

Land Administration Projects - the Preparation of a Purposeful Legal Framework Must Have Priority

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SUMMARY

In development projects, the preparation of a purposeful legal base for the planned work is often started too late. The operational work begins in the same moment when the legislation aspect is tackled. In many cases, the targeted legal framework cannot be finalized during the project term. Therefore, the beneficiary disposes of a result, which is not based on a valid legal foundation. In addition, this doubtful legal situation hampers the operational work significantly.

The authors plead for giving the development of the legal base a higher priority in the project design and to prepare at least an intermediate nucleus regulation before starting operational work. They will analyze the problem with the help of effective cases and show proposals for remedy.

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1. OLD AND MODERN POLICIES — FROM MAPS TO DATA

A general setup of development projects in the fields of land management and administration consist of the following components:

1. Improvement of facilities of the land administration authorities
2. Development of digital maps and improvement of the relevant field equipment/office equipment
3. Training of staff on field and office equipment
4. Project management support
5. Legal support

The respective list of goals coincides with the project components but represents an outdated policy: *Improvement of the map information for cadastral (property) documentation and taxation purposes.* — To put the good old map into the center is not appropriate any more. The reasonable modern approach is data-centric.

The question may be allowed whether this goal is set high enough to create long-term sustainable results investing quite a huge amount of money? — The key questions to be answered when projects are set-up should rather be:

- How to create a legal base which allows modern land and property documentation with client oriented and transparent land authorities or institutions? (Stuedler D., Rajabifard A. *Spatially enabled Society*, 2012)?
- How to establish in the short term a modern land documentation system to support resolution of land management problems (Enemark, S. 2013)?
- How to provide spatial data on property and holdings in short term to gain land transparency and support multipurpose information systems (NSDI)?

The absence of an appropriate legal base makes the project work painful and often lets the projects fail. From our experience we can learn that preparing a legal base is crucial and must have a much higher priority.

If it were not possible to adapt the existing legal framework to the needs of the planned project in advance, it would be wise to declare project perimeters with dedicated rule set to create conditions for a legally correct project work. The improvement of the existing legal framework can then be taken charge of in parallel.

2. ASSERTION OF AN APPROPRIATE PROJECT FUNDAMENT

2.1 STATEMENT 1: No sustainable project success without adequate legal framework in place

A modern legal framework on land administration is the nucleus for modern land management legislation. The legislation should rather focus on land and spatial data than on maps and map based information. The purposeful legal framework supports the handling and legal registration of data provided by the project in favor of old land administration or cadastre data. The relevant rules must be in place before any data will be produced by the project to give every holder or owner a clear picture of the status of the updated and registered information.

2.2 STATEMENT 2: No sustainable project success without full governmental support

Governmental support for projects does not mean only to sign a loan agreement. To sign a loan agreement for a land administration and land management project should be the final act of a purposeful preparation phase after the clearing up with all project hampering legal prescriptions and inter-governmental institutional conflicts. Why should a project be started with the enforcement of a loan agreement which after all costs money when preparatory work is done only half way? How should a project be successful if working e.g. in fields with disputing but enforced legal acts? Can a project overcome such hard obstacles with some 'legal support'? - As findings from several projects contradictory legislation and remedy for such situations can only managed by the strong will of the Government to create fruitful circumstances for a planned project.

2.3 STATEMENT 3: No sustainable project success without clear responsibilities for governmental authorities

Governmental authorities fighting each other because of unclear responsibilities and processes concerning property registration cannot support development projects in the domain of land management and administration in a sustainable way. As governmental structures more and more have to contribute to state budget by self financing the lucrative process of property registration is very attractive and will not be left to another institution when legislation is not clear concerning responsibilities. In addition to these responsibilities and competences concerning the flow of compensations for registration should never be interfered by a project process in a way that prevents an institution from earning money without compensation. Such disregards of existential money flows will create considerable project obstacles.

2.4 STATEMENT 4: No sustainable Project success without long term spatial data strategy

Documentation of property and spatial information always represents a dearly bought instrument. To increase acceptance of the investment within the government, the multipurpose use of the data is to be recorded and cultivated in an overall NSDI strategy. Nearly every modern Ministry can take advantage from such an instrument. This aspect has to be managed from the very beginning or even during the preparation phase of a development projects in the fields of land management and administration to produce persistent support but also high expectations from secondary users.

2.5 STATEMENT 5: No sustainable project success without the establishment of 'Temporary Development Zones' where a legal base is absent

To overcome the dodgy situation of urban expansion combined with informal/illegal housing and dwellings, we recommend a joint approach of land consolidation and urban planning. This concept asks for a legal framework dedicated to support the achievement of the development aims. Where this framework is not or only fragmentary available, as an initial step a separate perimeter of action, a so called 'Temporary Development Zone' (TDZ) is to be defined and rule set, adapted to the planned project and valid for the TDZ is to be put into force by a government decree (Table 2-1). This rule set overrides the existing laws in specific aspects. Working in different projects we learnt that the adjustment of the legal framework has to take place before any action.

Table 2-1 Legal aspects to be ruled for Temporary Development Zones in a special rule set.

Civil Code, Real Estate Registration Law, Cadastre Law:	Changes to land parcels as well as to rights (encumbrances) are applicable within TDZ and are registered free of charge to the new owners. Compensation by the TDZ project.
Land Use Law:	The land use within TDZ can be changed as technically accountable.
Land Reform Law, Privatization Law:	Land allocations may be freely changed within TDZ.
Expropriation Law:	Land expropriation against appropriate compensation is applicable within TDZ.
Building Law:	New constructions are permitted and registered free of charge to the new owners. Compensation by the TDZ project.
Public Services Law:	Public utilities are forced to provide services and metering to TDZ under appropriate conditions.

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Taking the pre-conditions into account, the following process is to be implemented:

- Step 1: Definition of the perimeter of action (dwelling area to be developed) including sufficient compensation in adjacent area or in the near surroundings.
- Step 2: Common agreement and decision on TDZ: The assembly of stakeholders and local government shall make a decision on the establishment of special rights for TDZ based on the Governmental Decree on the Establishment of Temporary Development Zones (TDZ) for a defined project period.
- Step 3: TDZ Project Analysis Phase: Documentation of formal/informal land rights, and public demand (services, rights-of-way, sensitive and endangered lands).
- Step 4: TDZ Project Land Management Phase: Redistribution plan according to agreed rules of real-substitution and compensation.
- Step 5: Public Display of the allocation plan with the right of administrative appeal for unsatisfied former owners.
- Step 6: Registration of new ownership; payments of compensation.
- Step 7: Reconstruction of settlements by private and utilities by public entities.

In running projects, e.g., in Kosovo (Government of the Republic of Kosovo, MPS 2008) and Azerbaijan, critical factors for success (Kohli, A. 2004) were identified to be:

- Documentation of informal/illegal occupation and construction before regularization;
- Regularization of informal/illegal occupation under formal and appropriate compensation to former owners;
- Management of land and resources according to a concept developed under the aspects of sustainability;
- Compulsory land acquisition by the public—eventually financed by the Bank—in case a direct role in land development is justifiable (e.g., services, right-of-way) (The World Bank 2009);
- Force local government to take an active role within a very short time; the legal provisions for temporary development zones shall expire after a limited period;
- Easy and free of charge registration for new ownership and building under concurrent compensation for registration by the TDZ project.

Summarizing these critical factors for success the TDZ approach can be described by its key features as shown in Figure 2-1 below.

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Figure 2-1 Temporary Development Zones (TDZ) approach - key features.

3. CONCLUSIONS

The need for an appropriate legal fundament for development activities is crucial for the success. In many cases this fact is neglected in the project design and the legal aspects is often dealt with casually.

It is important that that a project has a comprehensive legal base, even when the existing situation is not appropriate or fragmentary. I those cases the creation of Temporary Development Zones (TDZ) with a clearly defined perimeter and a dedicated rule set valid for the project period is highly recommended.

To lay the base for sustainable success of a project, legal arrangements are to be part of the contract negotiations. The way in which the legal fundament will be handled and what measures are to be fixed before the operational work starts will be agreed on in the project contract. This secures as well the full support of the government for the project.

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BIOGRAPHICAL NOTES

Dr. Alexander Kohli, born in 1967, graduated from the Department for Rural Engineering and Surveying in 1995 at the Swiss Federal Institute of Technology (ETH Zurich). From 1995 until 1998 he was doing his PhD studies at The Laboratory of Hydraulics, Hydrology and Glaciology (VAW), Swiss Federal Institute of Technology (ETH Zurich) on BUILDING SCOUR IN FLOOD PLAINS.

After the PhD in 1998, in 1999 he earned the Swiss license for licensed land surveyors. With BSB + Partner he runs a special department for Consulting and Development working for public (World Bank, EBRD, Swiss Government) and private organizations in the fields of Project Development, Land Management, Administration and Cadastre worldwide.

Since 2001 he has acted as head of the public-law planning association (regional planning association) REPLA Grenchen-Büren within the Swiss plateau. In 2009 Dr. Alexander Kohli was dispatched as the delegate of the Swiss professional organization of surveyors in FIG to Commission 8, Spatial Planning and Development. Since 2012 Dr. Kohli acts as Vice-President of the SWISS LAND MANAGEMENT foundation.

Jürg Kaufmann, born 1942 and graduated from the Swiss Federal Institute of Technology in Zurich. He founded in 1988 his own company KAUFMANN CONSULTING, working in the field of cadastre and geomatics on national and international level. Among many involvements for the Swiss Development Agencies, the UN, the World Bank, and for the federal and cantonal Swiss governments he was a member of the management board for the Swiss cadastral surveying system reform and of the legislation team for the Swiss Law on Geoinformation.

From 2003 until 2010 he acted as a president of Geosuisse, the professional Association for Geomatics and Land management and he became a honorary member.

Jürg Kaufmann is also a honorary member of FIG and was chairing the FIG-Commission 7 working group on 'Cadastre 2014'.

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