

Strengthening Individual and Institutional Capacity and Developing Framework for Good Governance: The need for an Integrated Approach for Proper Land Administration

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Key words: good governance, land administration, institutional performance, capacity development

SUMMARY

Weak governance in land administration is a common and severe problem that is being increasingly recognized. It has been a significant problem in developing countries, even in many developed countries due to lack of significant mechanism to protect existing land administration. Therefore, in developing countries land grabbing and insecure tenure are reflecting the problems of lack of transparency and inefficiency of land administration institutions and making a challenge on the way of moving to sustainable land management.

This paper argues that lack of sufficient capacity of institutions is the underlying driving factor of weak governing systems which hinder the efficient performance of institutions needs for sustainable land administration. Good governance is fundamental instrument to achieve sustainable development. But to establish good governance in the context of land administration it also needs to design and implement a sound and coherent approach of capacity development which can promote and guide sustainable land administration through institutional performance. Decisions of what should be done to address the problems go actually beyond the reach of individuals, and therefore, it requires an integrated approach including good governance mechanism and capacity development both at individual and institutional level to support sustainable development.

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1. INTRODUCTION

Secure land tenure and greater equity in land access have great relevance to attainment of millennium development goals. If secure land tenure plays its requisite role in national development, then certainly land administration is vehicle to achieve secure land tenure. But, today, the negative impacts of inefficient land administration on tenure security and its weak institutional capacity are strongly questioned. In many parts of the world, especially in developing countries, still the land rights are highly insecure due to weak land administration, and this situation mainly affects the poor.

According to EU Land Policy Guidelines, land administration is a set of structures and institutions which implement land policy, affects rights, delivers titles and deed and manage information system. In another way, land administration refers to the regulatory framework, institutional arrangements, systems and processes that encompass determination, allocation, administration and information concerning land. It includes determination and conditions of approved uses of land, adjudication of rights and their registration via titling, recording of land transaction and estimation of value and taxes based on land and property (Lyons and Chandra, 2001). Therefore, land administration systems may include the following major aspects (Burns, 2007: 5-6):

- Management of public land;
- Recording and registration of private rights in land;
- Recording, registration and publicizing of the grants or transfer of those rights in land through, for example, sale, gift, encumbrance, subdivision, consolidation and so on;
- Management of the fiscal aspects related to rights in land including land tax, historical sales data, valuation for a range of purpose, including the assessment of fees and taxes, and compensation for state acquisition of private rights in land, and so forth; and
- Control of use of land including land use zoning and support for the development application and approval process.

Land administration is a part of the infrastructure that supports good land management and weak land administration can lead to the centre of fragile land management also. Therefore, land administration should be treated as a means to an end, not an end in itself (United

Nations, 2005: 21). According to UN Habitat (2008a) the term ‘land administration’ refers to how civil authorities run and enforce tenure rules and regulations (p. 22). Therefore, deficiencies in land administration institutions responsible for boundary demarcation, registration and record keeping, adjudication of right, and resolution of conflict can prevent secure tenure (ibid). In many cases land administration systems in developing countries, even in many developed countries, simply lack good governance instruments which are needed to translate the land policy into implementation. No doubt, the root of the challenges and constraints to effective land administration is found in weak governance. Similarly, lack of administrative capacity and institutional weaknesses cause the major development bottlenecks and explain much poor governance. Hence, effective, accessible, transparent, and accountable land administration agencies are crucial to any effective governance framework (UN Habitat, 2008b: 38).

2. DEALING WITH CAPACITY ISSUES IN LAND ADMINISTRATION

2.1 Dimensions of capacity in land administration institutions

Effective land administration requires strong and fair institutions and should include an element of enforcement to ensure all actors—from individuals to government bodies—comply with tenure rules and regulations (UN Habitat, 2008a: 50) and sufficient institutional capacity is the vehicle to get effective and efficient institutions. It has a great relevance in land administration systems which are concerned with social, legal, economic and technical framework within which land managers and administrators must operate (UN-ECE, 1996).

The concept of ‘institution’ is challenging to grasp, as the term is used with a variety of different meanings (UNESCO, 2009). However, it can include both the framework of rules (both formal and informal) which define the inter-relationships between stakeholders and resources, and also the organizations which often define, work within and implement policies relating to these arrangements (World Bank, 2004). Institutions therefore include locally-constituted informal norms and processes, and more formal national legal frameworks and government departments and relevant organizations (ibid). Since the concepts ‘institution’ and ‘organization’ are somehow fuzzy in literature, both terms are often used interchangeably. In this paper the term institution is focusing government organizations dealing with land administration issues. Land administration institutions are the paramount towards the success in land administration systems while the ‘capacity’ of the institutions enables them to perform effectively and promote successful land administration.

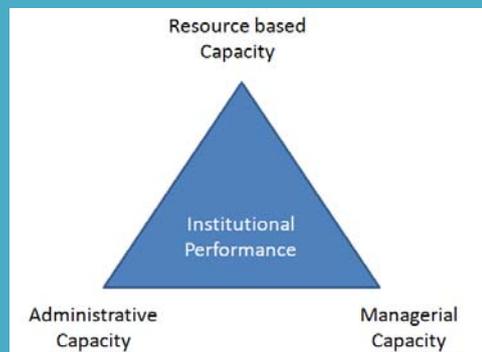
The term ‘capacity’ can be conceptualised as ability to achieve a certain objective in a certain field. According to UNDP (1998), capacity can be defined as *the ability of individuals and organizations or organizational units to perform functions effectively, efficiently and sustainably*. In the effort to define the ‘capacity’ of a land administration institution the definition of ‘capacity’ given by Beth Honadle (1986) probably appropriately fits. He conceptualizes capacity as *the ability to influence and foresee change, exercise informed decision-making concerning policy, implement policy decision through program development, wisely obtain and manage resources, and conduct meaningful evaluation as a guide to future*

behavior. In this respect, ‘capacity’ in land administration institutions may have three different dimensions:

- Resource based capacity: human resource, funding, technology and infrastructure
- Administrative capacity: Ability to apply land administration policies and legislations in an efficient and effective way, as well as to support the competent decision-making process
- Managerial capacity: Ability to perform the functions with effective managerial process and proper coordination with other organizations

It is increasingly becoming evident that if institutional capacity is weak, the institution will be unable to effectively carry out its land administration policies. Therefore, the quality of institutional performance will be affected in terms of three good governance criteria – accountability, efficiency and responsiveness. Such weaknesses prohibit further the strategic thinking and problem-solving capacity with providing avenue of ethical irresponsibility, including corruption practices. Therefore, adequate institutional capacity can be identified as one of the missing links in land administration systems in many countries.

Figure 01: Dimensions of capacity for institutional performance



2.2 Nature of institutional capacity challenges in land administration

Evidences from different countries show that much of the inefficiency has been ascribed to the land administration systems are related with institutional capacity. Practical experiences in many developed countries suggest that adequate institutional capacity and strong land administration systems go hand to hand while lack of institutional capacity can decline the efficiency of land administration systems. Institutional capacity ensures good governance in the field of land administration through creating and strengthening participatory institutions, decentralizing decision-making and building sustainable partnerships with the private sector and stakeholders which facilitates good governance. From the desktop research the following facts are found attested with weak land administration institutions:

Corruption and bribing: Land administration rates among the most corrupted public institutions across the world. The Global Corruption Barometer 2009 found that approximately 15 percent of the people who contacted land authorities in the previous 12 months reported paying a bribe. For example, in Bangladesh land registration system is a core of corruption that caused TK. 83 billion (US\$ 1.14 billion) bribe in 2006 for land registration, mutation and other land related irregularities (Bangladesh Today, 2010). Bribery in the

process of securing land use rights over particular plots of land are also found in China and Vietnam – Anti-Corruption Business Portal says. According to an article from *Bangkok Post* in 2009, a research conducted by the Office of National Anti-Corruption Commission indicated that the Lands Department is the most susceptible to receiving '*tea money*', a common term for bribes. A majority of companies and individuals paid about TBH 8,933 (US\$ 294.79) in such '*tea money*' per case in 2009.

Abuse of power: Often local land administration officials abuse their positions to demand gifts or bribes while performing formalities related to land, to exploit state projects to appropriate land, to illegally sell state property and to illegally acquire state-owned dwellings (van der Molen and Tuladhar, 2006). According to the Bertelsmann Foundation 2010, there are no secure property rights for Chinese farmers, therefore it is not uncommon for local land users to be removed from their land, sometimes violently, with little to no compensation, while officials sell off the land at below market value to land developers and receive kickbacks. It is estimated that nearly 40 million farmers have had their lands seized without any compensation. Same situation is also found in Vietnam in case of land speculation on the island of Phu Quoc, according to Anti-Corruption Business Portal.

Bureaucratic and expensive procedure: For many countries registering property is very time-consuming and often gives rise to demands for so-called 'speed payments'. For example, according to Anti-Corruption Business Portal registering property in Bangladesh requires going through an average of 8 administrative procedures, taking an average of 245 days at a cost of 6.6% of the property value. In Argentina, Brazil and Bolivia for registering property it requires to go through 6, 14 and 7 administrative steps and its takes an average of 42, 52 and 92 days respectively.

Lack of human resource: In many developing countries land administration institutions perform poorly because of insufficient trained/qualified staffs. These departments tend to be populated by generalists who have little knowledge or interest in land administration. This can only be corrected through the development of a career technical staff training in land administration (Wijetunga, 2008). Germany for example has six times more surveyors with academic background than the 52 African states (around 26,000 compared to 4,500 in Africa). And even more: the six leading countries with long-standing professional educational infrastructure in Africa (Nigeria, Ghana, Kenya, South Africa, Morocco and Egypt) make up 90% of all surveyors in Africa (Zimmermann, 2009).

Lack of technology including poor land recording system: Falsify or old land record is one of the major problems in many land administration institutions. Often counterfeit documents are produced to convince officials or with the help of the officials in return of bribe to get the legal rights to the property. In Bangladesh, allegations are rampant that receiving large amounts of bribe the staffs of Land Record Directorate tamper with the documents in different ways in order to create false ownership (Kader, Alam and Ali, 2000). In Nepal, due to software deficiencies and lack of human resource the initiatives of computerization of land records has been collapsed which started in 1993. Presently, there is no strategy on the ground

for managing land records, which are deteriorating due to poor storage conditions and frequent manual consultation and updating (Acharya, 2011).

Lack of coordination and engagement of multiple agencies: Involvement of multiple agencies in land administration with no appropriate mechanism for coordination and with overlapping functions is one of the major institutional weaknesses. As a result, many issues remain unresolved for a long time. For example, in Philippines at least 19 agencies are involved with overlapping functions in land administration. Four agencies have the authority to issue titles, and two have the authority to approve survey plans. (Burns, 2006). Lack of institutional coordination is also found in Bangladesh, especially in land acquisition process which is one of the major sources of land related conflict.

From the above examples, it is evident that problems in land administration institutions are endemic and reaction diffusion problems which hinder achieving land management goals. Performance of many of the land administration institutions are weak due to lack of transparency, absence of accountability, widespread corruption and abuse of power, lack of human resource and technology, expensive and bureaucratic procedures as well as delays in service delivery. The desktop research proves that institutional weaknesses that lie at the heart of land administration problems mainly reflect weak governing system which is actually result of inadequate institutional capacity. These causes of institutional weaknesses are diversified but follow a pattern which implies the issues related with institutional capacity:

- Problems with resource related capacity, e.g. lack of human resource, technology and funding
- Problems related with management and administrative capacity, e.g. corruption, abuse of power, bureaucratic and expensive procedure, lack of coordination with other institutions

3. CAPACITY DEVELOPMENT LIES AT THE CORE OF LAND ADMINISTRATION

3.1 Different levels of capacity development

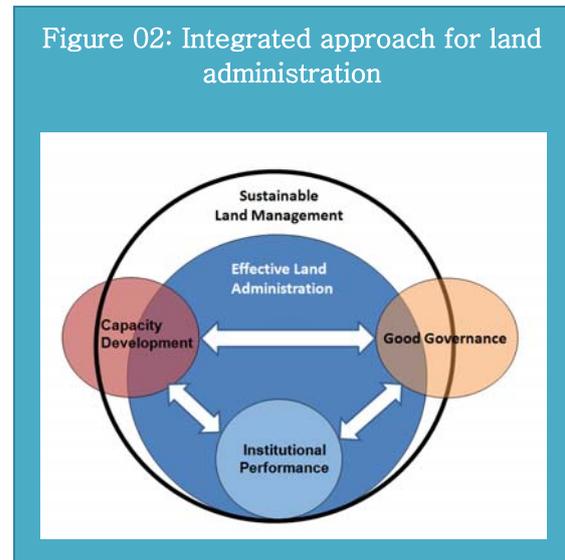
There is not singular definition of capacity development. Over the years the notion of capacity development has been changed. It has moved beyond the individual training and education to a complex system where human recourse capacity is related with the institutions and system. Therefore, recent definition emphasizes it as a process which has potentially direct impact on improvement of policy implementation and service delivery at all levels to optimise intended outcome (UNESCO, 2006: 1). According to UNDP (1997), *capacity development is the process by which individuals, groups, organizations, institutions, and societies increase their ability to i) perform core functions, solve problems and define and achieve objectives and ii) understand and deal with their development needs in a broader context and in a sustainable manner.* In addition, in 1991, UNDP with the International Institute for Hydraulic and Environmental Engineering recognized capacity development at three different levels:

- Individual level: It involves establishing the conditions under which public servants are able to embark on a continuous process of learning and adapting to change – building on existing knowledge and skills and enhancing and using them in new directions.
- Institutional level: It does not refer creating new institutions, rather modernizing existing institutions and supporting them in forming sound policies, organizational structures, and effective methods of management.
- Societal level: It supports the establishment of a more interactive public administration that learns equally from its actions and from feedback it receives from the population.

With the light of UNDP definition, individual capacity development therefore can be considered as an entry level of developing capacity which supports and fosters institutional capacity development. And capacity development at institutional level can be viewed as a long term process for acquisition of skills and mechanism to gain the capacity at societal level.

3.2 Good governance through capacity development for effective land administration

The relationship between good governance and efficiency of land administration systems is clearly acknowledged. And capacity development can be considered as one of the pre-requisites for instilling effective institutional performance and good governance in managing land administration systems. Despite the fact that institutional drawbacks and their aftermath vary from country to country, there are some common phenomena (e.g. corruption and bribing) which can be identified almost in every developing country's land sector as a reflection of weak governing system. Hence good governance is about rule of law and citizen participation to ensure public accountability and transparency, capacity development gain a greater importance as a strategy to achieve the principles of good governance. Simultaneously, good governance policy also encourages capacity development and institutional performance as well. Therefore, good governance, capacity development and institutional performance have bilateral relationship which ensures effective land administration systems, and thereafter sustainable land management (Figure 01).



While the need of good governance in developing countries has been always been well recognised, capacity development in this field has received relatively less importance though

good governance and capacity development is closely related with each other. Hence, substantial progress is needed to develop the capacity, accountability and responsiveness of administrative institutions responsible for land and secure tenure (UN Habitat, 2008a: 49). By developing strong and effective network through capacity development it is possible to help to foster rapid progress in achieving good governance. Therefore, capacity development program should go beyond education and training in certain field, which are of course necessary, but not sufficient.

3.3 Need for integrated capacity development approach

It is evident that land administration institutions are found to suffer lack of clear and tangible objectives as well as insufficient capacity to face the challenges. Institutional capacity in land administration is not only about the capacity of the institutions to perform its action effectively, it also refers enabling the whole environment to secure land tenure. An institution can therefore be referred as sufficiently capable when it has

- ability to produce and implement policy
- adaptive capacity to shape the decision considering local interest and local context (e.g. culture)
- effective organisational structure run through qualified professionals
- inter-administrative relationship
- sufficient room for stakeholder participation
- technological support in service delivery

Institutional capacity development is an integrated process and individual capacity development is the starting phase which addresses skill and knowledge gap to deal with the performance barriers of institutions. In many developing countries professional education system is underdeveloped and, therefore, talented young people often lack the resources (education, training, knowledge and intellectual support) to support institutional needs. On the contrary, institutional capacity development is necessary to cope with typical 'brain drain' that often leads the most qualified staffs to take better position in private sector or international organisations. Institutional capacity development will provide a congenial atmosphere to utilize the human capital. Individual and institutional capacity development, therefore are not isolated, rather individual capacity development is integrated part of institutional capacity development.

In the field of land administration capacity development is much more than education and training (individual) as it also covers the capacity to use them (institutional) under the right framework condition (e.g. policy formulation and implementation) with inter-sectoral coordination and collaboration and access to necessary resources (e.g. technology). Therefore, the objectives of institutional capacity development are to:

- Strengthen existing organizational structures through the improvement in the process of policy formulation and implementation; and

- Elimination of constraints and malfunctioning of institutions in service delivery through a comprehensive process and strengthening managerial capacities within good governance framework.

In this respect, institutional capacity development in land administration should encompass the following:

- Resource based capacity development: (i) Human resource capacity development through sharing and exchange knowledge, higher education and training (ii) Technology capacity development to enable individuals and organizations to identify and analyze the problems and proffers solutions to them
- Administrative capacity development: The ability to apply land administration policies and legislation in an efficient and effective way through development/change of rules and conditions, if necessary, as well as to support the competent decision-making process
- Managerial capacity development: The ability of the institution to perform efficiently its function of fulfilling expectations, managing resources, and solving problems

Table 01: Integrated view of institutional capacity development in land administration

Level	Purpose	Process	Outcome
Administrative capacity development	Strengthen the set of structure and process to apply and implement the policy to protect land rights	<ul style="list-style-type: none"> - Inter administrative coordination - Improving policy and program design, monitoring and evaluation in implementing policies and programs 	<ul style="list-style-type: none"> - Ensuring rule of law, accountability and transparency
Managerial capacity development	Strengthen the institutions to perform specified activities in service delivery	<ul style="list-style-type: none"> - Organisational and procedural improvements - Monitoring tools to measure service delivery performance 	<ul style="list-style-type: none"> - Performing functions efficiently and effectively
Resource capacity development	Strengthen the capacity of staffs and stakeholders	<ul style="list-style-type: none"> - Skill development through education and training - Awareness building - Knowledge and information sharing 	<ul style="list-style-type: none"> - Effective performance of staffs - Stakeholder participation in decision making process
	Improve technology capacity	<ul style="list-style-type: none"> - Networking and partnerships with different organizations within the country and abroad 	<ul style="list-style-type: none"> - Providing supports in delivering services efficiently and effectively

3.4 Institutional capacity development: Partnership is essential

In land administration systems partnership is important as it makes the system effective. It is a strategy to remove the organisational constraints within poor land administration systems. Hence, partnership is important for capacity development to provide institutions access to resources and advanced techniques to work in a new way. It's a two way relationships between 'institution and individual' and 'institution and institution' at different levels which is the key to successful capacity development.

Potential advantages of partnership vary depending on the nature of partnership, but obviously it opens up the opportunity for adapting variety of strategies for the improvement in quality of performance. Institutional partnership can foster the emergence of well trained professionals and compensate for the brain drain of professionals from developing countries. It can play also role in changing policy and operational task. Partnership in technological development is also necessary as the benefits in innovative performance are derived from productive partnership. Simply, it is a means of achieving change. However, establishing a genuine bond among the partners based on respective roles and shared objective is vital for the success of partnership. Partner's capacities in terms of human resource to be devoted to the partnership and administrative and managerial framework which will initiate the partnership are also instrumental factors. Therefore, for building partnership an institution should have also capacity. The paper argues that 'partnership capacity' should be considered as a basic capacity of an institution which will further strengthen resource based capacity, administrative and managerial capacity of it.

4. CONCLUSION

Effective land administration lies at the root of land management and it is a prerequisite for well functioning secure land tenure. Land administration is a long term approach taken by government to foster prudent land management being supported by efficient institutional performance. But in developing countries, experiences show that institutional weaknesses and malfunctions are the major causes of ineffective and unsustainable land administration. The reason is that the institutional capacities are often lack compare to the challenges they face. Therefore, to fulfill the necessity to improve the service delivery of land administration institutions capacity development in integrated way should be taken as a strategy. Such strategy should be long term and demand oriented where institutions should identify the gaps and initiate the approach to meet their own capacity requirements. Tendency should not be to focus only input development, rather to determine what type of capacity should be developed and when and how. No doubt, the complex process of capacity development is a strategy of land administration which can accrue benefits to the whole land management system and can ensure good governance on the condition that partnership is developed and managed effectively.

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