

Some Measures to Improve Transparency in Land Administration

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SUMMARY

Based on an earlier paper (van der Molen, 2006) this paper elaborates the measures which might improve transparency in land administration. Furthermore, capacity development is needed, so therefore an inventory of transparency programs is included.

The paper concludes that within a broader anti-corruption program of integrity measures, also specific land related measures are possible, which one one hand should be tested in real life situations and on the other hand be included in caapcity development programs.

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1. INVENTORY CORRUPTION IN LAND

In this chapter we report on a quick survey on corruption in land, based on public information. In section 1.1 we focus on the definition of corruption and its constituting elements. In section 1.2 we summarize the findings of a quick survey on what is known about corruption in land. In section 1.3. we present a long list of recommendations from various documents, and in section 1.4. we formulate a assumption on measures to curb corruption in land. The summaries are based on an earlier paper, presented in FIG Munich (Van der Molen, 2006)

1.1 Introduction

This section addresses corruption in land administration.

Although there is not a universally agreed definition of corruption, UN/Habitat defines corruption as 'the misuse of office for private gain' (UN/Habitat, 2004). Some common forms of corruption are

- Bribery ('abuse of discretion in favour of a third party in exchange of benefits given by the third party')
- Fraud ('abuse of discretion for private gain without third parties involvement')
- Favouritism, Nepotism and Clientelism ('abuse of discretion not for self-interest but for the interest of family, clan, political party, ethnic group etc.
(based on UN/Habitat, 2004)

Corruption has the most devastating effects in developing countries because it hinders any advance in economic growth and democracy (UNDP, 1998).

'Land administration is the process of determining, recording, and disseminating information about ownership, value and use of land; when implementing land management policies' (UN/ECE 1996). As land administration is strongly related with land management (the rationale for land administration is to facilitate land management), in this paper both land administration and land management issues are addressed.

Access to land and land related benefits is an important factor to reduce poverty and create economic growth (WB, 2003)

'Abuse of discretion' might easily apply to the land issue, as the administration and management of land belongs to the domain of government authority (although cooperation with private sector and civil parties is common). Formal decisions are necessary to register a property, to grant a mortgage, to impose or lift restrictions and to allocate a certain land use, which implies discretionary powers of the public sector.

‘Nepotism, Favouritism and Clientelism’ might easily apply to the land issue, as access to land in many situations is dependent kinship, especially under customary law. By consequence, in a world where corruption is getting more and more an issue (see e.g. UN. Habitat 2004), (Törhönen, 2006), (OECD 2000), (UNU, 2005), paying attention to corruption in the field of land administration and land management is inevitable.

1.2 Analysis of Corruption in Land Administration

The wide variety of forms of corruption appears to exist in the land sector as in any other sector, for example:

- Bribery (abuse of discretion because of payments by third parties). It appears that registration of property rights, registration of change of title, acquiring land information, cadastral land survey and land use planning are subject of corruption (reported from Bangla Desh, India, Nepal, Pakistan, Lithuania, Kenya, Czech Republic, Vietnam, Ireland, the Netherlands, Georgia, Russia, Mozambique and China)
- Fraud (abuse of discretion for personal gain without third part involvement). It appears that sales of land and dealing in shares of plantations etc. are not free from corruption (reported from Malaysia, Vietnam, Thailand, Australia, Cambodia, Tanzania, Ghana and China)
- Nepotism, Favouritism, Clientelism (abuse of discretion for benefit of family, friends etc.) It appears that issuing such property rights to land that belong to others (also the State) is subject of corruption (reported from Kenya, Uzbekistan, Vietnam, Botswana, Cambodia and China)

We are aware that our way of desk research may suggest that the mentioned countries are the only ones dealing with corruption. Of course this is not the case. It is just a matter which reports and cases are published in the free press. No country appears to be exempted from corruption.

Anyhow, is it obvious that the sector of land administration and land management is subject to corruption in all its forms; the exact reach and precise nature are difficult to estimate.

1.3 Suggestions on how to Curb Land Corruption in Land Administration

If we summarize the ‘real life’ recommendations from the mentioned paper in Munich, the following elements might play a role in curbing corruption in the land sector.

- Sound legal framework for protection of property rights (reported from China and Kenya)
- Clear definition of land tenure (reported from China)
- Enforcement of the law (reported from Vietnam)
- Open bidding on land (reported from China)
- Standardized procedures for land dealings and supervision (reported from China Vietnam, Zambia, India and South Africa)
- Investigations by Anti Corruption Bureau (reported from Tanzania)

- Preparation of land use plans (reported from Cambodia)
- Monitoring illegal land sales (reported from Cambodia and Kenya)
- Disclosure of illegal land swaps (reported from Cambodia and Kenya)
- Fee structure for services which prevents bribery (reported from Czech Republic)
- Free flow of information (reported from Bangladesh, Kenya and Georgia)
- Corruption issues in school curriculum (reported from Bangladesh)
- Inventory of public lands (reported from Kenya)
- Computerization of land record (reported from Kenya and India)
- Creation Land Titles Tribunal (reported from Kenya)

1.4 Possible Anti Corruption Measures

Based on these real life proposals, the Land Administration Guidelines (UN 1996), and the Transparency Toolkit (UN/Habitat 2004) we categorize the potential measures against corruption in the land sector as follows.

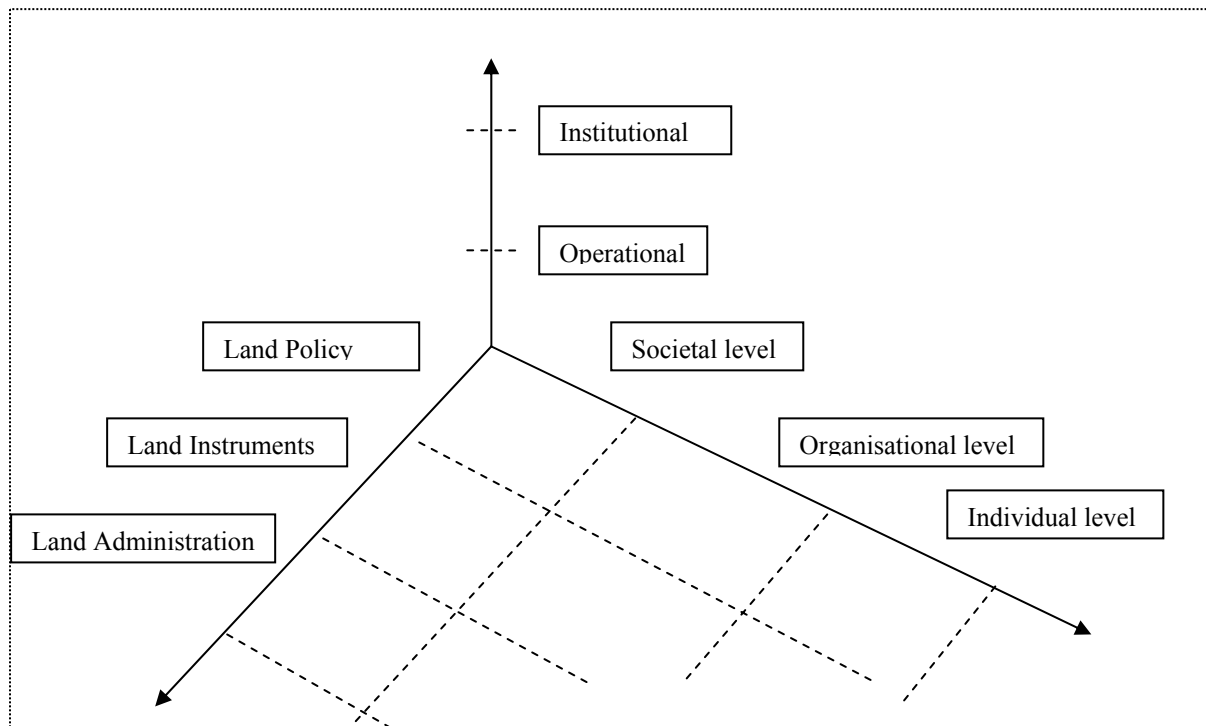
- Creation of inventory of existing land tenure ('cadastre'):
 - no ownership possible without being recorded, to prevent land grabbing
- Open access to information about ownership, value and use of land
 - open for public inspection, to monitor illegal land sales
 - limited personal privacy protection, to prevent to hide illegal interests
- Standardized procedures for determination, recording and dissemination of information
 - no change in inventory without source document that justifies the change (title application, deed, other document), to prevent illegal land transactions
 - limited discretionary competences, to prevent concentration of powers
- Supervision and possibility of appeal
 - independent audits, to monitor illegal operations
 - working with witnesses
 - special Land Tribunals to avoid normal courts to be clogged up
- Computerization
 - dealing with large amounts of data cannot do without.
 - give people direct access to services
 - better monitoring of progress processes

The proposals of TI and UN are very suitable to be met by the land sector, as possession of land is visible to anyone, land cannot be hidden, and making an inventory of land tenure (a 'cadastre') already contributes a lot to openness, transparency and availability of information (the fundamental meaning of the 'old' principles of land registers and cadastres of 'publicity' and 'specialty' has always been the provision of transparency in the land market....).

2. SOME MEASURES FOR IMPROVING TRANSPARENCY

There are various principles that might apply on measures in general. The most important lesson we learned from the theory on institutional economics (North, 1990), which is that society distinguishes institutional and operational aspects of measures. Measures are most

effective when embedded, justified, and defined at a broader level of law and regulations on one hand, and at operational process and procedure level on the other hand. Any anti-corruption measure by consequence should comprise such a two way approach. Secondly, measures in land administration should fit in a well understood context of land policy and land policy instruments for implementation, such as safeguarding land tenure security, regulating the land market, land use development and control, land reform, land taxation and management of natural resources (Van der Molen, 2003). Thirdly, anti corruption measures apply on three levels, namely society, organization, and individual. As such, measures might need a three dimensional approach:



As an example we take a measure to curb corruption in land conflict resolution.

Land Policy aspect: Formulation that a government aims at peaceful enjoyment of equal and fair access to land resources within the principle of the rule of law, participation of land policy development and openness of information principles.

Land Policy Instruments aspect: Definition of principles of conflict resolution for land tenure security, land markets, public acquisition of land, land reform etc.

Land Administration aspect: specific processes and procedures for conflict resolution mechanisms

Institutional aspect: legal framework for conflict resolution, administrative structure for courts and mediation

Operational aspects: manual for courts, land tribunals, and mediators.

Society aspects: integrity pacts,

Organizational aspects: corporate integrity measures, independent accountability and auditing

Individual aspects: code of ethics for judiciary

2.1 Availability of Land Information

The nature of corruption is that it is hidden. Bribery, fraud and nepotism occur in an environment of secrecy. Different from possession of a movable thing ('the one who holds a movable thing is supposed to be the owner'), ownership of an immovable thing is not determined by possession alone. This is the main rationale for the existence of land registers, where rights to land and their right-holders are registered. Without some form of inventory of existing land rights (in an approach of legal pluralism) ownership of land remains hidden and untraceable, and also malpractices. Availability of land information therefore must be guaranteed and facilitated by relevant authorities, including customary chiefs. Within this context, the term 'cadastre' often has the connotation of addressing the conventional system of property rights only, while neglecting other forms of land tenure and spatial units. But why should a 'cadastre' not comprise other forms as well, because the relationship between men and land might have many forms. This is further elaborated in the so called core cadastral domain, which in discussion with UN/Habitat evolved in a 'social tenure' domain model (Augustinus, Lemmen, van Oosterom, 2006), showing the concept of land tenure as a social contract, in whatever society or community this is defined.

2.2 Open Access to Information about Ownership, Value and Use of Land

Having relevant land information available, the information should not be accessible for the elites only. Transparency is best served when the public at large has the constitutional right to access the information at any time and without restrictions regarding the object of interest. Land information being open for public inspection, provides effective opportunities to monitor illegal land sales and land grabbing. The general interest is likely more important than the individual interest of right-holders, which urges to define at institutional level a limited personal privacy protection. This prevents actions to hide illegal interests in land.

2.3 Standardized Procedures for Determination, Recording and Dissemination of Information

It should be impossible to change land registers and cadastres in a hidden and legally unrecognized way. No change in land inventories therefore should be impossible without source document that justifies the change (title application, deed, other document), in order to prevent illegal land transactions. The source of the occurred change in land ownership should always be traceable to who took the decisions and according to what legal prescriptions. Furthermore the current complexity of many registration procedures (see the World Doing Business Reports) creates many opportunities for bribery. Simple procedures, simple workflow management systems limit the discretionary powers of land officials. Working with witness when applying for registration might prevent asking bribes by officials. Using standards make anomalies visible, for example suspect processing times, fees, and changes.

2.4 Supervision and Possibility of Appeal

Openness only not necessarily prevents corruption; however a system of public and corporate audits will reveal illegal manipulation of the registers. Accountability is a key issue in preventing fraud especially when codes of conduct, codes of ethics or integrity protocols link the result to the possibility of administrative and criminal sanctions. Independent supervision of actions by registration officials will do the same. In Zambia analysis of the land delivery process lead to numerous (27!) recommendations to curb ‘white collar malpractices’ by redesigning work processes, redefining roles of officials and openness (Mwanza, 2004).

Open procedures for appeal should be available for anyone, which might lead to investigations when malpractices are assumed.

2.5 Computerization

Availability and access to data, especially in land systems where large amounts of data are involved, is hardly possible without use of ICT. Of course analogue systems are ‘content-wise’ not worse than automated ones (say 10 years ago all land administration systems world wide were maintained manually) , but nowadays the benefits of automation are proven. Reducing land officials’ operations, reducing direct contacts between officials and customers, guaranteeing easy access, and monitoring of processes become possible, and improve transparency.

The aim of the property rights registration system in Georgia was the establishment of a corruption free, transparent and secure system of land registry in the country, through a balanced framework of institutional, legal, administrative, financial and technological reform. Some practical examples of anti-corruption measures are the establishment of a National Agency of Public Registry while land management and land administration functions were split to avoid any undesirable interference, a flexible fee structure allowing for accelerated registration, better salaries for staff, a hot line for auditing, the creation of a front and back office to avoid direct dealings of clients with staff, system integration to avoid any confusion about data, online services, and better auditing and internal control (Dabrundashvili, 2006

Computerization of land records under the project ‘Bhoomi’ in Karnataka India proves to increase efficiency, shorten delay and curb corruption. (New Indian Press, 2001)

This is in line with the recommendations of (TI, 2005b) that suggests (1) use of technology, (2) reducing the role of the ‘deed writer’, (3) re-forming stamp paper, (4) improvement of public dealing, (5) citizen’s charter, (6) independent complaint redressal cell (TI, 2005b). The report describes the situation prior and after ‘Bhoomi’ confirming the above mentioned result of the project.

That computerization alone might not curb corruption shows (De, 2006) who reports on officials in ‘Bhoomi’ asking bribes to correct mistakes, which they introduced in the databases themselves.

3. CAPACITY DEVELOPMENT ON CORRUPTION ISSUES

A relevant question now is, what capacity development on the issue is currently available world wide. As far as we could identify, the majority of anti-corruption and transparency programs are offered by international organisations and a few universities. It must be said that many programs are delivered in partnerships, where the international organisations work together with individual institutions take care of the actual education. We summarize our findings from a web-search done in January 2007.

OECD

Regarding capacity development on corruption in general, the OECD has a certain track record in the Asian Pacific in the framework of the ADB/OECD Anti Corruption Initiative for Asia-Pacific. Capacity building and information exchange are the two central means of this Initiative. It holds training seminars in the region. The first seminar (2004) addressed the effective prosecution of corruption, the second (2004) curbing corruption in public procurement, the third (2005) meeting international anti-corruption standards, and the fourth (2006) denying safe heaven to corruption and its assets. Additionally the Initiative organised a seminar on corruption prevention in Tsunami relief operations

APEC

The Asia-Pacific Economic Cooperation APEC, develops a series of anti-corruption and transparency workshops and training programmes. These programmes might include areas dealing with investigatory and prosecution techniques, judicial reform, anti-money-laundering, asset forfeiture and recovery, and standards.

UNDP

The UNDP definition of capacity and capacity development are often cited. ‘Capacity’ is defined as ‘the ability of individuals, organisations and societies to perform functions, solve problems, and set and achieve goals. ‘Capacity development’ entails ‘the sustainable creation, utilization, and retention of that capacity, in order to reduce poverty, enhance self reliance and improve people’s lives’. UNDP is devoted to capacity development through e.g. the ‘Capacity 2015’ learning network.

World Bank

The World Bank supports capacity development through its World Bank Institute., in a recognition that the safeguarding of the World Bank’s programmes are sustainable. WBI’s Global Governance Program supports the Bank’s governance and anti-corruption agenda, hosting –in 2006- more than 900 initiatives of various nature, while channelling many of these activities via the Global Development Learning Network (GDLN). The WBI’s learning programs cover a number of sectors and themes. Each program designs and delivers courses, seminars, policy consultations and other events that cover issues like governance and anti-corruption, business ethics, urban and local government etc.

Commonwealth

The Commonwealth Fund for Technical Cooperation organises some conferences, workshops and training courses for Commonwealth countries. Examples of the training courses are a two-week-course on ‘combating corruption and enhancing the integrity of judiciaries in the SADC region’ (Mauritius 2004), a two-week-course ‘improving governance and beating corruption’ (Singapore 2005), and a two-week-course on ‘better governance – managing

corruption’ again in Singapore (2006), because ‘Singapore’s experience in fighting corruption and promoting good governance is a model for study by senior officials involved in anti-corruption activities from all over the Commonwealth’.

PAI

Public Administration International is an advisory group which is part of the United Kingdom Public Administration Consortium (UKPAC), a group of public and private organisations that forms the UK’s National Section of the International Institute of Administrative Sciences (IIAS). PAI offers a set of study programs, of which one regards a two-week-course on ‘trust in government, promoting ethics, integrity, and professional standards in public services’. Also tailor made programs are possible, such as ‘democracy, transparency and accountability’, held in Nigeria, and ‘openness and transparency’ in Turkey.

UNPAN

The United Nations Online Network in Public Administration and Finance delivers capacity building and cooperation regarding effective public administration and efficient civil services. No specific courses on corruption are delivered.

UN/FAO

FAO does not pursue specific capacity development activities on corruption and transparency.

UN/Habitat

The Training and Capacity Building Branch assists local authorities and civil society, organisations to build core skills in competencies in various areas including leadership, financial management, local economic development, participatory planning and conflict management, by developing tools and delivering training and strategic workshops. Some are related to governance and transparency issues (e.g. transparency in local governance). UN/Habitat currently is developing training programs on ‘building trust in land administration’, together with ITC, UCLAS, KNUST and Polytechnic Namibia.

NORAD

The Norwegian Agency for Development Cooperation’s new strategy is to focus on governance and anti-corruption. It created a special ‘unit for governance and anti-corruption’, offering courses on anti-corruption methodology, mainly for own staff (also local).

IMF

The IMF Institute offers courses and training programs in Washington and in six IMF-overseas regional institutes and through distance learning programs. The IMFI focuses mainly on financial programming, financial policies and statistic, however some attention is on corruption e.g. IMF-symposium in 2006 on ‘integrity supervision of financial sector firms and markets’. In cooperation with the Global Organisations of Parliamentarians against Corruption IMF participates in workshops and training courses.

TI

Transparency International works together with partners in delivering education on corruption matters, of which several are mentioned in this overview. Its role is providing course ware, and lecturers. The Water sector attracted special attention, through the Water Integrity Network, where capacity building is a substantial element (O’Leary, 2006).

U4

The Utstein Group consists of the international development ministries of UK, Norway, Sweden, the Netherlands, Germany and Canada. The Group leads a web-based anti-

corruption resource centre, maintained by the Michelsen Institute in Bergen (N), The Centre offers anti-corruption training for own staff and invited partners. There are several online courses on the ‘essentials of corruption’, during 6 weeks. Also in-country courses are organised. In 2007 such courses are intended to deliver in Pakistan, Georgia and Tanzania.

ILC

The International Land Coalition pursues a knowledge program, providing lot of activities for collective empowerment. Corruption issues are not separately addresses, but are included in some programs.

USAID

USAID supports various anti-corruption training programs, such as delivered by the Kazakhstan Anti-corruption Centre, in the form of a university-level course which consists of a series of 12 lectures, group games and student presentations. For Asia –says USAID- this is the only anti-corruption course at present.

University of Passau (Germany)

This university delivers a one-week-course on ‘the economics of corruption’, consisting of lectures, workshops and training, targeted at anti-corruption policy makers and practitioners. Subjects at stake are the UN Convention, the design of criminal codes, corporate liability, blacklisting, whistle-blower protection, and ombudsmen.

Australian National University ANU

The Crawford School offers a one-week-course on ‘effective models for corruption control’, targeted at anti-corruption practitioners. The approach is based on the Singapore Corrupt Practices Investigation Bureau. Another course regards ‘corruption and anti-corruption’.

University of Birmingham

The International Development Department (IDD) delivers a full time short course on ‘governance, ethics and anti-corruption reforms’, focusing on the improvement of governance through control and prevent corruption and other unethical practices.

4. CONCLUSIONS AND RECOMMENDATIONS

Combating corruption in the land sector, most likely cannot be successful as an isolated action. It should be part of a national integrity system as proposed by Transparency International (TI, 2001), as various general national anti-corruption measures directly might be applicable at the land sector such as:

- Complaints and ombudsman office
- Independent audit function
- Independent anti corruption agencies
- Disclosure of income and assets
- Ethics training

For the land sector some specific measures might apply

- Land information should be available
- Guaranteed open access to all information
- Accountable processes
- Supervision and appeal.
- Computerization

Capacity Development in land management and land administration can be found all over the world, although not as wide spread as education in law, social sciences, natural science, and technology. Specific land management and land administration modules might be delivered as standard or elective modules within those broader educational fields.

International organisations appear to be involved in quite a few training courses and seminars on anti-corruption world wide, although not so much regarding the land sector.

Our conclusion is that transparency, integrity, anti-corruption in the land sector needs more attention. Diagnostic tools, which exist in e.g. the World Bank, might be expanded to the land sector, as tools and guidelines on transparency published by e.g. UN/Habitat. Possible measures should be tested in real life situations.

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BIOGRAPHICAL NOTES

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