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GOOD LAND GOVERNANCE

CONTEXTUALIZATION AND GLOBAL EXPERIENCE



RASHEED TI-JO RESEARCH SERIES: GOOD GOVERNANCE Rasheed (Transparency International-Jordan) was established at the end of 2013, as a non-for-profit civil society organization, through a group of activists working in the field of anti-corruption. Rasheed (Transparency International-Jordan) commenced work in Amman at the beginning of April 2014, and it represents the only official contact group of Transparency International in Jordan.

Rasheed (Transparency International-Jordan) aims to reinforce the involvement of the Jordanian citizen in anti-corruption activities, protect public, private and local governance institutions against corruption, enhance the efficiency and independence of control agencies specialized in the area of anti-corruption, strengthen the integrity of the legislative and judicial authorities, and reinforce the performance of Rasheed (Transparency International-Jordan) towards achieving its mission and vision.

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Contents	
Introduction	4
Contextualizing Good Governance	4
Principles of Good Governance in Land Administration	7
Corruption in Land	9
Best International Practices	13
Cadastre	13
Sweden database experience	13
German experience in land governance	14
International practices in eradicating corruption in land sector	14
Conclusions	15
Sources	17

Contents

Introduction

Corruption in land governance plays a destructive role in provoking the backwardness of socio-political and economic development in the land sphere as well as of the state as a whole. It is manifested in various forms, like issuing false claims, invoices, valuations or employees records in return for particular benefits, engagement in extortion activities for preventing unfavorable decisions, avoiding troubles and arbitrary fines for violating building regulations or changing land use. It can also include sort of tax manipulations for producing suitable valuations or granting public contracts for private gain.

Avoiding corruption is one of the obvious aspects of good governance. However, good governance also includes accountability, political stability, effectiveness, the quality of the legal framework and the rule of law, and the fight against corruption. Good governance means that the government is effectively governing, that it is fully representative and produces the desired results. Good governance principles can be implemented through equity, efficiency, transparency and accountability, sustainability, civil society involvement and security.

When citizens are informed about the activities of the government, they have more opportunities to force government officials to fulfill their duties in the public interest.

Contextualizing Good Governance

Good governance ideas are derived from the work done in the area of human rights and fundamental freedoms. Some aspects of good governance are enshrined in international human rights standards. There are specific human rights regarding property that are relevant to good governance in land tenure and land administration.

Human rights legislation ensures the legal framework, which is covering rights that are inherited to each human being, and such rights are interrelated, indivisible, interdependent and universal. Regional and global treaties signed by countries represent the core of the international human rights legal framework, and they explicitly protect the rights codified within them. Thus, governments, which have ratified those treaties, are legally bound to the obligations to protect and fulfill those rights.

Although, it should be mentioned that there is no codified universal right to land within the international legal framework, and thus, the core international legal instruments do not explicitly provide for such right – they protect other human rights for which land and issues related to it may be crucial. These are rights to food and adequate housing, as well as right to property, although, it is a bit different from the right to land in general understanding, but related to it.

However, it does not mean that such human right, as the right to land, does not exist or alternatively not being emerged. Human rights legal framework is not static: it develops and progresses over time through number of ways, including new treaties, authoritative interpretations of the already existing treaties by treaty bodies and human rights tribunals, and iterative processes that include drafting, implementation and sequential amplification of the soft-law (CCSI, 2017).

Based on them, there has been a case law established that helps to clarify the relationship between human rights and land rights in cases of unfair taxation, deprivation of ownership, land registration, land management and land restitution. Some aspects of good governance in relation to land tenure and land governance can be determined by the criterion of legally valid human rights. In international law, however, there is no general consensus on the essence of good governance, despite the fact that certain key principles have been universally recognized.

Land governance is the process by which decisions are made on the access to land and its use, on how to implement these decisions, and how to resolve conflicting interests in the land. Good governance is essential to achieving socio-economic progress and reducing poverty. Access to land tenure security and efficient delivery of land administration services all make a significant contribution to achieving the set of intended development goals.

Thus, governance in land administration can be defined as the set of all procedures of decision-making on land issues and implementation of such decisions. Land administration governance covers a broad spectrum: from land tenure, land use and taxation to state market and country development. Land administration governance has socio-political, legislative, technical, ecological, and economical dimensions, which cover a number of elements, such as state policy and laws as well as all involved institutions. By means of good governance, the competing interests of the government, the private sector, civil society, organizations and individuals on land will be coordinated and conformed (Mansberger, Navratil, 2012).

The inclusion of good governance in the process of land administration has a significant influence on the overall development: it encourages the favorable environment for investment, helps in solving societal issues and facilitates for the income growth. Meanwhile, in case of its absence within the land administration, it results in low income level, emergence of new social problems and spread of the already-existed ones, absence of responsibility, etc., and will lead to the insignificant holistic development (Figure 1).

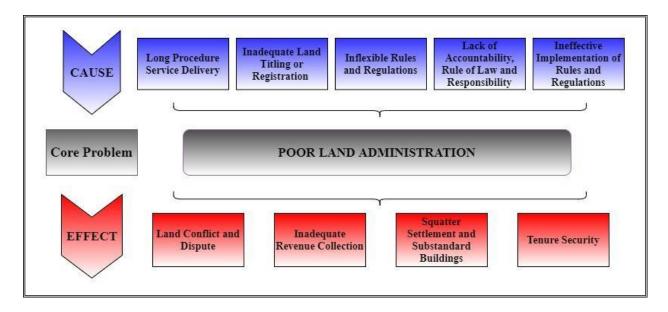


Figure 1: Cause and Effect Relationship of Poor Land Administration System.

Weak governance in administration results in the marginalization of the poor and improper land usage. Land administration in the majority of developing countries suffers from a lack of equity, transparency, accountability, responsiveness and inclusiveness in terms of the intended recipients (Berhadu, 2014).

Poor land governance is linked to the increasing insecurity in property rights and a high level of corruption and bribes in land administration operations, especially in developing countries, and the most affected by the poor land governance indigenous farmers, women, people with law income and other vulnerable groups of the society. Meanwhile, in the public land sector it is linked to poor institutional structure governing tenure security, inadequate, inconsistent, incoherent and inappropriately applied legal provisions, lack of transparency and accountability, injustice and institutional irresponsibility to the status and fate of land users. It also should be mentioned that slow bureaucratic procedures as well as high level of cost for land administration services allows the increase of the bribery, misappropriation of public funds along with other types of corrupt activities. Moreover, poor governance distorts official both formal and informal decision-making mechanisms and contributes to injustice and inequality, which in effect hinders economic development (Zimmermann, 2006; Bell, 2007).

The main land governance methods are land management, real estate cadastre, monitoring and land control. Together, these methods make it possible to establish a

harmonious system of land governance in society that brings both positive economic effect and contributes to a careful attitude to land, thus:

1. Land management, using the scientific knowledge base, creates an organizational and territorial basis for the efficient use of land resources, directly interacting with land management objects using geodesy, cartography, soil science, geobotany, economics, etc.

2. The real estate cadastre records, stores and evaluates, thereby guarantees the rights of landowners, contributing to the development of a civilized land turnover, provides information on real estate for various purposes, helps the state in fulfilling the fiscal function in relation to real estate;

3. Monitoring allows monitoring the state of land resources for timely response;

4. Land control is designed to prevent and suppress violations of land legislation, to hold violators accountable, thereby contributing to the prevention of offenses.

These governance methods can be effectively used in the land governance system if there are no serious contradictions within the system, as well as in the presence of favorable external conditions, for instance, in the form of a refined regulatory framework.

Principles of Good Governance in Land Administration

Good governance guarantees that socio-political and economic issues are defined and prioritized based on the accumulated societal consensus and coherence allowing states` authorities serving the needs of the entire society by implementing government instruments, which are designed in order to react and respond to the shifting social needs and to stimulate sustainable development.

Peter J. Ashton states that (Ashton, 2005, 77-79):

"...In order for the functioning of a governance system to be effective, efficient and socially relevant, it should be directed by the principles of good governance... Ultimately, the extent to which a governance system can be regarded as "good" or "weak" depends on whether or not [...] principles of good governance are explicit in every decision-making process that affects the livelihoods of stakeholders".

Thus, the principles of good land governance is based on the following common pillars (Zakout, Wehrmann, 2007; Bell, 2007):

 Transparency and consistency – Clear and consecutive recruitment of employees and appropriate standards of service as well as maintenance costs can lead to increased efficiency, accountability, transparency and trust in the credibility of the agency.

2. Accountability and Integrity – it could be ensured by implementing unified service standards, which can be monitored as well as by carrying out codes of conduct for employees along with mechanisms for sanctions and incentives, like for instance awards or benefits for remarkable and prominent staff.

3. Efficiency – it covers procedures on registering property transactions, which should be simple and not time-consuming: the shorter the procedure is and less steps are to be made, the less options are left for informal payments.

4. Effectiveness – it relies on the financial provisions and capacity building along with the status of the overall social and political conditions, like political commitment, will and stability as well as the rule of law and normative and statutory quality.

5. Depoliticization and autonomy – it is based on strengthening the independence and autonomy of local land administration along with implying the system of checks and balances at the national level, which all together can lead to the improvement of services and corruption eradication.

6. Civil society engagement and participation – it relies on refined access to information and measuring people's satisfaction as well as hotlines to provide society with the ability to report corruption and misconduct acts.

7. Impartiality and fairness – everyone should have equal access to services and service standards despite their financial state or political views.

8. Rule of law and legal enforcement – it needs a consecutive and clear legislation framework and just and transparent judiciary system as well as general dominance of the rule of law in order to protect and ensure property rights.

The effective and efficient implementation of the good governance principles within the scope of land governance and administration have it's positive impact that may result in:

• Decrease of the cost level for running business for both business sector and general public leading to the increase of confidence of the land registration system and reducing the number of informal land transactions;

• Reinforcement and support the formal land market and larger usage of formal land administration systems leading to more solid overall system, return benefits from the taxation and revenue share with public services;

• Growth of land tenure security enabling improved access to credit and income generation;

• Ensuring the regulated transaction costs and more fair taxation;

• Ensuring the equal inclusion to the access to the rule of law and rights protection for all, preventing unlawful eviction from the land and protection of the right to inheritance, especially for women, poor, orphans, widows and other vulnerable groups.

• Increase of the government's accountability and responsibility for its management and administration regarding environment and natural resources issues.

• Protection of state assets from the unlawful exploitation and allowance of the legal use of state land for socio-economic concession;

• Growth of public confidence in government and possibility of future investment in property;

• Decrease of number of conflicts as well as increase of quick response and efficient, just and transparent dispute resolution to the emerging ones.

Absence of even the most basic information about the land as an object of civil turnover in the public domain, a low level of public awareness, uncontrolled use, inefficient disposal, and redistribution of land by regional authorities ultimately undermine social stability and lower the country's economic growth as a whole.

In turn, the development and improvement of existing principles of publicity entails the need to develop a unified approach with the approved standards and regulations for the formation and allocation of land of various categories in order to exclude the adoption of a "creative" decision by the official apparatus for the realization of a land for "chosen" people. It also includes the elimination of existing contradictions in the legal framework in order to eradicate the temptation to use the loophole in the law to exercise rights to land (Belenko, 2019).

Corruption in Land

The phenomenon of corruption in the field of land relations is quite diverse, branched, multifaceted, multifunctional and complex, since it covers and includes other types of corruption. This may include corruption in the civil service, local governments, executive branch, provision of administrative services and judiciary as well as corruption in law enforcement, in parliamentary activities and many others. Thus, space for the existence of land corruption affects almost all institutions of the branches of government, since all of them are directly or indirectly related to land relations. Corruption in the field of land relations also covers a considerable number of entities of the state bodies responsible for the disposal of land resources. Corruption in this area consists of a large number of tangled, bureaucratic ties that form a complex system of functioning.

Among the most common causes of corruption in the government bodies dealing with land related issues are the following:

• Imperfection of the legislative framework (opacity, ambiguity, controversy), ambiguity of the legal framework and lack of clarity and unambiguity in the law;

- Bureaucratic, complex and time-consuming operational process and restrictions;
- The lack of transparency of information on the granting of permits;
- Specificity of the mentality of the population;
- Frequent changes of power at the local level;
- Weak local integrity and control systems;
- Inadequate resources and job insecurity;
- Low level of business culture.

The most characteristic shadow schemes of committing offenses in the field of land relations include bribery and abuse of power in the formation and subsequent disposal of land, which is based on the following:

- The provision of land in violation of applicable law (for example, on a noncompetitive basis, if the bidding procedure is mandatory);

- Transfer of land from one category to another, not provided for these purposes, followed by the transfer to the ownership of relevant persons (for instance, the transfer of agricultural land to the category of land for settlements);

- Patronage of persons, as well as "not seeing" their actions regarding the illegal use of land (for example, misuse or unauthorized occupation of land).

Generally, corruption can be viewed through the prism of two main forms: administrative corruption and political corruption at the level of representatives of state authorities and local governments.

Thus, *political corruption* is aimed at benefiting from the use of land in an advantageous way for a particular official or group of people, taking into account the authority granted to them. In the land sector this type of corruption aims to control and regulate state resources and it can be resulted from the creation of opportunities for reforms and land transactions as well as development projects occurring on different levels – regional, national or local. For instance, it may include leaseholding or privatizing state land, land expropriation for the government or negotiated acquirement of the large-scale lands by the investors, etc.

This form of corruption in the area of land issues depends on the wider weakness or drawbacks within the government that undermines principles of good governance, mainly accountability, transparency, integrity and rule of law. As a result, elected representatives and officials as well as the private sector actors possess the possibility to get away with punishment for their illegal actions as main national institutions may be co-opted in order to serve the interest and benefit of these particular people (TI, 2011).

Administrative corruption is expressed in the form of bribery for providing various services in the land sector, like for instance, cadastral registration of land within the "needed boundaries" or change in the permitted and intended use of the land for the subsequent profit (Chirkov, Oleinik, 2012). This type of corruption is particularly affecting social inclusion and equality, and distorts the focus of development, meanwhile, those who do not possess any financial resources to bribe a corrupt official are left out (FAO, 2007).

Corruption that undermines the good land governance is manifested in the following:

 Bribery – officials are bribed in order to provide services, prevent the enforcement of regulations and restrictions, speed up particular processes and bypass the queues or ensure the "needed" decision.

• Fraud – the common feature of the administration corruption that covers the activities of making false claims in order to receive payments. In this case, there are some practices being used, like involving non-existing staff and using false invoices on the payroll, understating valuation of land for minimizing tax payments and overstating it for supporting mortgage fraud.

• Employment of "facilitators" – this practice is widespread in cases for overcoming frictions in the system, providing officials with benefits in order to act within the clients' interests. They may also benefit from the client by receiving fees, or enrich themselves and corrupt officials on the clients` expenses by establishing cooperation linkages with such officials. Sometimes such activities may include blackmailing or threats.

• Blackmailing and extortion – Although, these types of corruption are used within other corrupt activities, they can also be viewed as independent. People pay corrupted officials

in order to prevent the unfavorable attitude and treatment, like for instance, tax demands or adherence to unjustified or inconsistent norms.

• Theft – stealing state property and selling it for the private gain. It may also include cases when, for instance, state contractors work for the private projects using the materials and labor that is paid by the state.

• Favoritism and nepotism – using the official influence in favor of close people, like friends, family members or political associates, and obtaining official posts avoiding a competitive and open recruitment process.

• Official misconduct – misuse by officials their position for gaining private benefits, like obtaining confidential information and data for further private interest, buying or selling land shares before the public statements are done. It also includes using provided employment facilities for personal use.

Preventive measures in the fight against corruption can also effectively affect corruption itself in terms of reducing its level, as well as prevent its consequences such as:

- Lowering the overall development level in case of wasting resources;
- Weak services and their poor quality;
- Decreasing level of public trust and confidence;
- Reducing public accountability;
- Raising conflicts with public;
- Decreasing the efficient delivery of services and prompt solution of emerging issues;
- Undermining the legitimacy of local authorities;
- Creation of systematic corruption phenomenon that generates different types of cost:
 - Social by redistributing the power and resources toward under serving;
 - Political by undermining authority of the institutions and their power;
 - Economic by distorting incentives.

Best International Practices

Cadastre

The cadastre plays an important role in public land governance and in minimizing corruption risks. Generally, this term means not only a detailed physical description of the land and everything on it, but also the registration of the land with the indication of the owner in the official body of the executive power. The cadastre may not indicate the information regarding the value of land or possessions (the territory and everything built on it) as this is represented in the detailed description of the property. Today, new electronic databases concerning land and its owners make it easier and faster to conclude transactions and obtain a mortgage.

The cadastre allows geocoding of real estate identifiers and, in particular, street addresses, which increases the ability of the government and society as a whole to use spatial data. In particular, the "spatially capable" government is more adapted to ensuring sustainable development (its economic, environmental, social and administrative dimensions), which is increasingly becoming the main goal of the state that is subject to all government activities (Williamson, 2008).

Sweden database experience

The current Swedish system of state land governance is confirmed by the following:

• Cadastral surveys form complete real estate assets that have all the necessary attributes such as paths, communications, etc. – optimize land division and prevent land fragmentation; certify that the stakeholder has a stable source of investment and financing for the future; ensure that land is used in the most efficient way, in accordance with available and applicable land policies; division of real estate objects is carried out in parallel and simultaneously with the decision of land use;

• Cadastral process: the land planner is responsible for process as a whole and often performs all the activities himself; the cadastral process is clear to the interested party and eliminates the need to involve additional experts, lawyers or consultants;

• Database – the information in the database is relevant, complete and accessible to society, which contributes to the better functioning of the economy;

• Legislation – the new clear cadastral legislation provides for new functions and greater responsibility for the cadastral land registry, and the national cadastre plays an active role in this.

A Swedish database containing land information is also effective. Various organizations are involved in the formation of the database, including the exchange of information, such as the tax office and the state registration service. Thus, society is fully provided with information regarding the boundaries of real estate, titles, prohibitions, restrictions, mortgages, address data, tax value of real estate and other information. Due to this, different users, such as banks, real estate agencies and brokers, have the ability to make well-informed decisions, i.e. to work effectively and efficiently (Ericsson, 2008).

German experience in land governance

In Germany, the share of farmers decreases annually, but the number of cooperative links is increasing. The country has a widespread land market and the state also controls the agricultural land market, which is done to prevent speculative land transactions. Agrarian law of the country forbids the crushing of peasant farms and their land. The state controls land transactions, stimulates the improvement of their quality, provides benefits to tenants.

Thus, in Germany, a three-level system of land use planning and protection is enshrined: national, federal and municipal. Each of the 16 federated lands has extensive authority to create its own land use planning and regulation systems. However, all are obliged to develop a general land program and general development plan of land use of their own territories, the provisions of which are binding on the municipalities.

Land prices are basically shaped by the market, without government intervention. Each city has a Land Expert Committee, which draws conclusions based on objective data. Not only does the city lease land, but it will also lease them. At the same time, construction organizations do not have the right to independently plan the territory and their development – this is the prerogative of the city government, and the consent of the authorities for certain works is obligatory.

International practices in eradicating corruption in land sector

Based on the analysis of the number of international practices in the area of fighting corrupt activities and decreasing the overall level of exercising corruption in numerous forms, the following practices were identified and highlighted:

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• Completion of land inventory and establishment of boundaries of administrative and territorial entities;

• Introduction of a transparent mechanism of realization of land plots through tenders (auctions);

• Strengthening the control over the legality of allotment of land and payment of land tax and rent payments;

• Completing the formation of an automated land cadastre system and creation an electronic land cadastre;

• Resolving the issue of allocation of funds to local self-government bodies, especially settlements, which are assigned to resorts, for the development of projects for the establishment of boundaries, regimes and zones of sanitary protection and their transfer to the area;

• The implementation of effective measures by the bodies of the state executive service to compulsory collection of fines under the decisions of the bodies of land resources, as well as the release of the seized land plots and the demolition of illegally constructed structures by decisions of the judicial bodies;

• Intensification at the state level of work on formation of extremely negative and unacceptable attitude of society to the phenomenon of corruption;

• Conducting environmental monitoring and control over land use efficiency.

Conclusions

Good land governance is a part of governance within which public resources, issues, obstacles and problems are handled adequately, reliably and in response to society's essential needs. Effective forms of governance rely on public participation, accountability, transparency, inclusion and rule of law.

Instruments for improving the efficiency of land governance are complete and correct land accounting, data transparency and analysis of the actual use of land and opportunities as well as protection of property rights. The use of these tools will increase the economic return on land and increase the welfare of both citizens – landowners, local communities and the state as a whole

Differences of perspective regarding what good governance is have important implications in policies. A land administration system designed to raise the agenda for poverty and gender issues is likely to give high priority to areas such as achieving tenure security for tenants and shareholders, recognizing informal and customary property rights and establishing gender-neutral inheritance rights. Being designed in order to promote economic development, land administration system is likely to foreground such issues like timeframe for post-sale reregistration, timeframe and accuracy of searches for checking charges against the particular property applied resulting from loans, clarity of planning and building regulations and norms, including policies for land use transition. This does not mean that there has to be a compromise between reducing corruption and enhancing service responsiveness and quality. Thus, land administration can result both in benefiting the interests of poor and enhance economic development at the same time, meanwhile poor land administration serving limited purposes provides the same limited contributions to the development of civil society.

Strong political rivalry and flourishing civil societies constrain state control by establishing transparency and accountability structures. Open and transparent processes of land registry as well as inclusive and responsive systems for planning the land usage promote mitigation of government control and narrowing the scope for state capture, which is difficult to be measured or identified as such issues are concealed.

Within the effective fight against corruption in the sphere of land governance, the following components should be included:

- Powerful legal frameworks for the protection of property rights;
- Clear definition of land users' rights;
- Enforcement of the law;
- Open land auctions;
- Standardized procedures for land transactions and supervisory procedures;
- Monitoring of illegal land transactions;

• Introduction of a payment structure for services that makes it impossible to obtain undue benefits;

- Free access to information;
- Computerization of land cadastral data;
- Establishment of specialized courts to hear land title cases.

In addition, the prevention and counteraction of corruption in the field of land relations cannot be isolated from the fight against corruption in other spheres, and the fight against corruption in the land sphere should be part of a national holistic integrity policy.

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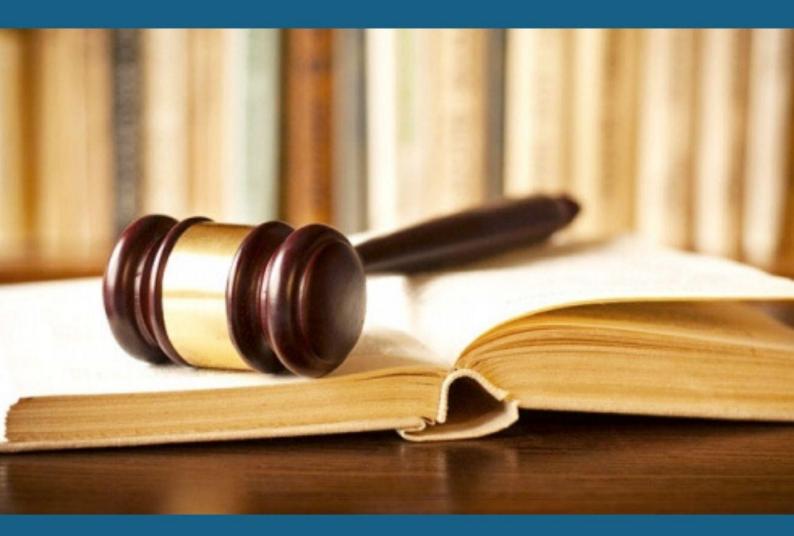
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