

THE CREDIBILITY OF INFORMALITY

RETHINKING "INEFFICIENT" PROPERTY RIGHTS OF
LAND, HOUSING AND INFRASTRUCTURE



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Cover design: Ben Davy

**What ultimately determines the performance
of institutions is not their form in terms of
formality, privatization, or security, but
their spatially and temporally defined
function.**

Peter Ho (2014)

THE CREDIBILITY OF INFORMAL INSTITUTIONS

RETHINKING "INEFFICIENT" PROPERTY RIGHTS OF LAND, HOUSING AND INFRASTRUCTURE

Informal institutional arrangements are often seen as an impediment to development and planning. Yet, they often produce villages, neighborhoods, businesses, or transportation modes around the globe. Their legal statuses vary considerably from country to country and from case to case: Some are illegal only in "theory" because they arise in countries where the planning and legal systems are grossly dysfunctional and fail to supply reasonable living and employment; others do violate planning or property laws in some ways and degrees.

Informal development is often labeled as inefficient, "perverse", or at most, "second-best" as compared to "best", formal and codified property rights. Yet, the experience in various settings – developed and developing alike – has demonstrated that informality might actually perform an important function amongst social actors, which does not substantially detract from the legal, institutional performance in a social, economic, cultural, or even environmental sense.

The session challenges conventional views by posing that such informal arrangements as they have emerged and persist in space and time are, in fact, functional, and thus should be regarded as credible. To this end, the session aims to bring together scholars from various disciplines – planning, law or related disciplines – in order to examine functional informalities in a variety of contexts. We welcome contributions studying land, housing and infrastructure from all parts of the world, regardless whether these are based in the developing "South" or the developed "North."

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SCHEDULE

VENUE

Knowles Building

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Wednesday 22nd

Session 1 chaired by Peter Ho

- 10:45 – 11:00 Opening notes "Credibility of Informality"
Peter Ho
- 11:00 – 11:20 Functional informalities? Planning and property rights in Bedouin municipalities: between indigenous customary law and modern state law
Erez Tzfadia
- 11:20 – 11:40 Form follows function? – Property in land and the mystery of informality
Ben Davy
- 11:40 – 12:00 The Credibility and Institutional Function of Small Property Rights' Housing in China
Li Sun and Peter Ho
- 12:00 – 12:30 Discussion and remarks by *Zhang Xiaoling*

Session 2 chaired by Rachelle Alterman

- 13:30 – 13:50 Institutional credibility of real estate property rights in urban China: the perceptions and the conflicts
Ying Zheng and Peter Ho
- 13:50 – 14:10 Housing and informality from the perspective of human dignity
Michael Kolocek
- 14:10 – 14:30 Factors affecting informal housing price discounts at city and estate level in China
Shen Lu
- 14:30 – 14:50 Who owns China's Housing? Institutional archaeology of urban & rural realty
Peter Ho
- 14:50 – 15:15 Day's closing remarks, discussion and group photo

Thursday 23rd

Session 3 chaired by Benjamin Davy

- 8:30 – 8:50 Rent Determinants of Sub-divided Units – Informal Housing Market in HK
Ka Man Leung
- 8:50 – 9:10 Institutional framework and massive illegal construction in Serbian cities
Slavka Zekovic and Tamara Maricic
- 9:10 – 9:30 Belgrade Waterfront Project as Instrument of Urban Transformation and Legal Changes of Urban Land Market
Slavka Zekovic and Tamara Maricic
- 9:30 – 9:50 Understanding Compensation When Use Rights in Rural Land in China are Changed
Hui Zhi Geng, Nan Li and LeGates Richard
- 9:50 – 10:15 Session's closing remarks and discussion
Peter Ho

ABSTRACTS

Session 1

Functional informalities? Planning and property rights in Bedouin municipalities: between indigenous customary law and modern state law

Tzfadia, Erez

Local Bedouin municipalities in Israel's southern district employ informal spatial and non-spatial arrangements. We argue that these arrangements, albeit inefficient administratively, aim at restraining structural tension between indigenous customary law and modern state legal authority, and between original Bedouin and their historically subordinate fellaheen Bedouin group. Generally speaking, the original Bedouin are the traditional landlords and they live in (unauthorized/informal) villages that surround the recognized Bedouin towns. The Israeli law rejects the Bedouins' traditional property rights. Most of the fellaheen live in planned towns, and formally lease state land. They do not claim traditional property rights, yet they do recognize and abide with the traditional property rights of the original Bedouins. For example, the local authority of Kseifa, which we focus on, prevents any development of (formally) state land whenever that land is owned by Bedouin landlord under their traditional customary law. This informal arrangement prevents the development of almost 90 per cents of the land in town, yet protects the (informal) property rights of original Bedouins. Many of these Bedouins live outside the town, yet formally are registered as town dwellers, thus enjoy voting rights in local elections to protect their interests in land. That is to say – inefficient yet credible.

We frame the conflicting socio-spatial-legal divisions and the resultant spatial and non-spatial arrangements as grey governance. The concept of grey governance highlights the spatial dimension of local government that is manifested in contrasting spatial divisions of space and forms of production of space between models of governance of traditional societies and those divisions of the modern state. In the case of Kseifa it highlights several spatial and non-spatial practices in the fields of provision of municipal services to informal villages outside the jurisdiction, construction of municipal infrastructure there, municipal elections and distribution of political power, have all been adopted by the municipality and the town residents as well as by non-town residents as inefficient formal but credible informal practices.

Form follows function? – Property in land and the mystery of informality

Davy, Ben

In a previous paper, Sony Pellissery and I have suggested that informal settlements be construed as manifestations of an 'everyday social contract of informality' that frames the production of non-state welfare in densely populated urban areas in the global South (Davy & Pellissery 2013). This idea fits well with the credibility thesis. According to Professor Ho's version of the credibility thesis (Ho 2014), the nature of institutions is determined by being endogenous, ever-moving, and resulting from disequilibrium. Formal property relies on an exogenously established, robust equilibrium. If we apply the credibility thesis to property rights in land, we must expect informal property—dedicated to the production of non-state welfare—to perform more credible than formal property. This conclusion, of course, goes against the grain of Western property theory (e.g., Blackstone 1766; Epstein 1985; Honoré 1961) as well as prevailing law and economics doctrine (e.g. Coase 1960; von Hayek 1976). Most prominently, de Soto (2000) stipulates an increase in wealth, efficiency, and economic growth as a result of the formalization of property rights. Recognizing the value of informality, from the perspective of these mainstream thinkers, is unwise.



The contradiction presents to us a mystery of informality: If informal institutions are more credible than formal institutions, why did Western economic and political systems waste so much resources on the creation and maintenance of formal institutions, such as property rights in land? In a soft reading of Davy & Pellissery 2013 and Ho 2014, informality is not always more credible than formality, but only under certain circumstances. As theory building goes, the soft reading is a bit disappointing. Under what circumstances does informal property prevail over formal property? I hope I can think of an answer until the Hong Kong conference!

The Credibility and Institutional Function of Small Property Rights' Housing in China

Sun, Li and Ho, Peter

Discussions about informal housing in developing, emerging economies often revolve around the need for prohibition, privatization and formalization. Private title is seen as a guarantee against indiscriminate expropriation leading to tenure security, better access to infrastructure, utilities and mortgage, and higher investments. However, the argument that formalization and privatization out of necessity lead to better rights of otherwise "victimized slum-dwellers" can be questioned. In addition, prohibition of informal housing can marginalize socially weaker groups, while drawing on critical resources for enforcement. We argue that to avoid externalities, one first needs to probe into the function of existing property rights before considering institutional form, irrespective whether formal or informal. China's extra-legal housing – or "Small Property Rights' Housing" (SPRH) – is a case-in-point. Extra-legal housing is estimated to account for one-third of the Chinese urban housing stock. In light of this scale, we maintain that extra-legal housing performs a vital function in providing social security, i.e. affordable housing for lower income groups. The argument is supported through a survey amongst 300 respondents in 7 medium and large-size cities. The survey finds that – despite alleged tenure insecurity – SPRH rallies a high level of institutional credibility along three dimensions: economic, social and psychological. Our findings indicate that urban planning and housing policy should consider institutional differences in line with existing functions. Put differently, whereas formalization, privatization or prohibition could be contemplated when credibility for informal housing is low, maintaining status-quo might be more sensible when that credibility is found to be high.

Session 2

Institutional credibility of real estate property rights in urban China: the perceptions and the conflicts

Zheng, Ying and Ho, Peter

Formal and private property rights are claimed to be important for market development. From a Western development perspective, China's property rights are far from being clearly-defined or legally-protected. The Credibility Thesis, on the other hand, postulates that property rights that persist are likely to perform a function, regardless their form, that is, if social actors aggregately support an institutions at relatively low level of conflict. This article tries to investigate how one of the largest groups of social actors in China, urban residents, perceive the property rights of housing, and react to developments in the real estate market. Property rights are described and examined from three perspectives, namely the titles of land use and housing, the 70-year land lease, and the national real estate registration. Data were collected from urban residents in a nation-wide survey anonymously conducted in 10 cities in 2015. The results showed that the housing title was highly supported (i.e. credible) and mostly considered in the market; markedly, the land use title was equally highly supported but less important to social actors; the national registration was modestly supported; whereas the 70-year land lease was in fact generally opposed but not considered of significant importance in the market. The results also indicated that the conflict level concerning property rights was fairly low. The conclusion

suggests that property rights are perceived as relatively credible, regardless existing institutional ambiguities.

Housing and informality from the perspective of human dignity

Kolocek, Michael

This paper discusses the meaning of informality for people affected by inadequate housing from the perspective of human dignity. Planners can respond to informality in different ways: combat, formalization, solidarity, or ignorance. In discourses on squatting, cage homes, or slums and other forms of informal housing, both human dignity and human rights are often mentioned to raise the public attention. This is not wrong, but only hardly helps planners to solve the problem. Responding to violations of the human right to housing, both dignity and informality need to be conceptualized carefully.

I first present the findings of a global discourse analysis of States Parties reports submitted under the monitoring system of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR discourse proves that in the last four decades, the global view on the human right to housing has changed towards a new recognition of the people living in inadequate housing as autonomous individuals with rights and needs. This new recognition also includes a fresh view on informal housing and working structures. Such a perspective has its roots in research on informality in the Global South (de Soto 2002; Neuwirth 2006 & 2011) and has already reached the jurisprudence of the European Court of Human Rights (Öneryıldız vs. Turkey, 30 November 2004; Winterstein and others v. France, 17 October 2013). Today, there is no doubt that informality exists in every country, although varying in forms and extents.

Based on my empirical analysis, I conclude, however, that spatial planners and other policy makers all around the world will not be able to realize the human right to housing entirely. The focus is then on what shall follow from that. The argument is built on a concept of dignity as non-humiliation (Davy 2014; Margalit 1996). I state: If a society is not able to realize the human right to housing entirely, it has at least to minimize situations in which people affected by inadequate housing have a sound reason to feel humiliated. The paper critically evaluates the role of informality for such a policy.

Factors affecting informal housing price discounts at city and estate level in China

Shen, Lu

The phenomenon of informal housing developments has been unneglectable and widely studied for years in most developing countries. Due to the special dual land tenure system in China, the developments of informal housing estates can be observed in a number of cities although they are illegal according to China's law. The significant price discounts of informal housing units have attracted many buyers despite the issue of insecure land tenure and the quasi-legal right of transfer. Some existing literature have studied the beginning, development, and current situations of informal housing while some others have discussed the appropriateness of different alternatives to deal with the informality and property rights issues. However, since these transactions occur in the grey markets in most cases, very few studies have attempted to study this phenomenon in empirical approaches. This study aims to identify the factors affecting the price discounts of informal housing from economic, social and legal perspectives. Meanwhile, it also intends to fill in the research gap by using empirical data of informal housing asking prices from various cities in China to quantify the discounts and compare the differences at both city and estate levels. Knowing what factors and how they affect the price discounts of informal housing will have implications on the particular legal policies and planning strategies that should be adopted to deal with this issue. Since this study is still at the preliminary stage, empirical data is not available till now. However, a detailed scheme of this study will be

presented so as to let the audience know how the study is to be done.

Who owns China's housing? An institutional archaeology of urban and rural housing

Ho, Peter

When considering development and urbanization, a critical question relates to the institutions on the basis of which these ought to be achieved. Formal, private and titled property rights are oft considered as essential in this. However, contrary to the notion that such rights can be exogenously designed and implemented, this paper ascertains that the property rights of Chinese housing stem from *endogenous* development. The institutional amalgam of contradictory, overlapping and opaque rights points to endogeneity – resultant from actors' multitudinous interactions, bargaining and conflict – rather than the reverse. The housing property rights are analyzed in an evolutionary sense around ownership as an idealized concept. In so doing, the paper describes how the Chinese housing rights' structure developed into its current form; what has been commercialized and what not; and what is formally defined and what not. The analysis covers a half century: the collectivist period since 1962 until the present, with a focus on the time since the 1998 Housing Reforms. The analysis includes the main types of urban *and* rural housing. In light of the endogenous structure of China's housing, the article cautions against precipitous institutional intervention, and contends that formalization and titling should proceed with great care.

Session 3

Rent Determinants of Sub-divided Units – an Informal Housing Market in Hong Kong

Leung, Ka Man

Sub-divided unit (SDU) has become an accommodation option for the urban poor in Hong Kong. It refers to the subdivision of a flat into two or more individual rooms, usually involves unauthorized building works, for rental purpose. Tenants not only face high unit rent, but also reside in inadequate living environment with limited living space and facilities. Yet, there is surging demand for SDUs from the urban poor, the informal housing market accommodated around 200,000 Hong Kong population in 2016. The informality of the market renders very high information and search costs as the rental information is not readily available and disclosed to the public. Potential tenants have to rely on the property agents to search for SDUs. Despite the potential problems arising from information asymmetry and illegality of the tenancy agreements, the market operates smoothly as it has evolved some credible commitment mechanisms.

With the special market nature, this study attempts to analyze the sub-divided unit rental market by hedonic pricing modeling. The effect of basic housing facilities inadequacy of sub-divided units on rent is examined. With the special conditions of sub-divided units, some variables, which have not been frequently in previous studies, are employed to explain the rent. It is hypothesized that basic housing facilities have strong positive effect on rent as it indicates the value of necessity instead of better convenience. The results show that the provisions of independent toilet, property management services of buildings, internal conditions of the rental units, measurements of electricity and water charges have significant and positive impact on SDU rent. These confirm the hypothesis and fill the research gap of studying the effect of housing facilities inadequacy on rental value.

Institutional framework and massive illegal construction in Serbian cities

Zekovic, Slavka and Maricic, Tamara

During the 1960s, fast urbanisation, high housing demand, lack of real construction land policy and inability of existing socialist model to provide necessary residential space, illegal construction occurred in peripheral urban areas as a parallel way for meeting housing needs in Serbia (despite very developed planning system).

From 1990 this process intensified even more. In 1990s, the key driving force was accommodation of a large number of refugees that came to Serbia after the collapse of the SFRY. Informal settlements represented the key form of urban sprawl in Belgrade, covering 22% of the construction land, and taking up 40% of the residential areas (UNECE, 2009). The majority of informal residents live in compact informal housing, scattered in 34 city zones, 18 low-density informal settlements, and in urban slums. In Serbia, the process of "real-estate bubble growth" manifested via an additional increase in illegal construction, now totalling 1.5 million illegal buildings (or 30.4% of their total number in 2015), with 820,000 applications for legalization. There are 0.4 million of illegal buildings in the Belgrade metropolitan area that cause further urban sprawl. Laws in Serbia confront the illegal construction, but this phenomenon has deeper causes, and legislation is unable to remove them successfully.

Manzotti (2009) indices that almost half of Belgrade is built in an "informal way". At the heart of this phenomenon that never seems to slow, lie real estate speculation and a systemic incapacity to respond to the need for providing basic housing. The imperative of formalisation flows of property relations derives from the flawed inductive logic that "rich countries have formalised tenure, therefore formalisation of tenure will help make you rich" (Bromley, 2009). Consequently, Serbian institutional logic promoted by Government in 2007 was based on the slogan "under the roof - registered has more value".

In the period 1990-2015 four laws on legalisation of massive illegal buildings have been adopted in Serbia. The Act on special conditions for registration of property rights on the buildings constructed without building permit (2013) enables legal security in real estate transactions and provision of loans. Only several percentages of illegal buildings in Serbia have been legalised.

Legalisation Act (2013, 2015) and Ordinance on the determination of the remuneration for legalisation (2010) prescribe payment of development fee 99% less than standard value determined by local regulations. This indicates that: 1) there is limited decentralisation of municipal competences as central authorities prescribe reduction of development fee where local government is in charge; 2) owners of legally constructed buildings who paid full development fee are discriminated, and 3) city budget is deprived. According to Planning and Construction Act (PCA), fee for conversion of agricultural land to urban construction land does not have to be paid during legalisation of objects. The Anti-corruption Agency of Serbia raised concerns regarding PCA provisions related to the legalisation of illegal buildings.

Main problem lies in ineffective legalisation of the massive illegal, irregular and informal buildings, and very weak institutional capacity building in this field.

Belgrade Waterfront Project as Instrument of Urban Transformation and Legal Changes of Urban Land Market

Zekovic, Slavka and Maricic Tamara

Phenomenon of the urban megaproject as large development project in cities is usually the result of policy-makers' planning decisions initiated and supported by neoliberal doctrine and urban policies. This paper highlights two main issues: 1) urban planning transformations by mega-project and its impact on changes of institutional and legal framework in Serbia (including property rights, prioritisation, funding of strategic projects), and 2) harmonisation of different forms of public authority responsibilities in planning and governance of urban megaproject investments, as well as greater coordination between numerous actors in decision making, governance and implementation. The paper analyses theoretical and methodological background related to dominant trends in the urban planning from the stand-point of megaprojects, especially in non-developed and developing countries (including post-socialist transitional countries), as well as empirical experience of the Belgrade Waterfront project (BWP). We concluded that change of

institutional framework (introduction of specific legal and policy instruments, e.g. *lex specialis* as instrument of urban land and property expropriation) under political pressures and in global economic and financial crisis was a key source of the future transformation of metropolitan tissue by BWP. Preliminary impact assessment of the BWP indicates the following: slow development effects, slow economic effects, slow transparency, social inequalities, marginal social mobilization and weak networks between the key actors and stakeholders, public funds overuse, limitation of government independence in law-making, high displacement impacts, high public financial risk, strong urban transformations, environmental impacts, medium-technological modernisation, etc. The paper highlights differences in political, institutional, social, economic environment that shaped BWP, as well as recommendations for future research and application in practice for continuing in-depth analysis and sensible analysis to effectively manage the undesirable consequences of BWP. We recommend introduction of trans-disciplinary cooperation for institutional and social innovation in the field of urban transformation by megaprojects. We have indicated some alternative recommendations in the process of planning, governance and implementation of MPs, which can support better development effects and result in better outcomes for the city. In the process of planning, protection of property rights and appraisal of the BWP impacts, we suggest more transparency, performance specifications, the creation of a better regulatory framework, and less use of private risk capital. The specific objective of the BWP requires specific instruments, such as legal, institutional, financial, economic, construction, environmental, different innovations and standards, and more innovative and flexible urban land instruments significant for urban transformations by megaprojects. It provides recommendations for future research and application, including determination of the interplay between different pools of power that are important in urban planning, governance and the implementation of MPs. Majority of megaprojects has weak performance records in economic, environmental and public support. One of the main mega-project paradoxes is performance paradox – excessive costs with overestimated (lower) revenues than planned. Therefore, a new approach in mega-project decision making is required, especially regarding: a) consideration and critique of conventional approach, with suggestion of alternative options, and b) how to overcome theoretical and empirical weaknesses of conventional approach by emphasizing potential risks, institutional questions and their adv.

Understanding Compensation When Use Rights in Rural Land in China are Changed

Hui Zhi Geng, Nan Li and LeGates Richard

The People's Republic of China has about the same land area as the United States, but five times the population and only about one fifth the arable land, so protecting arable land, increase the amount if possible, and using this scarce resource efficiently is very important. Agricultural land in China is owned by rural collectives, but households have use rights to specific plots to farm. Villages often contain factories (village enterprises) and may have other kinds of land uses with varied ownership and use rights.

China's national government encourages villages to consolidate parcels of agricultural land and increase both the amount of arable land and the average parcel size. Many villages seek to combine parcels to increase the average plot size in order to introduce economies of scale and make it possible to use modern farming methods, including use of farm machinery. They may also demolish obsolete village factories and residential buildings that occupy valuable farmland. While there is no equivalent of the U.S. constitution's 5th amendment "just compensation" clause, higher levels of government will compensate a household that loses use right in arable land, a house, or homestead land or the owner of a village enterprise (either state owned or private or a public/private partnership) if it is demolished. There may also be compensation for other kinds of transformation: such as loss of ponds for farmland. This paper describes a project undertaken by six villages in the Qingpu district on the Northern fringe of Shanghai to concentrate and rearrange scattered

cultivated land, residential and industrial land, ponds used for aquaculture, and forest land to create high yield parcels 30-50 acres in size or larger.

Only a detailed study at this scale can describe how household use rights to farmland itself, water used for aquaculture, homestead land used for houses, buildings, and household plots, and industrial land occupied by village enterprises is reorganized under China's urban and rural planning law of 2008.

Based on field research mapping different land uses and interviews with local officials. The study explored the expenses of re-arranging property rights and appropriate compensation for losses villagers experienced. It provides a practical approach that tens of thousands of other villages might pursue in requesting compensation from higher levels of government for different kinds of losses to agricultural parcels, factories, residential land.

The national government also has projects to improve the countryside that may reward some villages. Since 2012 the national "beautiful countryside" program will provide funding to villages designated "beautiful countryside" to improve public infrastructure and beautify the village.

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Professor Rachelle Alterman is Founding President and Honorary Fellow of the International Academic Association on Planning, Law and Property Rights. She is also the co-founder of Platform of Experts in Planning Law. Her research is in comparative planning law and land use regulation, comparative land policy and property rights, housing policy, planning theory and method, and implementation of public policy.

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Richard LeGates is Summit Professor of Urban Planning at Tongji University, co-director of the Tongji Coordinated Urban-rural Development and Countryside Planning Research Laboratory, Emeritus Professor of Urban Studies and Planning at San Francisco State University and the co-author of *Understanding China's Urbanization* (EE Press, 2016).



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Lu SHEN is currently a second-year PhD student in real estate economics at The University of Hong Kong (Hong Kong). Her research interests now focus on institutions, property rights, and land economics. In her PhD thesis, she is investigating how institutional factors contribute to and affect the price discounts of informal housing compared with formal housing in different cities in China. Before starting her PhD in Hong Kong, she obtained a master degree of real estate investment at The University of Hong Kong and a bachelor degree of Surveying at City University of Hong Kong. She grew up in Shanghai but now stays in Hong Kong. In her leisure time, she reads novels, dances tango and jazz, and enjoys traveling to different places.



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Tamara Maricic, research fellow at Institute of Architecture and Urban & Spatial Planning of Serbia. After research in Berlin and Dresden, Obtained MSc (urban green areas) and PhD (social impacts of mining) at the University of Belgrade. Working also in the environment protection field (SEAs). Published >60 research papers.

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Xiaoling Zhang is currently the Program Director of Master of Housing Studies as well as Associate Professor in the Department of Public Policy. Her current research work is focused on sustainable urbanism, land use policy as well as housing policy/management. She has organized a session on "Social-environmental justice and sustainability" in the 2015 Association of American Geographers Conference at Chicago and another one on "Urban inequality and unjust sustainability in China" at 2016 AAG in San Francisco. One of her recent publications is 'Three rights separation: China's proposed rural land rights reform and four types of local trials', which has published in 'Land Use Policy'.

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Ying Zheng is currently a PhD candidate in Institutional Economics and Land Administration at Delft University of Technology, and part of the RECOLAND project (www.recoland.eu). She holds a MSc in Rural Development (Erasmus Mundus scholar), a B.Eng. in Urban Planning (Nanjing University), and attended the postgraduate program in Business Economics (Ghent University). She has also acted as a consultant of real estate development (2010-2011) and as an urban planner (2006-2008).

