 2: LAND USE PLANNING, MANAGEMENT, AND TAXATION					
	Transparency of land use restrictions	i, ii, v	***	**	**
	Efficiency in the land use planning process	v, vii	***	**	*
	Speed and predictability of enforcement of restricted land uses	ii, v	***	**	**
	Transparency of valuations	vi	**	**	**
	Collection efficiency	v, vii	**	*	*
Thematic Area 3: MANAGEMENT OF PUBLIC LAND					
	Identification of public land and clear management	ii, v	**	**	*
	Justification and time-efficiency of expropriation processes	v	***	**	*
	Transparency and fairness of expropriation procedures	v	***	**	*
	Transparent process and economic benefit (in public land transfer)	vii	**	**	**
Thematic Area 4: PUBLIC PROVISION OF LAND INFORMATION					
	Completeness	viii	***	***	**
	Reliability	vii	***	***	**
	Cost-effectiveness and sustainability (investments to record land rights)	vii	**	**	**
	Transparency (Determination and collection of fees)	vii	***	***	***
Thematic Area 5: DISPUTE RESOLUTION AND CONFLICT MANAGEMENT					
	Assignment of responsibility	iii, iv	**	*	*
	Low level of pending conflict	ii, v	**	*	*

Table 1: Comparability of Good Governance in Land Administration (* ... possible with limitations; ** ... possible; *** ... well suited)
Tabelle 1: Vergleichbarkeit von Good Governance in der Landadministration (* ... bedingt möglich; ** ... möglich; *** ... gut möglich)

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