

Governance and Space, The Role of Civil Registers and Registers of Public and Private Land as Conditions for Development

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SUMMARY

Governance is the interaction of State, Private Sector and Civil Society in the daily practice of production, consumption, movement, recreation and all other activities which occur in a society. When processes lead to imbalances, Policies will try to restore a degree of equity. All societal processes occur in Space whereby space is Land, the Environment and the experience which people have while doing something somewhere.

In urban environments the Public Space plays a very important role to keep the city an economic and social healthy environment. Private properties and their development depend heavily on the quality of the public space.

The Land Administration community and Global Programs tend to stress the formalization of private property as a means to combat poverty and upgrade slums in developing countries.

This paper concludes that securing civil rights through adequate civil registers and the “formalization” of the de facto public land and public space, especially in urban areas, is more urgent than land tenure formalization of private plots.

RESUMEN

Gobernanza es la interacción entre el Estado, el Sector Privado y la Sociedad Civil, tanto en las prácticas diarias de producción, consumo, movimiento, recreación como en toda otra actividad que tiene lugar en la sociedad. Cuando los procesos caen en un desbalance, es a través de la implementación de políticas que se trata de restablecer la equidad. Todos los procesos sociales ocurren en el espacio es decir el medioambiente en el cual se desenvuelven las personas mientras están haciendo algo en algún lugar.

En el ámbito urbano el espacio público juega un papel muy importante para el mantenimiento de un buen ambiente económico y social. La propiedad privada y su desarrollo dependen en forma significativa de la calidad de los espacios públicos.

La comunidad relacionada a la Administración de Tierras y a los Programas Globales tienden a poner el énfasis en la tierra (como propiedad privada) como medio para combatir la pobreza en los lugares más desfavorecidos de los países en vías de desarrollo.

El presente trabajo concluye que asegurar los derechos civiles a través del registro civil y la formalización de la tierra y los espacios públicos, especialmente en áreas urbanas, es más urgente que la formalización de la tenencia de parcelas privadas.

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1. GOVERNANCE

In the past one used to speak about Government, being the State the ultimate repository of political power and Authority in a society. This corresponded with the concept of command and control of the State over society.

Governance is the concept which sees the State as one of the three domains of governance which are the loci of political, economic, and social power. We then distinguish the State, Private Sector and Civil Society interacting in the societal processes.

Governance is the concept of “keeping society together”. It is the keeping differences between people acceptable although everybody has the same rights. Governance is balancing powers and inequalities. Balancing will therefore always mean that power, freedom or income of some will be affected to favor others. Governance is the development of policies to mitigate imbalances which tend to arise from the interaction between citizens in their economic, social, cultural and religious behavior.

To make this acceptable the governance has to be: Participatory, Sustainable, Legitimate, Operates by rule of law, Accountable, Enabling and facilitative, Regulatory rather than controlling and Service-oriented.

There are three types of Governance (Alfiler, 2002):

- Economic governance – the processes of decision-making that directly or indirectly affect a country’s economic activities or its relationships with other economies.
- Political governance – the decision-making and policy implementation of a legitimate and authoritative state.
- Administrative governance – a system of policy implementation carried out through an efficient, independent, accountable, and open public sector.

Each type of Governance leads to formulating policies that have the following rationalities or dimensions (Snellen, 2002):

- Political - the decision making
- Legal - to assure the legitimacy and legality
- Economic- efficient - to assure the good spending of public money
- Technical-scientific - to assure up-to-date and appropriate methods and techniques to be used.

New is the Sustainability dimension to assure environmentally sound interventions and thus thinking along other spatial and time frames than what individuals in their (short term) planning consider.

Policies translate into policy instruments which allow actions to correct inequities. Actions are directed toward groups in time and space to influence their behavior. The provision of Public Goods and Services is the dominant policy instrument.

Economic Governance targets the well functioning of the players in the economic processes. Satisfaction of needs results from consumption and production. Given the importance of the economy many policies target access to economic opportunities, production factors and the markets.

Land, labor and capital are the production factors. Information is these days added as a new production factor. They are traded on the factor input market. The outcome of the production is traded on the intermediate and final product and services market.

Labor policies focus the creation of jobs, the supply of skilled labor for these jobs and regulations for the labor market.

Capital policies or economic development policies focus to stimulate the capitalization of the economy. Technological development is an important component. The financial market has become the first really global market (and largely out of control of Governance).

Land policies comprise the access to land, tenure arrangement, physical and environmental conditions of the land and the market in land-rights.

Information policies are a phenomenon of the last decades and focus the access to information as support for investment and market decisions. Information policies focus in first instance the information which is gathered by and for the public sector that can also be made available for the private sector and civil society.

2. SPACE

Space is a key concept for all dealing with land and geo topics. Spatial data, spatial data infrastructures, spatial information are the key words in conferences like the present one. Geo Information Science builds largely on the sciences of geodesy, land surveying and cartography. These sciences have managed to transform **space** into **place** and represent this in miniature as maps. With the coming of digital graphs and data processing, these were even further miniaturized and are now available on screen, on demand and at any scale.

The words *Land* and *Space* have become almost synonyms in these sciences. In the earth sciences the concept Land is dominant. Space (air- or outer-) is the place from where we observe with remote sensing the “Land – resources”.

Land Administration deals with the administration and registration of delineated pieces of land especially where they function as **place** for people to be and use. The line then gets a meaning of boundary and (de-)limits the rights of people on land, also in cases where the boundary is not visible (Dekker, 2003).

In humanities, architecture and in arts, Space is used more than Land. Also in the political and policy environment the word Space appears. Spatial Planning (German “Raum”, Dutch “ruimte”) is more than just land use planning or zoning. In daily language we speak of Living Space, “Lebensraum”, make space, freedom and space, etc.

Space exists always the combination with actions and movement of people over land. The spheres of actions do not have clear boundaries; they really are spheres and more than places. Neither are these spheres exclusive or constant. Space is an experience, an “Erlebnis”, social Space (Smith, 1998, 2002). Space is an important consumption good, especially for recreation, the recharge of the production factor labor.

Seen from this perspective space is very different from place. Spatial policies will also be different from place- land policies. Spatial policies deal explicitly with the activities of people on and with land and environment.

3. DEVELOPMENT, LAND AND SPACE

Development is the gradual increase in production and related consumption in a society. This is dependent on the accumulation of capital goods which is turn is a function of savings. Division of labor comes with development. The design and operation of technological sophisticated capital goods such as machines requires well trained and thus specialized labor.

In the early phases of development and while the economy is predominantly agricultural based, most investment comes directly from savings of the production unit. Once savings are managed by banks and lenders it becomes as financial capital a separate production factor. With it the financial capital managers and markets arise. Loans get bigger and require special security for the risks. Here the collateral starts to play a role as a guarantee for the lender. The mortgage on land and property is in capitalized economies an important phenomenon to secure the capital market.

In economic theory one distinguishes the primary, secondary and tertiary sector in the production.

Primary sector is agriculture, mining and fishing. These practice a direct exploitation of the natural resource Land. How these activities can be done, where and by who depends entirely on the access to this natural resource.

In the traditional agricultural production function Land is the dominant production factor, followed by labor and lastly by capital. If the production unit is a community, the size and

quality of the community land determine the production. Traditional (indigenous) rights arrange the use of resources for production and consumption.

The resource is the Space- the Environment, the land with everything on and over it through time. These societies deal with their environment in a conscious way and consider themselves to be part of this environment while unborn, during life and when dead. Each living member (often after an initiation ritual) has the right to enjoy the fruits of the environment and the obligation to share them with his community.

If the production unit is a family as part of a group or tribe, communal law systems arrange the access to land for the families belonging to the group or tribe.

As these explicitly arrange use rights for the living, they show environmental awareness and see the land (space) as a social resource. Each person, recognized in the tribe as member has the right to use this social resource.

If the production unit is an individual (family) in an economy where rights of access can only be obtained on the monetized formal land market, the production of this individual (household) is determined by the financial purchasing power on this market. If this market is “free and open” all production units will compete for the resource. Not surprising that good quality land will then have a high market price which makes it inaccessible to many.

Each formal citizen with purchasing power can operate on the formal land market and obtain formal rights on land as production factor.

The higher the price, the greater the need to exploit the resource more intensely by adding other production factors such as (cheap) labor and “non farm” capital to get a higher production and a better return on investment capital. The Land is not seen anymore as Space or Environment but has become the delineated (bounded) piece of land. It becomes the commodity over which maximum command and authority should be gained in order to exploit it within the time horizon of the production unit. The environmental sustainability is a concern with a longer time horizon and falls thus outside the individual production unit.

For those who do not have enough purchasing power, the informal market or taking possession by squatting of “free” space are the only options to get access to land. If these options are not viable a move to the cities to offer the labor force and finding a place for shelter is the last alternative. This is the root of informality. Not only the land holding and the shelter, but also the citizen himself becomes now informal as he cannot register himself as lawful citizen because of the informal land possession or unauthorized move (e.g. China).

The **secondary and tertiary sector** contain the production of industrial goods and services. This production develops with technology and specialized skills. Production therefore takes place in urban areas which facilitate the specialization of labor on the one hand and the close connection of producers to form chains in the production process on the other hand.

Production takes place in buildings and specialized offices. Production cycles become short and a fluid and effective connection to markets for inputs and outputs is crucial for the profitability of the enterprise.

Land in the urban areas is a totally different resource. The only role it plays is that of carrier of the capital investment. Land is part of the capital and can economically and often legally not be separated from the investment.

But each private investment on a plot of land becomes very dependent on the accessibility of the plot. Raw materials, goods and services have to be delivered, labor has to come and go, and products have to leave the plot in a fast and effective way.

Transport and movement require *public space*, i.e. land which is accessible to all and can be used freely and effectively.

It therefore gets the shape and function of *street or road*. It provides access to the plots and buildings where economic functions take place. It also carries services which these buildings require to operate well, such as energy, water, sewerage and waste disposal, telecommunication, and (public) transport. The street name and house number also identify and localize the building through the use of address in daily economic and social life.

The bloodstream of the urban economy and society flows through the roads and streets and feeds the economic and societal functions which take place in buildings, the organs of the urban fabric.

Traditionally urban areas are defined by the density of buildings. More appropriate would be the definition of an urban area as an area with a high density of streets. A healthy 'urb' is an area where the percentage Build-up and Build area (including parks, green elements and possibly water) is approximately 60-40.

That also means that at least 40 % of the land should function as *public space*, as land which is freely accessible and where public services are available.

The quality of an urban piece of land with buildings is highly dependent on the quality of the public land which serves the plot and its neighbors. Plots and streets together make up a neighborhood defined as the blocks and the streets which form a (homogeneous) area. It is well known that property prices are determined up to 50 % by the neighborhood, i.e. the experience which the street and other public space provides in an area.

The quality of a street is determined by the layout, the maintenance and functioning of the elements of the street. The cover type, regulation of traffic, safety, risks, noise, sweeping, and the *space* it offers are the components of type and quality of a street. All these are aspects of *public services and public management*.

The quality of a street is also influenced by the streetscape, i.e. the type, use and quality of the structures as perceived along the street, which are the result of private investment. Urban neighborhoods quickly decay when the quality of the streets goes down. The willingness to maintain and invest in private property immediately drops with the decay of neighborhoods.

The inverse can also be observed. When streets are upgraded and improved by local authorities and start to function as safe and pleasant public space, the willingness to invest on private land along the streets also goes up.

4. RIGHTS AND OBLIGATIONS, CITIZENS AND LAND IN DEVELOPED SOCIETIES

In the perception of economically developed societies with a predominant urban society these statements seem open doors. Informal rural land possession is hardly occurring. Informal urban land is largely unknown as these societies have local government structures and budgets which create, maintain and operate the public street space. Legislation even obliges the public sector to assume responsibility for the roads and streets and to maintain them. Citizens can exercise their civil rights and the public sector assumes its responsibility for the planning, construction, law, order and quality in the public space. Also other services such as access to schools and health at neighborhood level and connection to water, energy and sewerage of the private property can be rightfully claimed in developed economic governance environments from an accountable government.

The citizen rights are derived from the civil register which also maintains the present rightful residence of a citizen. That gives the citizen the right to vote in the place of residence, use the local public health and education services, go to the court in his region, obtain licenses, travel documents and other official statements in his region, etc. All citizens are first class legal local citizens. Anyone who does not appear in the (local) register is therefore illegal, with human rights (in the best cases) but no citizen rights. Citizens thus have great interest in being registered.

Similarly the land registers in these societies contain identified and delineated public and private parcels. Development on private plots requires protection so that it is in the interest of the investor to have the land (and property) registered as the building follows the rights of the land. The developer knows that the public sector has to assume the responsibility for the public space adjacent to -and in the neighborhood of- his plot. Functions and properties of the public space are defined in accepted plans. With that security development can be anticipated. Even credit institution will trust that the neighborhood we be developed as indicated in plans.

The security that the responsibility for the development and management of the public space will be taken up by the public sector (and can be enforced by civil stakeholders) will be called here "*Public Response Security*". The security is derived from the status of the land in the official plans, from the legal obligation for the management of public space by the (local) authority and from the ownership of the land parcel as reflected in the land register and cadastre.

The securities which are provided to citizens to stimulate them to be active in market economies are thus:

- Civil Security - the security of being able to exercise citizen rights at the place of residence
- Public Response Security - the security of a responsive Public sector and the provision of public services in the place of residence and work
- Tenure Security - the security of tenure of land on which durable investments are realized at own costs and risks.

When these securities are fulfilled, the risk of mortgaging properties becomes acceptable and the use of credit for increased investment becomes feasible.

5. DEVELOPING SOCIETIES, MDG'S AND GLOBAL PROGRAMS

Many developing countries suffer from the following characteristics:

- skewed distribution of (good) agricultural land while the rural population is still large.
- strong migration of “unskilled” labor to the urban areas (i.e. unskilled for urban economic processes).
- urban poverty, urban slums and informal settlement areas. While originally at the fringe, these settlement areas become the main urban fabric as the fringe continuously moves.

The reduction of urban poverty has become Millennium Development Goal, MDG 1 while the reduction of slums is MDG 7. UN-HABITAT, World Bank and many other agencies adhere to the goals and develop programs.

UN-HABITAT's *Global Campaign for Urban Governance* mentions the provision of services but management of public space is not an item. Infrastructure is mentioned a few times but not in the sense of managing streets and public space.

Housing, eviction and private tenure are mentioned, but not the regulation of public land tenure. The documents do mention that the civil status of the informal dweller is a problem.

The *Global Campaign for Secure Tenure* focuses on the most dramatic elements such as evictions and slum demolition and the weak position of women. The focus again is on housing and dwellings, access to services and organization of slum dwellers into groups to give them a voice and participation. The tenure and development of the public space does not appear as a point of action.

In the same line we see in the WB policies and publications for tenure regularization a focus on title provision and formalization of private plots through individual or community titles. UN-HABITAT and WB also stress the fact that formalized properties can be used as collateral which will help the poor to develop. The World Bank links the formalization immediately to increased revenue generation through property taxes.

Surprisingly, the municipality or local Government as firsts and foremost responsible for all the public space that was created (formally and informally), has not yet received very much

attention. Many local Governments also deny the responsibility for street in informal areas as they were not planned and developed by the official planning agencies. It is surprising to see that in the “Global” programs the role of the street for urban life and urban development and urban poverty is not mentioned.

In land registration and cadastral development the same phenomenon can be observed. In many land information systems and especially the ones where the use of a cadastral database is in first instance for fiscal purposes, the public properties are not registered or mapped. They appear as background in the map but are not as identified or registered parcel objects in databases.

All the emphasis on the use of land as collateral and the establishment of formal land markets where private property owners can buy and sell to come to an optimal allocation of land makes us forget that there is still a public domain in our neo liberal market economies and societies.

The incorporation of -de facto- public land in land registers and cadastres to make clear and transparent which rights and obligations are related to this land could be a way to enforce the obligations though rightful actions of civil society and private sector.

Research has demonstrated that in the process of bottom-up formalization of informal areas claims for the improvement of the street to function as quality public space have a higher priority than the formalization of private plots (Moreno Horta, 2002).

Though evictions are dramatic and estimated to affect 6 million people per year, the overwhelming majority of the 900.000.000 informal urban poor will have less problems with tenure insecurity than with the deficient quality of the urban neighborhood in which they live, especially with the quality and quantity of the public space which plays a crucial role for the poor in their survival and development opportunities.

Research has also shown that even the streets are squatted or sold when local authorities do not assume the management of the public space. (Njamwea 2003, Mends 2006). The result then is that the structure of these settlement areas becomes so bad that the potential for any economic development and quality improvement of the neighborhood is almost nil.

6. CONCLUSION

Going with tenure formalization programs to poor informal areas to make land possessors “formal” does not contribute to any development and rather consolidates misery. It would make more sense to assure that the public space is formalized in early phases of unplanned urban growth which is the dominant phenomenon in the developing world.

The juridical hurdles which that may cause are big. But far bigger is the problem of reducing poverty and slum improvement if the public land in a rapidly urbanizing world is not recognized, identified, registered and its management assumed as Governance responsibility.

Also in Land Administration practice more attention should be given to the formalization of de facto- Public land in urban areas.

Citizens with civil rights, derived from adequate civil registers (*civil security*), who can count on responsiveness from a Local Government to provide quality Public Space, as one of the most important public goods in daily (urban) life (*Public Response Security*) will gain interest in *security of land tenure* and be able to invest for development and improved living conditions.

Programs that start with the security of tenure hoping that the rest will follow automatically are doomed to fail.

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