

The Suitability of Institutional Arrangement and Policy Assessment Indicator in Malaysia's Land Administration System

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Abstract

A quality assessment framework that assesses the performance of institutional arrangement of land administration is essentially needed considering the framework is where the legal process and property rights are ensured. Land Governance Assessment Framework (LGAF) by World Bank is developed as a diagnostic instrument to assess country's land administration system at national or sub-national level. This study explored the appropriateness of this assessment framework by interviewing experts from Department of Land and Mines, Department of Surveying and Mapping in Penang Land and Mines Office, and Department of Town Planning and Consumer Association of Penang to determine the suitability based on twelve indicators of institutional arrangement and policy highlighted in LGAF. The result shows that, out of twelve indicators, only eleven indicators are highly suitable to be evaluate by Malaysia's land administration system. Through this study, a formal land administration system can be supported and guided via the scheduled evaluations based on the indicators which will be a beneficial for land authorities.

Keywords: Land Administration, Institutional Arrangement, Policy Assessment, Indicator, Land Governance Assessment Framework

Introduction

Institutional framework of land administration system ensures the legal basis necessary for the process, respecting property rights, and guaranteeing the property's protection (Auzins & Kapostins, 2012). Ali *et al.* (2014) specified that institutional structure is a key determinant of the land administration system efficiency with a clear internal and external flow of information. Besides, land administration system includes land settlement, land survey, land registration, land valuation, land control, infrastructure, and utilities. Williamson & Grant (2000) regarded land administration institution as a rule of the game according to accepted law and regulations. In this case, organizations in land administration are recognized as a key player that guarantees smooth operation of the institutions involved. In most

countries, the institutional arrangement of land administration is commonly influenced by the country's background, depending by the type of system, whether it is decentralized, deconcentrated, or centralized (Williamson, 2001).

The institutional arrangement of land administration touches on many issues, i.e. community participation, governance, sustainability, and decision making. Other than that, issues related to the review of the institutional arrangement of land administration include (i) organizational structure, roles, and responsibilities of the institutions providing the core land administration functions, i.e. registration, surveying, and mapping, (ii) decentralization of land administration agencies, (iii) linkages of the core land administration function to other land sector agencies and functions, and (iv) role of the private sector (Burns *et al.*, 2006). Bandeira *et al.* (2010) illustrated that the ineffectiveness of institutional design leads to consequences e.g. thin land formal market, high inability to enforce regulation, and high land tax evasion. Bennett *et al.* (2008) identified the legal and institutional conflicts arising from poorly designed, weakly administered, and inappropriate institutional arrangement.

Following the aforementioned issues, it is therefore important to have a quality assessment framework that assesses the performance of institutional arrangement because land administration activities require a more comprehensive understanding of the principles of institutional arrangement (Burns *et al.*, 2006; Mughal, 2019). Next, institutional arrangement in land administration system needs an effective organization to enhance credibility in the society. Inadequate policy implementation can be recognized if assessment on the performance of institutional arrangement of land administration system does not exist. In this case, ongoing studies are conducted to evaluate different methods to measure the success of land administration system. Steudler (2004) determined that the performance of land administration system is currently being evaluated by different organizations to assess the system for many different purposes, e.g. Table 1 illustrates the land governance assessment framework or in short, LGAF, which has been analyzed by World Bank as a diagnostic tool for land administration system in 50 countries (Deininger *et al.*, 2011). This study explored and analyzed the appropriateness of LGAF to evaluate the suitability of institutional arrangement and policy indicator in Malaysia's land administration system.

Table 1

List of Countries Categorized by Continent

Continents	Countries
Africa	<ul style="list-style-type: none"> • Benin • Burkina Faso • Burundi • Cameroon • Cape Verde • Dem. Republic of the Congo • Egypt • Ethiopia • The Gambia • Ghana • Guinea • Kenya • Lesotho • Malawi • Mali • Mauritania • Mozambique • Namibia • Nigeria • Rwanda • Senegal • Sienna Leone • South Africa • South Sudan • Sudan • Tanzania

	<ul style="list-style-type: none"> • Liberia • Madagascar 	<ul style="list-style-type: none"> • Uganda • Zambia
Central Europe	<ul style="list-style-type: none"> • Azerbaijan • Croatia • Georgia 	<ul style="list-style-type: none"> • Moldova • Romania • Ukraine
Latin America	<ul style="list-style-type: none"> • Brazil • Colombia • Guatemala 	<ul style="list-style-type: none"> • Honduras • Peru
Asia	<ul style="list-style-type: none"> • Cambodia • India • Indonesia • Kyrgyz Republic • Laos 	<ul style="list-style-type: none"> • Myanmar • Philippines • Timor-Leste • Vietnam
Middle East	<ul style="list-style-type: none"> • Afghanistan 	<ul style="list-style-type: none"> • Dubai

Source: (Deininger *et al.*, 2011)

Institutional Arrangement and Policy Assessment

Assessment is needed in any case where changes are considered, and an assessment portfolio has the greatest benefit to the organizations by giving necessary feedbacks into policy planning, programming, and budgetary process (Spilsbury *et al.*, 2014). Assessment also reflects whether an organization is systematic or not (Eo, 2010). Baizerman (2012) argued that the purpose of an assessment is to improve organizational practices. Cousins *et al.* (2014) believed that assessment is a systematic inquiry used in the formulation of judgment about merit, value or significance, and in support of decision making. It is also closely related with the terms utilization, impact, and influence (Daigneault, 2014).

Eo (2010) concluded that an assessment provides evidence-based information that are credible and enables the findings into decision making process. Spilsbury *et al.* (2014) specified that the findings in an assessment play an important role to secure organizational financial resources. Ingraham (2013) discovered that assessment helps to discover how a program is running, what the program is trying to do, and if the outcomes are similar to the stated goals and objectives. Likewise, assessment provides evidence of effective performance in achieving important outcomes and benefits (Spilsbury *et al.*, 2014). Assessment also determines the relevance, efficiency, effectiveness, impact, and sustainability of the interventions and contributions of the involved partners (Eo, 2010). Jabot *et al.* (2011) specified that assessment is an exercise that drives towards positive values by effects.

Findings from assessment are used to improve program, organizational structure, and process on an ongoing basis (McCoy *et al.*, 2014). Program assessment is also a good way of repair to prevent and control situations which enhance opportunity and possibility. Assessments of activities are usually undertaken to review the logic and to determine the progress towards results (Spilsbury *et al.*, 2014). In short, assessment is vital as it helps to improve a particular system by learning from situations that abstain the attainment of goals.

In discussing the governance approach to land administration, Table 2 shows that Deininger *et al.* (2011) have determined five thematic areas that have to be considered to achieve a successful governance. In this case, they found a specific role for public institutions in the land sector for them to increase good governance. Furthermore, understanding the roles and responsibilities of land governance institutions may contribute to the legal

frameworks, policies, and practices regarding land and land use.

Table 2

Five Thematic Areas in LGAF

Thematic Area	Explanation
Legal and institutional framework	Indicators related to the legal and institutional framework are designed to help policy makers assess: <ul style="list-style-type: none"> • The extent to which the range of existing land rights is legally recognized. • The level of documentation and enforcement and the cost of enforcing or gradually upgrading these rights. • Whether the regulation and management of land involve institutions with clear mandates and policy process that is transparent and equitable.
Land use planning, management, and taxation	The purposes of assessing this category are: <ul style="list-style-type: none"> • Land use restrictions are justified on the basis of the public interest. • Necessary exemptions are granted promptly and transparently. • The process for land use planning is efficient. • Taxes on land and real estate are transparently determined and efficiently collected.
Management of public land	A focus on public land management aims to help assess the extent to which: <ul style="list-style-type: none"> • Public landholdings are justified and transparently inventoried and managed; • Expropriation procedures are applied in the public interest through clear, transparent, and fair process involving the compensation of all those who lose rights. • The transfer or devolution of state land is transparent and monitored.
Public provision of land information	Indicators related to this category assess: <ul style="list-style-type: none"> • Whether land information systems provide sufficient, relevant, and up- to-date data on land ownership to the general public. • Whether land administration services are accessible, affordable, and sustainable.
Dispute resolution and conflict management	This fifth set of indicators can be used to assess: <ul style="list-style-type: none"> • Whether a country has affordable, clearly defined, transparent, and unbiased mechanisms for the resolution of land disputes. • Whether these mechanisms function effectively in practice.

Source: (Deininger *et al.*, 2011)

The LGAF process is guided by a framework of land governance indicators in the five thematic areas listed above divided into nine focus areas; each is divided into three to four dimensions (Table 3) in which rankings are assigned by expert panels based on prerecorded answers (on a scale from A to D) drawn upon global experiences. Through a consensual and participatory assessment by local experts of this core set of indicators, the LGAF serves to

map out key information on land governance and define actionable paths for policy interventions; all in a contextualized and country-driven manner.

Table 3

List of Focus Areas and Indicators

Focus Area	Indicators
Land Rights Recognition	Indicator 1: Recognition of a continuum of rights Indicator 2: Respect for and enforcement of rights
Rights to Forest and Common Lands & Rural Land Use Regulations	Indicator 1: Rights to forest and common lands Indicator 2: Effectiveness and equity of rural land use regulations
Urban Land Use, Planning, and Development	Indicator 1: Restrictions on rights Indicator 2: Transparency of land use restrictions Indicator 3: Efficiency in the urban land use planning process Indicator 4: Speed and predictability of enforcement of restricted land uses Indicator 5: Tenure regularization schemes in urban areas
Public Land Management	Indicator 1: Identification of public land and clear management Indicator 2: Justification and time-efficiency of acquisition processes Indicator 3: Transparency and fairness of acquisition procedures
Transfer of Large Tracts of Land to Investors	Indicator 1: Transfer of public land to private use follows a clear, competitive process and payments are collected Indicator 2: Private investment strategy Indicator 3: Policy implementation is effective, consistent and transparent Indicator 4: Contracts involving public land are public and accessible
Public Provision of Land Information: Registry and Cadastre	Indicator 1: Mechanisms for recognition of rights Indicator 2: Completeness of the land registry Indicator 3: Reliability of registry information Indicator 4: Cost-effectiveness and sustainability of land administration services Indicator 5: Fees are determined transparently
Land Valuation and Taxation	Indicator 1: Transparency of valuations Indicator 2: Collection efficiency
Dispute Resolution	Indicator 1: Assignment of responsibility Indicator 2: The share of land affected by pending conflicts is low and decreasing
Institutional Arrangements and Policies	Indicator 1: Clarity of mandates and practice Indicator 2: Equity and non-discrimination in the decision-making process

Source: (Deininger et al., 2011)

In this study, the focus area is on institutional arrangement and policy with two indicators and twelve dimensions. Institutional framework is useful in identifying if the regulation and management of land involve institutions with clear mandates and policy process that are

transparent and equitable (Deininger *et al.*, 2011). The two indicators are:

a) Clarity of Institutional Mandates

Institutional structure reflects the relationship between the actors in land administration transaction (Hagedorn, 2002). Transaction costs will increase because of unclear or overlapping mandates and functions. It can create a discretion of good governance (Deininger *et al.*, 2011). Moreover, the existence of multiple organizations with each legislation power impacts on land administration cycle (Burns *et al.*, 2006). Based on Hsu *et al.* (2013), lack of resources and weak legal framework increase the problems of property ownership, poor land management and institution coordination, and imbalance decision making between national policy and local decision. These can lead to the failure of good land administration system (Auzins & Kapostins, 2012). There are five dimensions under this indicator respectively; (i) land policy formulation where the implementation and arbitration are separated to avoid conflict of interest, (ii) responsibilities of the ministries and agencies dealing with land do not overlap (horizontal), (iii) administrative (vertical) overlap is avoided, (iv) land rights and use information are shared by public institutions and key parts are regularly reported and publicly accessible, and (v) overlaps of rights based on tenure typology are minimal and do not cause friction or dispute.

b) Equity and Nondiscrimination in the Decision-Making Process

Special interest groups are backed by some policy framework guiding institutional activities (Deininger *et al.*, 2011). Equity is the success of an adaptation action (Whitehead & Tsikata, 2003). Deere (2003) stated that nondiscrimination against women in land titling happens because women are considered as rural workers rather than the traditional designation "housewife". Seven dimensions listed in this indicator are; (i) land policies and regulations are developed in a participatory manner involving all relevant stakeholders, (ii) land policies address equity and poverty reduction goals (progress towards these is publicly monitored), (iii) land policies address ecological and environmental goals (progress towards these is publicly monitored), (iv) implementation of land policy is costed, matched with benefits, and adequately resourced, (v) regular public reporting indicating progress in policy implementation, (vi) land policies help to improve land use by low-income groups and those experiencing injustice, and (vii) land policies proactively and effectively reduce future disaster risk.

Methodology of Study

This study used primary and secondary data for the analysis. Primary data were collected via interviews consist of experts from Department of Land and Mines, Department of Surveying and Mapping in Penang Land and Mines Office, and Department of Town and Planning of Penang and Consumer Association of Penang, while secondary data were collected from the analysis of the relevant statutes, rules, regulations, books, reviews of previous research works as well as related journals. This study specifically used data analysis, writing method through revision, and reading and listening to recording data collected during interviews. This study also initially analyzed the interviewees' perceptions of the suitability of the indicators and dimensions of institutional arrangement and LGAF policies according to Malaysia context.

Results and Discussion

Based on the interviewees' reviews, discussions, and opinions, all the listed indicators and dimensions are appropriate approach to assess the institutional arrangement of Malaysia's land administration system. Table 4 summarizes the discussions among the interviewees about the indicators and dimensions.

Table 4

Summary of Interviews based on Indicators

Indicators	Appropriateness	Suitability to Evaluate
1. Land policy formulation, implementation, and arbitration are separated to avoid conflict of interest.	Functions of land policy formulation, implementation, and arbitration are separated. Therefore, this indicator is suits to evaluate because there are a few agencies playing important roles and responsibilities to standardize the land laws such as <i>Majlis Tanah Negara</i> and Department of Director General of Lands and Mines (JKPTG).	Suitable
2. Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal).	No overlap of responsibilities between ministries and agencies in land dealing activities because the National Land Code has already provided a comprehensive guideline to make it uniform and fair. Likewise, every responsibility has already been explained and discussed in meeting, however the overlapping occurs in few stages once the implementation begins. In order to avoid such things from happening that can reduce the efficiency of land dealing process, an assessment towards this indicator is needed.	Suitable
3. Overlapping administrative (vertical) is avoided.	No overlapping administrative issues. JKPTG and PTG play roles in federal and state land development process respectively. The administrative function is carefully planned and each scope is clearly defined. Moreover, the State Planning Committee ensures that the functions of technical agencies involved in land development process do not overlap.	Suitable
4. Land rights and use information are shared by public institutions and key parts are regularly reported and publicly	Land rights and use information are not openly accessed via internet to public because of some restriction which indirectly encourage the misuse of purposes. Public can get the information by payment from land offices, but land owners have the rights to access such a thing without payment because they pay land tax or rent every year. So, this indicator needs to be evaluated to ensure the	Suitable

accessible.	public gain benefits by accessing the information. Additionally, by this sharing of information, people can be made aware with any projects developed by local authority.	
5. Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.	Overlaps of rights causes double alienation and fraud. This sometimes happens because of unwritten will, hence may cause disputes among family and relatives. However, although the land tenure is bonded by indefeasibility as stated in National Land Code, the case still happens. Therefore, it is better to evaluate this indicator for an efficient land administration system.	Suitable
6. Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.	The process of creating or amending land policies and regulations involves special bodies such as lawyer, surveyor, planner, and valuer. There will be selecting committee to develop land policies and regulations that involves all relevant stakeholders.	Suitable
7. Land policies address equity and poverty reduction goals (progress towards these is publicly monitored).	The equity assessment cannot be address in Penang because it relies on purchasing power with its uneven population. It has already become private ownership in comparison to other types of ownership. In addition, a few monitors on reduction goal progress such as FELDA Group Settlement Act (GSA) is considered as a policy that helps the FELDA residents.	Not suitable for address equity but suitable for poverty reduction evaluation
8. Land policies address ecological and environmental goals (progress towards these is publicly monitored).	There is a major concern about issues regarding environment because it is a primary requirement. Usually the state's guidelines meet the environmental aspects. Besides, ecological and environmental goals are suitable to be evaluated because act of environment has underlined the environmental regulations in order to get approval from local authority. This term is rarely followed and authority should know that the effects of development cannot be perceived immediately. For example, according to experts, the effects of land reclamation take time and it should be monitor after a long time of period, hence this indicator is suitable to be assessed.	Suitable
9. The implementation	Implementation of land policy that matches with public benefits should be evaluated	Suitable

of land policy is costed, matched with benefits, and adequately resourced.	because sometimes the implementation is not beneficial towards public, hence this indicator is very important.	
10. There is a regular and public reporting indicating the progress in policy implementation.	Discussion via meeting with the state's Chief Minister and Exco is one of the mechanisms to indicate the policy implementation progress. Other than that, regular public reporting about <i>e-Tanah</i> implementation is also a method to understand public critics on land matter. There is no general indicating process, hence this should be used as an indicator.	Suitable
11. Land policies help to improve land use by low-income groups and those who experienced injustice.	Low-income groups and injustice need to be evaluated. Sometimes the purposes of land policies do not meet their objectives. For example, there are no facilities for children in low-cost houses that are specially built for low-income groups. Hence, this must be reconsidered and assessed for the sake of low-income groups.	Suitable
12. Land policies proactively and effectively reduce future disaster risk.	Policies are to prevent disasters and risks, e.g. Environmental Impact Assessment (EIA), however they should be monitored on a particular area after development. Plus, there is a perfect policy enforcement which proactively and effectively reduces future disaster risks, however lacking in implementation makes the scenario worsen off. Hence, this indicator suits to be evaluated.	Suitable

Through the table, there are eleven indicators based on institutional arrangement and policy indicator that are highly recommended and suitable to appropriately adopt in Malaysia land administration system evaluation. The suitable indicators are heavily opinionated from the interviewees referring to the current implementation of Malaysia's land administration system.

Conclusion

This study analyzed the suitability and appropriateness of institutional arrangement and policy indicator in Malaysia's land administration system using the state of Penang as a case study. Interviewees gave reasons about the importance of the listed indicators and dimensions towards achieving efficiency in the land administration system. The assessments of institutional arrangement, as well as policy indicator and its dimensions have broadly improved the country's land governance and land administration performance.

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