

Swiss Land Governance – the Result of a 900-Year Struggle for Inclusiveness

Ruth Moser and Ueli Straub, AGRIDEA Lindau, Switzerland

Switzerland has a long history of land struggles and debates to come to grips with inclusive land governance. Today the country makes use of a complex system of laws and ordinances, checks and balances, formal and informal processes as well as judicial practices and political procedures to manage land related decision-making. Many of the current challenges demand for a dynamic and systemic approach: They require reliable rules, but also a certain flexibility in order to adapt to future demands has to be assured.

Switzerland of today is characterized by cultural diversity, a high level of welfare and a long period without armed conflicts. But already in medieval times, cooperative structures and common land use have existed and procedures for conflict resolution and joint decision-making were established. This allowed the country to gain experience with the joint management of land and democratic participation, important political rights of the people (optional referendum and popular initiative) have been in force since the end of the 19th century already. Furthermore, the Swiss political system is characterized by a participatory federalism: The cantons – and the municipalities to a certain extent too – are sovereign entities within the framework of the Swiss Constitution. They have their own constitutions as well as legislative, executive and judicial authorities, in order to keep responsibility as close as possible to the people concerned.

This principle also shapes the system of spatial planning in Switzerland. The country's highly developed economy, increasing urbanization and well expanded infrastructure lead to a strong pressure on land use while at the same time they intensify the demand for the protection of landscape and environment. The current Swiss agricultural policy stands between these two opposing forces, trying to promote a sustainable use of land as well as preserving enough productive soil and farming know-how to maintain the potential for self-supply.

Spatial planning is quite comprehensive and includes the responsibility for the whole living space. It is a common task of all three state levels: Confederation, cantons and municipalities. The Federal Law on Spatial Planning represents a framework legislation, setting the principles for spatial planning. However, planning implementation is a task of the cantons, which they fulfil by means of their planning and building laws and the cantonal structure plans, the central instrument for the coordination of spatial development in Switzerland. Additional planning instruments are concepts and sectorial plans on the federal level and land use plans on the communal level. The latter are a core instrument of spatial planning, as they are binding for the general public. They define the delimitation of building and non-building zones and regulate the permitted use of the land. The distinction between building and non-building zone is a key factor in land use planning because it determines which laws are applicable and thus influences the conditions for land tenancy and acquisition, land prices, building permits etc.

The responsibility for the whole living space also implies that spatial planning cannot be regulated exclusively by planning and building legislation. Functional planning law includes all spatially relevant legislations, e.g. legislation concerning infrastructure and installations, agriculture, environment and nature protection, taxation, peasants' land rights, housing, regional policy or tourism. Indeed, planning processes are complex and its hardly possible to regulate all relevant needs by law. A comprehensive balancing of interests is necessary to consider all relevant public and private interests. Thus the basis for sound political decision-making and the avoidance or resolution of conflicts is laid.

Another important issue influencing land governance in Switzerland is the desire to secure national economic supply, especially food supply. The success of the so called "cultivation battle" during the World War II was one of the bases for the actual "Sectorial Plan for Crop Rotation Areas". Its aim is to preserve a minimum of arable soil (438'560 ha) sufficient to guarantee independent food security. Nonetheless, arable land is under severe pressure and the people clearly express their discomfort with urban sprawl and loss of

cultivated land. A revision of the Law on Spatial Planning in 2013 strengthened the protection of arable land.

These general outlines of Swiss Land Governance are explained more in detail with a series of exemplary **Case Studies**, which are summarized below:

Common Land Use: The “Oberallmeindkorporation Schwyz” (OAK), the biggest land corporation of the country, is over 900 years old, has more than 16'000 members (hereditary citizenship) and actually holds a 24'000 ha of land. Its history runs parallel to the development of Switzerland from its origins to the current democratic state. At the beginning stands a 250 year long conflict with the monastery of Einsiedeln about – land rights! A battle that rallied other local farmer communities against clergy and nobility. Over the centuries OAK developed the democratic participation of its members and the inclusive assignment of land use rights.

Spatial Planning: Land ownership is recorded in local land registers open to the public. Spatial planning regulates the land owners' potential use with a set of plans and additional legislations. Formal and informal procedures of checks and balances assure the participation of concerned citizens and land owners. Several planning levels with differing functions provide stability as well as flexibility. While the Confederation promotes and coordinates the spatial planning of the Cantons, the latter issue structure plans which give the Municipalities guidelines to develop their land use plans and define the zones.

Inheritance law and farm transfer: Basically, the civil code of Switzerland defines inheritance rules, fixing legal and compulsory shares as well as free quotas for the distribution of legacies. Non-dividable assets will be assigned to one of the heirs who will compensate his co-heirs at market value. Farm land however is subject to a specific “Law on Peasants Land Rights” (LPLR). It strives to guarantee access and affordable conditions to the user of agricultural land, by giving the heir who is capable and willing to manage the agricultural land personally the right to claim its undivided allocation. And it limits the price for agricultural land by fixing the capitalized earnings value (CEV) as valuation for the transfer of an agricultural business to an heir, resp. double the CEV in case of agricultural land parcels.

Farmland Market and Voluntary Property Consolidation: The LPLR regulates the free market too: Buyers of agricultural land have to be self-managers, and the law sets a dynamic price limit (max. 5% above the average prices in the past 5 years for comparable agricultural parcels or businesses in the concerned area). Farms therefore have limited opportunities to consolidate their parcelling on the market. In order to facilitate the improvement of parcelling, the administration offers various procedures: One of the less complex methods is the voluntary property consolidation: The municipality initiates the process by proposing perimeter and consolidation aims and inviting concerned property owners to an assembly which will decide whether to proceed with the consolidation or not.

Expropriation and Water Protection: The Law on Expropriation allows expropriations in case of superior public interests. They must be appropriate to attain the public goals, and they shall in principle be fully compensated. The law differs between “formal expropriation” (full compensation), “material expropriation” (compensation), and “public law property restrictions” (without compensation). The protection of groundwater resources is clearly of public interest. Their contribution areas are divided into a number of zones with different requirements: the restrictions decrease from zone S1 (catchment sector, material expropriation with compensation) to S2 (inner protection zone with restrictions, compensation) to S3 (outer protection zone (compensation possible)).

Constructing outside Building Zone: In principle, the law does not allow constructing outside the building zone. But it allows exceptions for: residential and economical farm buildings, buildings for energy production and infrastructural works for agriculture and forestry. New constructions, renovations or extensions of limited residential areas are permitted only when the concerned farm has a certain size. Economical farm buildings are zone compliant when they mainly serve for soil-dependant production. If they involve exclusively soil-independent production, they are only compliant in a “special agricultural zone”. All new constructions or alterations of animal keeping facilities have to respect minimal distances (odour emissions).

Nature Conservancy and Ecological Balance: Switzerland's agricultural policy guides farmer's decisions with a system of direct payments. The improvement of ecological standards is supported first by connecting general payments with compliance to the “proof of ecological performance” (basic ecological and etho-

logical requirements). Then other payments compensate specific voluntary performances with regard to environment and livestock. In addition the government applies a number of mandatory regulations with defined aims of water and soil protection, biodiversity improvement and animal welfare.

Farm cooperation: According to economists, Swiss farms should grow in order to improve their competitiveness. But the restricted agricultural land market gives them almost no leeway to do so. That's why the agricultural policy tries to promote cooperation among farms by creating incentives for farmers tackling joint projects: easing of thresholds for direct payments, access to additional interest free credits, non-refundable subsidies for the foundation of corporation initiatives. The Federal Office for Agriculture has started a campaign to promote cooperation and overcome emotional barriers hindering farmers to start joint production.