

■ ■ TRAINING PACKAGE: TRAINERS' GUIDE ■ ■



TOOLS TO SUPPORT TRANSPARENCY IN LAND ADMINISTRATION

SECURING LAND AND PROPERTY RIGHTS FOR ALL

UN HABITAT
FOR A BETTER URBAN FUTURE



ITC an Associated Institution of the



**UNITED NATIONS
UNIVERSITY**



GLTN
GLOBAL LAND TOOL NETWORK

■ ■ TRAINING PACKAGE: TRAINERS' GUIDE ■ ■

TOOLS TO SUPPORT TRANSPARENCY IN LAND ADMINISTRATION

Copyright © United Nations Human Settlements Programme

(UN-Habitat), 2013

HS Number: HS/010/13E

ISBN Number: (Volume) 978-92-1-132549-2

DISCLAIMER

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning delimitation of its frontiers or boundaries, or regarding its economic system or degree of development. The analysis, conclusions and recommendations of the report do not necessarily reflect the views of the United Nations Human Settlements Programme, the Governing Council of the United Nations Human Settlements Programme or its member States.

United Nations Human Settlements Programme (UN-Habitat)

PO Box 30030, Nairobi 00100, Kenya

Tel: +254 2 623 120

Fax: +254 2 624 266

www.unhabitat.org

Photos by: UN-Habitat

ACKNOWLEDGEMENTS

Principal authors: Chris Paresi, Solomon Haile, Melissa Permezel, Seth Asiana, Wilbard Kombe, Jane Gold, Arbind Tuladhar

Co-authors: Nfally Badiane, Roch Mongbo, Alain Bagré, Fidelis Kanyongolo, Augustine Mulolwa, Raynold Moyo, Lajana Manandhar, Reshma Shrestha, Buddhi N Shrestha, Muhammad Ayaz Raja Khan, Muzaffarabad, Salma A. Shafi, Shyamalie Perera, Trias Aditya and Floradema C. Eleazar

Coordinator: Solomon Haile

Contributors: Åsa Jonson, Remy Sietchiping, Danilo Antonio, Clarissa Augustinus, Jaap Zevenbergen

Editing: Melissa Permezel, Petra Weber

Graphic Design: Stefanie Freccia

Sponsors: The Norwegian Government and Swedish International Development Cooperation Agency

Printer: UNON, Publishing Services Section, Nairobi, ISO 14001: 2004 certified

TOOLS TO SUPPORT TRANSPARENCY IN LAND ADMINISTRATION

FOREWORD



'Tools to Support Transparency in Land Administration' is an important training manual with relevance and application for many in the land sector and beyond. Global trends reflect an increased desire by ordinary citizens for greater democracy and accountability in the governance structures, policies and resources that

affect their everyday lives. Land is a globally recognized primary resource and has vital economic, cultural, environmental and social dimensions. Land administration represents an important public service and is a key public administrative institution in most countries. The land sector must therefore be part of global trends towards fairness and openness and strive, often against many odds, to develop sound and transparent administrative systems.

This training package 'Tools to Support Transparency in Land Administration' will strengthen the capacity of those working in the land sector to deliver robust and efficient land administration services. Importantly, the package provides practical information and practice-based Tools to Support and strengthen transparency in land administration in three ways: First, the training kit provides users with vital background information to enhance their knowledge on the impacts of corruption, the benefits of transparency and its relationship to the land sector. Second a range

of flexible tools to facilitate and strengthen transparency and accountability are outlined. Third, a series of globally sourced, 'real life' case studies are included to help inform participants about corruption challenges in the land sector and encourage ideas for change. There are also a number of 'good practice' case studies that demonstrate how innovative approaches and tools can substantially improve transparency in land administration and promote good service delivery to citizens.

This Training Package, intended for government officials and state actors at large, thus provides many useful concepts, principles and tools for improving and strengthening local, regional and country level land administration systems. It is hoped that the practical nature of this training package will contribute to strong and equitable land administration systems in many countries and contexts and ultimately result in 'win-win' outcomes for all land sector stakeholders.

A handwritten signature in black ink, reading "Joan Clos". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr. Joan Clos,
Under-Secretary-General of the United Nations,
Executive Director UN-Habitat.

TABLE OF CONTENTS

Foreword	II	Session 8: Case Studies II - Case Studies focussing on the Tools to promote Transparency	27-28
Table of Contents	III	Session 9: Case Studies III - Reform Case Studies (global) analysing Tools used to undertake Reforms	29-30
Acknowledgements	IV-V	Session 10: Action Planning	32-34
TRANSPARENCY IN LAND ADMINISTRATION TRAINING PROGRAM	1	NOTES FOR TRAINERS	35-48
1. Background	1	1. Course structure	36
2. Target groups	2	2. Course material	36
3. Course objectives	2	3. Reference documents	37
4. Course content	2	4. Guidance to sessions	37-48
5. Learning approach	3	CASE STUDIES	49-190
6. Structure of the training program	3	1 Case studies	49
7. Expected outcomes of the training	5	1.1 General information	49-50
8. How to use this Trainers' Guide	5	1.2 Case studies of type I and II – Ice-Breaker and case based learning	51-154
9. Tips for the facilitator: How to run a successful training	5	1.3 Case studies of type III – Global reform Case studies	155-184
		Case studies from around the world for case based reflection on the tools	185-190
SESSIONS	7-34	1.4 Appendices	
Session 1 Governance, Land Administration, Good and Weak Governance, Transparency and Corruption	7-10	ABOUT GLTN	191
Session 2: Reflections on Ice-Breaker Case Studies I	11-13		
Session 3: Understanding and Assessing Transparency in Land Administration	14-16		
Session 4: Access to Information and Public Participation	17-19		
Session 5: Professional Ethics and Integrity	20-22		
Session 6: Institutional and Organizational Reforms	23-24		
Session 7: Reflection on Tools Presented via a Practitioner (such as an Anti-Corruption Agency)	25-26		

ACKNOWLEDGEMENTS

Tools to Support Transparency in Land Administration is one of the two outputs of the training program called 'Transparency in Land Administration.' A Trainers' Guide accompanies this publication in which training delivery methods and facilitation notes are set out along with a number of case studies.

The principal partners which came together to design and implement the training program and this publication are the Global Land Tool Network (GLTN) – an international land network hosted by UN-Habitat, Training and Capacity Building Branch (TCBB) of UN-Habitat and the Faculty of Geo-information Science and Earth Observation (ITC) of the University of Twente (UT).

The publication is the result of a concerted effort of a team of experts involved in implementing the Transparency in Land Administration training. It reflects their knowledge and experience acquired in the course of running two expert group meetings, six successive training sessions in Sub-Sahara Africa, South and South East Asia. The team involved in designing and implementing the training included: Jane Gold (formerly Polytechnic of Namibia [PoN]), Seth Asiamah (Kwame Nkrumah University of Science and Technology [KNUST], Ghana), Wilbard Kombe (Ardhi University [ARU], Tanzania), Solomon Haile and (GLTN/ UN-Habitat), Arbind Tuladhar and Chris Paresi (ITC). These experts have written and rewritten various sections of the Toolkit and the Trainers' Guide.

Melissa Permezel, Solomon Haile and Chris Paresi coordinated the authors' contributions and also guided the editing of or edited the contributions.

A number of regional resources persons and practitioners have been involved in developing the case studies: Nfally Badiane (Environmental Development Action in the Third World [ENDA], Senegal), Roch Mongbo (Université Abomey-Calavi, Benin), Alain Bagré (Géomètre Expert Foncier, Burkina Faso), Fidelis Kanyongolo (University of Malawi), Augustine Mulolwa (National Remote Sensing Centre, Zambia), Raynold Moyo (Ministry of Lands, Zambia) Jane Gold (formerly PoN), Seth Asiamah (KNUST) and Wilbard Kombe (ARU), Lajana

Manandhar, (Lumanti Support Group for Shelter), Reshma Shrestha (Kathmandu University), Buddhi N Shrestha (Former Director General, Survey Department of Nepal), Muhammad Ayaz Raja Khan (AJK Pakistan), Muzaffarabad (AJK Pakistan), Salma A. Shafi (Centre for Urban Studies, Dhaka, Bangladesh), Shyamalie Perera (Survey Department of Sri Lanka), Dr. Trias Aditya (Gadjah Mada University, Indonesia) and Floradema C. Eleazar (Planning, Monitoring and Evaluation Consultant, Philippines).

Acknowledgements are also due to several other individuals who contributed to the development and / or refinement of different sections of this publication and/or of the training programme either through the

review of drafts or involvement in training workshops or Expert Group Meetings (EGMs). We thank in particular Åsa Jonson, Clarissa Augustinus, Remy Sietchiping, Danilo Antonio, Raf Tuts (UN-Habitat), Jaap Zevenbergen and Petra Weber (ITC).

Finally, a special word of thanks to the GLTN /UN-Habitat, the governments of Norway and Sweden for providing the expertise and the resources that made possible firstly the design and implementation of the capacity development program and secondly for producing this publication.

TRANSPARENCY IN LAND ADMINISTRATION TRAINING PROGRAM

1. BACKGROUND

In all parts of the world, land is a highly complex and contentious issue, involving economic, social, political, cultural and often religious dimensions combined with a myriad of multi-layered administrative systems. Access to land is thus a highly political and politicised issue resulting in sharp differentiations between different groups and individuals. As spelled out in Article 75 of the United Nations Habitat Agenda, there is a strong link between land and poverty as the 'legal access to land is a strategic prerequisite for the provision of adequate shelter for all and the development of sustainable human settlements affecting both urban and rural areas. The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty'. Land and land administration are thus critical elements in the wider development agenda.

Transparency is a critical component of a functioning land administration, particularly in view of the scarcity of clear and credible information on land availability and transactions, and the poor dissemination of public information on land rights and policies. The

risk of corruption and inequalities are very real in land allocation and management and it is the poor and other vulnerable groups who often bear the consequences of such inequalities. The consequences to the poor often take the form of limited access to land assets, limited knowledge of land policies and legal frameworks, ignorance about formal land transactions and prices, misallocation of land rights and vulnerability to land grabbing and abuse such as illegal evictions, intimidation and bribery.

When in place, transparency can encourage civic engagement and stakeholder accountability by rendering the public decision making arena more accessible and thus access to land more equitable. A transparent system also strengthens confidence in governments and public agencies, and has a positive economic impact such as growth in GDP and substantial reduction in the cost of doing business. Many of the general governance principles related to transparency are thus highly relevant to the land administration field.

In many developing country contexts, there is a vast demand for skills in the land administration area, including competencies to strengthen transparency.

Developing tools in this area, however, without simultaneously developing capacity to implement them, is unlikely to create a sustainable impact. UN-Habitat and the Faculty of Geo-information Science and Earth Observation (ITC) from the University of Twente therefore agreed on a joint venture to enhance the capacity of those working in the land sector - to increase their knowledge and understanding of transparency through the design and conduct of a training programme on this topic.

This collaboration falls within the framework of Global Land Tool Network (GLTN), which identifies land management/administration as one of five key thematic focuses for attention and land tool development. It also builds on ongoing work by the Faculty of Geo-information Science and Earth Observation (ITC) from the University of Twente, (including the United Nations ITC School for Land Administration Studies) efforts to promote the importance of transparent land administration systems worldwide to improve socio-economic development in less developed countries, based on the principles of good governance.

2. TARGET GROUPS

The target group for this programme are 'upstream change agents', including: senior civil servants, in local government, civil society (including religious leaders and chiefs of customary tenure, where applicable), the media, professional organizations (private sector) and academic professionals.

3. COURSE OBJECTIVES

The overall objective of the training is to 'sensitise' 'up-stream change agents' about land administration, develop their capacity to address issues of corruption and to enhance transparency in the land sector . The Toolkit and the Trainers' guide provide content and methodology respectively. The training is most suited for those in middle and senior level land related management positions. Put another way, the publications are meant for adults with some experience in the land sector. Both publications however, can also be used as resources in academic programs on land administration, land management or related disciplines and as references for researchers grappling with land corruption and transparency

issues. A number of tools on transparency have been published in recent years (UN-Habitat and Transparency International, 2004), (M. Sohail & S. Cavill, 2007) but none have focused specifically on land administration. This training package thus hopes to fill a gap in capacity development in the land administration sector.

**THE SPECIFIC OVERALL OBJECTIVE
OF THE COURSE IS:**

**TO UNDERSTAND THE KNOWLEDGE
AND TOOLS REQUIRED TO PROMOTE
TRANSPARENCY IN LAND ADMINISTRATION.**

4. COURSE CONTENT

The content of the course covers a number of key themes which are clustered into different training sessions. In total there are 10 sessions planned for the course. Five sessions are dedicated to presenting and discussing the core concepts of land governance, transparency, and, land administration and tools that could help bring about transparency.

These five sessions cover the following themes:

- Land Governance, Transparency and Land Administration: Concepts, Principles and Linkages.
- Tools to Understand and Assess Transparency in Land Administration.
- Tools to improve Access to Information and Public Participation.
- Tools to improve Professional Ethics and Integrity.
- Tools to promote Institutional and Organizational Reforms.

The remaining five sessions involve group work on real life case studies and personal and group action plans. The relevance of tools presented can be assessed through an additional session in which a participant or participants can reflect on their practical experience. This can be done by organizing their session in which a participant with relevant experience (e.g., promoters of transparency and accountability from an Anti-Corruption organization) shares what tools his organization employs to tackle corruption and also reflect on the usefulness of the tools being introduced. The last session aims to develop action plans which may be implemented in the participants' countries of origin.

TRANSPARENCY IN LAND ADMINISTRATION TRAINING PROGRAM

These remaining four sessions therefore include:

- Case study I – Ice Breaker Case Studies and Participant's Individual Reflections on Issues.
- Reflection on Tools (presented by a person with relevant field/practical experience).
- Case study II – Knowledge Building on Tools using Case Studies via Group Work.
- Case study III – Knowledge Building on Tools using Reform Case Studies via Group Work.
- Action Planning (the way forward).
- Use of 'real life' practical examples to promote ideas and learning (via case studies);
- Problem based learning through case studies analysis and reflection both individually and in groups, and
- Group work which provides trainees more opportunities to participate and test the usefulness of the tools.
- Utilising the visual material provided in the presentations as a tool for learning and understanding.

5. LEARNING APPROACH

The training emphasizes an interactive and participatory learning approach. Participants should be encouraged to be active in sharing their knowledge and experiences. In the course of the training, a number of training delivery methods need to be used to facilitate learning including:

- Opening questions that enable participants to open up and debate key issues;
- Brief and interactive presentations of concepts and tools (not in a lecture mode);

A detailed description of objectives, contents and teaching approach is provided below for each session.

6. STRUCTURE OF THE TRAINING PROGRAM

The training program is composed of 10 sessions including an action planning session which require at least three days to complete. If resources and other factors permit, the training can be spread over 5 days. The program can, however, also spread over several days in a part-time scenario.

OVERVIEW OF THE SESSIONS

SESSION	TOPICS COVERED
Session 1	Governance, Land Administration, Good and Weak Governance, Transparency and Corruption
Session 2	Case Studies I – ‘Ice Breaker’ Case Studies
Session 3	Understanding and Assessing Transparency in Land Administration
Session 4	Access to Information and Public Participation
Session 5	Professional Ethics and Integrity
Session 6	Institutional and Organizational Reforms
Session 7	Reflection on Tools Presented via a Practitioner (such as an Anti-Corruption Agency)
Session 8	Case Studies II – Case Studies focussing on the Tools to promote transparency
Session 9	Case Studies III – Reform Case Studies (global) analysing Tools used to undertake Reforms
Session 10	Action Planning

NOTES FOR THE TRAINERS

7. EXPECTED OUTCOMES OF THE TRAINING

By the end of the training, it is expected that the participants will be able to:

1. Identify and explain the principles involved in promoting transparency in land governance including concepts such as good governance and transparency.
2. Understand and identify the factors that lead to corruption and those that promote transparency.
3. Understand the range of specific tools available to promote transparency in the land sector and specifically in land administration.
4. Have developed a range of contacts which could grow into an informal professional network or community of practice.

8. HOW TO USE THIS TRAINERS' GUIDE

This specific Trainers' Guide is designed to assist the facilitator or mediator of the training program. The trainers guide provides the facilitator with:

- Detailed session outlines and suggested approaches to each session;
- Facilitation tips;
- How to approach the case studies and group work;

- A number of potential worksheets; and
- A series of presentation slides coinciding with each session.

9. TIPS FOR THE FACILITATOR: HOW TO RUN A SUCCESSFUL TRAINING

Running a series of training sessions with a diverse range of participants has many challenges but also rewards. There are a few elements to keep in mind that will enhance your role and control as a facilitator and ensure that participants get the maximum results from the training. Some of the items to keep in mind include:

- Introduce yourself to participants and ask each participant to say something about themselves including their name, where they are from, and their expectations.
- Set out the ground rules for the session right at the start. Ask participants to comment and agree so all are clear and then refer back to that agreement if necessary through the course of the training. Some of the 'rules' might include sticking to time, listening and respecting each other, even when opinions differ, encouraging full participation by all etc.
- Respect everyone and withhold judgement. Always remember to appreciate, praise and thank participants. Encouragement is critical to motivation and engagement.
- Keep well-mannered eye contact with participants and be an active listener.
- Ask questions, paraphrase (especially if you feel a statement is unclear), and summarise.
- Facilitate fairly, give all participants an equal opportunity to speak, chair sessions, report back from small groups, do an energizer. However, while practising inclusiveness, do not insist that someone speaks and end up embarrassing them. No means no.
- If one person is speaking more than others and others are being silenced, suggest that others be given an opportunity to speak before returning to the one who has already spoken. Then give the person the floor.
- Ensure there is sufficient time allocated to discussion, questions and comments. Do not rush a discussion when it is obvious most participants need to talk further but also keep track of time. Your job is to ensure all the sessions in the training are completed and that people feel that they have been active participants.

- Be aware of examples, phrases that might offend and try not to use sexist, racist or other discriminatory language or examples.
- Keep your speaking time short. The facilitator is there to facilitate learning and interactions and not to occupy the workshop time.
- Keep your presentations and mini lectures brief – remember KISS (Keep it Short and Simple).
- Facilitators don't always know everything about the subject they are facilitating. If you do not have an answer to a question, be honest and say that you do not. You can take an educated guess, ask someone else in the room if they know, and/or you can offer to find the answer and report back to the workshop later.
- Use energizers when you feel the group is tired – get people to stand up and turn around and sit down again!
- Intervene immediately if you see a problem developing – if an argument is brewing, if someone is talking in an offensive manner etc. It is important to diffuse the situation before it gets worse. You can use the 'house rules' for this.
- Arrive in time for your sessions. Even come early as sometimes participants might like to talk with you or raise an issue before others arrive. This input could improve your training sessions or assist that particular participant.
- Be well prepared in advance and ensure that you have timed and tested the methods and tools you are going to use.
- Prepare all the handout material, presentations, etc. well in advance of the workshop. Remind any invited speakers of their participation the day before their session. Come prepared with an alternative in case they are late or cannot ultimately make it.
- Practice what you preach. Keep to the rules yourself.
- And try to smile a lot and always have FUN! Remember that your outlook and energy can affect and set the tone of the session.

AN ADDITIONAL NOTE ON TIME MANAGEMENT:

With regard to time, it can be said that the content presented in the Toolkit can reasonably be covered in three days, especially if training resources are dispatched to participants well in advance and participants come prepared. However, five days would be the most ideal training duration to satisfactorily share and digest the material. In view of this, it must be appreciated that the session duration suggested in the session outlines are only indicative and do not necessarily ensure adequate time to cover the content. Facilitators should be flexible in selecting themes and sessions and allocating the requisite time based on the needs, motivation and background of the target group who are participating.

SESSION 1

GOVERNANCE, LAND ADMINISTRATION,
GOOD AND WEAK GOVERNANCE,
TRANSPARENCY AND CORRUPTION

Activity: Interactive Presentation

Duration: 90 minutes

SESSION NOTES

Session 1: Land Governance and Transparency

Activity: Interactive Presentation

Duration: 90 minutes

SESSION OBJECTIVES

- To introduce the concept of Governance and its relation to land (particular focus on transparency) and to explore the links between governance and land administration and the impact of corruption;
- To outline the impacts of weak and strong governance in relation to land, and
- To provide 'real life', examples of good and bad practices in land governance.

BASIC READING

- Tools to Support Transparency in Land Administration; UN-Habitat and ITC, 2012.

INDICATIVE SESSION PLAN

TIME	SESSION ACTIVITY
30 minutes	Introduction ▶ Objectives of the session ▶ Outline of the session ▶ Anti-corruption quiz ▶ Opening questions: • What and why are we talking about in terms of land governance and transparency in Land Administration? • What are the principles of good governance in Land Administration? • Does good governance vary depending on the context/country or are there some universal principles? Explain and explore. • How does transparency help to realize good governance in Land Administration?
50 minutes	Interactive presentation on Land Governance and Transparency • Governance • Land Governance • Power relations inherent in land and how these relate to governance • Land Administration and Corruption • Transparency in Land Administration • Effects of weak and benefits of Good Land Governance • Conclusion
10 minutes	Plenary discussion • Answers to opening questions • General discussion on land governance and transparency in Land Administration
Facilitation Notes	• Get people to discuss concept of governance from their own personal and country experience to explore notion of context specific and universal understandings of good governance • Be mindful to keep discussion focussed

SESSION 1

ADDITIONAL READING

- Tools to Support Transparency in Local Governance; UN-Habitat and Transparency International, 2004; pages 7-15, in particular.
- Final Report on Expert Group Meeting: Transparency in Land Administration – A Capacity Building Agenda for Africa, Nairobi, Kenya, 29-31 January 2007. UN-Habitat and GLTN in cooperation with ITC; pages 7-16, in particular.
- Corruption and Land Administration by Paul van der Molen and Arbind Tuladhar presented in technical session of XXIII FIG Congress held in Munich, Germany, October 8-13, 2006.
- Good governance in land tenure and administration, FAO Land Tenure Studies 9, FAO Rome, 2007; pages 1-20, in particular.
- Good governance in Land Administration – Principle and Good Practices by W. Zakout, B. Wehrmann, Mika-Petteri Torhonen, WB and FAO, 2006.
- Secure Land Rights for all; UN-Habitat/GLTN, 2008.
- Restore the Health of Your Organization: a practical guide to curing and preventing Corruption in Local Government and communities. Volume 1 Concepts and Strategies by Fred Fisher. UN-Habitat and Partners Foundation for Local Development, FPD, 2006; pages 1-14, in particular.
- Partnering to Combat Corruption in Infrastructure Services; a Toolkit; by M. Sohail and S. Cavill, Water, Engineering and Development Centre, Loughborough University, 2007; pages 9-30.



Land survey in Burkina Faso. Photo © UN-Habitat.

SESSION 2

CASE STUDIES I – ‘ICE BREAKER’ CASE STUDIES

Activity: Individual reflections

Duration: Variable, depending on the number of Case Studies

INDICATIVE SESSION PLAN

SESSION NOTES

Session 2: Case Studies I – Presentation and discussion of ‘Ice Breaker’ case studies (see compilation of case studies)

Activity: Individual reflections

Duration: Maximum 90 minutes

SESSION OBJECTIVES

- To get participants comfortable with and reflecting on the concepts, issues and challenges of corruption in land administration;
- To raise awareness around the broader ethical and governance issues surrounding land administration in developing contexts and allow participants to make links with their own experience;
- To use short case studies to expose participants to some of the ‘real life’ ethical dilemmas surrounding land administration in developing contexts; and
- To provide an opportunity for participants to explore and situate some of their own ethical dilemmas, using the case studies as a catalyst.

TIME	SESSION ACTIVITY
10 minutes introduction + 10 minutes per Case Study	Introduction • Objectives of the session • Outline of the session • Introduction to case studies (illustration of the complex nature of Land Administration and some of the ethical dilemmas posed) • Short presentations of case studies
30 minutes	Individual work: (10 mins) Participants to familiarise themselves with the cases presented, reflect on the stories, and to situate their own experience in this context. Participants may like to consider some or all of the following questions as part of the discussion: • Which key issues around land are highlighted in the case studies? • What individuals or groups are most affected and why? (did the issue of gender, culture or another dimension that came into play?) • What are the key ethical dilemmas that come out of the case studies for you? • Which of these resonates most strongly with your own experience? • Describe one or two ethical dilemmas you have experienced or been exposed to in the course of your own work. How did you respond to these? Group work: (20 mins) In groups of 4, share your experiences using the above questions as a guide for discussion.
30 minutes	Plenary discussion • Discussion linking participants’ experiences with the ethical dimension • Questions: What was interesting about what you heard in your small group discussions? What were the common elements/themes across all four case studies? Was there anything that surprised you in the discussion? Would anyone like to share one of their ethical dilemmas?
Facilitation Notes	• Use this session to help participants to feel more comfortable about exploring the issues of corruption, the key themes, challenges, perhaps some of their own experiences if appropriate. • It is suggested that a maximum of four case studies for this session • To add to the discussion on different experiences of corruption, separate women and men and get them to list 5 priorities in terms of ethical dilemmas they think men and women face and compare differences and then discuss. • Groups should be randomly formed and assigned case studies. • Break out groups work better if groups are assigned with case studies that are familiar to them or whose stories are closer to their experience.

SESSION 2



Group discussion during a training workshop. Photo © UN-Habitat

SESSION 3

UNDERSTANDING AND ASSESSING TRANSPARENCY IN LAND ADMINISTRATION

Activity: Interactive presentation

Duration: 90 minutes

SESSION 3

INDICATIVE SESSION PLAN

SESSION NOTES

Session 3: Understanding and Assessing Transparency in Land Administration

Activity: Interactive presentation

Duration: 90 minutes

SESSION OBJECTIVES

- To understand the key considerations in transparency assessment; (focus on land administration 'hot spots');
- To identify preparatory activities (the do's and don'ts of assessment design and planning) of an assessment; and
- To introduce some tools whereby transparency in land administration can be assessed with a view to preventing and/or fighting corruption.

TIME	SESSION ACTIVITY
10 minutes	Introduction ▶ Objectives of the session ▶ Outline of the session ▶ Opening questions: • Is corruption difficult to assess and address? Why? • What do you think is the purpose of assessing corruption? How does it benefit an organization or department? • What are 5 key considerations when assessing corruption?
20 minutes	Brainstorming through an assessment case/story Facilitator to decide on key case study from training package after assessing participants and their interests/needs. ▶ Participants are encouraged to read the assessment story in appendix 2 and respond to the below questions. This is meant to provide a hands-on activity and keep participants engaged. ▶ Questions: • Based on your understanding of corruption/transparency, how do you characterise/classify the findings above? • Does this excerpt contain ideas of transparency assessment you have in mind? Why? Would you do anything differently? • What specific assessment messages does the story convey in terms data, methodology, actors and their roles, etc? • What is the added value that 'hot spots' bring to an assessment? • What is the added value that 'hot spots' bring to an assessment?

INDICATIVE SESSION PLAN continued

BASIC READING

- Tools to Support Transparency in Land Administration; UN-Habitat and ITC, 2012.
- Assessment story (in Annex 2).

ADDITIONAL READING

- Tools to Support Transparency in Local Governance. UN-Habitat and Transparency International, 2004; pages 28-53.
- Asia Development Bank (ADB) and Asia Development Bank Institute (ADBI), 2007, Improving Local Governance and Service Delivery: Citizen Report Card Learning Tool Kit.
- Transparency International, 2007, Mapping of Corruption and Governance Measurement Tools in sub-Saharan Africa.

TIME	SESSION ACTIVITY
40 minutes	Interactive Presentation on Understanding and Assessing Transparency Opening question: a relevant question that the facilitator/resource person deems useful can be posed at the beginning to get training participants excited and drive a point home about the objective of the session. Purpose of Assessment Assessment Scope • Core function of land administration • Actors and interests in the land sector • Levels of inquiry and analysis Indicators • Land corruption indicators • Vulnerability indicators • Assessment information indicators • Checklists
Facilitation Notes	• Use this session to alert them the importance of understanding the extent of corruption, where it occurs, why and how before considering any intervention. • If more than 90 minutes can be allocated for this session (e.g., in a 5 day training) or participants are willing to invest their spare time, ask them to read the assessment story from Zambia (Appendix 2) and respond to the questions at the end of the story to see assessment in action.

SESSION 4

ACCESS TO INFORMATION AND PUBLIC PARTICIPATION

Activity: Interactive presentations

Duration: 90 minutes

INDICATIVE SESSION PLAN

SESSION NOTES

Session 4: Access to Information and Public Participation

Activity: Interactive presentations

Duration: 90 minutes

SESSION OBJECTIVES

- To share information on the importance of access to land information and public participation as a means to improve transparency, and
- To learn about and discuss a variety of tools which promote access to information and public participation (including public education).

TIME	SESSION ACTIVITY
10 minutes	Introduction ▶ Objectives of the session ▶ Outline of the session ▶ Opening questions: • Who needs information and for what purposes in Land Administration? • In which ways can land information be disseminated to the public? How can we ensure that information gets to all key stakeholders (i.e. what are some of the dimensions/issues to consider in terms of who gets access to information and how? • Why is public participation and education important in bringing transparency in land administration? • How can we ensure all key individuals and groups are engaged? • What processes and tools can be utilised?
30 minutes	Interactive presentation and discussion on Access to Information • Access to information; why and for whom? • Land Information Systems; front and back offices, computerization as means to reduce time, lower costs, improve transparency and decrease workloads. • Web-based access to Land Information (including consideration of emerging social media like Facebook, Twitter, YouTube etc) • Information laws; protection of privacy and protection of the individual against excessive power. • Describe one or two ethical dilemmas you have experienced or been exposed to in the course of your own work. How did you respond to these? • Conclusions.

SESSION 4

BASIC READING

- Tools to Support Transparency in Land Administration; UN-Habitat and ITC, 2012.

ADDITIONAL READING

- Tools to Support Transparency in Local Governance. UN-Habitat and Transparency International, 2004; pages 54-81, and
- An Introduction to Openness and Access to Information; Danish Institute for Human Rights, 2005.

INDICATIVE SESSION PLAN continued

TIME	SESSION ACTIVITY
30 minutes	Interactive presentation and discussion on Public Participation • Public participation. • Public education. • Role of the media (including consideration of emerging social media like Facebook, Twitter, YouTube). • Conclusion.
Facilitation Notes	• Use this session to help participants to feel more comfortable about exploring the issues of corruption, the key themes, challenges, perhaps some of their own experiences if appropriate. • It is suggested that a maximum of four case studies for this session • To add to the discussion on different experiences of corruption, separate women and men and get them to list 5 priorities in terms of ethical dilemmas they think men and women face and compare differences and then discuss. • Groups should be randomly formed and assigned case studies. • Break out groups work better if groups are assigned with case studies that are familiar to them or whose stories are closer to their experience.

SESSION 5

PROFESSIONAL ETHICS AND INTEGRITY

Activity: Interactive presentation

Duration: 90 minutes

SESSION 5

SESSION NOTES

Session 5: Professional Ethics and Integrity

Activity: Interactive presentation

Duration: 90 minutes

SESSION OBJECTIVES

- To consider, learn about and gain a common understanding about the concepts and principles of professional ethics and integrity in the context of land administration, and
- To explore a variety of interventions and tools that
 - a) promote public trust and confidence in land administration, and
 - b) ethics for staff within land administration, such as codes of ethics and ethics training.

INDICATIVE SESSION PLAN

TIME	SESSION ACTIVITY
10 minutes	Introduction ► Objectives of the session ► Opening questions: • What do we mean by ethics and integrity? • Are there different ethics and codes of behaviour for different settings and circumstances and different groups? Explain and explore. • Who are the drivers of ethical behaviours in an organization? What about at home? Who is responsible? • How does a break-down in ethics and integrity affect land administration and conversely, how can a sound ethical framework support good governance in land administration?
10 minutes	Individual reflection • What are my ethics? What are the 5 things that are most important to me? • Who taught me about ethical behaviours and who is responsible for teaching it in my household? • What are the ethics of my place of work? How do I know what they are? • Can one teach someone to be fair/ethical/non-corrupt? • Is it something that can be changed? How? • Are there any differences between men and women? Why? • In an organizational setting, how are good and ethical behaviours taught and enforced? By whom and how?
30 minutes	Interactive presentation on Professional Ethics and Integrity • Ethics and Integrity; • Conflict of interest laws; • Code of professional ethics and 'code of conduct'; • Ethics training; • Dispute resolution and reporting (including the role of the whistleblower and whistleblower protection); • Conclusion.

INDICATIVE SESSION PLAN continued

BASIC READING

- Tools to Support Transparency in Land Administration; UN-Habitat and ITC, 2012.
- Story in Appendix.

ADDITIONAL READING

- Tools to Support Transparency in Local Governance. UN-Habitat and Transparency International, 2004; pages 82-117.
- Restore the health of your organization; a practical guide to curing and preventing corruption in local governments and communities. UN-Habitat and Partners Foundation for Local Development, FPD, 2006; Volume 2 – process facilitation tools.

TIME	SESSION ACTIVITY
30 minutes	Ethical Decision Making Model Case Study • Group discussion based on a Case Study (see Appendix)
10 min	Plenary discussion • Answers to opening questions • General discussion on professional ethics and integrity
Facilitator Notes	• Encourage participants to explore how their background, culture, gender or religion for example, can affect their understanding of ethics. • Encourage participants to share any positive examples that show how ethics were strengthened in an institutional setting (avoid problem based stories, encourage solution based stories). • Keep any discussions focussed. • Encourage code of conduct in session – non-judgmental, importance of listening etc.

SESSION 6

INSTITUTIONAL AND ORGANIZATIONAL REFORMS

Activity: Interactive presentation

Duration: 90 minutes

SESSION NOTES

Session 6: Institutional and Organizational Reforms

Activity: Interactive presentation

Duration: 90 minutes

SESSION OBJECTIVES

- To highlight organizational and institutional issues and challenges that stifle transparent service delivery, breed corruption and block customer satisfaction, and
- To introduce tools that enable institutions and organizations to reform and become more transparent and accountable.

BASIC READING

- Tools to Support Transparency in Land Administration; UN-Habitat and ITC, 2012.
- Story in Appendix.

ADDITIONAL READING

- Tools to Support Transparency in Local Governance. UN-Habitat and Transparency International, 2004; pages 118-146.
- Restore the health of your organization; a practical guide to curing and preventing corruption in local governments and communities. UN-Habitat and Partners Foundation for Local Development, FPD, 2006; Volume 2 – process facilitation tools.
- An Introduction to Openness and Access to Information; Danish Institute for Human Rights, 2005.

INDICATIVE SESSION PLAN

TIME	SESSION ACTIVITY
10 minutes	Introduction ▶ Objectives of the session ▶ Outline of the session ▶ Opening questions: • How can organizations be more effective in providing products and services in a transparent manner? What are the challenges but also opportunities for change? • Who is responsible for making the necessary changes and ensuring they take place (monitoring?)? • How do 'ordinary' staff i.e. those who are not in senior positions become empowered to be part of long term change? • What does capacity building mean to the organization and to those who work in it? Who is it for? Is it something that is inward focus or outward looking... or both?
30 minutes	Interactive presentation on Organizational and Institutional Reforms • Organization's mandates and charters • Organization forms and processes: simplification and standardization; front office/one stop shop/helpdesk; complaint's office/system • Leadership integrity; internal/external independent audit function; oversight committee; policy and legal frameworks • Capacity development and training • Conclusions.
20 minutes	Plenary discussion • Answers to opening questions • General discussion on institutional and organizational reforms.
Facilitators Notes	• Encourage participants to share any positive examples that show how ethics were strengthened in an institutional setting (avoid problem based stories, encourage solution based stories).

SESSION 7

REFLECTION ON TOOLS PRESENTED VIA A PRACTITIONER (SUCH AS AN ANTI-CORRUPTION AGENCY)

Activity: Interactive presentation

Duration: 60 minutes

SESSION NOTES

Session 7: Reflection on Tools Presented via a Practitioner (such as an Anti-Corruption Agency)

Activity: Interactive presentation

Duration: 60 minutes

SESSION OBJECTIVES

- To gain first hand insights into the experience of someone working in the field of transparency building/corruption prevention;
- To explore which tools are used by the Practitioner's agency or organization to promote transparency and understand the challenges and successes associated with the tools and the work of his/her agency/organization; and
- To discuss the key lessons learnt from the Practitioner's experience.

BASIC READING

- Tools to Support Transparency in Land Administration; UN-Habitat and ITC, 2012.

ADDITIONAL READING

- Tools to Support Transparency in Local Governance. UN-Habitat and Transparency International, 2004; pages 118-146.
- Restore the health of your organization; a practical guide to curing and preventing corruption in local governments and communities. UN-Habitat and Partners Foundation for Local Development, FPD, 2006; Volume 2 – process facilitation tools.

INDICATIVE SESSION PLAN

TIME	SESSION ACTIVITY
5 minutes	Introduction ▶ Introduce Guest Speaker ▶ Objectives of the session ▶ Outline of the session – speaker to talk for 20-30 mins then discussion ▶ Questions to consider: • What are the tools, according to the experience of the speaker, that are used to reduce and prevent land corruption? • What are the challenges but also opportunities for change? • How are the tools introduced in this training fare in terms of anti-corruption efforts out in the real world? • Where has the leadership come from? How have staff been motivated? • What key tools have been used? • What are some of the key lessons learnt?
20-30 minutes	Presentation by Visiting Practitioner
10 minutes	Groups Work: reflections on talk • Divide participants into groups and discuss issues raised.
20 minutes	Plenary discussion • Answers to opening questions • General discussion on institutional and organizational reforms
Facilitators Notes	• Ask Presenter to provide any notes on day of presentation. • Encourage participants to discuss positive examples that show how ethics were strengthened in an institutional setting (avoid problem based stories, encourage solution based questions).

- An Introduction to Openness and Access to Information; Danish Institute for Human Rights, 2005.

SESSION 8

CASE STUDIES II – CASE BASED LEARNING – CASE STUDIES FOCUSSED ON THE TOOLS TO PROMOTE TRANSPARENCY

Activity: Group work analysis

Duration: Variable depending on the number of Case Studies (around 2 hours)

INDICATIVE SESSION PLAN

SESSION NOTES

Session 8: Case studies II – Case based learning – Case Studies focussing on the Tools to promote Transparency

Activity: Group work analysis

Duration: Variable depending on the number of Case Studies (around 2 hours)

SESSION OBJECTIVES

- To use the long case studies to illustrate the five substantive areas and particularly the tools that have been covered in sessions 1 to 6;
- To allow participants to integrate what they've learned in Sessions 1-6 and apply these insights to 'real life' situations; and
- To provide the opportunity for participants to identify and discuss the possible entry points that can be used to address land corruption issues mitigate undesirable consequences and promote transparency in land administration systems.

BASIC READING

- Case Studies II - (see Compilation of Long Case Studies on Africa and Asia).

TIME	SESSION ACTIVITY
10 minutes introduction + 10 minutes per Case Study	Introduction ► Objectives of the session ► Outline of the session ► Introduction to: • Group work analysis • Final presentation task ► Short presentations of Case Studies
60 minutes	Groups WorkGroups Work: reflections on talk • What are the core issues involved in this case? • Who is affected and how? • Which of the areas that have been covered so far are at play in this case, and with what effect? • What is the ethical dimension that has been highlighted in this case? (For example, where are the hot spots of corruption and who is responsible for what act of omission or commission? Are the outcomes of decisions equitable; who is potentially 'advantaged' and 'disadvantaged' in the decision making process?) Which of the tools that you've been introduced to will help you to: • Analyse and understand the situation better. • Intervene in the situation to help offset undesirable consequences/allow for more equitable decision-making.
Facilitators Notes	• It is suggested that a maximum of four case studies for this session. • Groups should be randomly formed and assigned case studies unless the facilitator sees specific group work important. • Break out groups work better if groups are assigned with case studies that are familiar to them or whose stories are closer to their experience. • Set specific time limits and goals on what each group should achieve and by when. • Encourage each group to nominate a chairperson to keep to the program and ensure all participants engaged. • Each group should also nominate a note taker.

SESSION 9

CASE STUDIES III - REFORM CASE STUDIES (GLOBAL) ANALYSING TOOLS USED TO UNDERTAKE REFORMS

Activity: Group work presentations and discussions

Duration: Variable depending on the number of groups (around 2 hours)

INDICATIVE SESSION PLAN

SESSION NOTES

Session 9: Case Studies 3 - Reform Case Studies (global) Analysing Tools used to Undertake Reforms

Activity: Group work presentations and discussions

Duration: Variable depending on the number of groups (around 2 hours)

SESSION OBJECTIVES

The objectives of this session are for participants to break into groups to:

- Discuss the overall issues, challenges and opportunities presented in the long case studies in terms of promoting transparency in land;
- Explore the effectiveness of various tools and where innovative solutions were used to tackle particular issues; and
- Explore what might be relevant to each person's own work situation.

BASIC READING

- Case Studies III - (see Global reform Case Studies in compilation).

TIME	SESSION ACTIVITY
10 minutes per group	Presentation on analysis of case studies: The presentation of each group includes: • Each group should choose one case studies. • A situation analysis/description of the key common issues and challenges presented in the case studies. • Tools used to promote reforms. What tools were chosen and why? How were they effective? How will this strategy contribute to different outcomes? Who will be responsible for what? • What else could have been done? • What is the best tool/tool that I could apply in my context and why?
20 minutes	Plenary discussion • Drawing out key themes and synthesis. • Reminding participants of discussions in Session 2. • What have you learned from this detailed analysis of case studies that you could apply to some of the ethical dilemmas you identified in Session 2? • Identify which tools could be used in each participants personal situation.
Faciliator Notes	• Facilitator to nominate case studies for groups to save time; • Ask each groups to nominate a facilitator and for that person to set time limits on discussion etc so objectives achieved; • Each group should also nominate a note taker; and • Focus on identifying tools and reforms.



SESSION 10

ACTION PLANNING

Activity: Individual and group work on action planning

Duration: Variable, depending on the number of groups (around 2.5-3 hours)

SESSION 10

SESSION NOTES

Session 10: Action Planning

Activity: Individual and group work
on Action Planning

Duration: Variable, depending on the number of
groups (around 2.5-3 hours)

SESSION OBJECTIVES

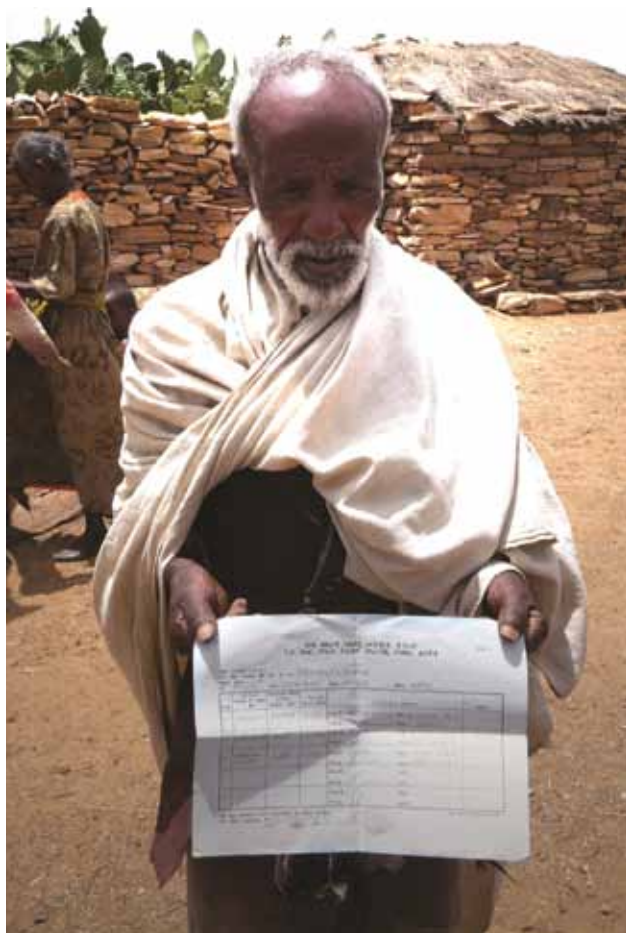
The objectives of this session are to allow each participant to:

- Reflect on what has been learnt in the preceding days of the course;
- Think about what post training activities participants can take to implement any new knowledge and ideas upon returning to his/her work place; and
- Provide a space for interaction with peers for the development of a community of practice and personal/national-level follow-up.

INDICATIVE SESSION PLAN

TIME	SESSION ACTIVITY
30 minutes	Guidance on Action Planning: Short introduction to Action Planning and to the session. Key questions to consider: • What are some of the next steps that participants would like to take in order to make the most of their training? • What are some of the key ways they can be supported? • What specific goals can be set?
60 minutes	Individual Action Planning: This sub-session will consider how the participant, in his or her individual capacity, will be able to use the new knowledge and skills gained from the course when returning to his or her position back home. An action plan template will be provided for completion to each participant, to help trigger thoughts and a specific action plan on this.
60 or 90 minutes	Group Action Planning: This sub-session will consist of two parts. • The first 30 minutes will be spent in group work by thematic profession (such as land, anti-corruption, advocacy.) These groups will have a mix of participants from different professions/disciplines. The intention is for the thematic group work to trigger ideas within each professional group as to what actions they can undertake back in their work context. • (Only applicable in case of a regional training programme) The next 30 minutes will be spent in group work by country. Participants will have an opportunity to report back on ideas they have gained from the first group exercise, to help in brainstorming on what can take place as a national follow-up to the regional training course. A suggested template will be provided to each group for reporting back in the plenary session. • The last 30 minutes will be provided for the thematic (or country) groups to complete a presentation on the key themes. • Action plans may require consultation with/approval from colleagues and supervisors. If participants so desire, facilitators should provide a space for this to happen, i.e., participants submit a provisional action plan at the end of the training and finalize it after two weeks upon their return.

INDICATIVE SESSION PLAN continued



A farmer in Tigray State, Ethiopia showing his land certificate. Photo © UN-Habitat.

Facilitation Notes

- Begin session with a brief presentation on the objectives of action planning, how it is organized and what considerations should be factored in going forward (see presentation).
- Action planning presentations by thematic or country groups.
- Each group will have 10 minutes to present, 10 minutes open plenary discussion. (10 minutes per group + 10 minutes plenary)
- Ask each groups to nominate a facilitator and for that person to set time limits on discussion etc so that the objectives are achieved.
- Each group should also nominate a note taker.
- Focus on identifying tools and reforms.
- Encourage participants to discuss what might be useful for them in their own context.
- Encourage individuals or country groups to develop specific actions plans so that a process of change can be commenced immediately on return to work.

NOTES FOR THE TRAINERS

1. COURSE STRUCTURE

Concepts and tools presentation sessions should last no more than 90 minutes per session and should be delivered in an interactive manner, alternating the presentation of concepts, their illustration through 'real life' examples and discussion based on (not-exclusively though) questions outlined at the beginning of the presentation. Facilitators are free to frame and use other opening questions (provocative questions preferred) where appropriate. The session based presentations are also available to support the learning process.

Individual and group work is based upon a set of case studies from different countries and regions around the world. Course-specific case studies can be selected depending on the country/region and the background of the participants. Group exercises can vary in duration, depending on the number of case studies to be analysed and then discussed.

The Action Planning session should consider individual, thematic group and country group Action

Planning. The participants should be sent the training package (Tools to Support Transparency in Land Administration, relevant information from the Trainers' Guide and further reading) well in advance of the course, to allow them to prepare themselves for the course (at least 2-3 weeks).

2. COURSE MATERIAL

The training programme is supported by the following teaching/learning material:

- UN-Habitat (2004) - A Toolkit to support Transparency in Land Administration.
- A Trainers' Guide:
 - The Trainers' Guide provides for full information on and documentation for people involved as facilitators.
- Restore the health of your organization; a practical guide to curing and preventing corruption in local governments and communities. UN-Habitat and Partners Foundation for Local Development, FPD, 2006; Volume 2 – process facilitation tools.
- Three sets of case studies. Set 1) Ice-Breaker case studies which highlight some of the challenges and issues in the land sector mainly from Africa and Asia and are designed to get people talking about corruption and they challenges they might face in their work contexts. Set 2) Case Studies focussing on the tools to promote transparency. These longer case studies are designed to be used to promote discussion of the types of tools that could be used to promote transparency. Set 3) The Global Reform case studies highlight some of the ways countries have approached solving land issues using a range of tools (case studies drawn from around the world). These case studies are designed for discussion around the tools covered in the training package and what other actions or tools could be used in each case, to promote transparency.

NOTES FOR THE TRAINERS

3. REFERENCE DOCUMENTS

The following documents have been selected as references and are provided in digital format to the participants for additional reading.

- Tools to Support Transparency in Local Governance; UN-Habitat & Transparency International; Urban Governance Toolkit Series; March 2004.
- Partnering to combat corruption in Infrastructure Services: A Toolkit; M. Sohail & S. Cavill; Water, Engineering and Development Centre, Loughborough University, 2007.
- Secure Land Rights for all; UN-Habitat, 2008.
- Corruption and Land Administration by Paul van der Molen and Arbind Tuladhar; presented in technical session of XXIII FIG Congress held in Munich, Germany, October 2006.
- Good governance in land tenure and administration; FAO Land Tenure Studies 9; FAO Rome, 2007.
- Good governance in Land Administration – Principle and Good practices by W. Zakout, B. Wehrmann, Mika-Petteri Torhonen; WB and FAO, 2007.
- Restore the Health of your organization: a practical guide to curing and preventing Corruption in Local Government and communities. Volume 1 Concepts and strategies by Fred Fisher. UN-Habitat and Partners Foundation for Local Development, FPD, 2006.
- Restore the Health of your organization: a practical guide to curing and preventing Corruption in Local Government and communities. Volume 2 – process facilitation tools by Ana Vasilache and Nicole Rata. UN-Habitat and Partners Foundation for Local Development, FPD, 2006.
- An Introduction to Openness and Access to Information; Danish Institute for Human Rights, 2005.

4. GUIDANCE TO SESSIONS

4.1. OVERALL FACILITATION OF THE COURSE AND OF THE DISCUSSION SESSIONS

- It is recommended to that a professional or experienced course facilitator is used to undertake the training and to do the presentation during the plenary sessions, guide participants' group-work, including advising on group reporting. A trained facilitator will also help keep to the course timetable and ensure all tasks are achieved in each session on time.
- Ground rules: ground rules should be agreed up on and the facilitator needs to do this right at the beginning of the course. The purpose is to create a favourable learning environment. It is recommended that these are set-up by participants themselves. These may be culture and context specific. They may include time management, respect for each other, turning off mobile phones and adhering to session time frames. The training is intended to be interactive, with contributions expected from all participants. Focus should be given to current discussion topics with short and succinct interventions so that issues raised for discussion can be focussed on. Participants should be asked to be patient with situations that did not seem familiar. Emphasise the importance of keeping time.
- Discussion sessions: the facilitator should maximize group discussion in sessions assigned for group work. Depending on the size of the group, participants should come together in small groups of five to six people and these should

provide more opportunities to participate. Facilitators must ensure break out groups discussions are not dominated by a single or few individuals. Results of the group work should be reported back to all participants and plenary discussion should follow.

- The presentations: a set of power point presentations have been developed to coincide with each structured session. They are designed to complement the information available for presentation. Specifically, they are meant to support the teaching process for the facilitator and the learning process for the participants. The content of the presentations is by no means 'set in concrete' or mean to be 'prescriptive'. Facilitators are encouraged to decide whether or not, each set of presentations will indeed be useful and whether or not some content should be removed or other content added, according to the context of the training session. In other words, as with the this entire training package, the presentations should be adapted and domesticated to reflect the local conditions, current issues and emphasis of the training.

- The Presentations and Learning styles: It is worth noting that the presentations could be useful in providing different methods through which participants can engage with the concepts, themes and issues of the Toolkit. People learn in various different ways – some by reading, some by listening and some from visual material. The presentations might therefore be an important visual aid used in conjunction with other methods (seminars, group work etc), in regard to ensuring all participants understand the content of the Toolkit.

4.2. SESSION 1: GOVERNANCE, LAND ADMINISTRATION, GOOD AND WEAK GOVERNANCE, TRANSPARENCY AND CORRUPTION

General Information on the Session

- Session 1 is to introduce the concept of Governance and its relation to land, to highlight issues and key questions in Transparency in Land Administration, and to discuss effects of good and bad practices and to discuss issues like the social relations of power that underpin good governance practices.

- Session 1 is composed of an introduction to the session, an interactive presentation of concepts and practices and a plenary discussion.

Introduction to the Session

- Approximately 20 minutes; 5 minutes for introducing the session and the questions for discussion and 15 minutes for the Anti-corruption quiz. The purpose of this quiz is to get a sense of participants' perception on issues as well as to get them fully engaged early in the training. Session 2 on short case studies (ice breakers) reinforces the engagement by allowing participants to take positions on stories which present ethical dilemmas.
- Questions for a plenary discussion to take place at the end of the session are introduced here, so that the participants keep them in mind during the presentation (red lines through the presentation). The questions proposed on the slide series are not exhaustive.

NOTES FOR THE TRAINERS

- Anti-corruption quiz (see Appendix 1): This quiz is to give each participant an insight in how he/she is looking at anti-corruption measures in his/her organization. It is a 'self-test'; and as such, the results are not to be shared with the audience. However, the key to interpreting the results should be communicated. The key is that if a participant scores:
 - Between 31 and 40 points, he/she is considered as potentially 'hard to convince' that anything can be done to cure corruption in his/her organization but also the person who might have most to gain from training.- Between 11 and 30 points, he/she is considered as being on the fence about how to handle corruption in his/her organization and could be influenced either way.
 - Less than 11 points, he/she is considered as well prepared to cure corruption in his/her organization. He/she only needs some tools/plans to launch a campaign to cure and prevent corruption.
- More details can be obtained in: Restore the Health of Your Organization: a practical guide

to curing and preventing Corruption in Local Government and communities. Volume 1 Concepts and strategies by Fred Fisher; pages 1 and 2.

Interactive Presentation

- Presentation of concepts and principles of land governance, including land administration, highlighting of issues related to transparency in land administration, and review of effects of good/bad practices in land governance, with 'real life' examples.
- The presentation should be interactive; motivate the participants to ask questions and/or to share opinions/examples from their real life experience. The questions for discussion introduced earlier can be used (but not exclusively) at the end of the corresponding presentation of concepts, principles or practices to keep the participants involved.

Plenary Discussion

- This will be an open discussion and may raise differences of opinion. Have ground rules ready on how to handle sensitive topics in particular, if they come up.

- Summarize the outcomes of the discussion in view of answering (at least) the 3 questions presented in the introduction of Session 1.
- Example of questions to start the plenary discussion:
 - What was interesting about what you heard in your small group discussions?
 - What were the common elements/themes across all four case studies?
 - Would anyone like to share one of their ethical dilemmas?

4.3. SESSION 2: REFLECTIONS ON ICE-BREAKER CASE STUDIES I

General Information on the Session

- Session 2 is to get participants comfortable with and reflecting on the concepts, issues and challenges of corruption in land administration; raise awareness around the broader ethical and governance issues surrounding the administration of land in developing contexts and allow participants to make links with their own experience.
- Different short case studies will be used to expose participants to some of the 'real life' ethical

NOTES FOR THE TRAINERS

dilemmas surrounding land administration in developing contexts. Participants will explore and situate some of their own ethical dilemmas, using the short case studies as a catalyst.

- During the allocated 10 minutes, participants are individually reflecting on the Ice-Breaker case studies and on their own experience in this context:
 - Which key issues around land are highlighted in the case studies?
 - What are the key ethical dilemmas that come out of the case studies for you?
 - Which of these resonates most strongly with your own experience?
 - Describe one or two ethical dilemmas you have experienced or been exposed to in the course of your own work. How did you respond to these?
- Session 2 is composed of an introduction to the Session, presentation of short case studies (it is not advisable to introduce more than four short case studies), individual reflections on the short case studies and on their own experience in this context followed by a plenary discussion.

Introduction to the Session

- Approximately 10 minutes to introduce the Session objectives and activities and 10 minutes introduction per selected short case study (total length of the introduction depending on the number of short case studies introduced) – but no more than 4.
- When introducing the Ice-Breaker case studies, focus on different themes illustrating the complex nature of Land Administration and on some of the ethical dilemmas posed.

Individual Reflections on the Case Studies 1 – Ice-Breaker case studies

- During the allocated 10 minutes, participants are individually reflecting on the Ice-Breaker Case Studies and on their own experience in this context:
 - Which key issues around land are highlighted in the case studies?
 - What are some of ways in which the issues highlighted in the case studies, could be addressed?

Then, participants are grouped (random groups of 4) to share their reflections and experiences; this should not take more than 20 minutes.

- Then, participants are grouped (random groups of 4) to share their reflections and experiences; this should not take more than 20 minutes.

Plenary Discussion

- The plenary discussion (no longer than 30 minutes) will be linking participants' experiences with the ethical dimension of land administration. This will be an open discussion and may raise differences of opinion. Have ground rules ready on how to handle sensitive topics in particular, if they come up.
- Example of questions to start the plenary discussion:
 - What was interesting about what you heard in your small group discussions?
 - What were the common elements/themes across all four case studies?
 - What were some of the most interesting or innovative reforms/tools used?
 - What will you use when you return home?

NOTES FOR THE TRAINERS

4.4. SESSION 3: UNDERSTANDING AND ASSESSING TRANSPARENCY IN LAND ADMINISTRATION

General Information on the Session

- Session 3 aims to 1) share thoughts on relevant concepts with emphasis on transparency and its different facets and thereby to ensure that everybody means the same thing when talking about transparency and related issues; 2) to determine the object of transparency assessment, 3) to draw attention to land administration 'hot spots' and to identify preparatory activities (the do's and don'ts of assessment design and planning); and 4) to introduce some tools whereby transparency in land administration can be assessed with a view to preventing and/or fighting corruption.
- Session 3 is composed of an introduction to the session, a brainstorming exercise through an assessment case, an interactive presentation of concepts and practices and a plenary discussion.

Introduction to the Session

- After introducing the objectives and structure of the session, an opening question is introduced: Is corruption difficult to assess and to address? Why?
- The issues that the question is expected to bring to light are further elaborated by sharing an observation. Chose a topical or well-known example to kick start the session.
- The introduction to the session should not take more than 10 minutes.

Brainstorming

- Participants are requested to read the case reported in Appendix 2 and to brainstorm by addressing a number of questions related to the assessment.
- The brainstorming exercise will take approximately 20 minutes.

Interactive Presentation

- Presentation of the purpose and scope of an assessment, review of indicators and tools for assessment and discuss assessment challenges.

Real life examples should be used as much as possible.

- The presentation should be interactive; motivate the participants to ask questions and/or to provide with opinions/examples from their real life experiences from their own country.
- The interactive presentation should not take more than 40 minutes.

Plenary Discussion

This will be an open discussion (maximum of 20 minutes) aiming at revisiting reflections on the assessment case used for brainstorming, but with a better understanding of the purpose and scope of the indicators and tools for assessment.

4.5. SESSION 4: ACCESS TO INFORMATION AND PUBLIC PARTICIPATION

General Information on the Session

- Session 4 is to 1) discuss issues related to access to land information in the light of transparency;

NOTES FOR THE TRAINERS

- 2) to highlight the needs for Land Information Systems with a view of increasing tenure security and improving transparency;
- 3) to show how public participation and media play a role in enhancing transparency on tenure security; and
- 4) to provide real life practical examples.

Introduction to the Session

- Approximately 10 minutes to introduce the objectives and structure of the session and to present the questions for discussion.
- Questions for a plenary discussion to take place at the end of the session are introduced here, so that the participants keep them in mind during the presentation (red lines through the presentation). The questions proposed on the slide series are not exclusive.

Interactive Presentation

- Two separate but interrelated presentations of a maximum duration of 30 minutes each:

- Presentation on Tools to Support Access to Information, including why is information needed and for whom; principles and potentials of Land Information Systems; principles and potentials Web-based access to Land Information; information laws and protection of privacy and protection of individual against excessive power. All these issues should be discussed using real life examples.
- Presentation on Tools to Support Public Participation, including public participation, public education and the role of media; all with real life examples.
- The presentations should be interactive; motivate the participants to ask questions and/or to offer opinions/examples from real life experiences from their own country. The questions for discussion introduced earlier (but not exclusively) can be used at the end of the corresponding presentation of concepts, principles or practices to keep the participants involved.

Plenary Discussion

- This will be an open discussion of 20 minutes on issues raised by the two presentations and on the relation between access to information and public participation.
- Summarize the outcomes of the discussion in view of answering (at least) 4 questions presented in the introduction of Session 4.

4.6. SESSION 5: PROFESSIONAL ETHICS AND INTEGRITY

General Information on the Session

- Session 5 is to introduce ethics and integrity in the context of Land Administration, to establish and reinforce ethical behaviour/ attitudes, to explore interventions/tools that can be put in place to build public trust and confidence in land administration, to explore interventions that can promote ethics for staff within the land administration context and to draw on practical examples, and share good practices.

NOTES FOR THE TRAINERS

- Session 5 is composed of an introduction to the session, an individual reflection of the participants, an interactive presentation of concepts and practices and of a group case study.

Introduction to the Session

- After a short introduction of the objectives and structure of the session, (non-exclusive) questions on ethics and integrity are introduced and shortly discussed here so that the participants keep them in mind during the session (red lines through the session)
 - What do we mean by ethics and integrity?
 - How does a breakdown in ethics and integrity affect land administration (some examples are included in the Toolkit)?
- The introduction to Session 5 should not take more than 10 minutes.

Individual Reflection

Cards are distributed to all participants to write down their feelings about the following questions (10 minutes):

- Can one teach someone one to be fair/ethical/non-corrupt?
- Is it something that can be changed? How?
- Are there any differences between men and women? Why?
- What practical steps can I undertake to promote good behaviours and practices within my organization/field of expertise?

Interactive Presentation

- A 30 minutes interactive presentation with the facilitator's input on a number of interventions and with short plenary discussions as and when the opportunity arises.
 - Introduction to ethics and integrity; Introduction to conflict of interest laws (facilitator input);
 - Codes of ethics and professional ethics;
 - Ethics training; and
 - Dispute resolution and reporting of wrongdoing (including discussion on whistleblower and whistleblower protection) (facilitator input).

- This session is well suited to being a fully interactive one, where participants are encouraged to contribute in various ways through out. The premise is to motivate participants to install a feeling of ethics and integrity into themselves so that by the end of the session participants already have a personal sense of ownership towards these tools.

Group Case Study

- This is based on a fictitious case study (attached in Appendix 3). Ideally, it should be discussed in a group situation where the group is composed of different stakeholders. A table is offered as a guide (see Appendix 3) to structuring the group discussion and should be distributed to each group at the beginning of their work together.
- The group discussion should be facilitated and not take more than 30 minutes.

Plenary Discussion

- This will be an open discussion of 10 minutes on issues raised by the interactive presentation on professional ethics and integrity.

NOTES FOR THE TRAINERS

- Summarize the outcomes of the discussion in view of answering (at least) 2 questions presented in the introduction of Session 5.

4.7. SESSION 6: INSTITUTIONAL AND ORGANIZATIONAL REFORMS

General Information on the Session

- Session 6 aims to 1) introduce how institutions and organizations are reformed to make them transparent and effective organizations, 2) to highlight issues on organizations, processes and information/ communication/participation and management control systems; and 3) providing practical examples, where possible.
- Session 6 is composed of an introduction to the session, an interactive presentation of concepts and practices, if possible, reflections from Anti-Corruption practice and a plenary discussion.

Introduction to the Session

- Approximately 10 minutes to introduce the objectives and structure of the session and to present the questions for discussion.

- Questions for a plenary discussion to take place at the end of the session are introduced here, so that the participants keep them in mind during the presentation (red lines through the presentation). The questions proposed on the slide series are not exhaustive.

Interactive Presentation

- Presentation (30 minutes maximum) on organization's mandates and charters; organization's forms and processes, including simplification and standardization, front office/one stop shop/helpdesk, complaint's office/system including leadership integrity, internal/external independent audit function, oversight committee and policy frameworks; all with real life examples.
- The presentation should be interactive; motivate the participants to ask questions and/or to provide opinions/examples from their personal experience. The questions for discussion introduced earlier can be used (but not exclusively) at the end of the corresponding presentation of concepts, principles or practices to keep the participants involved.

Reflection from Anti-Corruption Practice

- This session aims are best run in conjunction with a person working for an Anti-Corruption organization to reflect on his/her practical experience on the concepts and principles provided during the interactive presentation.
- The session will generate feedback from real practice and a discussion on the usefulness of the presented tools.
- This part of the session can take up to 30 minutes.

Plenary Discussion

- This will be an open discussion of 20 minutes on issues raised by the interactive presentation and feedback from real practice.
- Summarize the outcomes of the discussion in view of answering (at least) the 3 questions presented in the introduction of Session 6.

NOTES FOR THE TRAINERS

4.8. SESSION 7: REFLECTION ON TOOLS PRESENTED VIA A PRACTITIONER (SUCH AS AN ANTI-CORRUPTION AGENCY)

General Information on the Session

- Session 7 provides an opportunity to learn about how some of the tools discussed in the training work in reality via the feedback from a 'Practitioner' – that is, someone working in the field in an area directly related to supporting and promoting transparency. The practitioner will give a short talk on the work they undertake, some of the challenges they face and the tools they use to promote transparency. They should also talk about any key lessons from the tools that they use.
- Participants should then be encouraged to ask the guest speaker a range of questions related to the Tools covered in the training session.

Introduction to the Session

- Introduce the guest speaker, the organization they work for and the type of work they undertake.
- Outline the objectives of the session and some of the questions and issues about Tools that the

participants might like to consider while listening to the guest speaker.

- What has this organization or agency done to improve transparency?
 - What are the challenges but also opportunities for change?
 - Who has been responsible for making the necessary changes and ensuring they take place (monitoring?)?
 - Where has the leadership come from? How have staff been motivated?
 - What key tools have been used?
 - What are some of the key lessons learnt?
- The introduction to Session 7 should not take more than 5 minutes.

Plenary/Group Discussion

- The presentation by the guest speaker will be followed by a 20-30 minute roundtable discussion amongst all participants. Use above questions to prompt discussion.
- Ask a participant to thank the speaker and reflect on two key items they learnt from the talk.

4.9. SESSION 8: CASE STUDIES II – CASE BASED LEARNING – CASE STUDIES FOCUSING ON THE TOOLS TO PROMOTE TRANSPARENCY

General Information on the Session

- Session 8 aims to allow participants to integrate what they've learned in Sessions 1-6 and apply these insights to 'real life' situations by identifying and discussing the tools that could be used to address the problems raised in each case study, how the tools they chose would mitigate undesirable consequences and ultimately promote transparency in land administration systems.
- Different long case studies will be used to illustrate the 5 substantive areas that have been covered in Sessions 1-6 and as a basis for discussing which tools might be used.
- Session 8 is composed of an introduction to the Session, introduction to long case studies (it is not advisable to introduce more than four long case studies) and Group Work.

NOTES FOR THE TRAINERS

Introduction to the Session

- Approximately 10 minutes to introduce the Session objectives and activities and 2 minutes introduction per selected long case study (total length of the introduction depending on the number of long case studies introduced).
- When introducing the long case studies, focus on bringing together the 'technical' and the 'social' dimensions of land administration, touching on the complex nature and the ethical dimensions of decision-making around land and what individual or group of tools might be used to prompt participants thinking around solutions to the problem.

Group Work

- The facilitator will remind the participants that this Group Work session is to bring together the ethical, technical and social dimensions presented in the long case studies that combine what was learned in all the presentations thus far and draw lessons. The ethical dimensions are the entry points to elucidate lessons from the long case studies and specifically what tools might be used

to address the ethical issues raised and make land administration systems fairer and more effective.

- During 45 minutes, participants are working in groups to answer the following questions:
 - What are the core ethical issues (issues of non-transparency/issues of corruption) captured in the long case studies? What are the consequences of the issues involved? Who is affected and how?
 - Which of the tools that you have been introduced to will help you to analyse and understand the situation better, make interventions and improve the situations?
 - Have you encountered/heard of similar cases in your country, city etc? What remedies have been employed/ considered to ameliorate the situation?
 - What hasn't been done or worked and why?
- The participants will then prepare a presentation of their analysis of the long case studies for presentation and discussion in Session 8; this should not take more than 15 minutes. Presentations can best be structured as to include the results of the situation analysis and a proposal for an intervention strategy.

Session 9 is composed of group presentations of the global reform case study analysis results and of a plenary discussion.

4.10. SESSION 9: CASE STUDIES III - REFORM CASE STUDIES (GLOBAL) ANALYSING TOOLS USED TO UNDERTAKE REFORMS

General Information on the Session

- In a continuation of Session 8, the main objective of Session 9 is 1) to discuss the global reform case studies and the tools used to tackle land sector issues and 2) to share group's experiences and explore which tools were most appropriate and innovative, what else could have been done and which tools could be used by individual participants in their own work contexts.

Group Presentations: Results of the Analysis of the Global Reform Case Studies

- Each group will present for no more than 10 minutes.

NOTES FOR THE TRAINERS

- Each group's presentation includes:
 - A situation analysis/description of the problem situation.
 - What reform strategy was used and how effective it was? How were challenges overcome?
Was there one outstanding reform tool used? What other tools might have been used?
 - Which reforms/tools would work best in your context?

Plenary Discussion

- A plenary discussion of approximately 20 minutes to draw out key themes and synthesis on Transparency in Land Administration.
- Participants can be questioned on what they have learnt from the detailed analysis of the case studies and how these learning about the tools might be applied to some of the ethical dilemmas that they have identified in Session 2.

4.11. SESSION 10: ACTION PLANNING

General Information on the Session

- Session 10 aims to allow each participant to reflect on what has been learnt in the training programme, to think about what future steps he/she will take/to act on this new knowledge when returning to his/her work place and to provide a space for interaction with peers for possible collaboration in national-level follow-up.
- Session 10 is composed of 1) a short introduction on Action Planning. The participants will then 2) perform an individual action planning exercise and 3) will perform group action planning in either thematic groups or country groups and prepare presentations thereof (if relevant).
- A model for Personal/Country Action Plan is available in Appendix 4.

Guidance on Action Planning

- Objectives of the action plans, approaches to action planning, possible contents for personal

and country action plans and key elements of action planning (critical success factors, opportunities and challenges) are highlighted. This part of the session should not take more than 30 minutes.

Individual Action Planning

- This part of the session consists of 1) bringing together individual reading of materials that have been handed out during the preceding sessions and 2) thinking through how the participant, in his/her individual capacity, will be able to use the new knowledge and skills gained from the course when returning to his/her position back home.
- Advice and suggestions should be given to the participants on what they can achieve as individuals.
- Individual action planning should not take more than 30 minutes.

NOTES FOR THE TRAINERS

Group Action Planning

- Groups can be organized along country lines (when training participants are recruited from several countries and the training is rolled out as regional training) or they may be put together along institutional/thematic lines in case of a national training programme. The key to organising groups is to creatively think and set up an arrangement that works best for a specific/local condition.
- Participants will have an opportunity to report on ideas they have developed during the individual action planning sessions and to brainstorm on actions that can take place as a national follow-up to the training course.
- Finally, participants will prepare a group presentation; the presentation can be prepared as a slide series but also on a flip-chart or black/white board.
- Group action planning should not take more than 60 minutes.



Women participate in an election process in Afghanistan. Photo © UN-Habitat/ Wataru Kawasaki.

CASE STUDIES

1.1 GENERAL INFORMATION

There are three sets of case studies that are provided as a part of the training toolkit. These case studies are presented in the format of 'stories' from different countries/regions from around the world (hard- and soft-copy versions). Each Case Study is supported by a set of facilitator's questions to assist in the discussion process.

Case Studies of Type I from Africa and Asia are 'Ice-Breaker' case studies which aim to 1) provide a platform for making participants more comfortable to talk about the concepts, issues and challenges associated with corruption 2) raise awareness around the broader ethical and governance issues surrounding the administration of land in developing contexts and 3) provide an opportunity for participants to explore and situate some of their own ethical dilemmas, using the case studies as a catalyst for thought.

Case Studies of Type II (long case studies for case based learning around the Tools) aim at 1) highlighting the challenges facing particular countries in the land sector and 2) providing participants with the opportunity to identify the possible entry points and tools that can be used to address the problem situation and mitigate undesirable consequences.

Case Studies of Type III (global reform case studies for case based learning around the Tools) aim at 1) highlighting the challenges facing particular countries in the land sector and 2) the reforms/interventions/tools that have been used 'in real life' to bring about change (that is, improve transparency in land administration) and 3) provide opportunities for the participants to discuss the benefits and merits of the tools used and what others could be used to address the problem situation and mitigate undesirable consequences.

1.2 CASE STUDIES OF TYPE I AND II – ICE-BREAKER AND CASE BASED LEARNING CASE STUDIES FROM AFRICA AND ASIA INCLUDING STORIES FROM:

- Nepal
- Pakistan
- Bangladesh
- Sri Lanka
- Vietnam
- Indonesia
- Philippines
- Benin
- Burkina Faso
- Ghana

- Malawi
- Namibia
- Senegal
- Tanzania
- Zambia

1.3 CASE STUDIES OF TYPE III – GLOBAL REFORM CASE STUDIES FROM AROUND THE WORLD FOR CASE BASED REFLECTION ON THE TOOLS INCLUDING STORIES FROM:

- Egypt
- Belarus
- Honduras
- Georgia
- Macedonia
- Columbia
- Korea

CASE STUDIES I: 'ICE-BREAKER' CASE STUDIES WITH FACILITATOR QUESTIONS



TABLE OF CONTENTS

DISCLAIMER	53
1. INDONESIA: A DYNAMIC DISPUTE OVER LAND IN THE INNER-CITY	54-56
2. PHILIPPINES: THE TRAVAILS OF TRANSFERRING A TITLE	57-59
3. NEPAL: URBAN SQUATTERS STRUGGLING FOR LAND RIGHTS	60-63
4. PAKISTAN: A TENANT WITHOUT TENURE	64-66
5. BANGLADESH: TENURE SECURITY AND SHELTER POLICIES FOR THE URBAN POOR	67-69
6. SRI LANKA: OWNERSHIP UNCERTAINTY IN TEMPLE LAND	70-72
7. BENIN: WHO REALLY OWNS THIS LAND AND IS IT FOR SALE?	73-75
8. GHANA: WHEN THE TRADITIONAL MEETS THE MODERN...	76-77
9. GHANA: MANAGING LAND BOUGHT LOCALLY WHEN YOU ARE LIVING ABROAD	78-79
10. MALAWI: LOOPHOLES IN COMMUNITY BASED LAND DEVELOPMENT PROGRAMS	80-81
11. MALAWI: HOW MUCH TRANSPARENCY IS ENOUGH?	82-83
12. NAMIBIA: TRADITIONAL LAND IS THREATENED BY THE GOVERNMENT	84-85
13. NAMIBIA: THE CONFUSION OF LAND EXPROPRIATION	86-87
14. SENEGAL: BECAUSE YOU ARE A WOMAN...	88-89
15. TANZANIA: LAND DEVELOPMENT WITHOUT THE COMMUNITY	90-92
16. TANZANIA: LACK OF TRANSPARENCY FUELS CONFLICT BETWEEN ALL STAKEHOLDERS	93-95
17. ZAMBIA: THE EFFECTS OF A POOR LAND ADMINISTRATION SYSTEM	96-97

CASE STUDIES I: ICE BREAKER CASE STUDIES - ASIA AND AFRICA

DISCLAIMER

All following Case Studies have been developed for training purposes, in the framework of the Training Programme in Land Governance, Tools to Support Transparency in Land Administration' Toolkit, developed through a joint venture between UN-Habitat and ITC, to enhance the capacity in transparency in land administration from around the world.

The cases discussed hereafter are real; however, all people, (private and/or non-governmental) organizations, places and dates of events used in the Case Studies are fictitious. No association with any real people, (private and/or non-governmental) organizations, places and dates of events is intended or should be inferred.

1. INDONESIA

1. INDONESIA: A DYNAMIC DISPUTE OVER LAND IN THE INNER-CITY

Unsettled land disputes in Jakarta have been 'ordinary' headline news for decades. Land conflicts in Jakarta often cause social instability which sometimes even end in bloodshed. A physical clash between authorities and residents in Koja, North Jakarta last April 2010 demonstrates how land disputes can turn violent and end in bloodshed for local residents. During the clash, three people were killed and approximately 200 others were injured.

Another widely publicized land conflict that caused social unrest is the case of South Meruya, an inner city area located in West Jakarta. The area is home to more than 20,000 people, with several city administration offices, business venues, houses and schools. There are more than 5,000 families living on the 78 hectare plot of land in the area. Starting in May 2007, tensions were rising as residents from ten of the eleven community blocks were surprised by the move initiated by a developer company called 'PT Portanigra'. They had publicly declared their intent to take over 44 hectares of the land residents were currently living on. The company's 'right' to obtain

the land was based on an April 2007 Execution Order from the West Jakarta District Court, which, in turn, based its decision on a 2001 Supreme Court ruling.

The cause of the long unsettled conflict had begun in the 1970s. At that time, Meruya was not as crowded as today. Portanigra's lawyer claimed that the company had acquired 78 hectares of land in Meruya in 1972 and 1973 through three land brokers namely Mr. Juhri, Mr. Tugono and Mr. Yahya. It was discovered later that the three brokers had subsequently forged documents and sold the land again to several companies as well as to the city administration.

Their actions were discovered and the three were tried and sentenced to jail for fault and forgery in 1986. Juhri was sentenced to a one-year term in jail based on the decision of West Jakarta District Court, Yahya also got a year of sentence after his appeal to the Higher Court was rejected. The same sentence went to Tugono as his appeal to the Supreme Court was also rejected.

Based on the Courts' decisions, the company brought the problem of the land dispute to the Court in 1996. In 1997, the District Court ordered the confiscation of the 78 hectare area of land, with 'PT Potanigra'

winning the court case over the ownership dispute with the South Meruya residents, Mr. Juhri, Mr. Yahya and Mr. Tugono. In 2001, the Supreme Court ruled that the company was the lawful owner of the 78 hectares of land. Subsequently in May 2007, the West Jakarta District Court issued an eviction Order.

The residents living on the land were very upset and ready to fight for the right to stay on the land where they had been living for decades. An official Appeal, based on a Class Action to fight the Court Order, was lodged. In fact, all 1,285 residents as well as the city administration resisted the Order, filing two separate lawsuits against PT Portanigra and the three land brokers. The Jakarta city administration was also a party to be evicted from the area and they considered the Execution Order incorrect. They officially declared however, that they would assist in the execution of the Order. Another 4,000 residents also claimed ownership of the conflicted land but did not join in the specific Class Action.

Following the Class Action, the West Jakarta District Court postponed the eviction several times. The case has now become even more complicated as it has turned out that from the early 1970s up to the

1. INDONESIA

1990s, thousands of land transactions were illegally authorized by the National Land Agency (BPN). In total, there are about 6,500 land certificates that comprise 4,428 parcels with ownership rights, 1,908 parcels with building function rights, and 90 areas with use rights. The latest development shows that the conflict will enter a new phase where both claimants (community and government versus the company) step up into court mediation in order to try and resolve the issue.

BACKGROUND

The case of Meruya has attracted significant public attention including that of politicians, Parliament and the President. The conflict has revealed many issues related to land conflicts and the behavior of officials and developers and the failure of planning and policy frameworks. In sum, the case provides an overview of the consequences of poor land governance. There are a number of important issues that must be noted.

The findings from the West Jakarta District Court were flawed. In its order of 1997, the West Jakarta District Court did not specify which land and their corresponding borders, were part of their decision/

court ruling. The residents' lawyer noted that the field findings report conducted by West Jakarta District Court stated that the land was without any occupation; whereas in fact, houses and buildings had already been built on the land. The lawyer also noted that the bailiff's findings and the official confiscation report did not follow proper administrative public confiscation procedures. The findings later became the basis for the issuance of an official land confiscation report by the same court, which eventually led to the Supreme Court decision in 2001.

The actions of the development company were not legal. As declared by the National Land Agency (BPN) to the Court and Parliament, PT Portanigra never informed the National Land Agency that they have purchased the land they claimed. If the company had purchased the land, they should have registered the land rights and their corresponding borders with the relevant agency. PT Portanigra only claimed that they had a 'tax letter rights' as proof of the land selling transactions. For the National Land Agency, tax letter rights are only tax documents, not ownership certificates, so the company did not hold any document that proved their ownership rights to the land.

The long term squatter residents do have formal rights to claim land ownership. According to the Land Law, residents who use land continuously for a substantial period of time (i.e. for 20 years or more) are eligible to register their ownership to the land they occupied unless there is an existing ownership registered for the land concerned. From the National Land Agency's perspective, the land certification for Meruya residents is a legal claim.

There is disagreement in some government circles about how the land got resold many times by the developer. The former head of Kebon Jeruk District denied the claim expressed by PT Portanigra's lawyer that the three brokers had been reselling the land to several companies and the city administration for a total of 15 hectares of the land parcels. The Head stated that the city administration did not buy the land from Juhri but through him. He added there was no such bill of sale from the residents to the company. He said that there was only a bill of sale from residents to the city administration.

1. INDONESIA

DISCUSSION

The dilemma

The actions by the three land brokers and the National Land Agency have created a dilemma for all parties involved: The judicial bodies will have to find a solution to address conflicting claims which all seem to be based on some grounds, whether legally correct or not. The National Land Agency faces the criticism of having been issuing ownership certificates for years for conflicted land. The city administration and local residents face the risk of possible eviction. How can this dispute/conflict be resolved and who should take responsibility for what?

Questions

- What elements of corruption can you detect in this case study? Are there some instances where the corruption was worse than others?
- What specific steps should the government and judiciary bodies take to prevent similar types of corruption?
- How can the long term squatter residents enact with land rights given they are enabled by law, to make legitimate land claims?

AUTHOR

Dr. Trias Aditya
Gadjah Mada University,
Faculty of Engineering, Yogyakarta, Indonesia.



People's process, Indonesia. Photo © UN-Habitat.



Simeulue Ganting, Indonesia 2006. Photo © UN-Habitat.

2. PHILIPPINES

2. PHILIPPINES: THE TRAVAILS OF TRANSFERRING A TITLE

In January 1950, Eduardo Montemayor borrowed P10,000 from the Development Bank of the Philippines (DBP) in Tacloban using his six-hectare land as collateral. Five years later, however, DBP foreclosed on his property for failure to repay his loan. One year after the said foreclosure, Mr. Pedro Calumbag redeemed the piece of land from DBP by paying the P 10,000 original loan of Mr. Eduardo Montemayor including all the accrued interest.

In June 2001, Teresa Santos and her sister, Arlene, purchased the property from the heirs of Mr. Pedro Calumbag, who passed away in May 1997. Teresa began the process of transferring the title of the property into her name and into the name of her sister as co-owner.

At the Assessor's office, Teresa paid the real estate property tax amounting to P 7,000. But two weeks after she had paid the real estate tax, she discovered that the tax declaration certificate contained errors in it. First, instead of the name of Mr. Pedro Calumbag, the legitimate owner, the name of his brother, Rodolfo, appeared in the document. Second, instead

of describing the six-hectare property as a fishpond, it was declared instead as a nipa or palm tree land. In order to rectify the errors, Teresa travelled more than six times from her town of Tanauan, Leyte to the provincial Assessor's office in Tacloban. Finally, the Assessor's office responded by conducting an ocular inspection of the property. In the end, the required corrections were made.

At the Bureau of Internal Revenue (BIR) office of Tanauan, Teresa paid the Capital Gains Tax amounting to P 37,673, the documentary stamp and the Registration Certificate. At the Register of Deeds, a legal officer told Teresa that she should submit a clearance certificate from the Department of Agrarian Reform (DAR). But DAR refused to give the certification since the Comprehensive Agrarian Reform Program (CARP) does not cover fishponds. The Register of Deeds nevertheless insisted that Teresa should obtain from DAR the above-mentioned certification.

Then a certain DAR official advised Teresa to see both the Provincial Agrarian Reform Officer (PARO) and the Municipal Agrarian Reform Officer (MARO) in order to get their certification. This would state that, indeed, the property is a fishpond and hence, not subject

to CARP registration/certification. Teresa has not yet obtained the DAR certification because both the PARO and MARO are always absent from their offices.

Teresa said that she had heard many times before, that 'news has wings' (Filipino for 'news travels fast'). But she said that now she really believes that such sayings are true. She related that in July 2002, a retired Assessor came to her house and offered to facilitate the transfer of title for the huge amount of P 50,000. Asked if she would pay the P 50,000 'facilitation fees' Teresa decided not to pay. Until now, the issue concerning the transfer of the title remains unresolved.

BACKGROUND

The Land Administration and Management (LAM) system in the Philippines is one of the oldest systems in the country. Running for almost a century without improvements, it has been found to undermine the country's potential for economic growth and financial stability. Worse, it is the poorer strata of society that bear most of the costs of this dysfunctional land administration system. Policy studies have concluded that the structure of the present system has major defects and it is administered badly. Among the

2. PHILIPPINES



Manila, Philippines. Photo © UN-Habitat.

major structural defects identified include significant duplication and overlap in the roles, functions and activities of the key land agencies.

Since 1998, the Philippines has since embarked on a program to reform the country's LAM systems. A long-term LAM program was envisaged to achieve the goal of alleviating poverty and enhancing economic growth by improving security of tenure and fostering efficient and transparent land markets in urban and rural areas. In 2001-2004, a learning and innovation loan was implemented with support from the World Bank and the Australian Agency for International Development (AusAID). This phase, also known as LAMP1, developed and tested procedures for systematic titling, carried out policy studies, and developed draft legislations to address the structural defects of the system. The second phase of LAMP, LAMP2, implemented reformed titling procedures in three provinces to test the feasibility and DENR capability for managing a roll out titling program; pursued legislative reforms; carried out capability building programs and established LAM and valuation education curricula; and developed and implemented valuation reforms in key cities.

2. PHILIPPINES

DISCUSSION

The dilemma

This story presents a case whereby the client opted not to pay 'facilitators' to complete his important transaction. In doing so, she paid the price of not having the transfer of title completed. The case illustrates how an inferior system excludes those who cannot and do not want to go along with a corrupt system. This type of ineffective system forces people to have their transactions concluded 'informally' or outside the formal system. In doing so, the registries fail to capture the actual situation of land ownership on the ground, thus records are not updated. A weak land records and information system is thus created that does not serve the interest of the Government nor the general public. A more direct effect on government is that any revenue from registrations and transactions remain low, and cannot sustain the operations of a good registry. It also demonstrates how poor service delivery has allowed or provided opportunities for third parties to intervene and flourish from lack of information and knowledge of the procedures by the public.

The dilemma for the government then, in terms of how to improve its LAM system, is between, continuing to pursue the circuitous process and contend with inefficiencies among government staff at the forefront of service delivery; tolerate corrupt practices through payments for third parties to facilitate the registration of transfer; or really do something about it.

Questions

- What elements of corruption can you detect in this case study and what conditions have created a situation for this corruption to occur?
- Could Teresa done anything else to achieve her goal?
- Did the fact that Teresa was a woman affect her capacity to get her land title transferred?
- Which specific measures can government take to protect the transacting public from being hijacked by third party facilitators?

AUTHOR

Floradema C. Eleazar

Planning, Monitoring and Evaluation Consultant
Land Administration, Rural Development and
Environment and Natural Resources

Manila, Philippines



Baseco, Informal Settlement. Photo © UN-Habitat /Gerald

3. NEPAL: URBAN SQUATTERS STRUGGLING FOR LAND RIGHTS

Pathivara is one of the biggest squatter settlements in Kathmandu. It covers about 13 ropani (6613.58 sq.meters) of land and comprises of 154 houses in a row housing form. It is located in Kapan, which is developing as a commercialized area and is twelve years old. Pathivara is spread out on two types of land, public and guthi land. Out of 13 ropani (6613.58 sq.m) of the land that the community covers, 5 ropani (2543.68 sq.m) belongs to guthi, which is owned by Pashupati Area Development Trust (PADT).

The settlement comprises mainly of low income families living in rental housing who have come together from different areas of Kathmandu to settle down on this 'vacant' piece of land and escape from the ever increasing rental costs. Many also have a hope to establish their own secured home. In the last 12 years, the community has transferred from a 'temporary' to a 'permanent' kind of settlement with improved housing, improved access to sanitation, water, primary education, access to financial resources and organized women, children and other groups etc, largely as a result of the local Cooperatives,. To achieve these

outcomes, Pathivara has received necessary and important support from NGOs like Lumanti, Kapan Village Development Committee, Department for Urban Development and Building Construction, squatter communities' federation, the women's' cooperative and other agencies. Despite some physical improvements, however, people still do not have rights to the land and the houses that they are living in. The critical issue in Pathivara then, is how to make the people's home and land secured to help them live a dignified life?

The community has been struggling for the security of their space and settlement and to avoid forceful eviction from the day that they have landed on piece of land. PADT has been threatening to evict the community although they have not undertaken any action but the community's advocacy against the threat of forceful eviction has reduced the pressure from PADT. The government is neither threatening nor supporting the community's living arrangements. The government is making efforts to compromise with PADT to allow them to remain, but the PADT has not been supportive of this process. The community has made a survey of the settlement and submitted the information and request for the land ownership

certificates to the Ministry of Land Reform and Management. No reply from the concerned authority is yet forthcoming. The community also 'hears rumors' from the land mafia that the land ownership has been transferred and that they will need to vacate the land and homes in the near future. This uncertainty and speculation defines everyday life for the community living in what is now, an expensive commercialized area.

There are few challenges that the government face in addressing Pathivara land issues. There is no guiding or working policy to in regard to squatter settlements and in giving providing land and housing security for squatter communities, particularly in the urban areas. The government cannot take Pathivara case in isolation, as a number of similar communities exist all over urban Nepal. Although the government talks about the 'need' to identify genuine squatters so it can address their land and housing issues, they have not proposed an agreeable definition of who constitutes a 'genuine squatter'. There is also no clear approach to land and housing issues within the squatter people themselves so discussion with the communities is not initiated. The communities are also afraid that the government might have a negative

3. NEPAL

reaction. On all sides, there is therefore a tendency to avoid dealing with critical land issues.

The community continues to struggle for space and to live with dignity. They envision making Pathivara a safe and secured place with the establishment of the peoples' rights.

BACKGROUND

Nepal Basobas Basti Sanrakshan Samaj (NBBSS – a national federation of the squatter communities) had collected information from all the squatter communities in Kathmandu and collectively it had submitted a request to Ministry of Land Reform for secured land tenure. Pathivara had also joined this collective process initiated by NBBSS and submitted the information to NBBSS who in turn, gave it to the Ministry.

Pathivara has been successful in building a positive relationship with the office and have been able to get administrative support. As a result of Kapan Village

Development Committee (VDC) has issued residents of the squatter community with birth and marriage certificates and other necessary documents. The VDC has also given approval to the community for the construction of a children's' park and primary school. Similarly, Lumanti, an NGO working in the area of urban poverty and housing, has also mobilized resources from the Department for Urban Development and Building Construction (DUDBC) to support a water and sanitation project in Pathivara. All these improvement activities are carried out by the Pathivara Tole Sudhar Samiti (Pathivara locality Improvement Committee), a committee formed by the local people to manage the improvement process and address the security issues of the community. Pathivara is a part of the national squatters' federation that has formulated a Housing Bill and had submitted the Bill to the Ministry for Physical Planning and Works. They are also a part of the process in lobbying the government and Constituent Assembly members to mention 'housing right as a fundamental right' in the new constitution. The women are also specifically involved through the Nepal Mahila Ekta Samaj (women squatters' federation) in advocating for

housing rights through their advocacy activities. For security, the women are demanding land ownership certificates in joint names, both of their husbands and themselves.

The government thinks that the people living in Pathivara are not 'genuine landless' individuals and families, but are instead freely and forcibly occupying a big piece of land in the most expensive industrial area of Kathmandu. The people claim that they started living in that area at a time when the land price was not high and the area not considered prize commercial land. Instead, they are living there because the location is close to their work and there is easy access to public transport.

In Kathmandu, the government has not distributed land to squatter communities before whereas in rural areas, squatter families have been distributed land through the Sukumbasi Samasya Samadhqan Ayog (Commission for the Resolution of the Squatters' Problem). Recently the government has formed 'Commissions' in 25 districts, to look into squatter land, housing and other issues. A Commission, however, was not formed in Kathmandu and its

²Land that belongs to the State

³Guthi Land is Trust Land (land allocated for social, religious or any other welfare purpose and owned by Guthi Sansthan or any other religious institution)

3. NEPAL



Participatory planning process by men and women in Nepal. Photo © UN-Habitat.

absence will mean it is unlikely that the squatters' land and housing legal issues will be addressed soon, including those of Pathivara.

The squatter settlements in Kathmandu Valley first appeared in the 1950s when rural migrants began moving to the cities, mainly in search of employment. Over the years, the composition of the squatter settlements has changed. Many settlements still support former rural-urban migrants, but added to this are urban dwellers who can no longer afford exorbitant rents and land prices in the Valley. With

little or no alternative, these people have also joined those who must squat on public or private land in order to survive.

Pashupati Area Development Trust (PADT): Lord Pashupatinath has remained as a centre of reverence and a holy place for Hindu pilgrims since time immemorial. Pashupati Development Trust is established with an objective to maintain and develop the Pashupati area in a planned manner, in conformity with the ideals, glory and importance of the Lord Pashupatinath. That is to maintain, protect

and promote objects or sites of ancient, historical, religious, cultural and national importance and natural heritages in the Pashupati area. Apart from this, the trust is also responsible to make improvements in this holy site of pilgrimage as practicable in a planned manner and develop it as a site of international pilgrimage for the convenience of all Hindu devotees within and outside the country and of tourists as well.

DISCUSSION

Ethical dilemmas

The key ethical dilemmas before the government and other concerned land authorities are as follows.

- There are a number of squatter communities in Kathmandu. If land ownership is granted to Pathivara, all the squatter communities living on public and Guthi land need to be given ownership.
- The squatter communities are often located on expensive commercial areas and the land could earn millions for the land owners and potential revenue for the government.
- Many of the squatter families living in the settlements are not regarded as genuine squatter families. The government is in favour of identifying

3. NEPAL

the genuine squatter families so that their land and housing needs can be addressed. The process of identification may invite conflict and not a single step on this matter has been taken.

- As the squatter settlement grows older, people's investment in the settlement also increases. People keep on improving the areas including their access to water, sanitation, better housing, pathways, electricity, education, livelihoods etc. This makes people's stand and voice stronger for their right to secured land and housing.

The Broad question

The Pathivara squatters are in a location where land prices are very high (and increasing) and the government assumes that those living on the land are not marginalized people. According to locals, however, they moved there to find a better life and have gradually improved the living standards of the settlement through necessity and through remittances received from family members living abroad. It is only more recently that the land price has increased. More over the squatters now have social and cultural attachments to this land. Should the government grant them ownership as an isolated case or thus, face

the possibility that other urban squatter settlers will also demand rights? Or should the squatters be made to move? And how? Where?

Questions

- A. What specific steps should the government take in this scenario?
- Develop a broad based slum upgrading policy? What else?
 - Consider economic development zones and how these might fit with already existing residential areas (slums or otherwise)? How can it manage this potential tension?
 - Map all the communities of its cities, both formal and 'informal'?
 - Dialogue with the communities to understand what they do, what work they have and how they are also contributing to the city (upgrading facilities, area, employment they undertake for whom?)?
 - Develop dialogue with Land Trust organizations so there is a collective and all encompassing response to settler communities?
- B. What more can the people of Pathivara Settlement do to get their needs met?
- Get more organised and do what?
 - Resubmit their proposal?



Preparing village map with defecation site in Khairani Tar, Nepal. Photo © UN-Habitat/ Rajesh Manandhar.

- Make a case that they are also contributing to the city of Kathmandu?
- Provide various alternatives for secured housing such as land sharing, communal housing, slum upgrading?
- Enlist the support of other groups and organizations? Who?

AUTHOR

Ms Lajana Manandhar, Executive Director
Lumanti Support Group for Shelter
Ms. Reshma Shrestha, Lecturer, Kathmandu University
Nepal

4. PAKISTAN: A TENANT WITHOUT TENURE

Gull, age 75, is a resident of the village of Shagai, District of Swat, Khyber Pakhtunkhwa. He has four sons and eight daughters. His forefathers lived in this area for centuries as tenants of the Wali-e-Swat (Head of the State of Swat). Gull has lived the life of a tenant since his childhood. The State of Swat maintained its distinguished status of autonomous state since the English colonial period and was controlled by the Wali who had the privilege to decide over the fates of people of his state. Gull's family was assigned 180 Kanals (979200 sft) of land by the Wali for cultivation purposes where they used to grow rice, wheat and maize. Gull recalls always paying for the seed himself and giving half of the yield to the Wali. In case of a calamity like floods or unusual seasonal rains, causing a poor harvest, they had to pay for it. Narrating his past experience Gull says "If yield was low for any unforeseen reason, the Wali would not tolerate it and as punishment he would make us pay for it". After taking a deep breath Gull went on saying... "We did not know if there was a law to protect our rights, we never had the opportunity to get to the corridors of justice. The officer was friends with the Wali and he would organize lavish treats for them, do you think we

could dare to go see the Wali's friends for complains against him?....never! I love my children..."

Gull had always aspired to own land. He had been setting aside some money from his annual income so that he could some day realize his dream of 'land ownership'. The accession of the State of Swat to Pakistan in 1960 gave Gull considerable hope for better times. He thought that his bad times with the Wali were over and that he could now buy a plot of land from the government. But to Gull's surprise the Provincial Land Commission turned out to be a nightmare for him. "The influential people who we would see in the Wali's time were now with the government...they used their 'friendship' with the government 'high-ups' to occupy the lands of tenants...the "Patwari" (lowest rank revenue staff) is a king and when he decided to throw us out, he did that very conveniently"...Gull recalled with pain.

Gull says from his experience, that revenue officials, especially the 'Patwari' are very powerful. In order to make his job easy, the "Patwari" keeps close contact with local leaders and these leaders arrange for lavish food and accommodation when he arrives in the village. In turn he offers illegal support to these people. " One morning, a guy from the village came

to me and said Gull what about getting the land ownership in your name? You see I have very good terms with the Tehsildar (sub-divisional magistrate) and the Patwari...they will award you land without any greed...I was overwhelmed when he gave me a stamp paper to imprint my thumb impression on it. I quickly did so not knowing what the writing of the paper said...it was a land transfer deed which I had signed."

A few days later Gull received a legal notice from the Civil Court ordering him to quit that plot of land and Gull had no alternative than to obey the orders. He was deceived and in this way he was left helpless without any source of income to feed his family. "Decisions in courts take a very long time and expenses are too high so I decided to leave the matter in God's court. I had no choice..."

Instead of spending his savings on litigation, Gull decided to buy a small plot of land to build shelter for his family. He bought 4 marlas (1088sft) of land in the village and started building a temporary shelter for his family. The construction work was underway when the land mafia approached Gull and asked him to evacuate the land. Upon Gull's refusal, the land mafia and the owner of the land filed a case in Civil Court

4. PAKISTAN

that Gull was illegally occupying their land. In the meanwhile with the help of the “Patwari” the land mafia changed the revenue records and transferred Gull’s and some other people’s land in their name.

The Patwari does not see me. When I visit him he refuses to meet me...when I go to court, clerks and other low rank officials ask for money to arrange the hearing of my case. I spend a lot of money and time attending hearings, the lawyers charge a lot of money but our hearing is always postponed to next date...I don't know what to do. I don't have money to pursue my case and when I go to see high rank revenue officer they tell me the matter is in the court and they can't do anything about it.

Gull has been going to courts for every hearing for justice since 1992. He is appearing before courts for almost 20 years and he is no longer able to walk because of paralysis. His sons and grandsons bring him to court in a wheel chair only to hear ‘hearing has been adjourned until next month’.

Gull does not know what other place he can go to for justice. “I am the most ill-fated person. I have been bearing all the cruelties all my life so that my children at least can live in peace...but it does not seem possible. My lifetime savings are at stake and the court is not deciding on it for last 20 years...why is it so? Am I not a citizen of this state? Do my children not have right of living in peace? My grandchildren are pursuing my case... is the court waiting for my grand grandchildren to appear before it so that it can decide?”tears trickled down from his eyes watering his grey beard... “God will give me justice and he is the most merciful”.

BACKGROUND

The Revenue Department covers a basic and vital area of administration as the majority of the population depends directly or indirectly on land for its livelihood. There is no other Department with which people come into contact so often. The Revenue Department is responsible for the maintenance of revenue records, the administration of revenue justice and the collection of government dues. Besides the duties laid out here, the Deputy Commissioner enjoys great power in the district. He also spends a great deal of time on protocol duties to senior government officials.

Similarly, the assistant commissioner and the ‘Tehsildar’ are also magistrates at the sub-divisional level. Local police operate on their advice which makes them very powerful. At the lowest level is the ‘Patwari’, the actual revenue collector, who deals with revenue records. In no way can local people afford to annoy him as that may become risky as the story confirms, particularly if the land mafia is active in an area. Although his job seems to be quite technical and administrative, one stroke of his pen can make people struggle for the rest of their lives.

Pakistan has laws against land mafia and also laws related to a person’s long duration of tenure, allowing tenants who have been occupants of land for a particular length of time, the right of ownership. Unfortunately the implementing departments favour those who are able to pay bribes or hold power which results in injustice and inequality where the poor suffer most and powerful mafia enjoys major gains.

There is an urgent need to give rights to people like Gull whose family has lived and cultivated a specific plot of land for centuries. Otherwise, individuals and families in his situation will keep living without land and have no land rights. Leaving individuals and families like Gull and his family landless, only causes

4. PAKISTAN

longer term problems and intergenerational poverty. In those instances where families and individuals can move to the city, the prospects for change are not necessarily better as land is also scarce and meaningful employment hard to come by.

DISCUSSION

The Broad questions

- Corruption, lack of integrity and lengthy legal procedures are common place in some areas in Pakistan. The dilemma then is whether a litigant such as Gull would not be more sensible to give up the legal process or perhaps not even bother to start such a litigation procedure?
- How can the state begin to fix such endemic corruption?

Specific questions

- 'Justice delayed is justice denied', do you relate the phrase with the story? Is that true for Gull?
- Are you, as participant, able you able to recall an incidence of similar nature during your experience with revenue administration?
- Does the story highlight a need for institutional reforms? If yes to what degree the roles of

revenue official need to be reconsidered? What specific tools could the state employ to improve the process and the role of land administration and tax officials?

- Should there be laws allowing tenants landownership after a specific duration of tenure?
- Was there something else Gull could have done to improve his situation? Could he have appealed to anyone else? Should he have been more suspicious?
- What factors makes Gull so vulnerable to exploitation? What do his vulnerabilities highlight the need for?

AUTHOR

Muhammad Ayaz Raja Khan (AJK Pakistan) and Muzaffarabad (AJK Pakistan).



Father and son, Pakistan. Photo © UN-Habitat.

5. BANGLADESH

5. BANGLADESH: TENURE SECURITY AND SHELTER POLICIES FOR THE URBAN POOR

Sattala Bastee is a squatter settlement sheltering about 5000 households on 27 acres of land in the center of Dhaka city. The area is owned by the Ministry of Health and consists of a total of 95 acres of land of which 50 percent is occupied by hospitals, health offices, staff accommodation and other uses. The remaining land has been left unused for years. Gradually the vacant land got filled up by squatters who moved in as tenants. They occupied temporary shelters constructed by the staff of the health institutions or by local mastaans and pay rent for the house or land only. In the latter case they construct minimal abodes. The settlers are mostly migrants who make a living by working in the informal sector of the city.

The staff and the mastaans who act as landlords collect rents and raise their prices frequently. They also pay tolls to estate agents of the land owning and law enforcement agencies such as police, security guards etc. They act like a kind of guardians to the squatters but are unable to help them if evictions occur.

Some of the settlers have been living in the area for 30 years or more. With stability of income and support

of NGO's and donor supported programmes for improvement in education, health, sanitation, physical infrastructure and income generation, some have even been able to improve their shelter conditions. Thus in Sattala Bastee the shelters vary from very kutcha structures to improved semi-pucca and pucca housing. While the settlers of Sattala improved their living conditions over a period of time, land in the city has become scarce. More of the government land is under pressure for building government housing, commercial investments by the land owning agencies either through partnership of private sector investment or multinational agencies. With such development possibilities, the settlers in Sattala are facing eviction threats and have experienced eviction from time to time.

Due to backing by legal NGOs and donor backed programs favoring the urban poor, the residents of Sattala have been able to get stay orders by filing a court order petitions against eviction. The Ministry and its health departments have therefore failed to take possession of the land in Sattala Bostee to build the desired structures. At the same time, the Ministry has not give any consideration to land sharing plans and proposals by research institutions (supported by legal

NGOs) to share part of the land with the settlers or to retrieve a portion of the land for their own use.

In July 2010, there was an eviction without any prior notice and shelters on six acres of land were demolished. As a result of a previous court order petition against eviction, the action of the Ministry has been declared a contempt of court. The Ministry of Health could not therefore carry on with their proposed construction work. The contractor, who was active during the eviction, withdrew expecting a long lasting dispute. Within a very short time, the evicted dwellers have slowly moved back to the site and are gradually rebuilding their houses.

The resilience of the Sattala Bastee people is therefore a challenge to the government agencies who have understood that it is not easy to evict any settler without prior notice. Even if they give such notice, the Court may well be tempted to provide people stay orders which are extended from time to time.

Living under these conditions, no one is the winner, neither the Ministry of Health nor the settlers. At the same time, the numbers of urban poor are increasing and while they are supported by civil society, human rights agencies, NGOs and donors, they remain

5. BANGLADESH

vulnerable without housing and land rights. One may wonder whether the government should not try to implement 'pro-poor policies' to achieve sustainable urban development. To avoid future court orders for non-compliance with urban plans and master plans the government should at least and urgently provide land and housing programmes for the urban poor.

BACKGROUND

Presently, eviction takes place through a law which provides a 7-days notice period prior to eviction. This is widely criticized for its non-compliance. The informal settlements mostly grow on government owned lands which lie unused and undeveloped for long periods. The settlements grow with support of powerful local individuals and groups, mostly backed by government staff or local leaders with political backing. Eviction occurs only when the land owning agency or powerful groups backed by the government wants to use the land for gainful purposes. Poor settlements are being evicted every day even after 20-30 years of land occupation.



Young girls follow a proceeding in Bangladesh. Photo © UN-Habitat.

5. BANGLADESH

DISCUSSION

The Broad Question

Do anti-eviction bills really help the land settlement process to be used in favour of poor slum and squatter residents? Will it put the rights of the poor on the agenda of the planning agencies?

Specific Questions

- What steps should the government take to implement the national housing policy in urban areas?
- How can it be ensured that master plans for example, provide for pro poor land for housing? What tools and approaches could be implemented and enforced?
- How can the national housing policy agenda be transmitted to local government agenda and action for supporting urban poor communities?
- What role can NGO's play in these situations? Is a third party always going to be important in ensuring transparency and fairness in land administration systems?



AUTHOR

Salma A. Shafi, Centre for Urban Studies, Dhaka, Bangladesh.

A family outside their home in Bangladesh. Photo © UN-Habitat.

6. SRI LANKA

6. SRI LANKA: OWNERSHIP UNCERTAINTY IN TEMPLE LAND

The Temple Land Registration Ordinance No. 10 of 1856 empowered the Temple Land Commissioner to ascertain and set out the boundaries of temple lands in the Kandyan provinces. The then Surveyor General was requested in writing by the Temple Land Commissioner to carry out the survey of temple lands and to submit plans for registration. During the ten-year period (1858 – 1867) the temple lands were surveyed and plans provided to the Temple Land Commissioner.

The caretakers of these Vihara and Devalas (Vihara & Devala's are Buddhist temples / worship places), the chief priests Viharadipathies and Basnayaka Nilame, were not aware of the boundaries and extent of land that belonged to the temples. They did not have any legal documents as all the land was given to the people who looked after the Viharas & Devalas in the villages – although the Buddhist Temporalities Ordinance No. 19 of 1931 restricts the ownership of those lands to the Commissioner of Buddhist Activities.

The village 'Kotakadeniya' in the Divisional Secretariat division of Udunuwara in Kandy District, is a temple land. Viharadipathie incumbent Induruwe Dammananda Thera is the chief for the Kotakadeniya temple. The Temple Title Plan had been prepared by the Survey Department in 1860. Definite boundaries were not shown and there were only line segments. Some boundary features such as Ela or Oya (water Features) appeared in the field while others are invisible. It was therefore difficult to demarcate the old boundary on the ground. As a result, the old survey plan was scanned and geo-referenced to fit the new survey plan. After the field survey of all the land parcels in Kotakadeniya, the boundary of temple land was then transferred onto the cadastral plan of the area and all the land parcels inside the temple land were identified. After publishing the cadastral plan with the extents, the chief incumbent submitted his objections for providing titles to the people who reside within the old temple land. This caused difficulty finalizing the ownership of the occupants in the area as little effort had been made to inform the locals. Residents came to know that their lands fell within the temple land only after claims were called from people in the area under the Title Registration program.

According to the prevailing laws of vihara and devala, these lands however, cannot be encroached upon and cannot be determined as full ownership parcels. At present, however, many people use these lands as their own property and prepared Title Deeds of more than 50 years old. They also use this land without giving any contributions to the viharaya or devalaya. Thirteen occupants have their own instrument of conveyance, and the interesting feature is that oldest transaction recorded was with the Chief incumbent of the Kotakadeniya temple in 1956. He sold these lands to the people long ago and all these transactions were properly recorded in the Land Registry. In addition, some have transferred their properties through the deed registration system without knowing who the real owner is.

The actual fact is that the people who are currently living in these Vihara and Devala lands are enjoying a comfortable life and benefiting from the unclear situation. Most residents are living on these lands for more than 50 years without any hindrance.

6. SRI LANKA

Few landowners have obtained bank loans by mortgaging their land to Banks. Rather, their original deeds are with banks. Most of the permanent houses in the land parcels are now worth millions of rupees (about ten thousand dollars). The land value is also very high due to the recent development programs commenced in the area.

The actual complexity of the situation is now known to the people in the area. As a result, land transactions have reduced and notaries are also discouraging the registration of lands in the temple land areas. Several attempts were made by the administrators to rectify the situation but no decision had been made so far in deciding the ownership of residents who are living within the Vihara/Devala territory and not a single title certificate has been issued to them.

BACKGROUND

In Ancient Sri Lanka, The King was the ruler of all lands. In fact, he was the owner of entire country although he did empower some officials to assist him. These officials had to perform several functions for the King to rule the country. These officers collected a part of yield of the land from the villagers and gave them to the King. Lands were donated to Vihara and

Devalas by the King for the maintenance of these religious places (holy Places). Vihara and Devala are Buddhist worship places and they are located all over the country. People in these lands lived from the revenue and produce from these lands but they performed specified duties to the viharaya or devalaya. Such duties were called 'rajakariya'. Due to changes in society, the new generations, however, were less likely to perform the rajakariya to the viharaya or devalaya even if they know about it. Today, it is very rare to come across people practicing these duties.

The Temple Land Registration Ordinance No. 10 of 1856 provides for the settlement of claims for exemption from taxation of temple lands in the Kandyan provinces and for the due registration of all lands belonging to such temples. The Surveyor General was requested in writing by the Temple Land Commissioner to carry out a survey of the temple lands and to submit the plans for registration.

Buddhist Temporalities Ordinance No. 19 of 1931 is an ordinance to amend and consolidate the law relating to the Buddhists temporalities in the country. For example, it states that the mortgage, sale or other alienation of immovable property of temples shall be void unless it is according to the ruling of Public

Trustee. Those transactions should be done by the Trustee or the Viharadhipathi of the temple under the supervision of Public Trustee.

Title Registration Act – 1998. Via cadastral mapping, all the land in Sri Lanka will be surveyed and the title certificate given after adjudication. This certificate cannot be cancelled according to the Title Registration Act No. 21 of 1998. If any omission has happened it will be compensated by the Title Insurance Fund. Deeds concerning private lands are executed in different forms such as instrument of conveyance, instrument of transfer, instrument of gift. These private deeds are kept with land owner, with copies kept by the Land Registrar and the Notary Public.

DISCUSSION

Broad question

How does a country maintain its valuable cultural heritage such as Temple Lands while at the same time, acknowledge and deal with the realities of land and population pressures? What are some of the key processes or policies that must be in place and enforced?

6. SRI LANKA

Specific questions:

- What are the necessary steps which could be taken by the head of the state to protect the remaining lands for Vihara and Devala?
- What is the cover of the bank/ mortgagee if the government decided to handover titles to the Vihara/Devala?
- How could a 'win-win' dynamic be achieved in regard to enabling the Temple lands to continue and the basic values upheld while at the same time, acknowledge the need for land and housing? Could those living on the lands be contributing to the Temples in some way?

AUTHOR

Shyamalie Perera, Survey Department of Sri Lanka,
csltld@sltnet.lk.



House Improvements in Ibbagwatte, Colombo, Sri Lanka. Photo © UN-Habitat/ Suzi Mutter 2005.

7. BENIN

7. BENIN: WHO REALLY OWNS THIS LAND AND IS IT FOR SALE?

Dossou is a staff member of the national Post and Telecommunication agency of Benin. He was recruited in 1995. His colleagues invited him to join a tontine group of 20 members, each contributing FCFA25,000 monthly. The total FCFA500,000 thus gathered was given to one member each month.

Dossou received his FCFA500,000 in January, 1997 and decided, just as his two other newly recruited young colleagues (Fagnon a man and Assiba, a woman), to acquire a plot of land in Abomey-Calavi. A 'doyen' of their office already settled in Abomey-Calavi introduced them to Zazou, a land broker, whom he said was 'knowledgeable and reliable' and had assisted him acquire land a few years earlier. To Dossou and his two colleagues, Zazou presented 3 different options:

- Plots of 16mx32m from the land apportionment operation conducted by the state on the Calavi Palm grove and sold from FCFA900,000 to FCFA5,000,000, with a unique blue sheet for each plot. The nearer the plot to the inter-state road Cotonou-Niamey, the more expensive it was;

- Plots of 25mx25m situated at some 3 km beyond the west end of Calavi, sold for FCFA600,000 each by land retailers (who used to buy hectares of land from natives and then sold back by little plots with tiny provision for roads and none for public infrastructure);
- Plots of non regular dimensions of about 26mx30m near the old Calavi city, sold FCFA400,000. These were part of a collectivity domain and were put on sale by the sons of the late owner who shared the domain with his other brothers ageing over 60.

Within the limits of their savings, Dossou and Fagnon could only afford the last option, though they would have preferred the second one, which Assiba managed to get. But the broker ensured them: 'People in this family are reliable and would not try to cheat you. For a thousand years, your plots will be safe. All you have to do now is to get ready to pay for state apportionment taxes when time comes'.

For the transaction each of them paid FCFA10,000 for the 'certificate de non litige' a paper issued by the village Head to attest that the plots are free of any ownership contestation. In addition, they had to pay

some FCFA70,000 each at the district administration for various documents. The broker requested the equivalent of 10% of the plot price for his fees, FCFA40,000 each for Dossou and Fagnon (of which they paid FCFA 20,000 each) and FCFA60,000 for Assiba, which she paid.

Two years later, Fagnon dug a water-well and planted fences trees and a few fruit trees on the land. Dossou opted for waiting until he saved enough money to build a house. Early 2006, with his various savings and complementary salary payments he gathered FCFA5,520,000 and decided to build a house on his plot. What a surprise for him to discover a palm leaves flag on his land, a symbol for access forbiddingness in Southern Benin. He went to the sellers' family but the man he could find told him that it was a matter of jealousy within the large family and that the one who could assist him solving the problem was the elder brother settled in Parakou, at some 400km in the North Benin.

Dossou went for the broker for help. After some investigation, the latter explained. 'In fact, this is a matter of misunderstanding and jealousy within the large family, the head of which blames the sellers for

7. BENIN



not consulting with their uncles when selling their father's share of the land heritage. It is true that some uncles complain that their land has been unfairly mixed up in the plot sold to Dossou. But in my view, the family head could have helped settle the case ... but he was angry with the young men as they did not give him a substantial share of their earning from the land sale. In addition, a wealthy sister of those uncles encouraged them against the sellers though to my view, women have nothing to say on family land matters'.

Dossou resorted to the village Head, referring to the 'certificate de non litige' which he issued for the transaction. But the village Head declared 'there is nothing wrong with my 'certificat de non litige'. You are just unlucky to get mixed up in a matter of jealousy within the family. You ought to find those uncles, not forgetting that troublemaker lady who is talking on things that are not her business'.

But the elder uncle refused to listen to Dossou and sent him back to those who took his money for a land they did not own. Learning from the troubles facing

Fieldwork by staff from the municipality of Cotonou, Benin. Photo © UN-Habitat.

7. BENIN

Dossou, Fagnon decided to sell out his own plot. He put a sign post mentioning 'Plot for sale'. A few weeks later, the post was changed with another one indicating 'Litigious plot. Not for sale'. Assiba's case was not better. The land apportionment launched by the district administration for her zone got stopped, due to some conflicts opposing the district administration, the local committee and the engineer bureau in charge.

The friends of Dossou and Fagnon suggested that if they really wanted to keep the land, to offer to pay the arguing uncles again for the plots. With all these vagaries, the FCFA5,520,000 gathered by Dossou to build his house started vanishing through expenses they were not meant for.

DISCUSSION

- Could the scenario have ended more positively for the three buyers? How?
- What gender issues were at play in this scenario?
- How can ordinary citizens do their homework to find out exactly who owns a plot and if it is free for sale?



Local authority plays a critical role in land management like here in Cotonou, Benin.
Photo © UN-Habitat.

- If these sorts of familial and traditional disputes are common, how can the State help people ascertain whether plots are available or not? Is there some checklist that could be developed and available at local governments, that might assist people in such circumstances?
- Should Village Chiefs or Heads have a role in assisting fair and equitable land transactions? What could they do (or stop doing?)?

AUTHOR

Roch Mongbo Université Abomey-Calavi, Benin.

8. GHANA

8. GHANA: WHEN THE TRADITIONAL MEETS THE MODERN...

Bourneville and Greenacre are adjoining townships in Ghana. Both have vast development lands. In 1985 Madam Priscilla purchased leaseholds of 99 years in two adjoining plots of land from the chief of Bourneville. She did not process her documents but proceeded to build residential properties on both plots. In 1988 the chief of Greenacre approached her to ask for her title to both plots of land. When she produced the Land Allocation papers given her by the chief of Bourneville, she was informed that the area belonged to the chief of Greenacre and the chief of Bourneville had no authority to sell her the leasehold interests. When she approached the chief of Bourneville with the information, she was shown the planning layout for the area which was labelled, Bourneville Planning Scheme. She therefore proceeded with her development and she was not troubled by the chief of Greenacre. She completed both buildings in 1992. In 1995 when she needed to raise a loan for her business operations, she decided to process her land documents as the bank required a registered lease as collateral. When she presented her documents to the traditional overlord of both

Bourneville and Greenacre, she was informed that the chief of Greenacre had placed a caveat on her processing the documents because the land had been stolen by the chief of Bourneville and sold to her.

At her insistence, the traditional overlord arranged a meeting between the chiefs of Bourneville and Greenacre to resolve the issue. The chief of Bourneville based his ownership on two things: first was the labelling of the Planning Scheme; second was the fact that the boundary between the two townships was demarcated by some shrubs traditionally used to demarcate boundaries and that these were on the boundary of the plots given to Madam Priscilla. Unfortunately, none of these trees existed at the time the plots were sold to Madam Priscilla and no one, apart from the traditional authorities, remembered the location of the trees. The chief of Greenacre based his claim on the fact that his ancestors lived in the area encompassing both Greenacre and Bourneville and about 150 years ago, a fetish priest approached his ancestors for land to plant a fetish grove and the area around Bourneville was given to him. Out of the activities of the fetish grew the township of Bourneville. While the chief of Bourneville did not deny the fact of the fetish priest, he contended that

many townships in Ghana developed along the same lines and that did not give the original owners perpetual administration and ownership rights over the land and that the people of Bourneville have been in undisturbed possession of the land for over 150 years.

In the end, it became obvious to Madam Priscilla that she was not going to obtain the documents to be able to get her loan any time soon. She therefore approached the chief of Greenacre and struck a deal with him. She would re-purchase the land from him but he should allow the chief of Bourneville to complete the leasehold documents for her while they took time to resolve the ownership issue.

BACKGROUND

Customary land ownership in Ghana is usually obtained from the chief who is the traditional ruler of the community. Many of these chiefs, however, do not know exactly how much land they own or where the

8. GHANA

precise boundaries are. Instead, they often depend on landmarks to define boundaries (trees and streams, etc). Many of these landmarks, however, no longer exist and many people, including the Chiefs now depend on memory to determine their land ownership rights.

Many semi-rural areas are also affected by urban sprawl and development in Ghana. Demand for land has grown and the prices increased. Land has become even more of a prized commodity and is the cause of many litigations in the land sector. Such disputes are usually sorted out at the level of the traditional overlord – the Paramount chief - but this is not always the case and the innocent purchaser has to pay the price through a long and expensive litigation process in court or, pay twice for the same piece of land, because, as a traditional Ghanaian saying goes ‘when two elephants fight, it is the grass that suffers’.

In Kumasi, where the Case Study is situated, land documentation begins by the purchaser being given an Allocation Note from the ‘traditional authority’ selling the land (i.e. the Chief). The purchaser must present this note to the Asantehene who is the traditional overlord of Kumasi to be endorsed by him. Where there are conflicts in relation to the land

purchased, the Asantehene endeavours to settle the dispute. After the Asantehene has endorsed the Allocation Note, the Purchaser must process the document through the Lands Commission to obtain a leasehold document which can be then registered in the Land Title Registry.

DISCUSSION

- Both chiefs did not know the exact boundaries of their land. Could the land have been professionally surveyed and mapped out? Why doesn’t this happen? How could it be made law?
- How can customary land ownership issues be recognised and so as to be included in modern land administration systems? What roles do the Chiefs have in making this happen? What might they win or lose from this process?
- Is it the fault of town planning schemes that land can be owned by several owners?
- Could Madam Priscilla have registered her interest in the land when she acquired the land and thus the problem could have been solved then? What steps can individuals take to minimise disappointment and legal action before buying a plot of land?

- What are some specific ‘formal’ steps that could be put in place in the selling process so future buyers can avoid situations like Madam Priscilla?

AUTHOR

Seth Asiama, Kwame Nkrumah University of Science and Technology [KNUST], Ghana.



Women interacting in Accra, Ghana. Photo © Tamsuf.

9. GHANA: MANAGING LAND BOUGHT LOCALLY WHEN YOU ARE LIVING ABROAD

In the mid-eighties, a local Chief and Village Development Committee decided to make the allocation of land more transparent in the Ashanti Region of Ghana and also ensure that the local communities benefited from the sale of land in those communities. This decision led to the establishment of 'Land Allocation Committees' in all the townships comprising representatives of the Chief and the Village Development Committee with a secretary whose main task was to record all land sales.

By the mid-nineties, however, all the committees had been disbanded on the premise that they had no traditional standing. The Chief therefore resumed full control over allocation of land in the townships.

Around 1988, Mr. Williams purchased a leasehold interest in a plot of land to build his residence. Times were hard for him so he purchased ten 'pickup trucks worth' of sand and the same of stones used for building, left these on the land and travelled abroad to make some money for the building operation. He returned five years later to find that a building, up to the lintel level, stood on his land.

His investigations showed that the building on his land had been constructed by a Mr. Woode who lived in Holland and came to Ghana occasionally to advance his building project and left again after a few weeks. He contacted the secretary of the Land Allocation Committee who informed him that the Committee had been dissolved three years earlier and directed him to see the Chief.

Incidentally, Mr. Woode has just arrived back in the country and has been informed of the presence of Mr. Williams. They have agreed to meet.

Mr. Williams approached the Chief of the township to try to find a solution to his problem. The Chief informed him that he had no knowledge of who was building on the land and directed him to the secretary and chairman of the dissolved Land Allocation Committee. In his anxiety, Mr. Williams consulted some friends who advised him to proceed to process his documents to obtain a lease on the land since he still had the land allocation paper given him by the Land Allocation Committee. He therefore went ahead

to process the document and paid all the fees required of him.

The Lands Commission prepared a leasehold document for which was sent to the Asantehene's Land Secretariat. The Secretariat invited the Chief to sign the document but he refused on the basis that the land was already developed. Since this was of no consequence to the signing of the lease, the secretariat insisted that the Chief sign it. The Chief, however, could not be persuaded to sign. When the secretariat threatened to report his behaviour to the Asantehene, he confessed that he had heard that the land had been sold to the second owner by the surveyor he had contracted to help him in the demarcation of plots but the surveyor was dead.

Incidentally, Mr. Woode has just arrived back in the country and has been informed of the presence of Mr. Williams. They have agreed to meet.

9. GHANA

BACKGROUND

About 80% of land in Ghana is owned by traditional authorities who often on sell the land to prospective developers. Upon payment of the purchase price, the prospective developer is issued with an Allocation Note which must be processed at the Lands Commission (the government agency responsible for land management), into a leasehold document which can then be registered at the Land Title Registry.

Many developers do not bother to process and register the Allocation Note with the result that a check in the Land Title Registry will not give any evidence that the land had earlier been sold to someone else.

DISCUSSION

- What might have caused the collapse of the Land Allocation Committees?
- Could the Land Allocation Committees have been more transparent?
- If such; local committees are a good idea, how could they be set up so as to ensure that they operate in a transparent and effective manner? What traditional systems might be at stake or need to be transformed?

- Did Mr. Williams help his case by not formalizing and registering his land documents before travelling abroad? What formal mechanisms can be put in place to assist people like Mr Williams in making sure his land is secure?
- Should the presence of the sand and stones on the land not have alerted Mr. Woode that the land belonged to someone else? Could other formal practices be put in place so alert people like Mr Woode that the land is already formally occupied?
- If you were either Mr. Williams or Mr. Woode how would you have resolved this issue?
- What formal mechanisms could be put in place to help make the whole process more transparent for all stakeholders?

AUTHOR

Seth Asiama, Kwame Nkrumah University of Science and Technology [KNUST], Ghana.

10. MALAWI: LOOPHOLES IN COMMUNITY BASED LAND DEVELOPMENT PROGRAMS

In 2002, the Malawi Government adopted the National Land Policy (NLP) which includes a land redistribution and resettlement strategy for the benefit of the land hungry and the landless. However, the policy has not been enacted into law. The government has since adopted and implemented the Community Based Rural Land Development Programme (CBRLDP) as the means by which to execute the resettlement strategy of the NLP. In the pilot phase of the CBRLDP, Malawians in Mulanje and Thyolo districts who qualify for resettlement identify the potential area for resettlement in the Machinga and Mangochi districts and become eligible for a government grant US\$1,050 per household.

Among the institutions involved in the administration of the CBRLDP, are Community Oversight Committees (CoCs) which are responsible for overseeing resettlement transactions. In theory, CoCs should be able to use their powers of oversight to enforce norms and practices that promote transparency in the administration of the CBRLDP. In practice, however, that potential is limited by a lack of appropriate institutions as no law has been enacted to implement

the NLP and its strategies. In addition, the lack of legally binding norms of transparency makes the programme vulnerable to capture by vested interests rooted in customary law institutions which have no tradition of transparency and are based on heredity and patronage.

CoCs have reportedly been corrupted by some traditional leaders who have exploited the lack of legally binding norms of transparency and appointed to them their relations and allies. Research conducted in 2008 found evidence indicating that some CoCs as 'more or less extensions of chieftaincy as more than half of the participants were drawn from the royal families'. The research also found evidence of corruption in the selection of beneficiaries, with Focus Group Discussions in Machinga stating that some CoC members 'prioritize their family and friends as beneficiaries of CBRLDP ... [and that] the majority of the beneficiaries who are not either family relations or friends have had to bribe the CoC members in order to find their way into the programme'. Some CoC members have even been reported to be asking potential beneficiaries to pay up to MK2,000 (about US\$20) as a 'qualification' fee.

There are no immediate plans on the part of the government to initiate legislation to implement the NLP. There is also very little pressure from the public or civil society organizations for the enactment of such a law. By default, therefore, the CBRLDP continues to operate on the basis of institutional arrangements that, at best, have no legal obligation to promote transparency and, at worst, militate against transparency and encourage corruption to flourish.

BACKGROUND

The re-settlement strategy:

- The National Land Policy (NLP), adopted by the government in 2002, seeks to address the problem of landlessness partly by relocating people from overcrowded areas to less densely populated ones. The main vehicle which the government has used to effect the relocations has been the CBRLDP which involved resettling people from the overcrowded Thyolo and Mulanje districts to Machinga and Mangochi.
- The administration of the CBRLDP is not integrated into the land administration structure and has its own separate institutional framework. There is no law that directly governs the

10. MALAWI

programme and its processes are based more on administrative arrangements and discretionary powers of state officials and traditional authorities than binding rules of law.

The political economy of the CBRLDP:

- The re-location of people under the CBRLDP affects the power of traditional authorities in both sending and receiving districts. Relocation decreases the population under the control of traditional authorities in the sending districts while increasing the population under authorities in the receiving districts. Since the power of traditional authorities is related to the size of the population of their subjects, the authorities have a vested interest in specific relocations under the programme.
- Under the programme, relocating households are entitled to a US\$1,050 grant. In a country with an average per capita income of less than US\$100, the grant is relatively generous and provides an incentive for corruption of the programme, especially in the selection of beneficiaries. It therefore comes as no surprise that the most powerful authorities in the community - traditional authorities- seek to capture the programme's

institutions and processes and use them as a means of dispensing patronage to their 'favoured subjects'.

Transparency in the CBRLDP:

- Given the vulnerability of the CBRLDP to corruption, its institutions and processes need to be as transparent as possible. In its current form, the programme is lacking in transparency in that the appointment of some of the institutions involved in the administration of the programme is not governed by clear binding rules known to the public.
- The NLP includes a number of recommendations aimed at making land administration transparent. To date, however, these recommendations lack the force of law.

DISCUSSION

The Broad Question

- Corruption of the CBRLDP diverts the benefits away from deserving beneficiaries, namely, the land hungry and landless. Despite this, the programme has benefited - and continues to benefit - hundreds of men and women. The

dilemma then, is between continuing to implement the CBRLDP in its current form thereby perpetuating corruption and exclusion of marginalised people and suspending it until there are adequate legally binding requirements of transparency in the programme's institutions and processes.

Specific Questions

- What specific steps should the government take in order to protect the CBRLDP from being hijacked by corrupt local leaders?
- Should the implementation of the CBRLDP be suspended until the NLP is enacted into law thereby providing the programme a specific legal basis for enforcing transparency?
- How can the state make the CBRLDP more transparent and less corrupt without undermining the authority of institutions such as customary law and traditional leaders?

AUTHOR

Fidelis Kanyongolo, University of Malawi.

11. MALAWI: HOW MUCH TRANSPARENCY IS ENOUGH?

In mid 2005, Mzuzu City Assembly (MCA) - the local government authority for the city of Mzuzu - initiated a campaign to sell those properties within the city boundaries for which the owners had defaulted in the payment of city rates. This followed MCA obtaining a High Court allowing it to 'seize and sell by public auction in satisfaction of the rates due' and was subject to section 92 of the Local Government Act (LGA) which, in relation to the sale of properties for non-payment of rates, partly provides that: 'The Assembly shall give notice of the sale by advertisement in the Gazette and a newspaper circulating within the local government area'.

MCA hired an estate agent to process the sale by auction, of a number of properties that included a property called 'KK Motel' for which city rates were overdue. The estate agent proceeded to advertise a number of properties and, with respect to KK Motel, the advertisements (which were published on 10, 20, 21 and 29 August 2005) stated that KK Motel would be sold on 1 September 2005 at a public auction to be held at Roadside Motel.

KK Motel was, however, sold on 31 August 2005 at an 'unknown place'. The original owners of the motel who had defaulted in the payment of city rates, objected to the sale and applied for a court order to nullify the sale. Among the reasons for the objection were first, that the procedure on publication, as required by the LGA, had been breached and, second, that the motel had not been sold at a public auction as had been required in the original court order that the MCA had obtained authorising it to dispose of properties in satisfaction of rates due.

In considering the case, the High Court found the publication of the notices of the intended sale of KK Motel on 10, 20, 21 and 29 August to be faulty because they stated the date of the sale as 1 September and the venue for the sale as Roadside Motel while the sale took place on 31 August at an unknown place. The court also stated that even if the sale had taken place on the date and at the venue stated in the notices, there would still have been insufficient publication of the transaction since the period of notice was too short to permit a reasonable opportunity to the original owners of the property to object to the sale or redeem the property.

Ultimately, the court doubted that any auction, let alone a public one as required by the original court order, had taken place with respect to KK Motel. In the words of the court, the whole transaction had been 'a charade and a sham'.

The court therefore overruled the purported sale effected by the MCA, and thus used its constitutional power of judicial review of administrative action to set a high standard of transparency in land administration.

BACKGROUND

- Most local government authorities in Malawi depend for most of their income on rates paid by occupiers and owners of property in their areas of jurisdiction. The default rate among rate-payers is often high and local authorities periodically undertake rate collection campaigns involving the seizure and sale of affected properties. Through such campaigns, local authorities enhance their revenue part of which contributes to enhancing the capacity of the local government authorities to perform their various functions, including land administration.

11. MALAWI

- At the same time, however, the seizure and sale of properties provides opportunities for unscrupulous land administrators to affect transfers of the land corruptly for personal benefit. In order to prevent such abuse of the powers of seizure and sale, the Local Government Act (LGA) requires the authority to notify the public of any intended sale of seized property. Specifically, the Act provides that: 'the Assembly shall give notice of the sale by advertisement in the Gazette and a newspaper circulating within the local government area'.
- The sale of a seized property may be challenged if the requirement for notice is breached. A literal reading of the Act suggests that as long as a notice is published in the Gazette and a newspaper circulating within the local government area, the Act's standard of transparency is met. From that point of view, Mzuzu City Assembly had complied with the Act (although the notice has been inaccurate with regard to the date and venue of the sale of the property). A counter-argument - reflected in the position taken by the High Court in the case - is that in order for a notice to be adequate, it must provide information which enables people with an interest in the sale to

act on it. From this perspective, the notice published by MCA fell short of facilitating transparency and facilitated what appears to have been a dubious transaction.

- In support of the court's position, it may be argued that its decision makes a positive contribution to the transparency of land administration because it had interpreted the notice of sale to require more than formal compliance with the LGA's requirement that 'The Assembly shall give notice of the sale by advertisement in the Gazette and a newspaper circulating within the local government area'. On the other hand, it could be counter-argued that the court's decision undermined the authority and autonomy of land administrators to decide how much transparency is enough in any individual case.

DISCUSSION

- Is it possible to strike a proper balance between the promotion of transparency through judicial review of decisions of land administrators, on the one hand, and ensuring that land administrators are able to perform their functions without interference by other institutions?

- To what extent does section 92 of the LGA facilitate the flow of information to members of marginalised groups in the community, including women and the poor?
- Was it justifiable for the High Court to find fault with the notice that MCA published although it was consistent with a literal reading of the LGA (which merely requires that a notice be published without requiring it to be communicated to the person or persons whose property is to be sold)?
- Can the failure of the LGA to provide adequate guidance on the type and nature of notice (e.g. how long should such information be made available in the public domain, etc.) be regarded as an institutional failure?

AUTHOR

Fidelis Kanyongolo, University of Malawi.

12. NAMIBIA

12. NAMIBIA: TRADITIONAL LAND IS THREATENED BY THE GOVERNMENT

The most densely populated rural area of Namibia lies in the far northern regions of the country. Here the land is communal, belonging to the state who is the custodian, while the residents have rights of use of land and occupancy through the traditional system that has been practiced since pre-colonial times. The common form of land use is livestock grazing with small cultivated fields. The way of life is subsistence based and the commercial economic infrastructure is poor.

The land is allocated via traditional authorities and is usually done so by a verbal agreement. There are no formal papers, geographical descriptions of land titles or surveys, registration or physical mapping. While there are no established procedures for the transfer of land, both the state and residents are well versed in the traditional system as a means of securing occupancy rights.

The government has recently acknowledged the poorly developed economy in the northern parts of the country and decided to establish a major shopping/residential, entertainment centre complete with a zoo

and a golf course at a place known as 'Helao Nafidi'. Some fifty hectares are required for this development. All current land is utilized according to traditional use rights.

The government has briefed a development-led consortium to proceed with the development. While the stated intent of the development is to 'encourage local economic development, and to improve living conditions', the first that local residents knew of the proposed development was when they were served expropriation notices. And these are residents who have occupied the land for a century or more.

Thus, despite the presence of 'accepted' channels of communication between government and local residents which have been successfully used in the past, the latter were not informed of the proposed change of land use, neither were they given any opportunity to discuss their sentiments about the proposal. In addition, established town planning policies and procedures in the country were ignored. These planning practices require that residents be informed of proposed changes to land use, and that they become part of the process when making decisions concerning the land that they use and have been traditionally entitled to.

The residents have decided to challenge the government through the courts, using legal assistance. This is one of the few, if not the only, means by which those with limited rights can challenge government decisions. The government, on the other hand, is arguing that they own the land and are therefore entitled to do as they please with it, especially as no legal rights are held over the land.



Children in Namibia. Photo © UN-Habitat.

12. NAMIBIA

BACKGROUND

Since this case study was prepared in 2007, there have been further developments in the new town of Helao Nafidi. Land was expropriated without compensation by the local authority, either monetary or with the allocation of alternative land. The latter option is regarded as a commonly acceptable form of settlement. The prime land is being grabbed by foreign investors (Chinese) who 'appear' to by pass the legal procedures for acquiring land. Rumours abound that the transactions involve some form of private transaction between the local authority and the "investor".

The attempt by a town planning scheme to guide development is ignored completely and, for those who can afford to develop, there is a general free for all to do as one pleases in the town. The 'losers' in this scenario are the long term residents since they are generally the poorest and least educated and very traditional rural people. The land grabbing, mismanagement and lack of transparency is regularly reported in the press, so it is common knowledge. To date, however, the government has failed to act either by trying to resolve the problems or in taking action

against alleged corruption, or in lending support to the local residents.

The legal rights:

The Constitution of Namibia was put together following a very democratic process shortly after independence in 1990. It is clear that the right of individuals to land which they have lived on traditionally is recognised. The government is currently involved in mapping and formally recording such land onto a national register to ensure that there are records available in order to prevent land grabbing and disputes.

The Town Planning Scheme:

When a local authority is proclaimed as a 'town', it has the opportunity to prepare a town planning scheme which functions as a legal document to guide development in the town in an orderly manner. Each local authority is supposed to have an official who is trained in the mechanisms of the scheme and other town planning, land related management. The problem is more often that the relevant officer may not have had formal training, or might not have any experience in dealing with potentially corrupt situations.

DISCUSSION

- To what extent should the local residents be given rights to be involved in decisions affecting land which they have traditionally resided on?
- How is ethnicity (indigenous) and poverty affecting the local's capacity to be part of the development process and how could the situation be rectified?
- What other interventions should the government apply to rectify the situation?
- What support, if any, should be given to the local authority officials to manage the land transparently?
- Should transparency codes apply to foreigners/ foreign companies who become deeply involved in local land issues? How can these be developed? By who (local communities, local authorities/ government, the State or the UN? How could they be enforced?

AUTHOR

Jane Gold, formerly Polytechnic of Namibia [PoN]

13. NAMIBIA

13. NAMIBIA: THE CONFUSION OF LAND EXPROPRIATION

The farm, Ongombe West, was first purchased from the Government by the family in 1900. Before that, the land ownership was not classified in the western sense. People lived there, as they did all over Africa at that time, moving or staying as they felt so inclined according to traditional practice.

Today the farm ownership is classified as 'commercial' which means that the land is privately owned and used for commercial purposes. The family had developed a successful flower selling business, supplying local and international markets. The enterprise was highly labour intensive and there were plans for expansion. A petty incident, however, triggered off a series of events culminating in the farm being expropriated.

A labourer 'accidentally' killed one of the farmer's geese. The farmer retaliated by killing a labourer's goat which had strayed into a 'restricted' area. Each party demanded compensation for the loss of the respective animal, but none was forthcoming. Relations between the family and farm labourers soured rapidly. Shortly thereafter, six workers were fired for not attending work. The labourers refused to leave the workplace,

without the correct procedure for dismissal being followed. The farmer obtained a court order to evict them and dumped the workers off the farm, next to the road. The farm workers union threatened to take over the farm, but the Government intervened, ordering the farmer to take the labourers back. The farmer refused, so the labourers organized a petition demanding that they be re-employed. The Labour Court finally ordered the labourers to be reemployed. They were – for 24 hours - and fired immediately, on the advice of a new lawyer hired by the farmer.

The government had, up until this moment, always followed a policy of 'willing buyer – willing seller' in terms of assessing commercial land for land reform. At about the same time as this saga was playing out, the Government made a public announcement that the farm would be expropriated in an effort to speed up land reform. Five other farms were also identified. The farmer received one third of the value of the farm. The labourers (who were not descendants of the original indigenous people on the land, nor were they identified as beneficiaries in terms of the land reform process) began to run the farm operations on a subsistence basis.



Squatting in Namibia. Photo © UN-Habitat.

13. NAMIBIA

BACKGROUND

The farm was expropriated in 2006. A recent report indicated that the current occupants of the farm were battling to make ends meet. The expansive infrastructure which included excellent water installations, have all fallen into disrepair. The occupants are now demanding that the government give them 'additional' (financial) support to run the farm which continues to operate on a subsistence basis.

The farm was expropriated in 2006. A recent report indicated that the current occupants of the farm were battling to make ends meet. The expansive infrastructure which included excellent water installations, have all fallen into disrepair. The occupants are now demanding that the government give them 'additional' (financial) support to run the farm which continues to operate on a subsistence basis.

According to the National Land Policy, the purpose is to redress the inequitable distribution of land

characteristic of pre-independence. The policy sets up a system that ensures all Namibians have equal rights, opportunities and security across a range of land tenure types in both commercial and communal areas. One of the fundamental principles of the policy advocates public accountability and transparency, namely that:

- All aspects of land administration by Government and other agencies are open and transparent;
- All financial transaction involving land and public funds are audited on a regular basis in accordance with generally accepted accounting principles; and
- All proceedings of regional and local land boards shall be open to the public and the minutes of such meetings open to public scrutiny.

DISCUSSION

- Did the procedures for the land redistribution follow the national land policy principles?
- Was the expropriation based on rational, legitimate causes? How did the 'willing buyer – willing seller' come into play?



Sign of Shack Dwellers Federation of Namibia.
Photo © UN-Habitat.

- From your perspective, who gained from this outcome? Was it in the best economic/social/political interests of the country?
- If land redistribution is an important justice reform, how can it be carried out to promote prosperity and not result, as in this case, the deterioration of infrastructure and potentially sectorial deterioration (i.e. reduction in the capacity of the agricultural sector)

AUTHOR

Jane Gold, formerly Polytechnic of Namibia [PoN].

14. SENEGAL

14. SENEGAL: BECAUSE YOU ARE A WOMAN...

In Senegal, land is traditionally synonymous with power. There is a traditional Senegalese saying which says that where there is 'no land', a person has 'no right to the world'. Exclusion from land, and/or limited rights and thus a 'voice' or right 'to be heard' means marginalisation.

Women are particularly vulnerable to experiencing such marginalisation because of their limited 'rights' to land in Senegal. There are two key factors which serve to exclude women's access to land: first, the patriarchal mode of succession which is current in many sections of Senegalese society, and, second, the control of households' resources, which is largely in the hands of men. While women are key to agricultural production (all rural women are farmers), they cannot acquire land. They can borrow plots of land from men, but then they often 'reclaim' the land after it has been developed by women's activities.

While Islamic law recognizes a woman's rights, ignorance of the religious tenets (including the holy writings) and loss of a sense of the traditional practices, has opened the way for unethical practices.



Secure tenure launch, Senegal. Photo © UN-Habitat.

14. SENEGAL

Even in the family sphere, women often experience injustice. While men are conscious of the injustice done to their sisters when these women lose their rightful land inheritance, they still continue to sell their agricultural assets. Women are either ignorant of their rights or are unable and unwilling to confront male members of their family in order to make change. In this way, collective ignorance and lack of capacity is exploited by a few to ensure ongoing benefit to them, while excluding women and other marginalised groups.

In land succession law in Senegal, there is no policy or process for ensuring equitable distribution of land. Traditionally, after the father's death, the family moves quickly to distribute land, and particularly land which has fruit-bearing trees. This is because in some cases, women can inherit the trees (only). The women can retain control over the land as long as the trees continue to produce, but the land always reverts back to the brothers or male members of the family if the trees die. 'Non-productive land' is reserved for men. Local institutions (including local government) do not intervene to ensure a more equitable process, and this decision making continues to disadvantage those most in need, i.e. women.

The Diender women are found in the rural zone in the Thies region in Senegal, where agriculture is the dominant activity. The Women's Union of Rural Communities of Diender and Keur Moussa includes 28 groups and consists of around 2,818 members from 24 villages. The group has formed a federal association which aims to openly discuss all the traditional and religious constraints currently hidden in land management that inhibit women from having equal access to land. The group intends to achieve this aim by focussing on women's integration in the political decision making process to challenge and ultimately remove those factors which exclude women. Increasingly, the women of Diender invest their savings in land acquisition.

They have gained economic power, and their strong involvement in citizens' action groups enables them to question structural disparities which disadvantage some groups, especially in the management of land.

DISCUSSION

- Should women really try and make changes to deeply rooted cultural and religious systems in order to have some form of land rights?
- What could be done to improve women's participation in the decision making around land and help them get more formal rights and practical access to land? Which entity is responsible for this?
- Do you think the actions being undertaken by the Diender women are effective and could lead to substantive change? What would you do to bring about change?

AUTHOR

Nfally Badiane, Environmental Development Action in the Third World [ENDA], Senegal.

15. TANZANIA

15. TANZANIA: LAND DEVELOPMENT WITHOUT THE COMMUNITY

Governments worldwide are legally empowered to acquire land in the interest of the general public, subject to procedures defined in the law. The latter include making information accessible to the public and awareness creation about the nature of the public interests, rights and obligations of the sitting land occupiers and various other stakeholders. There are also laws pertaining to the deposition of the land use planning schemes for public audit.

The project on the harbour expansion started in 2001 with the preparation of a general scheme in the form of a redevelopment plan by the central government Ministry responsible for lands and urban development. The expansion was designated on the land adjoining the port that comprises an informal settlement comprising about 160 housing units occupied by almost 1500 inhabitants.

The redevelopment plan was prepared without any involvement of the key stakeholders as required by law (including sitting land occupiers or displacees, community leaders and utility supply institutions such as power and water supply agencies).

In 2002, the same Ministry went ahead to approve the general planning scheme without abiding by the legal provisions including seeking residents' comments and inputs or depositing the plan for public inspection. A presentation of the scheme was made, however, to the municipal authority's committee for Urban Planning, comprising technical staff and councillors. Representatives from the media were also in attendance. Thereafter, a detailed scheme was prepared by the same ministry in collaboration with municipal council staff, but again without involvement of the grassroots actors. In fact, involvement of the residents was limited to a presentation of the plan made to their representatives at the Municipal, Ward and Mtaa levels. Table 1 on the next page illustrates the information gaps that have been referred to.



Manzese Office, Tanzania. Photo © UN-Habitat/ Suzi Mutter.

15. TANZANIA

Table 1: Summary of processes, actors and information gaps

PROCESSES	ACTOR	INFORMATION GAP
1. Declaration of an area a redevelopment area (1992)	Minister	• Exhibition of the area at offices of local authority with jurisdiction over the area
2. Issue Government Notice of declare public interest to acquire land within the redevelopment areas (1994)	Minister	• Public advertisement in local newspapers and public notice boards?) (NOT DONE)
3. Prepare General Planning Scheme (2001)	Minister/delegate to Local Authorities	• Deposit the plan in local Council notice board and other public offices (NOT DONE) • Resident scrutiny of plan and submission of comments (NOT DONE)
4. Approval of General Planning Scheme (2002)	Minister	• Consideration of the residents/landowners reviews and reservations (NOT DONE)
5. Prepare Detailed Scheme (2004/2005)	Minister/in collaboration with the Local Authority	
6. Approval of Detailed Planning Scheme	Local authority Ministry	• Presentation of the Urban Planning Committee (UPC) (DONE May 2005)

Apart from the information gaps listed above, property owners were also denied information and an explanation on the pertinent issues in regard to the development, such as the rationale for the methods and procedures used to undertake the valuation of their houses and compute compensation payable. Copies of the redevelopment plans (general and detailed schemes) were ultimately made available at the municipal and ward offices, for aggrieved persons to check and register their concerns but only well after it was clear that the development was going ahead.

Despite the lack of access to information and disregard of key stakeholders, the public media, especially local newspapers, played an indispensable role particularly in publicizing residents' complaints and reservations about the project. Four daily tabloids repeatedly covered the case. In one instance, this obliged a senior official from the Ministry to come out and respond to the citizen concerns on TV; suggesting that had it not been for the media probably the Ministry would not have come out to give information on what was going on.

15. TANZANIA

BACKGROUND

The development area is a prime land for the expansion of the port facilities, and thus a crucial investment for national economic development. But like many other cases in the city, disputes related to unfair compensation and non-involvement of sitting land occupiers, has led to delays in implementing the project.

The Ministry had to review the valuation process, while at the same time, the politicians have taken up the challenge and engaged with land occupiers so as to clarify on the pertinent questions raised by the community including the rationale for valuation methods and livelihoods opportunities at the proposed resettlement area.

Both the Constitution of Tanzania (1977) and the Land Act (1999) are explicit about the rights of the sitting land occupiers to be paid fair and prompt compensation. It is also categorical about citizens' right to own property (Article 24 (1)). The spirit of the compensation as provided in the laws of the land is: to 'restore' or compensate the person whose land has been acquired for public interests, to the same position as he/she was before the eviction. In other words, one ought not to be better or worse of as a result of compensation but at the same level.

DISCUSSION

- What are the key factors/circumstance that enable this sort of situation to arise?
- Who should ultimately be held accountable for this situation and why?
- Is it possible and realistic to restore a family or individual to the position they/he or she was before an eviction?
- Tanzania has clear regulations and procedures around evictions. This case shows that they were not followed. What further actions need to be taken or tools implemented to ensure that the community is engaged and treated fairly and according to the law?
- What other steps might the evictees have taken to fight for their rights?
- What role did the media play in this situation and was it a useful one? Explain your answer.

AUTHOR

Wilbard Kombe (Ardhi University [ARU], Tanzania).



Manzese Office. Photo © UN-Habitat/ Suzi Mutter 2005.

16. TANZANIA

16. TANZANIA: LACK OF TRANSPARENCY FUELS CONFLICT BETWEEN ALL STAKEHOLDERS

A large publicly-owned cement company acquired a large piece of land (61 km²) in the 1960s from its traditional owners on the peri-urban fringe of a large city. The land was bought for mineral extraction, under the legislative powers provided for compulsory land acquisition. By law, the villagers living in the area were entitled to adequate and prompt compensation as well as alternative land. No such compensation was given immediately.

When the land was acquired, it was far beyond the city boundaries. The city continued to expand and by the time compensation was paid, however, the area was already within the city boundaries. In the mid-1990s some households were paid compensation (which they considered unfair). Many villagers were not given alternative lands to live on as promised. As a result, they continued to occupy the land that had been sold for mineral extraction. Ironically, this same land on which a title was issued in favour of the cement company, continued to be under the administration of the Village which was registered under law in 1976.

When the government adopted the policy of privatization, the cement company became private

and under new ownership. The new company realized that it did not need all the 61 km² it currently had. Rather, it needed only 8 km². Thus 53 km² of land remained under the legal ownership of the original cement company which held the right of occupancy. Villagers wanted to know from the cement company authorities, what their fate was, but were not given an answer. Instead they were directed to the Ministry responsible for Lands.

Meanwhile it appears there was a covert agreement between key officials of the old cement company and the Municipality. The 'unofficial' agreement was that the land not required by the new cement company, will be given to the Municipality for town planning purposes. This 'unofficial' agreement had the support of the local area Councillor without the knowledge, however, of the local villagers. When the villagers found out about the agreement, they claimed that the planning of land under a Village Council was the responsibility of the Village itself; not the Municipality - although in the villagers may have decided to ignore, or were not aware of the fact that the old cement company now had a right of occupancy over that land.

Since this period, there has been conflict between the Villagers (numbering over 2000) and a number of

other key stakeholders. The villagers have continued to claim that they had not been adequately compensated by the old cement company. Some had not been compensated at all. Many have also not been given alternative land. Because of these factors, the villagers therefore felt it was their right to continue occupying the land.

The villagers also had a conflict with their councillor, who they suspected was in collusion with a number of investors and the municipal council and who they felt, ultimately wanted to take over the land. The councillor had said that the area was to be 'surveyed' and land would be allocated to anybody who could pay a specified sum of money which, for most of the villagers was an exorbitant amount. The councillor was avoiding meeting the villagers when asked to do so.

The villagers also learnt that the Municipality had prepared a land use plan for the area of the village without involving the villagers themselves. This plan was not made public, despite the fact that at a public rally organized by a Mayor in 2002, it was agreed that the villagers could prepare their own land use plan and submit it to the municipality. The villagers did this and submitted their proposed land use plan. The Municipality did not act on it.

16. TANZANIA

Meanwhile, confusion continued to exist over the land since the old cement company had not surrendered the land back to the Commissioner for Lands as required by law, meaning that it was difficult to transfer the land either to the municipality or to the villagers without extinguishing the existing rights. The villagers met high ranking officials in the Ministry responsible for Lands who assured them that land within a village boundary belongs to the village. The old cement company issued a statement, however, saying that they are the lawful owners of the land and therefore are in disagreement with the villagers, the municipality and the Ministry responsible for Lands. The issue was taken to court. At the same time, all villages within the vicinity of the city were de-registered without notice, leaving the villagers with no locus to claim the land.

Despite their longstanding occupation of the land, the villagers lost their land rights claim and were required to vacate the land, which, the court ruled, belonged to the cement company. The villagers appealed to a higher court and lost again. They are still occupying the land and there have been several clashes between public law enforcers and authorities and the villagers. The conflict has now turned violent.

BACKGROUND

The villagers lost again in a recent court ruling. They have again appealed before the judgement was prepared and as a result, the decision to evict them seems to have been halted. The villagers are also continuing to question the rationale of the government to allocate such a large track of land to the cement factory proprietors, in a situation where those affected are also very poor and have not been given an appropriate alternative resettlement area.

It would appear that, the Court has upheld the position taken by previous judgements that the respondents are 'trespassers' on the land held by the cement factory. There are, however, unresolved claims in regard to the case such as that of inadequate compensation, disrespect of the agreement reached earlier to resettle displaced people's on a piece of the nearby (Tegeta area) land, the changed status of the areas (from a rural registered village to an urban area) and the preparation of a land use plan without involving the villagers.

DILEMMA

The position adopted by the court of law, requiring that the trespassers (i.e. villagers) vacate the area can, on the one hand, be regarded as upholding the rule of law. On the other hand, it would appear that the overall situation is not straight forward and a range of other issues have not been rightfully resolved.



Street market in Tanzania. Photo © UN-Habitat.

16. TANZANIA

DISCUSSION

- What are your thoughts on this case? Who is right and who is wrong? What could have been done to make this case more transparent and ultimately fairer and effective for all concerned?
- Does the fact that the villagers are indigenous and largely from low socio-economic backgrounds affect how they are treated? How? What could be done to stop any discrimination?
- Some sitting occupiers claims that they have not vacated the land since they got (an unfair) compensation in mid 1990s, others allege they have not been paid compensation. To what extent was the processing and payment of compensation transparent? How can one trust claims which are not substantiated – without written documents?
- How can the key officials be held more accountable for their actions (or in action)?
- What precedence is likely to be set if this case is finally settled the save politics of the day and not in compliance with the Court ruling?

AUTHOR

Wilbard Kombe, Ardhi University [ARU], Tanzania.



Tanzania, Refreshing course. Photo © UN-Habitat.

17. ZAMBIA: THE EFFECTS OF A POOR LAND ADMINISTRATION SYSTEM

Mr. Somnolent Siwale is a medium income resident of the City of Lusaka, Zambia and has owned a piece of land in Chelston within the City since 2002. He does not, however, live on this plot. The plot has remained undeveloped for close to five years. Most vacant pieces of land around Lusaka City, some of which were initially designated as children's play parks or reserved for public uses such as schools, have, over the past decades been turned into residential areas to meet housing demands. Mr. Siwale was keenly aware of the land pressure and of this general trend in the City. He felt quite secure in his ownership however, because he had a genuine certificate of title from the National Deeds Registry (NDR).

In 2007, while driving around in Chelston, Mr. Warped Banda saw a nice vacant piece of land near to an existing residential area. He visited this plot a couple more times in 2007. There was still no activity taking place on the plot. Mr. Banda then decided to visit the National Deeds Registry to make a search of the deeds registry. The search revealed that the plot, LUS 2010, was actually owned by Mr. Somnolent Siwale. The search also disclosed other details of ownership

and title such as address, sex and national identity card (NIC) number of the owner. Mr. Banda then approached an officer of the NDR and asked him how he could obtain a duplicate Certificate of Title (CoT). Assuming Mr. Banda had lost his original CoT, the officer explained the process and advised him to submit a letter on prescribed forms and to enclose a copy of his NIC. Having known the legal procedure and with a deliberate intent to defraud, Mr. Banda took the particulars of Mr. Somnolent Siwale. He then approached the NIC office and applied for and obtained the replacement of the NIC with his own face photo but with the particulars of Mr. Siwale. Armed with a new NIC and acting as Mr. Siwale, Mr. Banda then applied for a duplicate CoT at the NDR following the legal procedure as explained to him earlier.

After receiving the application, NDR advertised the request in public media for 14 days. Thereafter, having received no objection to the request and following the due process of the law, the NDR finally issued Mr. Banda masquerading as Mr. Siwale with a duplicate CoT. As a further act to defraud, Mr. Banda used the duplicate CoT to sell the property and to transfer the title to Mr. Fortunate Chanda for K200 million through a registered conveyancing agency. Mr. Chanda being

the new title holder of the property, started to develop it. In the process, the original owner Mr. Somnolent Siwale discovered that someone was building on his plot. He approached Mr. Chanda. Mr. Chanda showed him proof of ownership. In the process of discussion, Mr. Chanda disclosed that he bought the plot from Mr. Somnolent Siwale and NDR issued him a CoT. Mr. Siwale refuted selling the property and transferring the title to anyone. Mr. Siwale then proceeded to the NDR and conducted a search that revealed that indeed Mr. Somnolent Siwale had sold the plot to Mr. Fortunate Chanda. The search also revealed that the copy of the NIC attached to the application for the duplicate CoT had his correct particulars but with a different face photo (belonging to Mr. Warped Banda).

After all these interactions, the NDR established that it had issued a duplicate and a new CoT on the basis of a fake NIC. In the meantime, Mr. Banda the owner of the fake NIC had disappeared, and the NDR has to figure out how to resolve ownership of plot LUS 2010.

DISCUSSION

- Could this saga have been prevented, and if so at what point and by whom?
- What other steps could Mr Siwale have taken to prevent this scenario?

There was a lapse in both the NDR and NIC Office systems. What kind of lapse was it? (Technical, legal, or organizational). How it could it be avoided?

AUTHOR

Raynold Moyo, Ministry of Lands, Zambia and
Augustine Mulolwa, National Remote Sensing Centre,
Zambia.



Selling vegetables along a street in Zambia. Photo © UN-Habitat.

CASE STUDIES II: LONG CASE STUDIES FOR TOOL KNOWLEDGE DEVELOPMENT WITH FACILITATOR QUESTIONS



TABLE OF CONTENTS

DISCLAIMER	100
1. NEPAL: A WOMAN'S LAND RECORD AUTHENTICATION SAGA	101-105
2. PAKISTAN: TENURE SECURITY AND JUSTICE	106-109
3. BANGLADESH: A SINGLE MOTHER SECURING HER FAMILY'S FUTURE	110-113
4. SRI LANKA: ABUSE OF DISCRETION	114-117
5. INDONESIA: CUSTOMARY LANDS THAT CONFLICT WITH NEW GOVERNMENT POLICY	118-122
6. PHILIPPINES: ANNA'S ORDEAL OF TRANSFERRING HER TITLE	123-126
7. BENIN: 'A BIG MESS':WHEN HISTORY COMBINES WITH POOR LAND PARCELLING AND LAND GRABBING	127-129
8. GHANA: ONE LAND, MANY OWNERS, MANY ADMINISTRATIVE LOOPHOLES	130-131
9. GHANA: A WOMAN'S TRAVAIL	132-135
10. NAMIBIA: DO SHACK DWELLERS HAVE LAND RIGHTS?	136-137
11. NAMIBIA: THE THREAT OF EVICTION	138-139
12. SENEGAL: ONGOING CORRUPTION DESPITE LEGAL FRAMEWORKS	140-141
13. SENEGAL: THE PROBLEMS WHEN TWO CITIES COLLIDE	142-143
14. TANZANIA: LACK OF TRANSPARENCY IN CHANGES OF LAND USE	144-146
15. TANZANIA: TRANSPARENCY VERSUS EFFICIENCY	147-149
16. ZAMBIA: THE UPS AND DOWNS OF TRYING TO IMPROVE THE LAND ADMINISTRATION SYSTEM	150-151

DISCLAIMER

All following Case Studies have been developed for training purposes, in the framework of the Training Programme in Land Governance, Tools to Support Transparency in Land Administration' Toolkit, developed through a joint venture between UN-Habitat and ITC, to enhance the capacity in transparency in land administration from around the world.

The cases discussed hereafter are real; however, all people, (private and/or non-governmental) organizations, places and dates of events used in the Case Studies are fictitious. No association with any real people, (private and/or non-governmental) organizations, places and dates of events is intended or should be inferred.

1. NEPAL

1. NEPAL: A WOMAN'S LAND RECORD AUTHENTICATION SAGA

A Nepali lady named Srijana Upadhyaya, residing in Arizona, the United States of America, came to Kathmandu, Nepal for a three weeks' vacation to care for and monitor her land that she owns there. She is a US Green Card holder and lives in America with her husband. She has a piece of land at Ward number 4 of Kathmandu Metropolitan City, located beside the relatively new Kathmandu Ring-road. The land was bought nearly two decades ago while she was still living in Kathmandu. She hasn't visited the land for quite a while and is a little bit worried whether her land is still intact in Kathmandu. She had left the land vacant for a long time. If she had given it to someone for cultivation, there was a possibility of them claiming the tenancy rights. So she left it vacant, in the hope that all would be ok.

Having arrived in Kathmandu, she visited her land to check whether it was alright. She noticed that buildings had been constructed on the adjoining parcel of land. She knew that the price of her land had gone up a considerable amount, since people from the rural countryside had migrated to Kathmandu capital city due to insecurity of life and property in the remote areas pushing up land prices considerably.

In the meantime, her neighbor suggested her authenticating the land record (Haal Sabik) to keep it safe and sound. Most of the land owners have 'authenticated' their old land ownership certificates. The process required affixing photographs on the new ownership certificate (Lalpurja) with thumb prints, a written signature and copy of the citizenship certificate number.

After some days, Srijana visited the District Land Revenue Office at Dillibazar for the authentication of her original land ownership certificate. The office staff asked her to file an application with a photocopy of the existing Lalpurja, copy of citizenship certificate and the latest receipt for paid Land Tax. The requests presented her with problems as she had not carried her Nepali citizenship certificate with her from America nor had she paid the Tax on her land for a long time. As the office staff noticed her becoming nervous, it was suggested that she seek help from a Deed Writer (Lekhandas).

The following morning she contacted a Lekhandas, accepting to pay the fee he required. The Lekhandas helped her to get the copy of her citizenship certificate from the Kathmandu District Administration Office. Similarly, the Land Tax which was due for many years, was paid to the Municipal Ward Office.

After the collection of these supporting documents, an application was filed in the Land Revenue Office for authentication of her ownership certificate. In connection to the processing, the application was forwarded to the District Survey Office at Dillibazar Charkhal Adda to verify the location and area of the land with the ownership certificate. The Head of the Survey Office assigned one Surveyor to go to the field for ground verification. The Surveyor was busy at that time, so he asked her to contact him the two days later.

Srijana, accompanied by the Lekhandas came to the Survey Office at the agreed upon day at 10.00 AM. The assigned Surveyor came to the office at 10.30 AM. He did some general work for nearly an hour and then spent some finding the concerned cadastral map sheet from the filing cabinet. He then measured the length and width of the parcel lines graphically on the map with the help of a graduated scale. He then computed the approximate area of parcel using a transparent Talc Square. Ultimately, the Surveyor left his office to meet with Srijana and Lekhanda. The Surveyor requested Srijana to arrange a taxi to go to the parcel concerned.

Reaching the site, he measured the land with the help of a fiber measuring tape for nearly half an hour.

1. NEPAL



Women Queue for Water in Nepal. Photo © UN-Habitat.

There were buildings on two sides and a vacant land on the third side. At the front end was the Kathmandu Ring-road. After completing the measurement, Srijana, using the taxi, dropped the Surveyor at his office. The surveyor told her to come back the following day.

At the Survey Office the following day, the Surveyor told her that the land was short by 16 square meters to the 400 sq meters mentioned in the old certificate that she had. He further said, 'I shall send your file to the Land Revenue Office that you only possess only 384 sq mtr of land'. Srijana pleaded that the parcel of land was still the same as when she bought it, seeing no reason to make it less. But the Surveyor was not convinced hence did not provide the required verification. She then contacted the Lekhandas again to solve the problem.

Meanwhile Srijana rushed to the private sector firm Bhumichitra Mapping and Land Development Co. P. Ltd for the actual measurement of her parcel of land. She felt that a Chartered Surveyor, a technical person who had obtained a license from a government institution, might be incapable of measuring the exact parcel boundaries. So the engaged firm's Chartered Surveyor measured physically each and every corner of the parcel and also made diagonal lines and plotted

1. NEPAL

these digitally. He computed the total area of the land to be 394 sq mtr, providing Srijana with a hard copy print from the digital map of the parcel of land.

With the help of the Lekhandas, Srijana talked in three separate rounds to the Government Surveyor showing the parcel map prepared by the private mapping company. During the meeting, the Government Surveyor told that however and whatever the private surveyor's measurement might be, there was a difference with the original ownership certificate. He also said that the difference of 16 sq mtr of land would value about Rs 800,000 (US\$10,600) at the current market price. If she would give him around four percent of the value of 8 sq mtr or Rs.30,000 (US\$400) unnoticed by others, he informed Srijana that he would make the area of the parcel to be 392 sq mtr, which would be only 8 sq mtr shorter than the original area.

The matter was finally settled and Srijana agreed to everything, as proposed by the Surveyor. The work to finalise all the documents was now done very quickly and was submitted to the Survey Officer (the ultimate boss) through the Survey Supervisor (the immediate Boss) to complete the formality. Both of them made

signatures on the paper, without examining the area of the land and it was forwarded to the Land Revenue Office there and then.

When the file reached the Land Revenue Office, the Administrative Assistant (Nayab Subba) handled the file. He studied the file and asked the reason for the delay in the Survey office. At the same time, he observed that the land was short by 8 sq mtr compared to the original ownership certificate. He said that given the discrepancy, the file therefore had to be thoroughly studied, which might take some time.

Faced with further potential delays, Srijana was very depressed. But the Lekhandas consoled her and negotiated with the Nayab Subba offering Rs 5,000 (US\$66) to facilitate the process. Finally the process was completed and the new land certificate registered. In the end, Srijana obtained a new ownership certificate (Lalpurja), with her photograph, her citizenship number, her left and right thumb prints and her signature.

Finally, she gave Rs. 5,000 (US\$ 66) to the Lekhandas as his fee for all of his efforts. Srijana also thanked god as she was scheduled to fly back to the United States two days later. If the work had not been completed that same day, she would have had to postpone her flight without any clear idea of when she could return to the United States of America.

BACKGROUND

- According to the Lands Act- 1964, if somebody tills and cultivates the land of a certain owner in the main cultivating (paddy or corn) season, he will be entitled to be a tenant, if he is registered in the Land Reform Office and obtains a Tiller's Certificate. Srijana was afraid of giving her land to someone to care and cultivate in case that they might claim their tenancy rights given that she had no idea when she would return to Kathmandu.

1. NEPAL

- If there is a registered tiller having a Tenancy Certificate, he will be entitled as the owner of fifty percent of the total area of land.
- There is a provision in Chapter 16 of Land Administration Directives- 2001 that the land registry and ownership certificate, issued before 'Re-surveying of Land', should be authenticated (make Haal Sabik) to ensure that the government and public land and adjoining private land have not been encroached. Haal Sabik is a process of verifying an existing land record and it must be completed and kept as collateral to the bank to obtain a loan and also for selling or mortgage the land.
- Most of Nepalese land-owners do not know that if the work of a Surveyor is not satisfactory, they can complain to higher level authorities, i.e. Surveyor's immediate and ultimate bosses. Lack of such information has increased corruption among the lower level working staff.
- It is a well-known fact, that whatever and however junior staff earns illegally from corruption, the money will be almost always divided proportionately with a share to high ranking personnel at the end of the working day. Staff are therefore not afraid of taking bribe privately because senior management are also benefiting.
- The majority of staff in government offices do not have professional ethics and moral training on how to serve the society. In many instances, money is offered to political leaders, even ministers and high ranking officers so that people can get jobs in government offices or be posted to the "attractive office" or the division of a department. As a result, these staff are often lacking good personal codes of ethics as well as the actual skills and knowledge to solve the crucial technical issues and problems.
- Office heads often cannot control corrupt staff since they are also linked directly and indirectly with the bribe process. If the office head takes action against corrupt staff, pressure comes from the jurisdictional office and ultimately, it is he or she that suffers.
- There is no commanding inter-relationship among concerned organizations to speed up administrative work which is related with more than one institution. There is a culture of protecting one's turf and of focusing sole on the specific matters of that department or section. Furthermore, the head of each organization often thinks that he/she is 'superior' to others and does not need to consult or have their staff liaise with any other office or department. As a result, however, services to the general public are ineffective and time consuming as the public are required to link in with and seek information from a range of departments.
- Office personnel mostly do not publish work procedures and amended rules and regulations to let it be known to all the stakeholders or general people that changes have been made. As a result, the general public cannot not discuss or complain if the work is pending for days on end because they might not know exactly who or where to complain to. Some organizations have, however, installed notice boards, mentioning the 'Charter of the Office' but in general, no one heeds what they say as experience shows that what is on and what is delivered can be two very different things.

1. NEPAL

DISCUSSION

The Broad question:

- Should Srijana have paid any bribes to any of the officials to get her new certificate?

Specific questions:

- Why didn't Srijana complain to the higher authorities or the immediate and ultimate bosses of the Surveyor, about not having done the work on time?
- Why has the basic Surveyor's work not been checked and verified by his supervisor, though there is a system to verify it? Do you think, if the supervisor checks and makes necessary corrections on parcel area, he won't get a share of illegal income from the field Surveyor?
- What steps should be taken by the government to those officials that makes the ground verification work delay intentionally, hankering over some money under the table?
- Why do the land revenue officials have a strong linkage with the Deed Writer (Lekhandas) during land transaction procedures? The officials ignore

the stakeholders, but they entertain the Lekhandas. Do you visualize any activity of corruption between them? What other dynamics might be at play?

- Given the vulnerable nature of her land (which she new about), what else could Srijana have done to make sure her land was secure?
- If Srijana was a man, do you think it might have made a difference or it would have depended on her status as a man?
- How can the state make the land record authentication procedure more transparent by preparing a template and less corrupt without undermining the institution, but with the existing land laws and regulations? What tools, procedures and practices might be used?

AUTHOR

Buddhi N Shrestha

Former Director General, Survey Department of Nepal
P.O. Box 6769, Kathmandu, Nepal.



A baby washing hands with tap water in Nepal.
Photo © UN-Habitat.

2. PAKISTAN: TENURE SECURITY AND JUSTICE

Gulshan Bibi, widow of Mr. Ghulam Muhammad is a 'lower class' resident in the District of Muzaffarabad, Azad Jammu & Kashmir (AJK). She has five sons and three daughters. Gulshan Bibi's late husband was a primary school teacher.

As a result of the partition of the Sub-Continent in 1947, a large number of Muslim families left their homes and moved towards Pakistan in order to realize their dreams of a 'happy, independent and prosperous life'. The family of Ghulam Muhammad was one with dreams who decided to migrate from Indian held Kashmir (IHK) to AJK in 1958. Ghulam Muhammad, along with his parents and three brothers reached Muzaffarabad city, the Capital of AJK and spent 13 years as a landless family. In these years, the family failed to get even a small plot of land where they could live with privacy. After a long period of suffering and difficulties, Ghulam Muhammad, who was the eldest son of his parents, succeeded to find a government job and started his career as a primary school teacher. He also got married with Gulshan Bibi whose family had also migrated from IHK (Indian Held Kashmir).

In 1971, Ghulam Muhammad's father purchased a plot of land of two kanals (10880 sft) and being the elder son, Ghulam Muhammad provided the money for the purchase of the land. Soon after having their own land, they constructed a small house with three bedrooms and the whole family started living together there.

Before the death of Ghulam Muhammad's father, the land was divided equally among the three brothers by their father as it is a common practice in the area that most of the issues are settled and decisions are taken by the head of the family during his life. All this was done verbally, however, and nothing was recorded in writing.

After the death of Ghulam Muhammad's father, his youngest brother shifted with his family to another place in Pakistan where he purchased his own land and settled permanently. The second brother of Ghulam Muhammad, however, secretly transferred half a plot of land (one kanal, 5440sqft) in his name by giving bribery to the land revenue officials, all of this without properly informing Ghulam Muhammad. Nevertheless Ghulam Muhammad, feeling his brother might be up to something, decided to transfer the ownership of his part of land as per his father's decision.

When he went to the 'Tehsil' (Sub-Division) Office and presented his case before the revenue officials, he was asked to pay money (bribery) if he wanted to get the issue resolved. Ghulam Muhammad was a religious man and he did not accept this to do this feeling it was unfair. As a result of his refusal, the official transfer of the land remained incomplete and he was unable to get the ownership rights of his plot of land. Ghulam Muhammad subsequently decided to abandon the idea of land ownership rights for the rest of his life. When he died, however, he knew that his widow and offspring would suffer after his death.

After the death of Ghulam Muhammad his two younger brothers approached his widow, Gulshan Bibi and asked for the division of the land where she was living with her children. They threatened her, claiming that the plot of land was inherited from their father and that, by law, it should have been divided equally among the three brothers. In doing so they quoted that during his life, their father, had divided the land among his three sons on an equal basis. This was shocking for Gulshan Bibi but after a lengthy debate she conditionally agreed for the division provided the division was made of the entire plot of land which covered an area of two kanals. Her young brother in

2. PAKISTAN

law did not agree to her condition as he had already taken half of the land through illegal means and said that he had purchased that land by himself, having legal proof/ papers of that.

When Gulshan Bibi realised the position she was in, having no written evidence, she decided to call the 'Grand Jirga' (the local court of notables of the area) to try and resolve the issue. All the three parties presented their case before the Jirga but unfortunately, the decision of the Jirga went against Gulshan Bibi because she failed to provide the required legal documents to show her inheritance rights of land ownership. Worse, it was decided that Gulshan Bibi would pay 70,000 (PKR) to each party (total 140,000 PKR) as penalty, which came as another surprise to her.

In order to save the land and the roof which was the only place where she and her children were living independently, she sold the jewellery of her daughters and daughters in law. She also borrowed money from her relatives but still she could not manage to pay the full amount she had been penalized to pay.

When the given deadline approached, she refused to pay and appealed for more time. Her plea was

rejected and she was asked to evacuate the land until and unless the matter had been resolved by the 'Jirga'. Gulshan Bibi was compelled to comply with the decision of the Jirga and left the land.

The widow moved her family to a rented house in Muzaffarabad in 2006. Her eldest son has been running a small medical store and her younger son is also doing a private job. The case filed by Gulshan Bibi is still pending in two courts; the Senior Civil Court and in the High Court since 2006. She has been regularly attending the hearings and also has hired lawyers for the both courts and paying their fees. She does not know for how long the hearings will proceed and how long it will take for a final decision to be reached. Sometimes, such cases related to land disputes, take 10 to 30 years or may remain undecided for generations. She says that she cannot predict what the court verdict will be, because of the lack of transparency and with all the corruption, anything can happen. Gulshan Bibi is very upset and thinks that she is right, but if the decision goes against her, once again her family will be landless because she is still not in the position to purchase a plot of land as the rates of land are out of her financial reach.

BACKGROUND

From a policy and organizational point of view, land administration in Azad Jammu and Kashmir Pakistan has gone through a very long evolution process. Land law and systems date back to the early 13th century, mainly based on traditional Muslim law and subsequently amended under Indian rule. Under British rule, the (revenue) system was refined and formalised to keep a full record of the tax paid by landowners and to update the changes in ownership resulting from the inheritance or sale. Major amendments were made in the land laws of Azad Jammu and Kashmir (AJK) in 1960 when the Land Reforms Act was passed. Under these reforms the maximum limit of individual holding was fixed, occupancy tenants were given ownership rights and tenants were protected against eviction. According to Shariah Law, the deceased person's property is transferred to his descendants by equal division. Although in this case the father of Ghulam Muhammad did not leave any will, all three sons including Ghulam Muhammad have equal rights inheritance rights based on Shariah Law. It was very unfair that Ghulam Muhammad's brother illegally transferred his part of the land and subsequently claimed rights over the rest of the land.

2. PAKISTAN

As far as access to information for the general public and participation of the population in the decision making process is concerned, both are missing in the existing revenue system of AJK in Pakistan. It is rare for people to get the desired/required information from revenue offices or to participate in any kind of decision making process. The 'Patwari' who is supposed to be available at his duty station, normally does not bother to go into the field. Once or twice a year he goes to the field but only at the request of the richest man of the area, with all the travel and other expenses being covered by the person making the request. In addition, if someone wants to get the legal documents or any copy of his sale deed or landownership he/she has to pay the 'Patwari' handsomely as he is the only person from whom the desired information can be obtained.

In terms of integrity, the Deputy Commissioner and his subordinates enjoy special powers in AJK. Unlike the reformed revenue system elsewhere in Pakistan, the Assistant Commissioner and 'Tehsildar' still enjoy magisterial power in AJK, being in charge of District Administration. The 'Patwari' who is supposed to be stationed in his 'Patwar circle' which consists of a number of villages, is rarely approachable. Having a relationship with the 'Patwari' is considered to be



Punjab, Pakistan. Photo © UN-Habitat.

2. PAKISTAN

a privilege as land holdings in AJK are very small and many. Malpractice or corruption by the 'Patwari' is usually not reported. In fact, if the "Patwari" is assigned to conduct an investigation in the face of a claim, it is precisely his presence that makes people anxious. He is not seen as a neutral player in the whole mix. For small, day to day conflicts on water, pathways and village common land etc. however, the 'Patwari's' opinion and expertise has to be sought which makes him very valuable for the people. At the same time, however, he can delay hearing of a particular case as long as he desires which cripples a quick decision making process. A land related case settlement may take years and in some cases, generations. Ironically, if land records were to be computerized, very few out of the hundreds of 'Patwaris' would be able to work as they are not well educated.

DISCUSSION

The Broad Question

- As a woman and a widower, there seemed no formal or traditional system that was sympathetic to her plight. Is that fair? Did the fact that her late husband didn't give her a formal land title make that much difference or was there something else at play?
- Was her faith in the traditional Jirga that she would be protected against the claims of Ghulam Muhammed's brothers justified? What would have been the best option for her to do? And what would this require in terms of transparency?

Specific questions

- As a woman and a widow, do you think Gulsham Bibi was properly informed about conditions and chances of winning this conflict? Did her status as a woman and a widow affect her chances? How or how not?

- How far the local Jirga (decision by elders) is relevant in the subject society and can it be improved to become a part of the legal system? If yes, how and in doing so, should the Jirga system be more sensitive to women?
- Does the story call for need of improved coordination between the law enforcing agencies, revenue department, and traditional authorities like the Jirga councils?
- What specific tools could be put in place to generally improve the system for people like Gulsham Bibi?

AUTHOR

Muhammad Ayaz Raja Khan
Muzaffarabad, AJK Pakistan.

3. BANGLADESH

3. BANGLADESH: A SINGLE MOTHER SECURING HER FAMILY'S FUTURE

Aleya is 30 years old and divorced in the Muslim custom after six years of marriage. She had a very brief married life and stay in her husband's home. The cause of the break up is her husband's second marriage. Within three years of marriage Aleya returned to her parents' home with her two sons who were born within this time. According to her she used to be tortured by her husband and his family. So she decided to shoulder the responsibility of her sons and took the step for separation which led to divorce ultimately. Aleya has no education or other skills to sustain her. She started working in the field helping her parents in farm and undertaking household chores.

Aleya's families are natives of Hatiya, an island south of Noakhali (District Head Quarter) main land. Hatiya is an old island with more than 400 years of settlement history. For the past 50 years or more the island has been subject to erosion along the sea shore as well river banks and countless families have been rendered landless from this phenomenon. Aleya's family migrated to the newly accredited chars (areas of newly

accreted lands) of Noakhali along with many landless families. The new chars along the main land draws these destitute people with the promise of acquiring fresh settlement and this is an accepted process. The growing population of landless people in the chars is in constant conflict with the powerful groups who are somehow supported by the administration and make the settlement process for the landless vulnerable.

Aleya's family moved in with their kin and was allowed to stay on the land of a 'Jotdar', a powerful person who owns land, who occupied about 8 acres of land. He allowed Aleya's father to live on the land and cultivate the land as a Bargadar, share cropper. In 1996 after inception of the Char Development and Settlements Project (CDSP, supported by the Dutch Government), these occupied lands were redistributed among the landless. Aleya's father thus got a permanent settlement and Aleya and her three sisters living with their parents got security and permanent home and farm land to provide their basic food. Incidentally all the sisters are estranged from their husbands and living in an extended family system quite common in rural Bangladesh. Aleya has only one brother who is also the youngest of the siblings and the lack of male members increases the vulnerability

of the family. Aleya has a strong nature and stood by her father during the hard times and helped him in the CDSP allotment process to receive the Nothi (settlement case) and resisted eviction threats by powerful land owners during the survey process.

The prospect of receiving land as a landless family is lessened when single women live with their families. In the Chars communities, women and children are often abandoned by the men as there is lack of employment for young males who often leave their families to settle elsewhere or marry for better opportunities. The main objective of the CDSP program is socio economic rehabilitation of the destitute families. The poorest of the poor who cannot even build their own homes were given shelter in a clustered village. These clustered villages (CVs) were constructed on large blocks of khas land (government land) with 30 houses arranged around a common pond in the centre and each house hold got 0.16 acres of homestead land with a tin shed house provided by the Ministry of Land and a water sealed latrine provided free of cost. Most of the settlers in the CV did not have any cultivable land or any other livelihood. Single women, elderly and disabled were also encouraged by CDSP to apply for this benefit. A lot of the CV settlers were recent

3. BANGLADESH

immigrants and had no chance or were too weak to occupy any other agricultural land. Throughout the whole process, however, many did not receive any agricultural land and those who received land were given small areas, hardly over an acre.

Aleya as a single woman with two dependant sons, applied to CDSP for shelter support once the donor funded project started the land and shelter allotment process. She got an allotment with a tin shed house of 350 sq meters size in the cluster village at Nobogram. The house is a typical one room shelter made of bamboo walls and CI sheet roofing. For this allotment Aleya's father had to pay a bribe of Tk5000 (USD \$60) to the agents or middleman in the land distribution process. As per the process, she also had rights to be recipient of a share of the agricultural land allotted to the landless applicants for livelihood purpose. She received three pieces of land adding to one acre in three separate parcels with three land owners. In general the occupants of the CVs are not well employed. Most of them are share croppers. Single women either beg or work in food for works program of the government which consists of mainly earth works for road and embankment construction. Aleya realized that she could not gain much from

these three scattered pieces in three locations. She also did not have the ability to pursue her case with the DCR to ask for an alternate allotment. On the other hand, local committee members who act as middlemen for the Jotdars advised her to sell her share of the land. Her difficult situation forced her to sell her share to the bigger owner. She sold the land for a small amount of money which could only enable her to return the money borrowed during her CV house allotment.

After becoming an owner of the house in the Cluster village in Nabogram, Aleya started living there with her two sons. She started rearing poultry and doing homestead gardening to earn some money for sustenance. But within a short time she had to abandon the house as her husband started stalking her, particularly at night time. He tried to claim his rights as the head of the household and Aleya finding no one to protect her, was forced to abandon her house and again, take refuge with her father. It was hard for her to leave her home but she had no other alternative. Today her house is occupied by another family who are living there temporarily and in a way keeping her occupation secure.

Aleya's situation did not improve. Her vulnerability as a single woman without a husband forced her to abandon her shelter. The agricultural land given to her was not suitable for use so she disposed it for cash money. Tilling the field with her father provided her with basic food only. With two growing children she needed cash money to buy many basic necessities. She realized that she had to leave her home for survival. This situation made her search for cash earning jobs which is not easy in the Chars. Her quest for work eventually led her to Dhaka city as a migrant where started working as a domestic helper. It was a hard step for her to leave two minor sons in the care of her parents and go to Dhaka, an unknown city. CDSP staff helped her find a secure employment. The job helped her to save even after providing monetary support to her family. From her savings Aleya bought a piece of agricultural land of 2 acres after some years. This is now providing the family with cash crop and also staple food for the year. Aleya is dreaming that one day, she can return back to her home in the cluster village, farm her land with help of her sons when they grow up. She also plans to have a small business such as a grocery or tailoring shop with further savings.

3. BANGLADESH

BACKGROUND

The Char lands of Bangladesh (an area of accreted land) form a big resource for a country with the highest density in the world and also a high percentage of the population who are poor and landless. The newly accredited lands belong to the government and are distributed among the rural landless through policies and programs. These projects receive high level attention and support of major donors like World Bank, Royal Netherlands Embassy, UNDP, ADB etc.

Prior to the government implementing the Char land distribution system there was a great anarchy in these areas. Wherever new lands formed, these were taken in possession by powerful people. Even with the government system of land distribution among the landless, a new group or class of land brokers emerged who became active in manipulating and taking land away from the poor through cunning methods. Lack of monitoring, lack of transparency in the method of land administration and distribution has led to these unjust actions toward landless and vulnerable groups particularly single women, elderly people and in general the poorer groups. It should

also be noted that a single woman living in father's house as an extended family is quite common in rural Bangladesh. Such situations are caused by the vulnerability of marital life of women in the Chars.

The new Chars along the main land, tends to attract 'destitute people with the promise of acquiring fresh settlement and this is an accepted process. Only the growing population of landless combined with conflict that emerge amongst power brokers in these areas, make the settlement process for the landless vulnerable. Lack of modern land administration systems (i.e. mapping through GIS, computerized methods) are also causes for lack of transparency and resulted in an inadequate distribution system.

Many of the cluster village (CV) settlers were recent migrants and had no chance or were weak to occupy any agricultural land. In general, occupants of the CVs are not well employed. Most of them are share croppers. Single women either beg or work in food for

works program of the government which in this area is mainly in earth works for road and embankment construction. Many did not receive any agricultural land and those who received any land at all, got small areas hardly over an acre. It was foreseen that settlements without cultivable land would not be sustainable but no employment alternatives have emerged or are actively cultivated.

DISCUSSION

Specific questions

- What are the determinants of decision/allotment making process? Is there any scope for public participation?
- Should Aleya as a single woman with minor children, received separate attention for social security and livelihood?
- By what process can the vulnerability of single women be taken care of both for shelter and livelihood?

3. BANGLADESH

- What transparency tools should be recommended for cases like Aleya's to make the process more acceptable and adaptable to the landless? Accessibility, Participation Professional Integrity, Institutional Reforms?
- What role do donors play in ensuring that programs like the Chars, are implemented in a fair and transparent manner? What specific tools could they put in place to assist?

AUTHOR

Salma A. Shafi, Centre for Urban Studies
Dhaka, Bangladesh.



Children in Bangladesh. Photo © UN-Habitat.

4. SRI LANKA:

4. SRI LANKA: ABUSE OF DISCRETION

The village called Totillagahawatta is in the Divulapitiya Divisional Secretary area of Gampaha district in the Western province. The village is defined by paddy lands as well as high lands though some of these paddy lands are abandoned. This partly developed village lies on the Minuwangoda-Dunagaha road with infrastructure facilities such as electricity and telephone. People dig wells in their home plots to get water. Some of the land parcels are inherited and a few plots are 'alienated lands'. The right side of the village is a part of 'Kalugala' Forest Reserve. The other part of the reserve falls within the adjoining village.

The area close to the Forest Reserve was state owned and given to the people for development under the land alienation programme in 1938. During this time a villager called Appuhamy encroached on a state land plot from the area adjoining the Forest Reserve. The area he was traversing was richly covered with plants full of mature seeds bending down.

Somapala Mudalige was a carpenter who was born in the adjoining village. He purchased this land plot from Appuhamy for fifty rupees in 1957. But Somapala didn't know whether it was in fact state land or

private land and he just purchased the land for his settlement. He was an innocent worker in the village and most of the carpentry work in the villagers was done by him. The furniture he made was often very good and strong, but he took a long time to make them.

Somapala had been making the long hard journey for 5 years to the plot and built a small house. He had also married Kusuma from the rural area of the North Central province in 1962. He received five cows for dairy produce as a dowry. They spent a peaceful life and had two sons Ruwan, Kamal and a daughter Kumari, the youngest. They spent a lot of money for the education of their children but only Ruwan studied well and became a government officer. He got married to Kanthi, a teacher living in a village about 78 km away from Totillagahawatta.

It was the eternal allegation of aunt Gunawathie who visited Kusuma on and off, that if not for Kumari who remained at home being unable to get married in her youth because their family would never have survived long. It was she, the daughter, who did all the drudgery and also roamed around the forest reserve and collected dry branches for fuel.

Kusuma got depressed thinking about this fact and decided to give her daughter in marriage to Lionel, son of Gunawathie. Before the marriage of Kumari, Mudalige gave 23 perches (582 sq.m.- perch is a unit of measure of land extent) from his land of thirty eight perches (202 sq.m.) to her transferring the ownership of this extent in terms of deed of gift. The balance part was given to Kamal for his use but no deed transaction was executed.

Lionel was the only son in Gunawathie's family who lived in an adjoining village with a meagre income from a couple of small paddy fields. Gunawathie did not allow Lionel to live with her, and Lionel started a new life at Kumari's Mahagedara in 1993. Earning little by little, Lionel decided to expand the dairy production to poultry farming, and therefore, built few coops in the land parcel given to Kumari. But it was hard time for Kumari as her parents and brother Kamal met with a terrible road accident and passed away. They therefore decided to obtain money to purchase chickens by mortgaging their land parcel to a rural bank. After inquiring from the bank, Lionel got the strip of land of 23 perches from Mahagedarawatta surveyed and produced the survey plan and the deed to the bank to obtain a bank loan. A few months

4. SRI LANKA:

later, Lionel received a bank loan of two hundred thousand rupees. On receiving the bank loan they built more coops to expand their poultry business in the other part of the land as well as they were the only occupants in Mahagedarawatta.

The Government introduced a land titling programme in 2002 in the Divulapitiya Divisional Secretariat Division. State sector officers were surveying public and private lands to give the land titles for the land owners. Tenement information (includes the land parcel identification number, extent, land use, claimants name, remarks) produced by the Survey Department for the cadastral map indicated the status of all the land parcels, whether state or private.

The particular land parcels of Kumari were indicated as 'state' land. But in the Tenement list, as a remark, it was noted that Kumari was living on this land with reference to their deed. Under the Title Registration act the map of the area to be gazetted under section 12 and claims were called.

Kumari, very much interested to get a title certificate for their land, met the investigation officers who located their office in Totillagahawatta.

In the title registration procedure land owners have to produce duly completed claim form for obtaining certificate for their land after section 12 was gazetted as well as any objections can be forwarded. While completing the claim form Kumari had a problem filling in the details of the deed and she inquired from the investigation officers about the procedure for obtaining certificate for their land as it was mortgaged to the rural bank.

With the assistance from investigation officers, she completed her claim form and submitted it. As Kumari's elder brother was not claiming for a share in Mahagedarawatta, Kumari completed additional claim form for the balance part of Mahagedarawatta to get a Title certificate for that too.

In the meantime another claimant Mr. Edward Dias from an area far away from Totillagahawatta also forwarded a claim form for a land parcel supported by a LDO (Land Development Ordinance) grant received in 1979. He was a state sector officer dealing in land matters in Gampaha Kachcheri. He was a powerful

character in the state service in those days and still had a very close relationship with politicians. In his land grant certificate the land parcel shown was shown to be exactly the same as the land parcels of Kumari and the extent stated as 40 perches (1012 sq.m.). People owning the lands in the surrounding areas also had received land grants but in no other instance there had been claim from persons other than real owners.

Kumari came to know that one Mr. Dias is also claiming for her land only now and she started roaming from the morning till evening to meet various state officials to solve this matter. During this process, she came to know that some illegal manipulations had occurred during land transaction in the late 1970's. She tried hard for two years but couldn't get a solution to the problem. In the meantime, the family business also went bankrupt and they were unable to pay the loan instalments for six months.

As the Investigation officers also had a problem in deciding the ownership to Kumari's land, they requested the Survey officers to trace the history of the land parcel in the old survey documents. In searching the old survey documents, they found that a land plot in the old survey plan was identified to one

4. SRI LANKA:

Appuhamy. In the document, he was termed as an 'encroacher' and the land use as 'barren land'. It was the only encroached land parcel in that survey plan.

BACKGROUND

Investigation officers from the Land Settlement Department are the authorized officers to investigate the ownership of a land. It is customary to call as Mahagedara to parents house / native home of the children. Kachcheri is the former regional (district) administrative office.

The objective of the Land Development Ordinance (LDO) No. 19 of 1935 is to provide systematic development and isolation of state land. The disposal of lands under the Land Development Ordinance is to people belonging to the farmers' class, low income groups, higher income groups and educated youths for agricultural or residential or for both purposes are carried out through this Ordinance. Lands are not issued for any other purposes under this Ordinance. LDO grants were issued by the Government Agent till 1992, to the landless people. From 1992, (according to the 13th amendment to the constitution) the Divisional Secretary is in charge for the Land matters

in the administrative division (Divisional Secretary Division). The staff that are engaged for land matters, are experienced officers.

The Title Registration Act -1998 makes provision for the investigation and registration of Title to a land parcel; For the regulation of transactions relating to a land parcel so registered; and for matters connected therewith or incidental thereto, Registration of Title is done systematically over an area such as Province, District or Division or any other administrative area, which the Hon. Minister of Lands may from time to time specify and publish in the Govt. Gazette. At the same time, a legal investigation is carried out to determine the rights and ownership of land parcels. The investigation process could surface hidden disputes or unknown contestable issues relating to the ownership of the land.

The Registration of Documents Ordinance – 1927 is the basis for the deeds based on the land registration system. Duplicates of deeds and instruments must be submitted to the registrar of lands for registration. Documents concerning lands shall be void unless they are registered in the land registry.

DISCUSSION

Specific questions

- When Appuhamy sold state land to Mudalige, no one made a complaint against it. What are the causes for the absence of such a complaint about this illegal transaction, either to land administrators or to Mudalige?
- What are the shortcomings in the decision making process of the land administrators for not giving a land grant to Appuhamy?
- How did Mr. Dias, a former state sector officer, receive a land grant by undermining transparency in land administration?
- Which organization has responsibility and mandate for compensation to Kumari and her family for the loss in terms of disturbances to their family life and their business?
- What clear steps could be put in place to avoid this situation occurring again?

4. SRI LANKA:

AUTHOR

Shyamalie Perera, Survey Department of Sri Lanka
csltd@sltnet.lk.



Urban and slum settlements in Colombo, Sri Lanka. Photo © UN-Habitat/ Suzi Mutter 2005.

5. INDONESIA:

5. INDONESIA: CUSTOMARY LANDS THAT CONFLICT WITH NEW GOVERNMENT POLICY

Customary land rights in Indonesia, usually referred to as 'Adat' and in South Sumatra as 'Marga', are in danger. In 1999 the then Ministry of Agrarian Affairs issued a Decree (Nr. 5) with guidelines on managing customary land rights and conflicts under the gradual evolution and implementation of newer systems of land administration. Nevertheless, conflicts have arisen, particularly in rural forested areas.

In the 1970s and 1980s, the national government, through the Department of Forestry granted Industrial Forest Concessions to forest plantation companies in an attempt to boost national revenue by exploiting

forest resources. ¹The granting of concessions often resulted in land disputes between local communities and forest plantation companies in Kalimantan, Sulawesi, Sumatera, and Papua forested areas. One such dispute arose between the local community and the company 'PT Musi Hutan Persada' (MHP) in South Sumatra over land located in Rambang Lubai Subdistrict, Muara Enim Regency.

Musi Hutan Persada (MHP) is a well-known forest plantation company owned by one of the larger Indonesian conglomerates. The company obtained an Industrial Forest Concession in 1991 based on the Minister of Forestry Decree No.205/ KPTS-II/1991 extended with another Minister of Forestry Decree

issued in 1996 (No. 38/Kpts-II/1996). Since then, the company began to take over forest lands in South Sumatra. MHP supplied its wood raw materials to Tanjung Enim Lestari LLC or PT TEL to produce pulp. 'PT TEL' was also known for its 'special' link to the family of former President Suharto (leader of New Order era), where his oldest daughter was one of the company shareholders.

Reportedly, the company was well-managed, thus opening up many jobs for local people. In 1999, the company claimed to employ about 2,000 people. Unfortunately, as happened in many Forest Concession sites, the boundary between industrial forest areas and protected forest land were often very

¹ During The Dutch colonial period the forestland boundaries have been established by the Boschwezen (the Forestry Bureau) perfectly which were recognized by the local people and customary leaders. After the Independence and during the New Order era, those areas have been intensively exploited both by the timber companies and local people with different points of view. The forest concession companies have legal rights to exploit the area from the Government while the local people converted the forest lands into other uses as part of their customary tradition called "Simpur Cahaya". From 1970s up to 1980s those forestland areas were left abandoned, thus they became an excellent habitat of Alang-alang Ecosystem (*Imperica Cylindrica*). As mandated by the Fundamental Law (UUD 1945) article 33, then the Government, through the Ministry of Forestry valued the abandoned lands as unproductive lands that could be converted into productive forested land areas. During The Dutch colonial period the forestland boundaries have been established by the Boschwezen (the Forestry Bureau) perfectly which were recognized by the local people and customary leaders. After the Independence and during the New Order era, those areas have been intensively exploited both by the timber companies and local people with different points of view. The forest concession companies have legal rights to exploit the area from the Government while the local people converted the forest lands into other uses as part of their customary tradition called "Simpur Cahaya". From 1970s up to 1980s those forestland areas were left abandoned, thus they became an excellent habitat of Alang-alang Ecosystem (*Imperica Cylindrica*). As mandated by the Fundamental Law (UUD 1945) article 33, then the Government, through the Ministry of Forestry valued the abandoned lands as unproductive lands that could be converted into productive forested land areas.

5. INDONESIA:

unclear. According to the Legal Aid Institute (LBH) Chapter South Sumatra, out of the 296,400 hectares of MHP's concession land, approximately 19,918 hectares (6.7%) were subject to dispute between MHP and the local community. The boundaries were often conflicting when comparing the maps used by different agencies. For many of the local Rambang Lubai people, the impact of the company's operations has been more than just matters of 'geometry' and 'mapping'. They saw and felt that the company's activities increasingly encroached on their customary (Adat) land. This was seen as inappropriate and unacceptable to the locals.

During the country's 'New Order' era, according to many local residents, oppression and land evictions were commonplace and only a few individuals were brave enough to voice their protests or even to discuss their frustrations. The local army and government effectively suppressed any potential conflicts over land, including the shooting of one villager by soldiers guarding the MHP operations. After the fall of the New Order era, the local community initiated attempts to re-take the land they claimed to be their own.

In 1999, the local community found an opportunity to raise their voice. Led by a campaign coordinator,

Mr. Sani, the local people claimed part of the land operated by MHP and wrote three demands addressed to MHP. On July 24, 1999, the coordinator and representatives of 9 villages filed the demands to the MHP base camp in Suban Jeriji. The demands were: a) the return of local people's land (the claim was about 26,000 hectares); b) payment of compensation for the loss of opportunity in the last 9 years (Rp 665.000.000 in total); and c) payment of compensation for trees and crops on the claimed land (around Rp 885,125,000). The demands were also copied to the Regent Muara Enim District, the South Sumatra Governor, the Head of the National Land Agency, the Minister of Forestry and to Speakers of the House.

The MHP spokesman rejected the demands, stating that the company never took 'one meter of land or one tree from people'. From the company's point of view, MHP had been acting legally correct as their forest exploitation operations were based on officially issued decrees.

These included the acquisition of the Right to Exploitation (HGU) authorized by the National Land Agency (BPN) and the Minister of Forestry, based on a boundary investigation involving many agencies to settle the boundary on the field.

On 11 September 1999, thousands of villagers organized a demonstration, considered by locals as the largest ever, in the Muara Enim regency's capital. A few days later, on October 7, 1999, it was followed by another big demonstration in the capital of South Sumatra Province, outside the Governor's office. In response to this, the local Regency (Kabupaten) installed a team to investigate the villagers' claim. A meeting was then held in Jakarta where the coordinator, the Regent (Bupati), and representatives from the governor's office met the Director of MHP. On October 27, the Director of MHP agreed that the company would not cut any single tree in the disputed areas until the dispute had been resolved. He also agreed that the handover of conflicted areas and the compensation for trees cut down would be carried out.

But on 1 November 1999, the company revoked the agreement stating that the land was owned by the State and could not be returned to local people. Later in February 2000, between 3,000 – 4,500 local people staged a demonstration in the front yard of the Governor's office. They threatened to camp 'forever' and not leave before the case was resolved. The Governor himself asked the coordinator to send the

5. INDONESIA:

villagers back home, but the coordinator refused to do so. Then the governor tried to set up a meeting with the Director of MHP but he failed. The crowd was willing to go home only after the Governor offered his promise to meet the Minister of Forestry to resolve the conflict.

The conflict was then taken up by the media when MHP lawyers accused the coordinator, Mr. Sani of blackmailing the company and asking for US \$30,000. Mr. Sani admitted having requested the company to cover his trips to Jakarta for meetings but insisted that he had never received any other money. His counteraccusation was that MHP tried to bribe him to stop the campaign.

On 24 February 2000, the Governor declared that the disputed land in Rambang Lubai and Rambang Daku was in a situation of 'status quo'. He ordered MHP to stop their operations in the disputed areas. MHP questioned the authority of the Governor over forest concessions and continued logging, effectively neglecting the status quo instruction. As could be expected, angry villagers attacked the company's base camp and set fire to 2 trucks. MHP employees were evacuated to avoid more destruction. Six weeks later, the Secretary General of the Ministry of Forestry

went to Rambang Lubai to attend a meeting. After the meeting he said that 'now it is the time (for the company) to give compensation'. Compensation would be determined by the provincial government and the 12,050 hectares of disputed land would be returned to local people.

Unfortunately, after months of hope, the expected compensation and land did not come. The Decision of the Minister of Forestry No.147/KPTS-II/2000 was to exclude 12,050 hectares of land area from MHP logging efforts but it did not provide any hints on the ownership status of the land in dispute. Furthermore, the local community found out that the 12,050 hectares of disputed land would be legally transferred from the company to the provincial government 'for the interest of the local community'.

Finally, the community had to agree to join a 'Community Forest Management Scheme'. In this scheme, the villagers would actually be part of the MHP logging processes, being obliged to plant, clear and weed plantation forest as well as protecting it from fire. In turn they would earn benefits (7% of the proceeds to the village council and a small management fee). Thus, no one actually received tree compensation or compensation for the land taken.

The money resulting from the scheme was paid to a foundation established by the former campaign coordinator.

Up to now, the conflict continues. The current approach is designed to overcome the conflict, by including a joint collaboration or partnership program in planting and harvesting the trees. Nevertheless, the disputes over the boundary and ownership rights have never been resolved.

BACKGROUND

In Indonesia, forest land covers about 70% of the total land area of the country where customary land and communal land has existed for centuries. The Land Act (UUPA) was inspired by customary law and acknowledged the customary land rights. There was also a Minister of Agrarian Decree 5/1999 that contains guidelines on how to manage customary land rights and conflict.

There has always been a set of overlapping and uncoordinated policies in handling rights, restrictions and responsibilities of the customary land in Indonesia. This is demonstrated by this case study where the Minister of Forestry issued concession rights and then the Land Office issues the Exploitation Right but they

5. INDONESIA:

both use different maps to represent the land borders. Not surprisingly, this results in the scenario that sees many forest plantation sites with overlapping borders and confusion where protected forests end and industrial forests start. On many occasions, the maps produced by the Minister of Forestry and the Land Office or Spatial Plans Agency never concur. Disputes on the land borders demarcating customary land boundaries with Forest concession has therefore been one of the sources for conflict.

The situation is made worse by the regulations on government devolution/decentralisation. The regulation was authorized after the fall of the New Order era. As a consequence of central government's autonomy devolution, local government is now more powerful to issue permits to companies to start or extend their enterprises running on mining or agriculture sectors. Unfortunately on many occasions, land disputes, land evictions, and community marginalization result in customary land conflicts in forest areas. For the local people, the forest lands that they inherited from their parents and their ancestors were all lawful to be exploited according with their

'Adat' - 'Marga' (in case of South Sumatra). For the companies, all operations run on the concession areas, are all legal according to Government (Department of Forestry, Land Office, Local government).

In the above case, the governor was heavily involved in the process and acted as a mediator to the local people. The Governor decided that the status of the disputed land was 'status quo'. This pleased the general public/community and elevated his political position. But his decision also created another problem as the authorization to grant or freeze the concession right is on the one hand vested with the Federal Minister of Forestry whereas the Exploitation Right is vested with the Land Agency (BPN).

The end of the story is a sad for the local indigenous people. Several community members were disappointed with the amount of compensation payment for each individual. In their opinion, even the compensation could not match the cost and time expended by community members during their struggle against MHP. Furthermore, no amount of money could reinstate their rights over their land and their right to undertake their traditional way of life.

DISCUSSION

The dilemma

Indigenous people have international rights and often nationally recognised rights to land. The communities in this case study had rights to their land but also had to compete with corrupt logging companies and government officials who wanted to gain from the potential of the land in question. The fact that land administration is handled by more than one department complicated the local community's capacity to have their land rights acknowledge and protected. Further, many indigenous communities are not always educated in the formal education system nor have experience of government departments and protocols. How can indigenous peoples successfully claim their land rights?

5. INDONESIA:

QUESTIONS

- What are the transparency issues captured in this case and who do you think is most responsible for the dispute?
- Could it be said that land disputes provide an opportunity for the local elite to promote their own political careers? If so, how can these behaviours be prevented or at least curtailed?
- Did the fact that the mining company and politicians were dealing with indigenous people affect how they related with them and did or did not respect their rights?
- What tool or combination of tools can be used to address the transparency issues captured in the case study? Why?

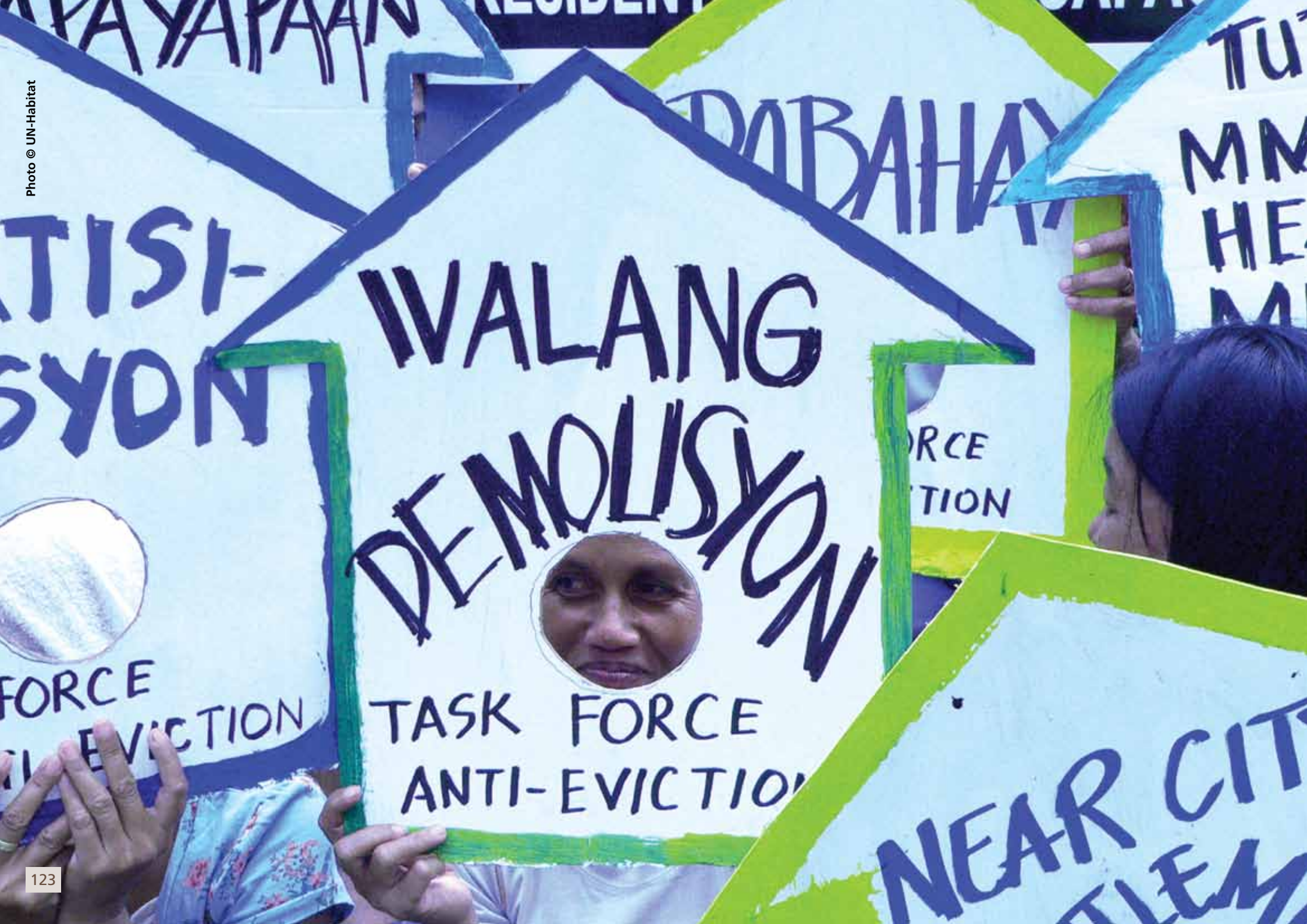
AUTHOR

Dr. Trias Aditya, Gadjah Mada University, Faculty of Engineering, Yogyakarta, Indonesia.

Wahyu Wardana, Gadjah Mada University, Faculty of Forestry



Men at work in Pidie. Photo © UN-Habitat.



6. PHILIPPINES: ANNA'S ORDEAL OF TRANSFERRING HER TITLE

This case involves the sale of a 200 square meter piece of land owned by Mr. Florencio Tolentino to Ms. Anna Mendoza, a government employee. This piece of land is only a portion of a 10,000 sq. meter real estate property located in Barangay Solano, Tanauan, and Leyte.

This property was issued a 'Free Patent' title issued by the Register of Deeds in December 1992. The sale, which occurred in July 1996, was covered by a Deed of Absolute Sale. The total amount Anna paid to Mr. Tolentino was P 40,000 but, through mutual agreement, only the amount of P 10,000 was reflected in the original copy of the Deed of Absolute Sale in order to reduce the amount of real property tax.

Three days after the sale of the piece of land was concluded, Anna went to the Bureau of Internal Revenue (BIR) to pay the Capital Gains Tax (CGT). In the beginning, she tried to convince Mr. Tolentino that he should pay the CGT but he persistently refused.

As a result, Anna had to pay P 1,300 CGT to the BIR. This process took only two days to complete. After she had finished her business with the BIR, Anna went to the Assessor's office to pay a separate tax declaration for the segregated 200 sq. meter piece of land. In addition, she also paid the following: (a) previous arrears of Mr. Tolentino; (b) real property tax of P 850; (c) tax clearance certificate; (d) documentary stamp; and (e) tax declaration certificate.

In order to comply with the requirement of the Department of Environment and Natural Resources (DENR), Anna also hired a private Geodetic Engineer to do the cadastral survey of the property. She paid him P 6,000 for his services. Anna submitted a copy of the cadastral survey to DENR. After two weeks, the DENR released to Anna the technical description of her property and the subdivision plan. At the Register of Deeds, Anna submitted the following documents: (a) tax clearance; (b) transfer fee; (c) copy of the Deed of Absolute Sale; and (d) copy of the capital gains tax.

The offices of the Provincial Agrarian Reform officer (PARO) and the Municipal Agrarian Reform Officer

(MARO) required Anna to also produce the following additional documents: (a) application for retention; (b) declaration of real property tax; (c) affidavit of buyer attesting to the purchase of land. (This is in compliance with the Administrative Order No. 1, series of 1989 of the Department of Agrarian Reform (DAR); (d) affidavit of the seller declaring that he is the owner of the property; (e) affidavit of the seller in compliance with DAR's AO No. 1, series of 1989; (f) affidavit from the seller that there are no tenants on the land; (g) certification from the chairperson of the Barangay Agrarian Reform Council attesting to the fact that the property in question is not tenanted and that Mr. Florencio Tolentino is indeed the rightful owner of the property; (h) certification from the Provincial Assessor certifying that 'as per records', Mr. Florencio Tolentino appears to be the 'owner' of the parcel of real property located in the Municipality of Tanauan, Leyte; and (i) Certification from the Municipal Assessor's office that the parcel of land is registered with the Municipal Assessor's office.

Anna complied with all these requirements in fifteen (15) days. She said, however, that this would not

² The case was lifted from an earlier report entitled "Transfer of Titles and Support Services: Realities from the Ground". The study was prepared in October 2002, under the auspices of the Philippine-Australia Land Administration and Management Project. The study was funded by AusAID. The study aimed to establish baseline information on the quality of services prior to the introduction of reformed procedures; and determine the relevance of the Project's interventions.

have been possible if her friends in these government agencies did not use their own 'connections' and 'influence' to help facilitate matters. Just when Anna thought that she was nearing the end of her seemingly 'endless ordeal', the Register of Deeds (ROD) instructed her to secure from the Housing and Land Use Regulatory Board (HLURB) the following documents: (a) license to sell; and (b) certificate of registration. The HLURB then told her that she should see the Municipal engineer of Tanauan, Leyte. Unfortunately, however, the engineer was not around when Anna went to see him. Instead, the Planning Engineer insisted that Anna should see him. But Anna failed to come to the office of the Planning Engineer. She was reluctant to see him personally because she suspected that he would demand money from her.

Apart from the copies and license to sell and the certificate of registration, ROD asked Anna to submit the following additional requirements: (a) three (3) copies of the tracing cloth; (b) three (3) copies of the blueprint; (c) three (3) copies of the technical design from DENR; (d) approved subdivision plan and partition agreement; (e) BIR clearance; and (f) PARO/MARO clearance.

Regarding the PARO/MARO clearances, Anna could not comprehend why these offices were again demanding the said documents when in fact she had already given them to the officers before.

When Anna was halfway through the process of the transfer of title, the legal officer of the Register of Deeds (ROD) in Tacloban told her that the sale of the property was null and void. The ROD person explained to her that there is a regulation that forbids any sale of property with a Free Patent title within a period of five years. This regulation invalidated the transaction between Anna and Mr. Tolentino since the pre patent was issued to Mr. Tolentino in 1992 and sold to Anna in 1996. In addition, Anna also learned from the ROD person that the absence of the title number in the Deed of Absolute Sale also invalidated the transaction she had entered into with Mr. Tolentino.

Finally on 10 September 2002, Anna got her title. The process took her four months to complete, at a cost of P 24,800. This excludes the expenses incurred such as the following up of documents and producing the required certifications.

BACKGROUND

The Land Administration and Management (LAM) system in the Philippines is one of the oldest systems in the country. Running for almost a century without improvements; it has been found to undermine the country's potential for economic growth and financial stability. Worse, it is the poorer sections of the community that bear the main costs of a dysfunctional system. Since 1998, the Philippines have since embarked on a program to reform the LAM systems in the country. A long term LAM program was envisioned to achieve the goal of alleviating poverty and enhancing economic growth by improving security of tenure and fostering efficient and transparent land markets in urban and rural areas. In 2001-2004; a learning and innovation loan was implemented with support from the World Bank and the Australian Agency for International Development (AusAID). This phase, also known as LAMP1, developed and tested procedures for systematic titling, carried out policy studies, and developed draft legislations to address the structural defects of the system. The second phase of LAMP, LAMP2, implemented reformed titling

procedures in three provinces to test the feasibility and DENR capability for managing a roll out titling program; pursued legislative reforms; carried out capability building programs and established LAM and valuation education curricula; and developed and implemented valuation reforms in key cities.

The transfer of title was completed with the help of a retired Municipal Assessor who offered his services to facilitate the whole process. The fee demanded was P17,500 for the transaction – Anna paid in advance P13,000. She got her title within a month.

This case illustrates how the lack of information and education by the public on the proper procedures, requirements, and amount of fees that need to be paid, and standards has created opportunities for third party professionals to flourish. It also shows how the lack of coordination among agencies involved in land administration has resulted in confusion and difficulty among those who want to transact their properties. Clear cases of repeated submissions of the same documents and requirements; and how lack of proper evaluation of applications for transactions has resulted in futility (i.e., the client has to be told in the

end, after going through the gruelling procedures) that the sale was null and void. This system deprives the public/clients of the benefit of a good service they so deserve, and leaves them with no choice but to go along with a corrupt system to get secure registration. People also tend to be satisfied with the status quo, not knowing an alternative system can give superior benefits – like in the case of Thailand, where transfer of titles can take only an hour, and directly involve the parties. In the Philippines, the result is general lack of distrust of the system. It also deprives those who cannot afford to utilise the service, thus resulting in major inequities.

DISCUSSION

The dilemma

The system was inefficient and created opportunities for Anna's case to be exploited by officials for private gain, What should Anna have done? Told senior officials what was happening or risk her chances of title transfer? Should she have resisted paying the bribes and also risked her title transfer opportunity?

Questions

- Are there ethical issues that could be raised with Anna's behaviour? What about the behaviour of government staff Anna dealt with in the process? What do these say about the administration of the LAM system that the case study demonstrates?
- The difficulty of registering transfer of titles, and formalizing other land transactions has encouraged many people to remain "informal" (i.e., not register their transactions). What are the implications of these on the (i) sustainability of the registry? (ii) on the reliability of records and information in the system? (iii) on government and investors who would like to have access to more accurate and reliable records as basis for investments?
- What tools or combination of tools can be used to address the transparency issues captured in this case? Why?

AUTHOR

Floradema C. Eleazar, Planning, Monitoring and Evaluation Consultant, Land Administration, Rural Development and Environment and Natural Resources Manila, Philippines.

7. BENIN: 'A BIG MESS': WHEN HISTORY COMBINES WITH POOR LAND PARCELLING AND LAND GRABBING

The Pahou sub-district is located some 18km West of Cotonou in Benin. It is part of the Ouidah district that forms, together with Cotonou, Abomey-Calavi and Semè districts that biggest urban agglomeration of the South Benin known as 'le Grand Cotonou'. Just as in Abomey-Calavi and Semè, Pahou has witnessed a great deal of tension in the area due to land disputes resulting in people opportunities for prosperous business for some and causing frustrations and exclusion for others. This situation escalated recently into a confrontation between groups during the land parcelling operation in the area, creating such havoc that the government ceased all land related projects in the area which impacted on many households.

Land Dynamics in Pahou

The Pahou area was traditionally dominated by the agricultural sector and some activity continues today. The sandy sea shore at the southern part of Pahou territory has been planted with coconuts since the early 1950s and 1960s, mainly for export. In addition,

tomatoes and peppers have been also cultivated there since the 1980s and sold to Cotonou. The northern part of the territory is on lateritic soil and is planted with palm trees, citrus fruits and various food crops (maize, cassava, groundnuts and cowpeas).

There were many large farms in the area and these were passed onto the next generations, equally divided between the male sons of a man's spouses. With the development of industrial palm plantations from the early 1950s, some elders have stocked family lands under palm groves for their own private use, delaying the cadets' access to land and reducing their share of the patrimony. Furthermore, many of the youth who might have been inline for such land inheritance, migrated to Cotonou and Nigeria in the years 60s and 70s, giving this area of the country an 'image' of being 'vacant farm land'. The government also took part of this land without any compensation, and created two state farms. One farm was planted with irrigated palm groves (end of the 1970s) and the other one was run by North Koreans (mid 1980s). The actions of the state created a lot of local anxiety. Locals feared that the state would undertake more land grabbing.

Meanwhile returns from the national palm industry went down, stimulating land sales to city dwellers searching for safe investment for their savings at the advent of the international economic crisis of the 1980s. The young men who had settled in town came back as land brokers winning selling brokerages on the land transactions. Land purchasers were of various categories:

- Absentee farmers holding 2 to 10ha of palm plantation, citrus fruits, coconuts and horticultures, but also animal husbandry (pigs, goats, cattle, rabbits, etc.) Most had land titles and recruited labourers locally.
- Land gamblers who bought 1 to 5ha which they then split into parcels of 400 to 900m². At the same time, some villagers would continue growing seasonal crops until the plots were sold out for housing.
- People who purchased 2 to 4 housing land plots near land gamblers or near land heirs who had sold them these plots because they had to meet expenses related to sickness or burial or land depletion. This latter category has become more important since the early 2000s.

The on selling of land that occurred in the area, often illegally, was also compounded by the local young men who had inherited land but felt it was too little or too infertile to make anything of. Many felt that their best option was to on sell the land so they could at least make some money. Local women or daughters got no inheritance or any share in the profits.

Within a few decades, the map of land holdings in Pahou changed significantly and got more and more complex resulting from intersection of all the above factors (splitting up of family plots, land grabbing by the state, falling palm and coco nuts chains, demographic change and urban development). Land stakeholders increased in numbers and categories. It is in such a context that the land parcelling was launched.

THE 'BIG MESS': LAND PARCELLING IN PAHOU

Parcelling is an instrument well appreciated by State administration for urban land management in Benin. The operation consists of restructuring peri-urban land which in the main, is already split into plots, and often have owner occupied houses.

The operation makes provision for public roads and socio-economic infrastructure (markets, health centres, schools etc.) by reducing every land holding by 20 to 40% of its size, except for the titled lands. The process of sorting out who has titled and untitled land, however, was not clear and a source of suspicion and rumours of corruption within State services in charge at both central and local levels. As a result, State institutions and actors involved lost a good share of their credibility and legitimacy throughout the whole process.

In order to reduce the suspicion of corruption and avert more social crises, a 'participatory approach' engaging more with the local community, has been introduced in the Pahou parcelling operation. A committee made up of State officials, surveyors, representatives of land owners and some local notables. was put in place to ensure a smooth parcelling process is undertaken. The two latter categories of local members were charged of safeguarding the interests of local populations throughout the operation. Some land gamblers and young men elected in this committee however, still managed to win prominent positions and played first line roles at the stage of land plot census.

The plot census operation started in 2004. The Ouidah district Council was then dominated by the RB political party (Parti de la Renaissance du Bénin). RB was an opposition party to Kérékou government although it did participate in Yayi Boni's government after he won the presidential election of March 2006 but has returned back to political opposition since then. During the 2008 local election, the RB party had to fight FCBE the presidential party coalition (Force Cauri pour un Bénin Emergeant). The young men in the parcelling committee were from the RB party but were suspected of having been recruited by FCBE during the process of the 2008 local elections. Finally, the Ouidah district was won by a man well known on Benin political scene and with the support of the RB party. The local leaders of this party are said to have resolved to fight the committee members who joined the FCBE, accusing them of corruption in the process of the land census.

Meanwhile, in their daily operations, the local members of the committee seemed to have lost contact with their constituents (family land owners, land gamblers and small plots holders). They are suspected of being now, much closer to the technicians and State agents in charge of the

operation. Specifically, these committee members are said to organize the registration of fictitious plots in the land book and then find a physical location for these plots which they then share among themselves. Further, it has been found that the 30% land reduction supposed to be used for roads and socio-economic infrastructure was also partly used for this purpose.

These 'deals' were said to have been detected, provoking violent local demonstrations calling for the dismissal of the committee.

The parcelling operation was then suspended by the new district council in August 2008. Now and then, the local press raises the issue in the local media. Meanwhile, all the key stakeholders have to wait: the land gamblers who expect make profit from their land investments, the middle class citizens who put their savings into land plots expecting to build their 'dream' house as well as the district administration expecting to raise taxes on parcelled land plots.

DISCUSSION

- What initial steps put in place by the government, for example might have helped the situation?
- What role might be expected from the State in this market and what role does it play in reality?
- What kinds of interventions might be expected from the state compared to what is happening in reality?
- What are the market and non-market factors that affect the land market? How can local communities cope with these trends in managing local land issues (have a local plan? Local land council?)?
- How can formal land administration systems ensure that if local committees are to be formed, that they 1) truly reflect the local community and 2) do their job properly?

- How can land parcelling processes remain on track and as de-politicised as possible?

AUTHOR

Roch Mongbo, Université Abomey-Calavi, Benin.



Cotonou municipality staff at work. Photo © UN-Habitat.

² The two main State institutions in charge of drafting the master plan for urban development are the IGN (National Geographic Institute) and the SERHAU-SA (Société d'Etude Régionale d'Habitat et d'Aménagement Urbain, Société Anonyme) a State agency for urban development now privatised. Other state institutions involved are the national service of public domains affairs at regional and local levels, the regional directorate for urban development and waste management. Decentralisation in January 2003, district level services have won more power in land parceling operations.

8. GHANA: ONE LAND, MANY OWNERS, MANY ADMINISTRATIVE LOOPHOLES

In 1995, 'Vinesong Ltd', a manufacturing company, contracted 'Hello Properties', a real estate agency firm, to acquire land in a small village to enable operations expansion. Hello Properties contacted the Chief of the village who directed them to Mr. Swine, a local landowner who owned land in the area required by Vinesong Ltd. They arranged with Mr. Swine to purchase a leasehold interest in three acres of his land at the price of GH¢50,000.00. Subsequent to this Hello Properties realized that Mr. Swine had an unexpired term of only 20 years on his lease; Vinesong Ltd. required a 99-year lease. When Mr. Swine was informed, he promised to obtain a longer lease which he could transfer to the purchasers.

Upon investigations, Hello Properties found out that the land being offered by Mr. Swine was acquired as part of a larger area of 60 acres for a manufacturing activity by Slumber Company Ltd. The company's manufacturing activity was abandoned after being in operation for a few years. Though the company had not been liquidated, it has become defunct and the directors, most of who were expatriates, had left the country leaving Mr. Swine, the local director, at post.

Mr. Swine, taking advantage of the situation, had divided most of the land into building plots and sold them to developers many of who had developed their plots as residential plots with residents living on the plots.

The only area left undeveloped is the three acres offered to Hello Properties. The area has not been zoned though it was within the Planning Area of the District Assembly but no planning scheme existed for the area covered by the company's land. Consequently, none of the people occupying the company's land has title deeds or planning permission for their developments. They only possess receipts issued by Mr. Swine, sometimes in his personal capacity, and sometimes as a Director of the Company.

Hello Properties conducted a search at the Deeds Registry and found out that the entire land area was registered in the name of Slumber Company Ltd. Additionally, it was discovered that Slumber Company Ltd. had mortgaged the entire land area to a bank, including the parts that Mr. Swine had sought to sell.

Since the area was not zoned, both Hello Properties and Mr. Swine contracted the District Office of the Department of Town and Country Planning to prepare a layout for the area. The layout affected only the site for Vinesong Ltd. and its immediate vicinity.

To be able to give the 99-year lease Vinesong Ltd. required, Mr. Swine sought legal advice and was advised to surrender the remainder of his term to his landlord, who was the chief of the village, for a longer term of 99 years. His solicitors prepared a deed of surrender for him to register in the Deeds Registry. The Deed of Surrender was only for the three acres required by Vinesong Ltd. The Deeds Registry refused to register the Deed of Surrender on the basis that the mortgage had not been discharged.

Mr. Swine, in spite of his inability to register the Deed of Surrender, went to the chief of the village and obtained a fresh lease for 99 years for the three acres of land. He subsequently presented this to the Deeds Registry for registration. The document was registered by the Deeds Registry with a new Title Number and Serial Number though it was part of the original land owned by Slumber Company Ltd, the lease on which still had 20 years to run. Mr. Swine subsequently assigned this property to Vinesong Ltd through Hello Properties who made part-payment for the land to him. The Chief of the village subsequently heard that Mr. Swine had obtained a huge sum of money through the transaction and wanted a part of the money from Mr. Swine as 'compensation' for his part in

helping him obtain the longer lease. Mr. Swine refused to pay any money to the Chief beyond what was 'traditionally required' as the land in question originally belonged to him.

Subsequent to the registration of the assignment by Vinesong Ltd. Hello Properties was confronted by Mr. Goody who had a receipt and a site plan to show that a substantial portion of the three acres assigned by Mr. Swine had actually been sold by Mr. Swine, acting for Slumber Company Ltd to Sledge and Sons, who had not registered its interest in the property in the Deeds Registry. Sledge and Sons had subsequently sold its interest in the property to Mr. Goody. Hello Properties confronted Mr. Swine with this new information but Mr. Swine denied any knowledge of Mr. Goody's interest.

While this was going on two other persons surfaced to say that Mr. Swine had sold a part of the same land to them. Mr. Swine accepted their claim and in the presence officers of Hello Properties, refunded their purchase prices to them with an additional payment for relocation. Mr. Swine refused to meet with Mr. Goody and officers of Hello Properties to discuss the issue of whether Mr. Goody owned any part of the land, though they were neighbours. His excuse was

that Mr. Goody's wife had once insulted him. Mr. Goody, on the other hand, always availed himself for such meetings.

Hello Properties subsequently paid part of the purchase price to Mr. Goody to represent his part of the land acquired by Vinesong Ltd. and paid the remainder to Mr. Swine who collected it.

Mr. Swine has now sued Vinesong Ltd and Hello Properties for the full purchase price of the land on the basis that before he sold the land to Vinesong Ltd. he did a search at the Deeds Registry and did not find any encumbrance on the title and that Mr. Goody's claim to any part of the land is false.

Mr. Goody has joined Vinesong Ltd and Hello Properties as co-defendants and has presented the receipt given to him by Sledge and Sons Ltd to support his claim. Attached to this receipt is another receipt given by Slumber Company Ltd to Sledge and Sons and signed by Mr. Swine, as a Director, in respect of the same piece of land.

DISCUSSION

- Identify circumstances in which you believe Mr. Swine was not transparent in his dealings with respect to the transactions
- In what ways did the Chief help Mr. Swine in being less transparent? Could the Chief have done things differently?
- In your view how has the State helped Mr. Swine to be less transparent?
- Looking at the totality of the evidence what would be your verdict if you were the judge before whom the case was being heard? Why?
- In an ideal scenario, which of the transparency tools would you employ to improve this scenario?

AUTHOR

Seth Asiama, Kwame Nkrumah University of Science and Technology [KNUST], Ghana.

9. GHANA: A WOMAN'S TRAVAIL

Madam Abiba Suleiman is of the Temne tribe in Sierra Leone and has four brothers and a sister. As a young lady she received land from her family head, like all the young men and women in the village, she farms the land. She understood that by the custom of the tribe, however, that she was only entitled to use the land when it was 'farming season'. She was not allowed to cultivate perennial crops for example. She also cultivated vegetables on the lowlands that she was always given because the men planted rice on the highlands.

After the civil war, she saw that women from nearby Guinea were selling a lot of vegetables such as tomatoes, in Freetown and that they could do this because they cultivated on a large scale. She was very interested in this type of farming and selling so she therefore decided to expand her farming activities to enable her sell her produce in the market.

When she approached her family head with her plans, she was told that she could not do this as 'the men' needed the land in the main season to cultivate rice. About six months after she was refused permission to cultivate the land on a more permanent basis, one

of her brothers approached the family head for land to cultivate mangos and the family head granted his request. Madam Abiba could not complain because the beneficiary was her own brother.

Not long after that she got married to a man from the Mende tribe and moved with her husband to his village. Her husband's family welcomed her and were extremely nice to her. Her husband was very hard working and they were able to cultivate two large plantations of cola nuts. Additionally her husband planted rice on the highlands during the main farming season and she cultivated vegetables and legumes during the minor rainy season. They were also able to build a modern house in the village where they lived.

After about 15 years their marriage was not blessed with a child and this created some disaffection among her husband's family members towards her. Her husband's sisters encouraged him to take another wife but he refused. In the midst of this confusion, her husband died suddenly. Madam Abiba was shocked beyond belief. The family buried her husband and the funeral rights were held. On the fortieth day after the death of her husband, her husband's family had a meeting and invited her. She was informed that the family had decided to give her to her late husband's

younger brother to marry. Madam Abiba asked to be allowed to think about it and she was given one month to do this. At the end of the one month period the family called her again for an answer. She was emphatic that she would not marry her late husband's brother. The family head then informed her that in that case the family could no longer keep her and she could not continue to work on the family's land. She enquired about the cash crop farms and whether she had any claim on the revenues accruing from them. The reply was in the negative; since the farms were on the family's land and since she no longer belonged to the family she had no claims on the farms. After a few weeks, Madam Abiba packed her personal belongings and left for her own village.

Meanwhile, during the time she was away with her now deceased husband in his village, her father had also died and she had attended the funeral and done all that was expected of her as a daughter, so returning to her village was not a problem. On arrival, however, she discovered that all her father's lands had been distributed among her brothers who were actively farming. When she requested a portion of her father's land for her use, she was informed that since her brothers had appropriated her father's lands

she could only be entitled to the land the family head shared at the beginning of each farming season and then she could only cultivate vegetables. She was devastated. She had come back to where she started from. After staying in the village for about three months she decided to go back to Freetown to seek her fortune there.

In Freetown, she settled in Gloucester Village which lies on a hill beyond Fourah Bay College. The area is quite hilly with a lot of vacant lands used for agriculture but with potential for real estate development in the right economic environment. Without money and without any skills, Madam Abiba had few options for survival. She teamed up with about 30 other women some of who were married into polygamous marriages and had the responsibility of caring for their children, to form a farming group. The Group negotiated for land from a local Creole landowner and obtained about an acre of land. The land sloped into a small stream at the foot of the hill. In the rainy season, the Group farmed the slopes of the hill and farmed the valley in the dry season and paid a rent of Le 100,000.00 in each season. The Group cultivated vegetables like carrots, cabbage, Chinese cabbage, thyme and lettuce, as the

landowner did not permit rice cultivation. The Group sold the produce of the farm and shared part of the proceeds among themselves.

They also gave themselves loans out of the income from the farm produce at an interest rate of 25%. The Group had no title to their land and operated at the pleasure of the landlord. This meant that the Group could not make any improvements to the land as their tenancy was virtually from farming season to farming season. After about five years of uninterrupted cultivation of the land the landlord called the leadership of the Group one day to inform them that he needed the land for his personal use, thus terminating their tenancy. The Group could do nothing but leave the land. It turned out later that another Group had offered the landlord a higher rent for the land.

By this time, Madam Abiba had accumulated a little capital and decided to re-locate to the area of Bo in the eastern part of the country to seek her fortunes. At Bo she decided not to work on land again and started a small trading business with the little money she had. She was lucky and soon established herself as a businesswoman in the city. As her wealth increased she decided to build a house for herself and purchased

a piece of land for the purpose. This created some problems for her. Coming from Freetown, she was viewed as a 'Creole' as she spoke the Creole language very well. This created an impediment as the Paramount Chief refused to acquiesce in the sale of the land to her. Eventually, however, it became clear that she was a Temne and the chief agreed to sell her the land.

The title conveyed in the transaction was not clear. A document was prepared and signed by the family head from who she acquired the land and was then witnessed by the Paramount Chief. The document did not give the duration of the grant and referred to the grantor as the Giver while the grantee was referred to as the Taker. Again, while the interest being conveyed was not expressly stated in the agreement, Madam Abiba as the grantee was to hold the land 'for himself/herself, heirs and assigns'. She was enjoined to 'observe all customary laws, obey the Chiefdom Administration Laws and the Township Council Laws'. Again, she was not to 'dispose of the demised land unknown to any of the landholding family or any of the Chiefdom Councillors'. She was confused; the interest being conveyed to her was not a leasehold as it did not have a term of years and did not provide the



A view of a bus stop in Ghana. Photo © UN-Habitat.

annual payment of ground rents and yet she found that the conditions attached to the grant derogated substantially from the qualities of a freehold interest as she knew it in Freetown.

After she constructed her house she decided to expand her business by buying foodstuffs from

neighbouring Guinea and Liberia to sell in Freetown. She needed some capital to enable her do this and approached a bank in Freetown for a loan. The bank required some collateral and she offered her house to be used as such. The bank was happy with the quality of the property and its location and was quite keen on giving her the loan. The bank requested the

documents in regard to her land; but was not happy with what she produced and asked her to obtain either a lease or a freehold interest. The family head and Paramount Chief refused to give her a new document for either a leasehold interest or a freehold on the basis that she was a stranger. The bank would not budge on the demand for the document which they insisted should be registered in the Registrar-General's Department. As a result of the impasse, Madam Abiba had to give up her desire to expand her business.

BACKGROUND

Sierra Leone is in West Africa and established by the repatriation of freed slaves from the United Kingdom, and later from Jamaica and Nova Scotia in North America. The country is culturally and geographically divided into two, the Western Area is inhabited by the freed slaves – the Creoles – and the indigenous groups inhabit the rest of the country.

Land ownership in the Western Area is freehold and is fashioned on the British land ownership system. Land in the rest of the country however, operates under customary law. Under this law,, land is owned communally and cannot be bought or sold.

The individual farmer, whether a member of the community or a stranger, only has the right to use or cultivate the land and this type of negotiation is seldom reflected in a formal document. There are two main indigenous tribes – the Temne and the Mende both of whose cultures follow a ‘patrilineal’ model. This means that women do not ordinarily own land and can derive their ownership from their fathers, brothers or husbands. In fact, in traditional Sierra Leonean society, males are considered superior to women and woman are meant to be subservient to men. The result is that the rights and work efforts of women is not duly recognized and accorded the respect it deserves. This is in contrast with the Western Area where women enjoy equal rights with men.

In urban areas, some changes are taking place and people who wish to build houses in the Provinces must acquire their land from the family heads and the Paramount Chiefs.

They are given a document which is neither a leasehold interest nor a freehold. It cannot be registered in the Deeds Registry and the Banks do not accept it as collateral for mortgages. It appears however, that once the land is developed, it cannot

be taken away from the developer but he/she (can neither sell nor part with possession without the express consent of the family head and the Paramount Chief.

DISCUSSION

- When Madam Abiba requested for land on a permanent basis she was refused but when her brother made the same request it was granted. Do you consider the family head’s decision as falling short of the principles underlying transparency in his administration of the family’s land?
- By not complaining was Madam Abiba condoning the actions of the family head or did she actually have no grounds on which to complain according to the local customs? Is this fair?
- While the actions of Madam Abiba’s in-laws were culturally acceptable, do they infringe any rules of transparency?
- Are there any ethical issues you could raise with respect to the behaviour of the landlord at Gloucester Village in taking the land away from the women’s group?

- Many banks in Africa require registered land documents as collaterals in the issuing of loans to their customers. In the face of the difficulties often encountered in land administration such that faced by Madam Abiba which tools of transparency would you recommend to ease the problems faced by customers like Madam Abiba?
- Madam Abiba circumstances were greatly affected because she was a woman, There are probably many enterprising women like Madam Abiba in similar circumstances all over the developing world. Does the State or even Paramount Chiefs play a role in helping women like Madam Abiba have rights to land and get bank loans? How could they assist?

AUTHOR

Seth Asiama, Kwame Nkrumah University of Science and Technology [KNUST], Ghana.

10. NAMIBIA: DO SHACK DWELLERS HAVE LAND RIGHTS?

In Namibia, groups of low income households often pool resources to buy a block of (freehold) land in an urban area. In this way the land becomes affordable and they help each other to make regular payments and develop their own infrastructure and housing. The group called Lituyeni, comprising of 28 households, had done just this. They paid a deposit to the local authority in March 2000 for the purchase of a piece of land. The group was given five years to pay off the land. The group comprises mostly of domestic workers who earn the worst wages in Namibian cities. Others are informally employed in work that often results in unpredictable incomes.

In the early stages of acquiring the land, each household diligently paid their monthly contribution, which included payment for the land, rates and taxes and basic services, to the local authority. Because of the precarious nature of their work, and the fact that many residents failed to understand why they needed to pay for things like “rates”, the members sometimes began using the money for meeting family crises, like school fees, health treatment or to pay for the funeral of a relative. The control over regular payments was

weak due to inexperience of the group and the treasurer in particular. Before long, less and less people were making regular payments. Year 2005 came and went. The arrears, which included payment for the land, rates and taxes, as well as water consumption and refuse removal, kept mounting.

In July 2007 a letter was allegedly sent to a resident on this block land’s private post box number. The person was no longer part of the group, having left for an unknown destination three years previously. No one in Lituyeni had ever seen or heard of this letter, until the local authority arrived on site a few weeks later to claim the land back. The local authority said that since the arrears on the land was excessive; they were entitled to cancel the sale of land as per the policy on credit control (Council resolution 126/04/2005). The land could be re-purchased subject to the following conditions:

- The resale would be by private treaty subject to approval by the government, at the latest adjusted prices. (Original purchase price was N\$110,851.00 and current price is estimated at N\$210,797.30, excluding reconnection of water and electricity).
- The application for repurchase should be fully motivated.

- The plot must be bought in cash.
- All obligations (i.e. debts) in terms of the previous agreement have to be settled before the plot can be bought.
- The group has to provide a statement of income to indicate that the group is able to afford the monthly instalments (if this approach is accepted by Council).

In March 2007, before the sale of land was cancelled, the group reorganized themselves and calculated how much each household needed to pay to address the arrears. They started making monthly payments again which the local authority accepted.

The group feels that the city council’s has not been very transparent with their land administration decisions since the local authority has failed to show the group evidence of the letter which ‘cancelled’ the agreement to purchase the land. The group understood that matters such as arrears amongst the group members were to be dealt with via the community development section of council, which they in fact, have had no dealings with. It was understood that community development officers would be available to advise groups such as this one,

on how to manage their responsibilities and budget for payments. Information/advice on payments for rates and taxes must be explained. It should have also been explained to the group that any 'arrear' meant possible default on the sale agreement. This was not done.

The city council argued that all land where there is accumulated debt is sold on a cost recovery basis to keep the local authority functioning. Where anyone in the city defaults, the same policy is applied, no matter whom they are, or where they live in the city.

BACKGROUND

The group was never advised of the policy on credit control, which came into effect five years after they had paid their deposit to secure the land for themselves. The first that they had ever heard of such a policy was two years later, when it was decided that the city would cancel their agreement. The city of Windhoek has established a special division who is tasked with working with the poorer residents of the city. It was found that invariably these residents often lacked access to information about land

management and the rights that they have. Any issues relating to the land can be discussed and explained by the community development officials. In this case, the finance department of the city dealt directly with the residents and failed to include the community development section.

What resulted was a clear demonstration of poor communication and transparency with a group of uninformed residents who almost lost their life savings and land because of it. The poorest are often the most vulnerable in such cases.

The savings group, Lituyeni, collected information on their land rights and obtained legal opinion about the series of events leading to the threatened cancellation of their right to the land. The group has also organised itself around stronger leadership, and secured back the rights to this block of land at the original value in 2000. Furthermore, they have made a commitment to pay the arrears on a monthly basis, as well as the balance for the land that is still outstanding. The community development division of the city council are now supporting the group to reach their objective.

DISCUSSION

- Is this a case of corruption or just poor communication? Explain your answer.
- Discuss the measures of transparency utilised by the city officials. How could these have been improved? What more could Council have done given it had set up the community development section specifically to assist vulnerable groups?
- What steps can groups such as Lituyeni take to protect themselves against such outcomes?

AUTHOR

Jane Gold, formerly Polytechnic of Namibia [PoN].

11. NAMIBIA: THE THREAT OF EVICTION

The owner of an agricultural small holding in Brakwater reached an agreement with the nineteen families who lived and worked on his property: that they could occupy 8 hectares of land on the farm for their own use. This was before independence in 1990 and the land, or the agreement, was never registered. The reason for this is unknown; whether the Group Areas Act precluded black Namibians from owning commercial farm land or the owner died before the land was formally registered. After the owner did pass away, it took some years to wind up the estate, during which time informal settlers began moving onto the land. The process of occupying the land continued over a period of time, with new families arriving weekly.

In 2003, Eluwa Lya Tenda Property purchased the land. A major shareholder of this company was the secretary to the Parliamentary cabinet. In December 2006 the company was granted a court order to evict all the settlers from the land, both the long term residents of about 27 years, and also the more recent residents. The settlers were informed of this and given until 7 September 2007 to vacate the land,

failing which physical demolition of their structures was threatened. The occupants of the land offered to purchase it but this was not accepted by the land owner. In the meantime, the adjacent land holder, who is the permanent secretary of a government ministry, had tried to sell his property, but no one was willing to buy the land, even at deflated market prices.

The occupants have appealed to the local authority, under whose jurisdiction the land falls, to zone the land to reflect the land use. The local authority is somewhat reluctant to become involved in the debate, tending to leave the issue completely alone and 'to its own devices'. The 'hands off' approach of the local government has also meant there are limited or no services such as water, electricity or refuse removal, even though the residents pay rates and taxes to the city.

At the same time the occupants have appealed to the Ministry of Lands to expropriate the farm for disadvantaged persons. They argue that the farm land would have been expropriated had it belonged to someone from another ethnic group or if there was less of a vested interest by politicians. It is alleged that the political influences are demanding that the land be

dealt with in favour of the occupants and not in terms of government legislation, such as the National Land Policy of 1998.

In the meantime, the residents are busy collecting data which will contribute to the national data base on all informal settlement throughout the country. By doing this they hope to demonstrate that they are part of a national group of poor people who belong to the Shack Dwellers Federation and should be treated as such. The residents have also enlisted the support of the Legal Assistance Centre to argue their case in court. They are claiming that they can not be regarded as informal settlers since they have been paying rent to the farmer for many years. The National Land Policy states that a person ceases to be informal when rent is paid.

Adjacent land holders argue that many of the residents on the land are purely opportunistic. Some have houses in Windhoek which they rent out; others are employed in the civil service (such as the police, the defence force and as hospital staff). By implication, these people are not poor and should not be exploiting the Mix Camp. The surrounding land holders in general demand that the residents be evicted.

BACKGROUND

Expropriation of farm land as a means of poverty alleviation and income re-distribution is widely campaigned by the Namibian government, and commercial farms are regularly expropriated throughout the country. In other circumstances, an even small issue between the farm workers and the farmers has been sufficient to trigger the drive to expropriate.

- In a rural setting where the land is owned commercially, there are clear procedures to follow for the expropriation of farm land. It is usually intended to facilitate access to land by those who were disadvantaged under apartheid. In this case, the dynamic is somewhat different, however, as all the players are from the discriminated group. The more powerful land owner has a strong political connection which is speculated as to the reason there is no interference by the national or local government.
- The management and control of this portion of land is more complex than stated in the case study since it is peri urban land that falls within the ambit of the city of Windhoek's management.

The city has the power to zone this land for what ever purposes they deem necessary or appropriate. But the city has opted to remain outside of this conflict.

- Further investigations on the site of Mix camp have indicated that the bulk of the informal residents do not reside on the land of Eluwa Lya Tenda Property who served the eviction notice, but on the land belonging to another politician.

DISCUSSION

This case study is clearly one which suggests that there was no demonstration of transparency by any of the affected parties thus far. There are many ways that this case could have worked out.

What could have been done to abrogate this situation from the beginning? Make some suggestions of how this 'impasse' could have worked out taking the perspective of:

- The original farm workers.
- The recent informal settlers.
- The Eluwa Lya Tenda Property who threatened eviction

- The adjacent land owner also with good political connections, and
- The local authority.

AUTHOR

Jane Gold, formerly Polytechnic of Namibia [PoN].

12. SENEGAL: ONGOING CORRUPTION DESPITE LEGAL FRAMEWORKS

The rural community of «Xaxar » in Senegal is near a coastal area, and is 124km² in size. The implementation of the 1972 administrative, territorial and local reform set it up as a rural community (law number 72-25 of April 19th, 1972). The broad community comprises 22 villages; seven of which are located on its coastal zone. This zone is characterized by tourism growth which has become, alongside more traditional fishing activities, its main source of revenue. According to assessments of the Forecast and the Statistics Directorate of Senegal, the rural community comprised 33,691 inhabitants in 2004. The population growth rate is around 3.5 % a year.

It is now considered that this growth rate will increase the demand for land. In fact, problems in land management have already emerged, largely to do with the implementation of national land laws. While the law on the national domain guarantees democratic access to land to all, in practice, the process of land management is inequitable. There is currently no clear information system to enable equitable decisions around land and spatial management to be made,

creating the conditions for inequity and corruption around land. With a growing demand for land in this part of Senegal, this coastal zone bears the consequences of poor or inadequate land allocation systems. More often than not, it is the poor who suffer the greatest consequences and often elected officials who seek to gain.

It is well known that elected representatives often parcel out of their territory in national domain plots. They recruit a surveyor, who ignores the legal nature of plots and does not connect information with the Land Registry for example. On the basis of this information, they sub-divide land and deliver administrative acts, which violate the established procedure. When aggrieved beneficiaries go to the administration, which proceeds with the usual checks with the land preservation, it often turns out that the plot belongs to someone else.

There are a number of contributing factors to the confusion and misappropriation of land in this area.

First, while only a few elected representatives are violating regulations in town planning and in state-owned management, parcelling out of land

does happen prior to the approval of the regional town planning commission. In the past, elected representatives played an active role in the previous plots attribution commission, by the law 96 07 of March 22nd, 1996. When the degree changed, responsibility for land was devolved to regions, administrative districts and to rural communities. Decree 96-1130 of December 27th, 1996, involves the application of the above mentioned law in management and in use of State private domain, public domain and national domain.

The devolution of responsibility around land, and the absence of clear information systems, however, has meant that these elected representatives allocate, remove and transfer plots, sometimes in the absence of clear information and inadequate land allocation systems, even when allocation and removal must adhere to strict conditions. This contributes to land speculation and to ongoing land litigations in this area.

Second, when it comes to the attribution, withdrawal and the mutation of plots, these can only be undertaken by the commission, and applied at the level of local authorities, as stated in the regulation. Third, transparency is lacking in the actual processes

⁴Xaxar is substitute's name to protect anonymity of the studied rural community in Senegal

and practices of the commission. The minutes of the commission sessions for example, must be approved by a State representative before the publication of the decisions adopted by the commission. This formal procedure is seldom, if ever, respected.

Fourth, attribution acts are written in relation to ongoing parcelling application and delays occur, without any summons for concerned persons, thus ignoring obligations to follow established procedures around plot access rules. So while effective processes and procedures are in place, these are not adhered to, which provides opportunity for abuse of power and inequity.

Finally, there is seldom any responsibility taken by elected officials to redress the situation. Instead, during the rural and municipal council's board's renewals for example, these same elected representatives always argue that their 'predecessors' left with archives, which has left a destructive deficit of institutional reports so they are unable to verify ownership.

The effective implementation of a reliable information system then is severely compromised by both lack of skills and intent on the part of elected representatives.

This combination regularly contributes to conflicts on territorial limits and results in inequities in land property access. The most significant consequence of this poor adherence to planning regulations concerns the loss of revenue for local government.

In the absence of capability in maritime public domain management on the part of the municipality and the rural community, intermediaries are coming in and taking the money that would ordinarily go to local government. The high cost of transactions that characterises the 'not built' land market in Senegal makes intermediation a lucrative activity, with a high level of impact on the local economy and revenue sources.

These practices have undermined the authority of the Domains Office, which previously was involved in ground registration. Today this service holds no files on plots preservation, on land conservation or on public domain reports. Nevertheless, the only means of safekeeping the process of attribution lies with the Domain's Conductor; the civil servant who is authorised to carry out ground registration procedures of lots.

DISCUSSION

- What are some of the clear but also subtle ways the land administration is not working in this part of Senegal?
- How do governments respond to the argument 'well the problem was our predecessors, not us' to ensure that poor land administration practices are reduced and replaced by fair and effective ones? Who is ultimately responsible for bringing about change?
- What processes or tools could be put in place to improve the system?

AUTHOR

Nfally Badiane, Environmental Development Action in the Third World [ENDA], Senegal.

13. SENEGAL: THE PROBLEMS WHEN TWO CITIES COLLIDE

The concentration of one Senegalese in five in only 3% of the national territory has meant that Dakar, the capital city, has reached saturation point. This level of crowding has had implications for the smaller city of Thies, situated less than 80 km from Dakar. Since the early 2000's, Thies has taken advantage of what is called a modernizing voluntarism, a model of growth based on spontaneous settlement along urban peripheries. Following this model, urban development is achieved, and parcels of land are managed by the municipal authority, accompanied by equipment and modern infrastructure. Having been absorbed into the city, land value in Thies has taken off.

Inevitably the municipal boundary has encroached on adjacent rural areas. This expansion has taken place over time, facilitated by institutional manipulation and the perceived 'superiority' of the city over rural villages. The former rural community of Fandene is now at the centre of conflict, with two competitive fronts, one stimulated by the municipality, seeking to exercise its authority, and the other by the rural community, which is resisting these advances at the same time as facing inexorable urban expansion.



Dakar, Senegal. Photo © UN-Habitat.

Thies city has strengthened its autonomy by absorbing nearby rural entities. Its ambition is to increase its political weight through its demographic reach and its perceived 'control' of land. This has brought it into conflict with the rural community of Fandene. Thies city has suffered from this rapid expansion, however, as it has led to uncontrolled development. Three quarters of the population of 300,000 in 41 districts live in over-crowded conditions. The municipality is faced with two possible solutions. First, it can restructure the precarious housing by introducing a primary basic network there and/or second, the authorities can try and formally plan new spaces to welcome new populations. This second plan, however, might result in encroaching on other rural areas.

The complexity faced by the authorities and indeed the local and migrant populations has opened the way for manipulation in the land sector, especially the practice of land speculation. It has also started a conflict between the local rural government and its surrounding communities and villages. All key stakeholders have a different focus and different priorities, in particular around safeguarding social, economic and environmental activities of the area.

Various stakeholders have capitalised on the uncertainty and ignorance surrounding land. Thies city officials for example, have taken advantage of the ignorance of the majority of rural councillors by imposing sub divisions on rural land, and allocating lots for housing. Cunning city dwellers, for their part, have encouraged farmers to sell their lands before occupation measures have been decreed. These opportunists (and some rural councillors) have moved into the city to entice civil servants to buy farmlands (or simply land perimeters). Certain local elected representatives have even participated in occupation decisions organised by Thies city and require compensation – plots of land! An administrative worker in an urban management office, a rural councillor and a municipal worker have interpreted and manipulated the law to serve their own interests, at the expense of the rural community.

DISCUSSION

This case study raises important questions about urban development at the urban/rural fringe of cities.

- What are some of the issues that face cities when they expand into rural areas that can make many

stakeholders vulnerable to corruption and exploitation in relation to land?

- What are some of the major flaws in the system that are enabling people to take advantage, in negative ways, of the situation?
- What might have been done to improve the situation of Thies and the surrounding communities? What specific systems and processes might have been put in place or steps taken by respective authorities to avoid what is now a conflict of interest for many stakeholders?
- What can local communities do to ensure their issues are heard?
- What sort of partnerships might be useful in this scenario to help address all the issues?

AUTHOR

Nfally Badiane, Environmental Development Action in the Third World [ENDA], Senegal.

14. TANZANIA: LACK OF TRANSPARENCY IN CHANGES OF LAND USE

The rationale for urban land use planning and zoning is, inter alia, to designate land for urban development activities and facilitate socio-economic welfare. While the laws and procedures are explicit on what has to be done and by whom, in practice, changes of land use in the planning scheme in many urban areas in the country, have, more often than not, NOT abided by the laws and procedures. Worse, there is little or no regard to ensure transparency in the decisions or decision making process. Table 1 summarises what is involved in any formal process of application for change in land use.

In 1977, the Master Plan for X municipality designated a piece of land measuring 25 hectare as a 'Special Industrial Area'. In the early 1980s, industrial plots measuring between 1.0 and 2.0 ha were planned and surveyed ready for allocation and development. In 1982 the Municipality allocated one of the plots measuring 1.2 ha to a private firm. In 1985, the firm

decided to sell the plot to another firm. At the time of selling, only minor developments had taken place which comprised an outer building and a water service line. On 15th March 1993, the new owner applied to the Municipal Council to change the use from 'special industrial use' to 'institutional i.e. secondary school'. Three days later, (i.e. on 18th March), the Urban Planning Committee of the Council endorsed the application to change the use, without carrying out an investigation to assess the suitability of the land for the envisaged development or impacts the changes of land use might have.

On the same day, an application with a recommendation to change land use from Use Group N (Special Industrial Use) to Use Group K (Institutional and Residential Use) was forwarded to the Ministry for Lands, by the Municipal Council. This was a clear violation of section 78 subsection (f) and (j) of the Town and Country Planning Ordinance which restricts the change from Use Group N, for the obvious reason that designation of an area for a school in the middle of industrial land contravenes

fundamental principles in urban land use planning and urban development. Two weeks later, (i.e. on 2nd April 1993), the Ministry of Lands, without any further investigation or questioning the rationale behind the decision made by the Council to change land use from industrial to institutional, approved the change of use. Subsequently, the school buildings were constructed and academic work commenced. According to the Headmaster of the school and staff occupying the residences, the change of use and construction of a private school in the middle of noxious industrial area has been the source of ongoing health problems experienced by both staff and students, including skin rashes, headaches, coughing, and allergies. He also stated that the while the municipal officials were aware of the suffering of the students and staff, they seemed to have 'turned a deaf ear', suggesting that they were in fact, part to the deal. The students and staff at the school are subject to, a local (ten cell) leader who lives in the nearby neighbourhood, and who has been following up the complaints from the students and staff. This person noted that...'the land developer is a rich man and well known in the town. He is capable of doing anything to fulfil his desires'.

⁵According to the Town and Country, Planning Ordinance Special Industrial Area refers to 'offensive industries' by reasons of smell, noise and fumes dangerous or inimical to public health.

⁶This is not the only instance. Studies have shown that in the 1980s and 1990s the same Ministry changed land use from recreational use (open spaces) to residential in several sites and service project areas. This was done without seeking the council's endorsement or consulting with the residents in these areas

Table 1: Summary of the formal change of land use

PROCEDURES FOR CHANGE OF LAND USE	LAWS APPLICABLE	ACTORS INVOLVED	OUTCOME
(a) Developer submits an application for change of use to his/her respective Municipal or local authority, stating the use being applied for and reasons.	Town and Country Planning legislation	Applicant/Developer Municipal Council	The Urban Planning Department (UPD) in the local authority assesses the application, visits and investigates the sites to check matters such as compatibility and suitability of land vis a vis the new use. Thereafter recommendations of the Dept. are forwarded to the Urban Planning Committee (UPC) for further deliberation.
(b) Submission of the application to Urban Planning Committee.	Town and Country Planning legislation and regulations Standing regulation – consult with and seek views of adjoining land occupiers	- Department of Urban Planning - Councillor - Ward Executive Officer - Department of Urban Planning - Adjoining land occupiers	- If the UPC endorses the application it is forwarded to the Minister of Lands (ML). If (ML), UPC rejects the application, the applicant is accordingly informed by the Municipal Council. - Largely to find out whether they have reservations against the change of use.
(c) Submission of the application with recommendations of Urban Planning Committee to the Minister for Lands – Director for Urban Planning.	Town and Country Planning legislation	Local Authority	Upon receipt, the Director for Urban Planning scrutinizes the application submitted and accordingly advises the Minister.
(d) Submission to the Minister for Lands.	Town and Country Planning legislation	- Director of Urban Planning - Minister	The Minister may adopt with or without modification or reject the recommendations of the Director and the Municipality. If dissatisfied with submission from his Director or the Council, may also appoint a team to visit the site, assess the situation and submit a report on the basis of which he would make a decision.
(e) Ministry informs the local authority about the decision of the Minister - outcome of the application.	Town and Country Planning legislation	- ML - Local Authority - Applicant	If approved the applicant may proceed with development processes, if rejected he may appeal to the Minister.

Similar stories have been documented in many urban centres in the country, where influential individuals and groups have the capacity to disregard laws and procedures pertaining to changes in land use. Despite complaints from the teachers and students, the school is still operating in the area

BACKGROUND

There are similar cases reflected, for instance, in the recent public outcry concerning the mushrooming of Filling Stations and their haphazard sitting, particularly in unplanned settlements. From this case, it would appear that corruption is facilitating the change of land use, in which case the rich can acquire changes of a land use without following the laid down procedures. This happens even in situations where such decisions clearly contravene established procedures. Studies have shown that most of these changes have been made by local government officials without either consultation with adjoining communities or approval of the Ministry of Lands , and in total disregard of the existing rules, procedures and regulations.

The change of land use from Use Group N (Special Industrial Area) to Use Group K (Institutional and Residential) is an outright violation of norms and basic principles of Town and Country Planning. The law requires that before a change of use is effected, the adjoining land occupiers are given an opportunity to give their views and position/reservation regarding the proposed change of use. This does not seem to have been complied with.

DISCUSSION

- Does this case mean that corruption has been more or less institutionalised and thus cannot be fought?
- How could such a systematic lubrication of the system be tolerated (across all the levels) without raising eyebrows?
- What can be done and by whom to rectify the situation? What specific tools could be adopted or actions undertaken and by whom?
- Could the school community have done more? Why or why not? What could they have done?

AUTHOR

Wilbard Kombe, Ardhi University [ARU], Tanzania.

⁷ Urban regulations require direct involvement of adjoining land occupiers in the course of changing land use in unplanned or unplanned areas.

15. TANZANIA: TRANSPARENCY VERSUS EFFICIENCY

This case study refers to a situation where the government realized that competition for the few planned, surveyed and serviced plots was so stiff that an allocation system currently in operation, had ceased to be transparent or effective. Instead, only rich powerful and persons connected to those allocating plots, could get planned, surveyed and serviced plots. Many people had opted to buy land from private sector sellers, often at a much higher cost than the price at which was allocated to that land. As a solution, it appeared feasible that if the government could secure some considerable finance, acquire land, plan and service it, it could then sell this land openly to prospective developers, recover all the costs and therefore create a 'revolving fund' which could be used in a variety of ways including the provision of more land and the upgrading of unplanned areas. There was real optimism that this approach could see the end of unplanned development in urban areas and a dramatic reduction in corruption.

The results were disappointing. The project resulted in a 'mixed bag' of gains. In some cases, there was little or no transparency and in others there was

transparency but the outcomes could have been better. The key steps in Project Implementation were: (1) Identification of Project areas, budgeting and project write-up; (2) Aerial photography to record developments on the identified areas; (3) Preparation of detailed land use plans (4) Public awareness campaigns; (5) Acquisition of land by the President; (6) Valuation of land and property to determine compensation for the affected persons (7) Land Surveying (8) Civil works for roads and drains; (9) Plot allocation and titling. The whole Project was expected to be concluded in one year.

The Project write-up and negotiating for the loan to carry out the project was an intra-governmental affair although local governments were not involved. Tasks such as the identification of areas in which the project was to be implemented; aerial photographing of these areas and determining the land values that would be used to determine compensation for the populations to be affected, were all undertaken. They were, however, done without the awareness of the people living or holding property in the area. The Government felt that such an approach would 'avoid speculation' which would have made it difficult for them to implement the project.

The central government who were the implementers of this project did, however, mount an awareness campaign involving leaders and communities in the areas to be affected, not only informing them about the fact that their areas were to be acquired for public interest, but also assuring them that compensation would be paid, promptly and would include the value of land, and some elements of the cost of relocation. All landowners were given a form to fill in and to state how much they thought they should be compensated. The valuation of the properties (land, buildings, houses, crops, trees etc.) of the affected persons was carried out by registered valuers with the owners present. The owners were then required to confirm and sign the document with the valuers quote so that it was officially recorded. How the final compensation figures arrived, at, however, were felt to be vague and this was a cause of many complaints.

There was considerable resistance against this project from the landowners. Some decried being dispossessed of their land and other properties and others refused to accept the compensation, arguing that the values given to each property had been inordinately disproportional. Some resorted to court action to try to stop the project as people felt that the

government had violated the provisions of a number of laws and they also wanted to be more involved in the determination of their final fate.

The President had to use his compulsory land acquisition powers, short-circuiting some of the provisions of the law in the process to keep the project on track. Detailed land use plans were done by experts and were taken to the local authorities for approval, but the provisions of the planning legislation which require that such plans be put in public places for inspection and deliberation by the public before final approval by the Minister, were not done.

Once most hurdles had been surmounted and the plots were ready for allocation, officials determined the price of the various lots on the basis of their size, location and the cost that it took to produce them. The government's idea was initially to allocate these plots only to those who did not have land or a house already in the urban area in question. Any interested person had to buy an application form and indicate, besides his/her personal details, what piece of land they wanted and what they could afford.



Zanzibar, Tanzania. Photo © Stefanie Freccia

The price of all plots was made public and was even put in the public media. Periodic bulletins were made informing the applicants as to who had been successful.

The plot allocations, however, were inconsistent. In the first instance, not all who applied got an allocation. The criteria of giving A and denying B an allocation plot was not disclosed. This created a lot of dissatisfaction amongst the unsuccessful applicants. Furthermore, there was no right of appeal if someone was not allocated a plot.

Over time, it was realized that the projected high demand for plots was actually not there. Not many people could afford the high prices at which most plots were sold. People were given allocations but failed to turn up to pay the requisite amounts. Plots were not selling as fast as had been anticipated and an over-supply (versus price) existed. The price at which the plots were being sold was considered to be too high, especially for low income households. Furthermore, the small plots which were cheaper and could therefore be afforded by low income households, were a minority of all the plots. Nevertheless, the government was prepared to accept

payments in favour of rents and was patient with those who delayed payment as promised.

After it was realized that there was an adequate supply of plots for those who were able to afford, the allocation system was abandoned in favour of outright sales. Anybody interested would go to the relevant offices and would be shown what pieces of land were available and where, as well as their costs. It is note worthy that technology played a key role in the allocation process at this point as via the use of GIS and database software, it was possible to know what plots were still available, thus enabling land seekers to make an immediate choice.

At the end of the process, however, it was clear that economic considerations won over equity and land rights. The Project did not really benefit a significant proportion of vulnerable families nor did it have a focus on gender although a good proportion of the land was taken up by women who could afford the purchase price. The poor continued to go without plots. The Project was expected to be wound up in one year but it has continued for 5 years now. The original target number of plots has been exceeded by over 50%. The seed capital that was borrowed

from the Treasury has partly been repaid, and partly converted into a revolving fund to assist in dealing with urban land problems. Similar projects have now been initiated in a number of other urban areas.

DISCUSSION

- The project started off with good intentions. How and where did things go wrong? What key mistakes were made?
- What specific tools could have been used to improve the whole process? In particular, how could the process have been more 'pro-poor'?

AUTHOR

Wilbard Kombe, Ardhi University [ARU], Tanzania.

16. ZAMBIA: THE UPS AND DOWNS OF TRYING TO IMPROVE THE LAND ADMINISTRATION SYSTEM

Prime Minister Maka Dodi makes a press conference and announces to the public that the National Land Affairs Agency (NLAA) is closed indefinitely citing high level corruption and a lack of accountability. Prime Minister (PM) Dodi instructs all NLAA employees to go home until investigative agencies of government have completed their investigations which would involve interrogating selected employees alleged to have committed land scams and who acquired land and associated wealth through irregular means. The PM further directs that electronic and physical record searches be conducted to aid investigations. Political and high level Managers within the NLAA are reportedly fired and suspended respectively. PM Dodi then pronounces to the public, during the press brief, that the NLAA was a federal agency 'stinking with corruption'.

The closure of the NLAA is the first action of its kind ever. Never before has a national agency been closed. The public, however, are aware of the PM's commitment to 'zero tolerance' of corruption since ascending to power as head of state several years

before. Prior to the 'siege' several public print media houses consistently turned out articles on bad land governance practices at the NLAA over a period of several months. Apparent public pressure was on the rise as a result of alleged corruption at the NLAA agency, influenced by media revelations and a general lack of governmental response to the public outcry. A culmination of these events caused a chain reaction leading to the press conference and austerity measures announced by the PM Maka Dodi.

Before the 'siege', on a day-to-day basis, Edna Luo Minister for Land Affairs maintained a very close but rather unusual social relationship with Bob Ndulo, Director of Lands. The association was characterized by the 'private exchange' of 'illicit favours'. Minister Edna Luo is known to maintain a selective social contact with staff whilst keeping Dana Santa, the Principal Secretary, at a distance in terms of social and business interaction at the work place. While not openly obvious, Minister Edna Luo was actually lobbying the PM to have Dana Santa removed from office and replaced by one of the Minister's close associates. Dana Santa is a strict, dedicated and a long serving civil servant at the NLAA who is not so popular among senior management and staff in general

for her resolute, tough management decisions. The actions of close aides to Minister Edna Luo were designed to dis-credit Dana Santa for utilising supposed 'pecuniary advantage' tactics to rise to her management position.

The Deputy Minister 'blindly' supports Minister Edna Luo so as to access land, unfavourably and selfishly, solicit for cash bribes as well as to hand out benefits to close aides. The close aides to Minister Edna Luo at the NLAA include the Deputy Minister for Land Affairs, Director - Administration Directorate, Personal Assistant to the Minister, and Human Resources Manager.

Minister Edna Luo is also engaged in political survival tactics in the current year of presidential and general elections. A wealthy foreign investor visits and discusses privately with the Minister an issue regarding land and then lobbies for a huge tract of land to be granted to him by the NLAA. This is after he has paid a 'donation' of US\$300,000 to support the Minister's parliamentary elections campaign in the forthcoming elections. Minister Edna Luo is desperate to retain her parliamentary seat and having accepted the 'donation', is obliged to return a favour to the investor. In a further act of persuasion, the investor

pays the Minister US\$700,000 in lieu of her 'efforts' to support his application to the Director of Lands to acquire 35,000 hectares of virgin agricultural land for conservation oriented agro-production and processing development for the export market. Minister Edna Luo pressures the Director, who is unaware of the deal, to grant the investor land. The Minister, noting that the Director of Lands has over time resolved not to respond favourably to the Minister's one wish for this specific investor, begins to reconsider her private trust in the Director of Lands and concludes that Bob Ndulo had betrayed her – this happened around the time that the 'siege' commenced.

During this period, on a day-to-day occurrence, Bob Ndulo, the Director of Lands is also frequently 'land dealing' while also receiving unreasonable favours from the Minister. Beyond his call of duty, Bob Ndulo is quietly engaged in highly irregular practices of self acquisition of land, receiving under-hand client pay-outs and granting prime land to relatives and friends thus disadvantaging many genuine land applicants. Despite the Director of Lands having delegated powers to grant land with discretion, according to law, the Director of Lands is required to officially declare personal interests and seek approval

from higher authorities when granting land to himself or to close relatives or when receiving gifts on duty. The Director of Land's cordial relationship with the Minister diminishes rapidly as soon as he shows reluctance and then refuses to grant the land to the investor with connections to the Minister.

The Director of Land's refusal to grant the investor land in extent of 35,000 ha was because of PM Maka Dodi's directive not to grant the investor any additional land contending that the specific investor had already earlier been granted sufficient land for his investment. This directive was not, however, communicated to Minister Edna Luo, hence her reaction to the Director of Lands.

Minister Edna Luo confides in PM Maka Dodi to have Principal Secretary (PS) of the NLAA suspended. A week before the 'siege' PM suspends the PS and appoints Director of Lands, Bob Ndulo, to act for administrative convenience as PS. Suspension of the PS comes as a shock to other senior managers and the staff as a whole at NLAA. Minister Edna Luo is unsettled by Director of Land's temporary appointment as PS. Without informing and consulting the PM, the appointing authority, as per government

business practice, Minister Edna Luo goes and makes a submission to the National Anti-Corruption Bureau and other investigative wings of government alleging the Director of Lands was very corrupt and involved in serious land scams. Following these events (which are keenly taken up by the private media) the PM fires the Minister, terminates the acting appointment of Bob Ndulo as PS and suspends him as Director of Lands. Then as a 'coup de grace', PM orders the indefinite closure of the NLAA (the 'siege'). Upon further confidential reports and not long after the Minister's dismissal, the PM also fires the Deputy Minister at NLAA and transfers three other associated managers who were involved in 'shady dealings' as social aides to the Minister. People speculated, however, as to why the associated persons were not just dismissed outright.

Several weeks after 'siege', the PM announces, through a press release, that the NLAA will re-open. The PM then appoints a new Minister, Deputy Minister, Principal Secretary and a new Director of Lands. The PM directs new management at NLAA to accelerate on-going institutional reforms dealing specifically with the following issues: business process re-engineering, development and deployment

of a new digital land administration system, establishment of a new customer service centre and launch of a service charter, building of a code of ethics for all employees, and establishment of an integrity committee of senior managers to oversee governance and integrity issues within NLAA. The NLAA had earlier been selected as one of the problem institutions, vis-à-vis corruption, where institutional reforms had to be implemented.

BACKGROUND

Long before the siege, it had been realised that there were both technical and organizational weaknesses in the land administration system. These were used especially by long serving officers to engage in corrupt practices and wrong doing. The procedures were deemed to be unclear and cumbersome and the process, especially titling to be too lengthy and costly. There was no one-stop-customer service centre for the entire NLAA. This meant that clients were forced to visit several offices in the Agency as they pursued their various applications. Cases of misplacement or loss of documents were common, deliberate or otherwise. The digital land information system was incomplete and not very secure. Some records were not yet in

the system and could only be accessed from analogue files in filing cabinets. The filing space was, however, limited causing disorder in the filing system.

Above all these problems, information to clients concerning land administration regulations, services, procedures and requirements was rare and disorganised. One such document concerning procedures was written two decades ago. There were no reproductions made. This lack of information has to some extent accentuated the bad public image of the NLAA. Apart from the general government public service regulations, there was no code of ethics specific to land administration. Therefore, without strong, knowledgeable leadership, it had become difficult to oversee good governance and integrity in the NLAA. Even whistle-blowing was difficult. Also as shown above, it was not uncommon that strong leadership became a threat to long-standing vested interests including politics. The lack of leadership compounded the situation and made it impossible for good governance and integrity to occur as the officer were afraid.

The institutional reforms were therefore aimed at minimising the chance for corruption through the mentioned measures. The events following the siege both provided further impetus for and accelerated the implementation of the reforms. Ten months after the situation had come to a head, the PM inaugurated a high profile NLAA event where his speech continued to reflect a hard message on zero tolerance on corruption - asking all NLAA employers to work further for better land governance values and urged all employees not to be complacent despite the clear gains the NLAA had achieved. The land administration system, customer service charter, code of ethics, and customer service centre had been implemented by this time.

As a result of the siege, however, new officers were actually reluctant to make decisions on substantive matters for fear of the implications and were suspicious of existing senior managers. These perhaps unexpected outcomes compromised the smooth operation of land administration processes and projects.

BACKGROUND

Prime Minister of the Republic

The Prime Minister in Zambia is the Head of Government and appoints Cabinet Ministers. The PM is also the 'national landlord' having state custodianship of land on behalf of the country citizens under a leasehold tenure system. The Prime Minister delegates powers to allocate land to the Director of Lands in accordance to the Land Affairs Ordinance. Director of Lands on a day-to-day basis allocates land on behalf of the Prime Minister. The PM may consult other persons, e.g. the Principal Secretary and/or the Honourable Minister but enjoys privileges to discharge the function of allocating land without interference from superiors in the National Land Affairs Agency.

National Land Affairs Agency (NLAA)

The NLAA is the Government Ministry responsible for land administration in the Country. It is in charge of land surveys and mapping, land allocation and registration. It includes directorates of Lands, Deeds and Registry, and Surveys.

Minister for Land Affairs

Political Head of the Ministry portfolio charged with policy direction responsibility. Reporting to and receiving instructions from the Prime Minister.

Principal Secretary of the National Land Affairs Agency

Director-General (or the Permanent Secretary equivalent in some other countries), is the overall administrative head in charge of the day-to-day running of the Agency with various directorates under its jurisdiction including the Directorate of Lands.

Director of Lands of the National Land Affairs Agency

Responsible for the Directorate of Lands, one of four (4) directorates under the National Land Affairs Agency. Directly reporting administratively to the Principal Secretary of the National Land Agency. However, under the Land Affairs Ordinance, this person has delegated powers from the Prime Minister to allocate or approve land allocations without administrative interference.

General

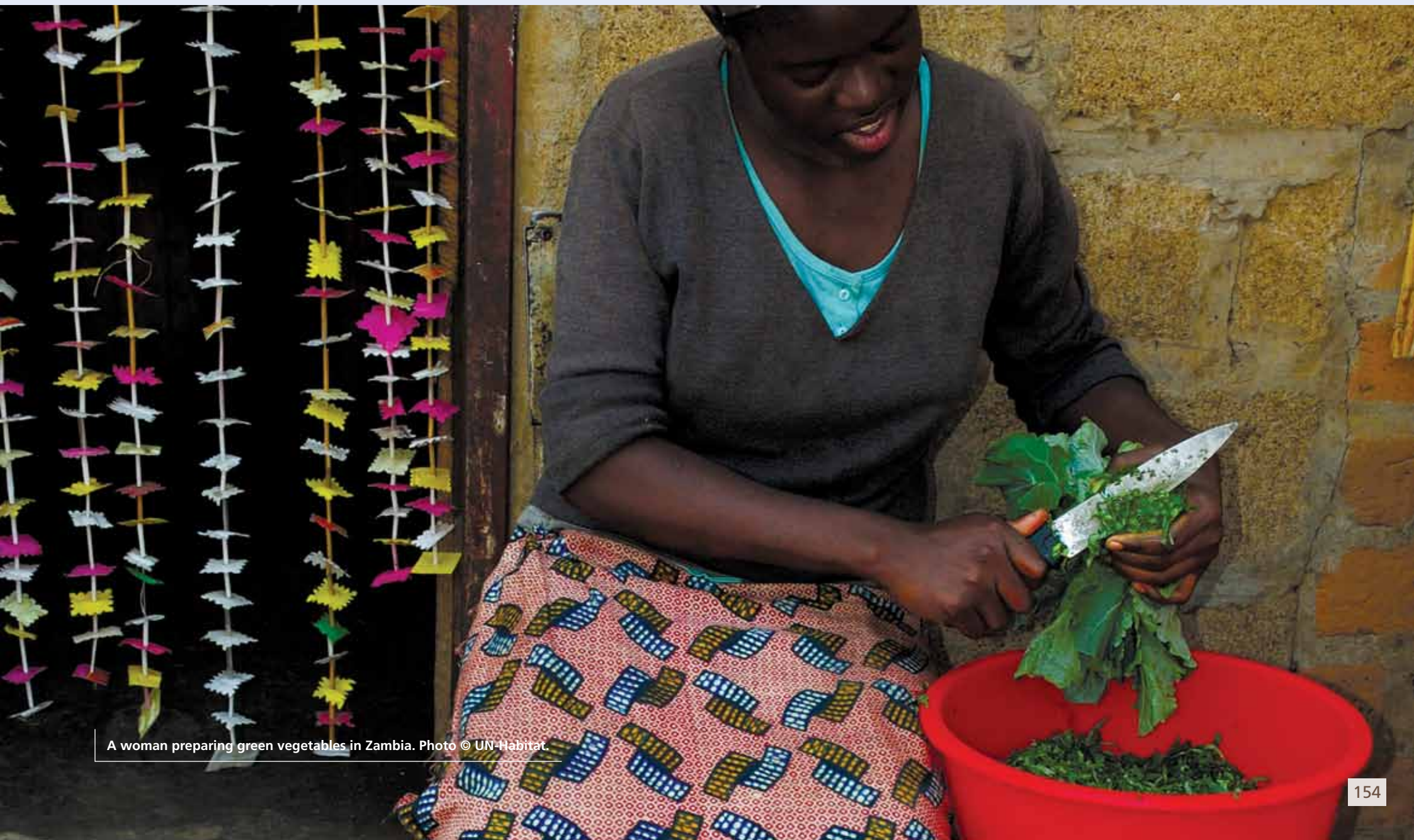
Any land allocation exceeding 250 ha needs the express authorisation of the Prime Minister.

DISCUSSION

- Why did Minister Luo and Director Ndulo continue with illicit dealings in land despite their knowledge of the Prime Minister's zero tolerance on corruption?
- Director Ndulo was clearly returning favours to Minister Luo until PM directed otherwise. In returning these favours, what was he violating?
- Events reached a climax at the NLAA, before the PM laid the siege. Did the media play a useful role in all this, or was it all up to the PM?
- What does the suspension of PS, Dana Santa, signify with regard to protection of persons of higher integrity in public organizations?
- New officers at the NLAA were afraid of making decisions. Most of these decisions were however a matter of routine procedure. If so, why were the officers still afraid (relate to institutional reforms)?

AUTHOR

Raynold Moyo, Ministry of Lands, Zambia and Augustine Mulolwa, National Remote Sensing Centre, Zambia.



A woman preparing green vegetables in Zambia. Photo © UN-Habitat.

CASE STUDIES III: GLOBAL REFORM CASE STUDIES WITH FACILITATOR QUESTIONS



TABLE OF CONTENTS

DISCLAIMER	157
1. BELARUS: REFORMING PROPERTY REGISTRATION VIA THE ONE STOP SHOP.	158-162
2. EGYPT: IMPROVING FEE STRUCTURES IN PROPERTY REGISTRATION	163-166
3. HONDURAS: SLASHING THE TIME TO REGISTER A PROPERTY	167-169
4. GEORGIA: FUNDAMENTAL PROPERTY REFORMS	170-172
5. MACEDONIA: IMPROVING PROPERTY REGISTRATION AS PART OF BIGGER PICTURE REFORMS	173-177
6. CZECH REPUBLIC: CREATING A NEW PROFESSION TO IMPROVE BUILDING PROJECTS	178
7. COLOMBIA: BENEFITS OF PRIVATISING BUILDING INSPECTORS	179-182
8. SOUTH KOREA: INSTITUTIONAL REFORMS LAYING THE FOUNDATIONS TO IMPROVE BUILDING CODE AND THE PERMITS PROCESS FOR BUILDING CONSTRUCTION	183-184

CASE STUDIES III: GLOBAL REFORM CASE STUDIES - ASIA AND AFRICA

DISCLAIMER

All following Case Studies have been developed for training purposes, in the framework of the Training Programme in Land Governance, Tools to Support Transparency in Land Administration' Toolkit, developed through a joint venture between UN-Habitat and ITC, to enhance the capacity in transparency in land administration from around the world.

The cases discussed hereafter are real; however, all people, (private and/or non-governmental) organizations, places and dates of events used in the Case Studies are fictitious. No association with any real people, (private and/or non-governmental) organizations, places and dates of events is intended or should be inferred.

1. BELARUS: REFORMING PROPERTY REGISTRATION VIA THE ONE STOP SHOP.

INTRODUCTION

With the collapse of the Soviet Union and Belarus' declaration of independence in 1990, the newly independent Eastern European country found itself in a state of transition - moving from a highly regulated state-controlled economy to a more democratic market-oriented one. To make substantive changes, the country adopted three principles to guide a range of systemic changes - 'liberalization, stabilization and privatization'. In doing so, many previous government policies and structures and administrative procedures were abolished, changed and streamlined. One of the priority areas targeted for reform was the land sector and the property registration system in particular.

BACKGROUND

During the Soviet era, transferring property was a cumbersome, long and inefficient process. In fact the whole land sector was defined by inefficiency, inequality and corruption. The entire land tenure regime was under state 'ownership'. This meant that all property transactions were prohibited and all real estate in the country valued over a limit (set by

local administration) was confiscated and put under state management. In fact the term 'real estate' was abolished altogether given there was no land to buy or sell in this era of Belarus' history.

The bureaucracy around land at this time was also significant. Six different agencies were engaged in the management of land resources. All resources were separated into those under the jurisdiction of local administration and those under the jurisdiction of the central Soviet administration and its territorial subsidiaries became nationalized property. Not surprisingly, with so many agencies involved, the property registration process was cumbersome, unclear and confusing.

Some of the most difficult features of the system and processes included the vague nature of rights in relation immovable property (personal residence and land plots), lease, mortgage and rights to non-residential property (some rights were not actually defined at all in civil legislation). The registration of immovable property also lacked a clear legal basis and many legal issues were simply not addressed because practice had been given priority over developing a sound legal framework. The legal implications for registrations (or of failing to register) were not clear

and many opportunities existed for corrupt practices. There also existed multiple registries as data collection and registrations were the responsibility of a number of different bureaucracies, but responsibilities for specific tasks were not clear, neither to the bureaucracy nor the public. There were therefore 4 agencies for example, involved in the immovable property cadastre and yet none had any formal links or structures which shared information, knowledge, data entry controls or accountability. Again the opportunities for corruption were rife.

Finally, both juridical and geodetic data information were not handled well. While the amount of data on immovable property rights was extensive for example, its reliability was generally not good. Many of the records in the data sets were erroneous or incomplete (poorly recorded addresses and inventory numbers for example) and could not serve as the basis for the formal registration of individual land rights. Similarly, a wide range of geodetic data existed, it was held by different organizations, more and collected in a haphazard manner and most institutions were not well funded to collect it in an accurate and effective manner. Accurate maps of Belarus in scales ranging from 1:500 to 1:10,000 were considered a security

1. BELARUS

threat and were literally under lock and key under the USSR security laws of the time (including important and potentially useful maps and geodesic data such as the coordinates of the national geodesic grid).

THE REFORM PROCESS

As Belarus started to emerge from that period of Soviet rule in the 1990's, many wanted to reform the land administration system but found the previous administrative approaches firmly entrenched. But change did occur. For example, for the first time in a long time, the term 'real estate' returned to the public arena in 1989. Several other reforms began to be implemented including the:

- Creation of a real estate market;
- Reorganization of the established Soviet system on property use and transfer;
- Significant increase in tariffs on all communal services and maintenance for residential as well as the newly emerging commercial property;
- Gradual privatization of state and municipal estates;
- Modernization of existing administrative, organizational and legal structures aimed at responding to the new and emerging land market economy.

Change however, was slow. It was only in 1994 when a couple of agencies/departments agreed to join together (the support of international donors), that further reforms were initiated including the:

- Privatization of 'real' property;
- Establishment of a transparent and legally binding system that recognized and protected ownership rights to immovable property;
- Proposal to unite Belarus' various registration agencies (started in 1995 and 1996 and then finally took off in 2000); and
- Development of an inter-departmental working group to drive through change. For almost 2 years, the group worked on a model for the unified agency's operations studying international best practices (from Russia, Sweden and Latvia).

THE EMERGENCE OF THE ONE STOP SHOP PRINCIPLE

The Reference group's main task was to eliminate all the layers of duplication that complicated Belarus' registration process and to create a simple system where applicants would interact with a registry only twice: once to submit their application and again to

pick up their title. The new system would operate based on the 'one-stop shop' principle. All documents required for application would be submitted to the registry by the applicant, and it was the responsibility of the registry's authorities to follow up with other agencies. The registry would also process applications and provide the documentation certifying the applicant's right to the property within the timeframe required by law. The 'one stop shop' process was finally achieved towards the end of 2003 and was reflected in three major events that completed the reform process.

- 1) The Registration Act No. 133 was enacted. The Act delegated the task of property registration to a central government agency rather than being undertaken regionally and by a range of different organizations. The Act also called on property and land owners to register their property in the new unified register where registration documents were submitted to a single agency instead of to a host of different agencies.
- 2) A unified registry combining records on land plots and properties from the Bureau for Technical Inventory and the Executive Committee of the Capital City of Minsk was also created. All the

1. BELARUS



View of Minsk uptown, Belarus. Photo © Meoita/ shutterstock

records were entered into the one database. Furthermore, the registry was to operate on a centralized basis, uniting 7 regions, 6 in various provinces and one in the capital, Minsk. It would include 125 field offices where information could be exchanged electronically between agencies as well as with clients. Any land registration information could also be accessed online.

- 3) A successful pilot study of this project was carried out in the Gorodok in the Vitebskaya regions. The one-stop shop was rolled out to the rest of the country at the end of 2003.
- 4) The development of specific legislation defining the operation of agencies subject to the one-stop shop and these agencies' relationships with physical and legal persons. As a result, many administrative procedures were simplified and documents defining how these procedures should take place were drafted from scratch providing both administrators and the public with clear information on administrative processes.

1. BELARUS

THE CHALLENGES OF REFORM

Like most changes processes, there were significant challenges encountered along the way. A list of the key challenges and how they were overcome, are outlined below.

- 1) Staffing. With all the new legislation, new processes and procedures, new computer and administrative systems, there were simply not enough qualified staff capable of engaging and managing them. Only one-fifth of the agency's staff was in compliance with the new law's education requirements, which also specified that officials working in the agency would require training every 3 years.

Solution? Capacity development program developed for officials. An intense recruitment and training program was undertaken and soon the agency staff were sufficiently trained to the desired level.

- 2) Lingering confusion for the general public about how the new system worked combined with a general lack of information.

Solution? Further institutional reforms: the creation of a new agency to implement all state policy in the field of land relations, geodesy, cartography, state property registration, rights on property and property transactions. 'Kiosks' with up-to-date information were also set up in every office of this new agency as well as its subordinate organizations. The newly created Committee launched a website describing the type of services it provides, its fees and the time required to provide these services and also set up information kiosks and electronic systems to manage its information

- 3) Working hours. Under the old Soviet system, working hours were strict and limited to particular days. It was often difficult for people undertake their own work activities plus find the time to get to the relevant state offices, particularly when the inefficient system meant queuing for long hours.

Solution? Further institutional reforms: the working hours of the Committee officials were extended and changed to fit the customers' needs. In some cases, Saturdays and even Sundays were introduced as 'working days' so that clients could attend to their business.

- 4) Old buildings, outdated systems. Both the buildings in which land offices and agencies were located were old and run down and the computer and storage systems outdated. These factors were hindering the reform process.

Solution? Physical and technical upgrades: the agency's buildings were renovated and its equipment including hardware and software upgraded. Data on registered properties and their ownership was transferred to an electronic format, centralized in one central property registry and connected to all field offices.

BENEFITS OF BELARUS' REFORM TO THE PROPERTY REGISTER

The reforms in Belarus did not happen overnight. Rather, it represented a series of incremental changes to a deeply entrenched system. In the long run, however, the changes speak for themselves. Today, the State Property Committee employs over 700 registrars and holds information on 4.1 million real estate objects (including land lots, buildings and insulated spaces), the rights and rights limitations on these objects, as well as past transactions. The process of registering property in the capital city Minsk is now

1. BELARUS

highly efficient: On average, it takes only 21 days and 4 steps to register a property.

REFERENCE

World Bank Doing Business 2009 Report. The World Bank/International Finance Corporation. At <http://www.doingbusiness.org/reports/case-studies/2009/property-reform-in-belarus>

QUESTIONS

- What are the dimensions of transparency or lack thereof in the Belarus story? How does the story link with transparency in Land Administration?
- What made change so difficult at the beginning? What were some of the challenges?
- What are the key tool(s) that Belarus implemented to bring about reform? And what were the challenges in deploying the tools?
- What was the key reform undertaken and the most effective tool used?



Wooden cottage, Belarus. Photo © Petr Malyshev/ shutterstock

2. EGYPT

2. EGYPT: IMPROVING FEE STRUCTURES IN PROPERTY REGISTRATION

INTRODUCTION

Discussions about land reforms often tend to focus on the ultimate benefits for the public and key stakeholders. Governments too, however, are 'key stakeholders' in the land sector and like the public, benefit when the system works well and don't when the system lacks transparency. Sound and transparent land governance and administration systems can result in 'win-win' scenarios for both government and the public, not just one or the other.

Egypt is a case in point. For many years, the inefficient, ineffective and costly land registry system in Egypt denied the public a real opportunity to properly and effectively register their property but also the government legitimate and much needed tax revenue from property registration. The system was so inefficient, corrupt and costly that few Egyptians registered (and those that did had to pay a lot for it via bribes or via the costly formal rules). As a result, the government reaped very little income tax from the national registration system (in July 2006, for example, the government collected just



Cairo, Egypt. Photo © UN-Habitat/ C. Acioly.

EGP 6.1 million in registration fees, less than the price of an apartment in an affluent Cairo neighborhood). Old property registration laws from 1964 were curbing the capacity for development in Egypt's land sector - from all stakeholders point of view.

BACKGROUND

Of Egypt's estimated 25 million urban properties, only 7% were formally registered. Unregistered property in Egypt was estimated to be worth \$241 billion (55 times the foreign direct investment the country received over the last 200 years, including the Suez Canal and the Aswan Dam, or 30 times the value of the Cairo stock exchange). Transferring a property between domestic companies cost a staggering 5.9% of property value (less than 0.5% for the same process in New York). The fee structure encouraged undervaluation, complicated property registration, and required more regulation to secure tax revenues which couldn't recuperate lost property tax anyway. In sum, it created an environment for corruption and the government lost significant and legitimate land tax revenue.

TIME FOR CHANGE: KEY TOOLS FOR MAKING CHANGE

In early 2000, a reform process was implemented that has genuinely improved the system, enabling property registration costs to be reduced, encouraged more people to register their property and enable the government to therefore claim legitimate property taxes. The government identified a number of changes that could be implemented:

- 1) The high costs associated with registering a property were reduced.
- 2) The cumbersome and corrupt registration process was made more efficient and transparent.

The aim was to integrate the informal property market into the official national framework by formalizing it. This was achieved by:

- a) Dramatically reducing the property registration fees and developing a new model. The fee structure was changed from one based on percentages to one based on fixed fees.
- b) Reforming and simplifying the property registration process which encouraged both citizens and companies to obtain titles (thus

showing exactly the extent of formal land owned and by whom enabling records to be updated).

- c) Recognizing that the public shouldn't have to pay much for a public service, especially when the government too, reaped a real benefit from their inclusion and participation in the formal property sector.

A number of other key actions were undertaken to improve the registration system. These included:

- 1) Stakeholder engagement and participation: a wide ranging stakeholder mapping exercise was undertaken to determine who could best influence and undertake the reform (undertaken by the Ministry of State for Administrative Development). Staff created a comprehensive stakeholders list and then brainstormed about how each person or group could make a tangible contribution to the reform. Response scenarios were developed to prepare for and counter any resistance.
- 2) Inter-governmental and external partnerships were formed: the Ministries of Justice and the Property Tax Authority joined the Ministry of State for Administrative Development undertook a pilot project to study property registration. The

2. EGYPT

processes consisted of regular meetings not only between the different stakeholder government departments but a range of external stakeholders who brought ideas and opinions to the table.

- 3) Thorough research undertaken and facts gathered to support change provided: a convincing report was delivered which essentially showed that if only half the informal properties became registered after the reform, the revenues would be EGP 5.5 billion, more than half of the net profits. A cost benefit model was developed and fixed charges for services developed based on 'real costs' to both the consumer and the government. The result was a new set of fees: EGP 23 for drafting a title, EGP 40 for surveying and measurements services, and EGP 37 for registration Services - for a total of EGP 100. A range of other fees were researched against best practice in other countries at the time and a simple fee premise adopted: the larger the area, the higher the fee, because people with more can afford higher fees. Other fees included:
 - The fees for document registration, initiatory pleadings, and related works are capped at EGP 2,000 (\$350).

- The notarization and registration fees are capped at EGP 30 (\$5.21).
 - 14 other registration fees are now merely symbolic, each less than \$6.
 - Fees for inspections and requesting registration are now gone.
- 3) Legislation enacted: the proposed changes were approved by the necessary legislators thus enshrining them in law.

THE CHALLENGES OF REFORM

The process was not always straightforward. Below are detailed a range of issues the Ministry had to contend with and what tools they used to solve the problem.

- 1) Resistance to change within the government and opposition parties. Within the government there was significant scepticism around the capacity of the system to deal with and deliver change. The Egyptian Opposition also needed convincing as to how reducing property registration revenues could possibly benefit the poor or the property and capital markets.

Solution? Facts were gathered and an inclusive consensus building approach adopted.

- 2) Economic feasibility challenged: there was concern amongst government departments that a robust financial plan must be in place to justify the changes.

Solution? Robust strategic and financial plans delivered:

- 3) Commitment to the reform process by individual departments. There was concern that staff in departments might not be willing to take up the reform process.

Solution? Reform whole of government approach: incentives were implemented to staff and departments. Individual and team performances were to be measured by changes made and departments rewarded for engaging with the new system. Departments also rewarded contributions to the success of the transformation formally (by public recognition) and professionally (by promotions).

- 4) How were the public to know about these improvements and trust that they were real?

2. EGYPT

Solution? An extensive public education process undertaken: a widespread media campaign was undertaken to explain the changes to the public and encourage them to support the process and reap the rewards.

BENEFITS OF EGYPT'S REFORM TO THE PROPERTY REGISTER

Within a year of the law's passage, revenues from title deeds jumped from EGP 100,000 to EGP 2 million, and total registration revenues from EGP 6.3 million to EGP 41.5 million. The benefit of such a tool is driven by this thinking: low property registration fees encourage every property holder to receive a formal title. The poor especially will benefit, because they can use their property as collateral, start doing business, and achieve some of their dreams'. Furthermore, the total property registration fees decreased from 5.9% of property value to 1%. Revenues from title registrations rose 39% between the 6 months before the reform and the 6 months after.

SOURCE

Jamal Ibrahim Haider (2007). World Bank and International Finance Corporation. Smart Business Case Studies (2007). At <http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Reforms/Case-Studies/Smart-Lessons/DB07-SL-Egypt-Capital.pdf>

QUESTIONS

- Why was the Egyptian government's change of thinking on property registration so important? What did it enable them to do?
- The government faced many challenges, what was the biggest challenge and how was it overcome successfully?
- What was the key reform and the most important tool/tools utilized?
- Is there any other tool that the government could have used?



Urban Agriculture in Cairo. Photo © UN-Habitat

3. HONDURAS

3. HONDURAS: SLASHING THE TIME TO REGISTER A PROPERTY

INTRODUCTION

Honduras's property registry system was in a mess. Its twenty four national registries were outdated, could not cope with the demand for registration nor handle the data gathered effectively or transparently. The impact of the defunct national registries system was to create an unstable and ineffective property market which had negative ripple effects throughout the whole Honduran economy.

BACKGROUND

Before the reforms, property registration was done by hand in books and the 'personal folio' system only recorded the name of the owner and a brief description of the property but for a range of reasons, did not link the owner to the location. Not surprisingly, there was often confusion as to the location of properties and to which owner it belonged. The process to register a property also took a long time (1-2 years for immovable property) unless you could 'pay' for the process to be sped up. No one had confidence in the system and registration rates were only a third of what they should have been (for

example only 37% of properties were registered in the capital city Tegucigalpa).

The system also encouraged corruption. Notaries, for example, enjoyed a monopoly over the whole registration process. The old law required that notaries personally submit all the registration documents at the registry and thus their willingness to do so would be 'encouraged' if clients could pay a little bit 'extra'.

KEY TOOLS UTILISED TO MAKE CHANGES

In the early 2000's, a number of key tools were utilised by the government to bring about change. These included:

- 1) Philosophical commitment to change the system: there was an overall general consensus in the government that reform was required across the whole land sector and therefore changes to property registration was embedded in a broader change program.
- 2) Reform to property laws: A stronger institutional and legal framework was created for a more efficient system of property rights that would reduce transaction costs and activate capital markets. The draft law transferred responsibility

for the property registry from the judiciary, where it traditionally resided in Latin America, to the executive. The law also helped regularize the land claims of indigenous people.

- 3) Institutional reform: the law created a decentralized government agency, the Property Institute, to manage a new computerized system on property data, accessible to the public. It would also be responsible for the regular operations of the registries of immovable property.
- 4) Streamlined administrative processes (better overall computer systems): the law introduced a new registration system, the 'real folio' technique, to make property registration easier, cheaper, and safer. The starting point of the reorganized system would be the location of the property and its cadastral record. The idea was to connect the registry records with geo-referenced cadastral information in a central electronic database. Parties involved in a sale and purchase would then be able to verify the ownership and encumbrances of the property online making the process more convenient, transparent and thus importantly, more secure. A national electronic property rights system was also established called the National

3. HONDURAS

System for Property Administration.

- 5) Getting the right leadership to ensure change: the ex mayor of Tegucigalpa was brought on board to spear head the change process. The mayor was well respected and had a reputation for following through on commitments and for his consensus building approach (i.e. could work across political party lines).
- 6) Financial backing: The reform got a financial boost from an ongoing project on land reform financed by the World Bank. The Honduras Land Administration Program was launched in early 2004, with the Project Coordination Unit managing the World Bank's funding at national level.

THE CHALLENGES OF REFORM

One of the major obstacles to the reform process was from various interest groups who felt that the changes threatened their rights or way of doing business. While the new law eliminated the requirement that only notaries could process and deliver any new registrations thus restricting their role to certifying the identity of the parties in a transaction, notaries were not happy at a possible reduction in their role.

It suggested a reduction in their formal and informal fees. Many feared that citizens would rather pay a lower fee to the registry by doing the paperwork themselves than pay a higher fee to the notary. That would cost them business. So, notaries organized an intense campaign against the new law, targeting members of Congress. And lawyers supported the notaries' claims because they feared that taking the system outside the judiciary would cost them career opportunities and political clout. Various civil society organizations also considered that some legal provisions of the draft law were against the interests of their communities. They argued that the law violated ILO convention no. 169 concerning indigenous and tribal peoples in independent countries. The organizations also felt that their communities had not been adequately consulted in the drafting of the property law.

Solution? Strategic consultation process adopted and citizens were also educated about how the changes would lead to positive changes in the system.

BENEFITS OF HONDURAS' REFORM

The new property registration system increased the public's confidence, bringing higher standards of efficiency and security. Citizens were more willing to register their property (Tegucigalpa received 65% more registration applications between July and December 2007 than in the same period for 2006).

The reform process also significantly slashed the time to register a property transfer from an average of 18 months to 15 days and made it more transparent and traceable online through the unified registry system. The new procedure for buying and selling land was also simplified: the buyer presents the copy of the notarized title deed and other necessary documents at the Property Institute's office. The buyer receives a receipt. Experts from the Property Institute evaluate the documents. The buyer tracks the steps at home online (if they can) scanning, verification of title problems, and the like until the final registration is granted. The buyer then goes to the Property Institute

3. HONDURAS

to pick up the documents, stamped to prove that they have been registered.

SOURCE

Coma-Cunill, Roger and Delion, Marie (2008). Slashing the time to register property from 18 months to 15 days in Honduras. World Bank – the cost of doing business case studies. At <http://www.doingbusiness.org/~media/FPKM/Doing%20Business/Documents/Reforms/Case-Studies/2008/DB08-CS-Honduras.pdf>

QUESTIONS

- How were the competing interests of stakeholders managed in this case study and why was it successful?
- What was the key reform and the most important tool/tools utilized?
- Were the reforms sufficient to reduce corruption particularly among the notaries?



Colorful Blankets, Honduras. Photo © Steeve Roche/ shutterstock

4. GEORGIA: FUNDAMENTAL PROPERTY REFORMS INTRODUCTION

The land sector in Georgia suffered greatly during the Soviet era. The entire system was inefficient and administrative structures and processes caused duplication of titling and other services were spread across an array of departments, completely alienating the public from engaging with the system. The inefficiency of the system also bred corruption and vested interests in the sector became strong. The people of Georgia however, wanted change across the board and the early 2000's saw the political 'Rose Revolution' occur and a new reformist government coming to power. This government signalled new changes for Georgia and literally revolutionised the land sector.

BACKGROUND

Before the revolution in 2004, while the land system struggled, no government wanted to attempt any changes. It was too difficult and many government departments and officials also had deeply embedded interests in the old system continuing. Subsequent governments did attempt changes but sometimes, these changes only further complicated the system.

In 1996, the Parliament issued the Law on Land Registration. But the law had a major flaw: the registry recorded only initial owners, not subsequent transactions. The State Department of Land Management tried to solve the problem but was overwhelmed with other tasks and its mandate was too broad so little was achieved. The administrative structure of the government also led to significant problems with overlapping and unclear lines of responsibility and the sheer range of other agencies involved in the land sector complicated any reform attempts. Furthermore, decisions on land management, disposition, and registration were often delayed, confused, and swayed by bribes. Overall, information was poorly handled, never shared and conflicts of interest were rife. Corruption flourished

Finally, government officials' and workers' low salaries, their lack of capacity to undertake their jobs (more than one third under-qualified to do their jobs), the capacity for informal 'political influence', and the poorly defined responsibilities and procedures created opportunities and incentives for corruption in the system. Although agencies charged only nominal fees, the 'actual' price of land registration was determined by the amount of the bribe, according to a real estate

broker familiar with both the old and new systems. Bribes started at \$100 and most could not afford to pay.

A number of other factors complicated the situation. Local political influence also marred land categorization, dispute mediation, and registration, because the department's offices were paid by the local governments. Further, the duplicate fees for services and conflicting property registrations discouraged the public from having anything to do with any agency unless they really had to. In 2002 the chairman of the State Department of Land Management convened a working group including department representatives, international organizations, and local groups, to identify some priorities for change in the land sector. But while the sector was ready for change, the department was not and vested interests at local offices and management resisted any action on the proposal fearing a loss of influence over land privatization and administration. Further, the political environment discouraged risks so a substantial amount of momentum was lost at this point. In early 2004, however, Georgians took the entire political environment into their own lands, literally, and Georgia experienced a revolution.

4. GEORGIA

Dubbed the 'Rose Revolution', a new government was sworn in on a platform of reform and improvements to governance, especially to engender transparency across all systems and stamp out corruption. Reforms to the Land sector were one of the governments' top priorities.

KEY TOOLS UTILISED TO MAKE CHANGES

A number of key tools were implemented by the new government to bring about change in the land sector.

- 1) A clear anti corruption platform was adopted: the new government declared a 'zero tolerance' to corruption which applied to all government processes and procedures. A multilateral working group was set up and the group began with legislation and institutional reform. The goal was to build more transparent land administrative systems.
- 2) Significant institutional reforms were undertaken. A new National Agency of Public Registry was formed under the Ministry of Justice. The agency was to be independent in its budget. Old department management were replaced by completely new ones, old staff had to reapply for their jobs and had to prove, via an exam, that they could in fact, do their jobs. Many subsequently lost their jobs (over half of the original staff).
- 3) New staff were recruited and trained: A massive recruitment process was undertaken to get more and newly qualified staff into the system. Specific fees were set for all land transactions. Salaries were increased to encourage good performance by 20-fold—from 41 lari a month (\$23) to 740 lari a month (\$411) which also created keen competition for positions. An incentive system with performance bonuses, equivalent to 2 monthly wages was also implemented to inspire and reward good performance.
- 4) Relevant associations and stakeholders were engaged to support the change process. For example, the Association for the Protection of Land Owners' Rights which held public meetings, wrote newspaper articles, and distributed flyers. This initiative was important to the success of the land reform process reflected in the public's positive response with more land registrations.
- 5) Public education campaigns undertaken: Broad public information campaigns educated people about the benefits of property registration were instigated.

- 6) Best practices/lesson learnt were utilized: Lessons learnt from other's experiences were utilized in the reform process. While no specific model was used, the reform drew on the ideas developed by the working group and international partners. Ideas from reforms in Lithuania, and lessons from study tours and international workshops were integrated.
- 7) Reforms undertaken with financial backing. One of the fears of the reform process would be that Treasury and other financial systems, would not reap enough of a financial benefit. They were proved wrong. The reforms were undertaken with clear financial plans and an understanding that an improved system would encourage more registrations and thus more and regular income. One goal of the reform was for the new land agency to be self-financed through internal control of its funds.

BENEFITS OF GEORGIA'S REFORM

By 2005, only just over a year after the Rose Revolution, registration revenue for example, had already increased significantly, thanks to higher registrations, a new fee structure and the retention

4. GEORGIA

of funds at the registry. Furthermore, the general public were now more willing to enter the property market, due in large part to the security of the new registration process and the increased confidence and trust in the system. The procedures, time, and costs fell after the introduction of the National Agency of the Public Registry and the new law. And optional expedited procedures, combined with lower fees and centralized procedures, put Georgia among the 10 least expensive countries to register property and among the 15 most efficient in the world, according to the World Bank's Doing Business report in 2007.

SOURCE

Fidas Penelope and McNicholas Jim (2007). Need land administration reform? Start a revolution. World Bank. Cost of Doing Business.

QUESTIONS

- What was unique about Georgia's reform process? (i.e. was it the timing so that the new revolutionary government enabled reforms to take place or was it the combination of tools used?)
- What was important about how the reform process linked improvements to the property registry and financial success and accountability?
- What was the key reform and the most important tool/tools utilized?

5. MACEDONIA

5. MACEDONIA: IMPROVING PROPERTY REGISTRATION AS PART OF BIGGER PICTURE REFORMS

INTRODUCTION

As a recent country to the European Union, Macedonia was required to undertake a range of reforms to meet EU standards. The process provided impetus for the government to make a whole series of changes, and importantly, reform the property registration system.

BACKGROUND

After receiving 'candidate country status' in 2005, Macedonia was required to undertake a series of reforms, largely legislative reforms, to align with EU policy. Equally important, however, was the Macedonian's desire to make the most of this reform agenda and importantly make a range of changes to attract investment and develop business activity that will create jobs and achieve economic growth. Since 2004 the parliament has made important changes to legislation, including business regulations and brought its administrative systems into the 21st Century utilizing computer and web based technology. All these changes benefited property registration systems



Market in Macedonia. Photo © Ljupco Smokovski/ shutterstock

which were slow and not user friendly for the general public.

KEY TOOLS UTILISED TO MAKE CHANGES

There were two levels of changes and tools adopted that facilitated positive change to Macedonia's property registration systems.

- 1) Fundamental changes to the governance and administrative systems of Macedonia were implemented which provided a solid platform or framework upon which new and improved property registration systems could be put in place.
- 2) Commitment to good governance principles. As part of joining the EU, Macedonia had to change its way of governance. Its 'modus operandi' had to move towards one of greater transparency, efficiency and effectiveness in order to meet the stringent EU standards for new member states. The reforms were positive. These governance principles directly affected the property registration administrative processes which according to these principles, had to be overhauled because they were not in line with such approaches.

- 3) Inter departmental cooperation strengthened to undertake reforms and improve administrative frameworks both within departments and across them. These reforms affected property registration by improving administrative processes within and across departments and for the public.
- 4) Upgrading access to information technologies. The government utilised new e-government initiatives to inform the public and also make it easier for the public to access information: E-government provided the platform for many of the reforms in the business regulatory environment. The aim was to create more modern, integrated, efficient, transparent and secure processes. The first step was to establish the infrastructure; the second was to roll out the e-services. An electronic tax system was developed which streamlined the filing and payment of taxes, an electronic cadastre for property registration and an 'e-desk' online system for business registration began operating in 2011. The electronic cadastre or 'e-cadastre' improved management of the workload and provided 'real-time' dissemination and exchange of data. The e-front desk includes electronic conveyance, recording and processing of applications.

Among other things, it allows notaries to check information on encumbrances and the status of applications.

- 5) Specific institutional reforms to the property registration system, especially of the cadastre. For example, a 2008 law streamlined procedures and set time limits. The cadastre has introduced performance standards to motivate staff to work more efficiently. The cadastre has also worked to improve its public image, by holding 'open days', opening 'hotlines' to answer questions and meeting with citizens in the municipalities of Skopje.
- 6) Other laws were implemented to improve the system such as the Law on Spatial and Urban Planning and the law on Construction. Among other things, the amendments set deadlines for the approval process and introduce a 'silence is consent' rule for cases where the deadlines are missed.
- 7) Incentives were offered to staff that performed well. Staff exceeding the average can receive a salary increase of up to 25%.

5. MACEDONIA

BENEFITS OF MACEDONIA'S REFORM

The reform program has produced positive results. FYR Macedonia is now among the ten European economies that made the biggest strides in creating a regulatory environment more 'favorable to business' in the past six years. It moved up in the World Bank's global ranking on the ease of doing business from 81 in Doing Business 2006 to 22 in 2011. Besides improving in the relative ranking, FYR Macedonia is also among the economies that closed the gap to the frontier the most in the past six years. The number of property cases awaiting registration in Skopje shrank from 15,035 in 2005 to 2,082 in May 2011. The average time to process applications fell from 60 days in 2004 to 5 in 2011. All fees were cut by 50% in 2007 as part of the regulatory guillotine project and by another 10–72% in January 2010. These accomplishments won the cadastre an award of excellence from the World Bank in June 2010.

SOURCE

World Bank Cost of Doing Business Case Studies (2011). FYR Macedonia: Major changes spurred by regional integration. At <http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Reforms/Case-Studies/2011/DB12-Case-Studies-FYR-Macedonia.pdf>

QUESTIONS

- What was the key 'big picture' reform utilized by Macedonia to achieve improvements to property registration?
- What was the most important specific tool/tools utilized by Macedonia to achieve improvements to property registration?
- What role can staff incentives play in land reform systems?

6. CZECH REPUBLIC

6. CZECH REPUBLIC: CREATING A NEW PROFESSION TO IMPROVE BUILDING PROJECTS

INTRODUCTION

In 2007, it took 36 procedures, 251 days, and costs equivalent to 18.5 percent of the per capita gross national income to obtain all the approvals to build a simple new warehouse and connect it to utilities in the Czech Republic capital city of Prague. The system was overloaded due to a construction boom in the city and neither the officials doing the processing nor the builders doing business could cope with the system. This all changed with an innovative idea to create a new authorised building inspector role and shorten building code procedures within the building code system to streamline permits

BACKGROUND

As in many other Eastern European countries, land allocation and construction in the Czech Republic, were, for half a century, based on administrative decisions and a planned economy, not one of supply and demand. A private property and real estate market for businesses did not exist for example, and new developments in the construction industry were few. Further, many laws around building codes were

outdated and didn't represent the current market.

The 2007 building code sought to turn things around. At its center was an entirely new profession for the Czech Republic: the authorized inspector. The new law stipulated that developers may ask the public building office to handle the entire permitting process or may contract a private inspector. The private inspector goes through the project's documentation to assess if it accords with the territorial plan and the relevant building regulations. Cutting the lengthy back and forth between builders and building offices, the authorized inspector can help builders address discrepancies between the design plans and the required standards right away.

At the end of the process the authorized inspector issues a certificate that the designed structure can be built. Although the certificate and the relevant documentation still have to be sent to the public building office, the builder can start construction immediately. Authorized inspectors can also issue the basic approval document at the end of construction, allowing builders to put the building into use. Inspections during construction are still carried out by the building offices, but they follow a schedule established by the inspector during the initial assessment.

The Czech inspector does not carry out the technical controls during construction. The building offices remain responsible for inspections during construction, following the schedule of the authorized inspector. Furthermore, the authorized inspector issues the permit and 'tasks' the public building office with the inspections.

KEY TOOLS UTILISED TO INTRODUCE THE NEW BUILDING INSPECTOR ROLE

- 1) New laws: the code introduced new laws which privatized some of the building control procedures and to speed the licensing process.
- 2) Best practice models sought from international experience and modified to reflect the Czech context.
- 3) Key stakeholders engaged to build capacity in the new profession. Responsibility for implementing the new profession fell to the 2 professional chambers in the country: the Czech Chamber of Architects and the Czech Chamber of Authorized Construction Engineers and Technicians. The two chambers established an 'expert exam' commission and set the terms and conditions for exams, with the first exams held in June 2007.

6. CZECH REPUBLIC

THE CHALLENGES OF REFORM

A number of challenges were faced.

1) Finding the right model for reform.

Solution? A Coordination Committee, charged with overseeing implementation, sought advice from professional peers from England, Sweden, and Bavaria to design a workable solution for the Czech Republic. The most important inspiration came from England (where private inspectors can replace public buildings proceedings) and Bavaria (where private inspections complement public building proceedings). Both approaches had slightly different advantages. The Bavarian model enabled a mixed sector approach, some private and some public enabling building offices to retain their ultimate decision making power which could mean less resistance from the building offices to be overcome during the reform. On the other hand, as in England where private inspectors compete directly with public building offices, the public offices might have more incentives to streamline their processes if they have to compete. In response, some local Czech public building

offices started partnering with building offices elsewhere in the country to offer similar services.

2) How to manage the issue of liability.

Solution? Given the process was in the private domain and in order to ensure a high standard of professionalism from the new inspectors, the Czech authorized that the inspectors hold the liability for damages resulting from substandard building because they draw up the schedule of needed inspections – even if structural safety controls are carried out by the building offices or the authorized inspectors.

3) How to ensure sustainable and transparent systems and a corruption free environment.

The authorized inspectors are currently tasked and paid for by the builder, not by the building office which was seen to create adverse incentives because authorized inspectors are not accountable to public building offices, tempting them to enforce less stringent standards with 'important' clients.

Solution? To counter the incentive problem, the Czech law obliges the inspector to provide

expert cooperation to the public building office if required to do so. And the minister for regional development has the right to revoke the certification of an authorized inspector for repeated or material breaches. The inspectors were still vulnerable to corruption, however. The building offices' ability to intervene depends on their retaining staff with qualifications equivalent to those of the authorized inspectors. An incentive problem looms because of the expected salary differentials between authorized inspectors and public building office staff. The average gross monthly salary for a building office employee is about \$1,000. Meanwhile, authorized inspectors expect their salary to be around \$50 an hour. With an authorized inspector able to earn in just 20 hours as much as colleagues at the building office earn in a month, qualified staff will likely migrate from the public sector to the private. A first indication that this might occur is that, according to the chairman, building offices are already considering outsourcing the inspection part of the process to the authorized inspectors using a loophole in the law.

6. CZECH REPUBLIC

BENEFITS OF THE CZECH REPUBLIC'S REFORM

The Czech authorized inspector is an alternative to the public building process. The inspector assists the builder from the beginning of the proceedings to the end, ensuring that all the documentation for approval are in order and offering advice, if needed, on how to address discrepancies. The system is still evolving but so far, the new profession seems to have led to many positive outcomes and provides a real alternative to the old system.

SOURCE

World Bank Cost of Doing Business Case Studies (2008). Czech Republic: creating a new profession from scratch. At <http://www.doingbusiness.org/~media/FPKM/Doing%20Business/Documents/Reforms/Case-Studies/2008/DB08-CS-Czech.pdf>

QUESTIONS

- What were the most effective tools used to improve the building inspection process?
- Do you think that the role of the private sector is effective in this scenario? How and why?
- What other tools might be put in place to reduce the risk of corruption amongst the new building inspectors?



The old Town Square in Prague, Czech Republic. Photo © Pagina

7. COLOMBIA

7. COLOMBIA: BENEFITS OF PRIVATISING BUILDING INSPECTORS

INTRODUCTION

In 1995, obtaining a building permit in Colombia's capital Bogota was a burdensome and exhausting process for all parties concerned. Construction companies had to wait on average 1,080 days to obtain the necessary clearances from the city's Planning Office (over three years). At this time, out of 181 economies examined in the World Bank's Doing Business, only Haiti had a worse track record. The Colombian system was untenable, unsustainable and corrupt so in 1995, the government transferred the entire building permit sector out of the state's domain and into the private sector. The system has now been operating for fifteen years and has made a significant difference to the property market in Columbia.

BACKGROUND

Bogota's Planning Office was understaffed, under skilled and therefore struggled to keep up with the demand for building permits. Work was backlogged and the office staff did not have the right equipment or skills to do their job effectively. On the other side, construction professionals were often frustrated and

their work delayed in order to wait and comply with city council regulations to develop their projects. The only way to expedite the process was through 'personal connections' with staff working in the municipality and this usually led to some form of bribe. Even then, continuous 'follow up' of an application was required. The consequences for both the building industry and the national economy were significant. Construction was not booming nor was it a major contributor to the GDP. Small builders were particularly disadvantaged, since they typically lacked the 'clout' to push their projects through the system.

In 1995, the Colombian government introduced a radical new system into the building permit sector that moved administration of building permits out of the state-run Planning Office and into the private domain. Private professionals called Urban Curators (Curadores Urbanos) became responsible for the complete and timely review of building permit applications. Urban Curators issued building permits by verifying that builders comply with the city's regulations and established a team of certified field experts around them including, construction engineers, architects and lawyers. They also collected fees for their services independently of the government and were also liable if something went wrong with the building.

KEY TOOLS USED TO IMPROVE THE SYSTEM

The specific reforms to the building permit sector were part of a number of other broader and key institutional reforms adopted by the Colombian government at the time:

- 1) Formal and legislative support for public/private partnerships: In the late 1990's, Colombia adopted a new constitution that promoted the principle of 'decentralization by collaboration' (descentralización por colaboración). That is, an approach where governments could and would work with or alongside both public and private sector partners in order to get projects completed. The result was a policy framework that enabled policymakers to easily move selected responsibilities from the public sector to the private sector, if public and private interests aligned and a 'win-win' outcome could be produced. Colombia's previous constitution (established in 1886) lacked any references to public duties being carried out by private institutions. The change in Colombia's 1991 constitution therefore gave the government a formal legal and policy framework to pursue projects and services that could operate in the private sector.

7. COLOMBIA

- 2) Capacity to realize when change was required. At the time, the role of local government in Bogota was important in terms of fundamentally supporting the involvement of the private sector in delivering on building permits. Often, local authorities were reluctant to hand over administrative power to other organizations, government or non government. The local city council of Bogota, however, thought differently for 3 reasons. First, it was clear that the local Planning Office was not equipped (financially or equipment wise) or skilled to handle the permit demands. Second, time taken for permit applications was depriving the local government of practical resources that it wanted spent on broader urban design projects in the City. Third, the long administrative delays and inefficiencies were depriving the city of important tax revenue. The government needed the tax revenue to pursue other development projects and it didn't have the resources to hire new staff to undertake these tasks nor could it afford to upgrade its offices and equipment to improve permit process.
- 3) Development of key stakeholder partnerships. Collaboration by local and national authorities

and the private sector was key to the creation and implementation of the new system. Also crucial was the involvement of the Colombian Chamber of Construction (known as CAMACOL). The organization took a lead role in facilitating communication and fostering cooperation among all key stakeholders. While it did have clear stake in the outcome, it also acted in a way that engendered positive outcomes for all parties.

- 4) Appropriate system to employ right people for the new Urban Curators. A transparent, merit-based system was established to employ the new urban curators that, in the main, ensured that only certified and capable professionals were taking up the newly formed roles. Potential curators have to pass through a selection process that includes exams and interviews with experts from the public and private sectors. Appropriate legislative checks and balances are also in place to ensure a transparent and professional service is applied. The growing body of legislation also put in place necessary disciplinary and liability regulations. According to Colombian law for example, Urban Curators are subject to public oversight because they perform public services. Curators must

carry an insurance policy to cover any damages that their decisions could cause. If negligence or fraud can be proven, Urban Curators can even end up in jail. Disciplinary and fiscal controls are mainly handled by Colombia's Procuraduria and Contraloria, the two agencies that oversee public servants and private citizens performing public services.

- 5) Control maintained by local government. While the Urban Curators operate in the private domain, the urban regulations under which they must operate are still the ultimate responsibility of the local Planning Office. The local government still has the 'moral' authority to set the tone for the profession. If the public or local authorities find that a decision made by an Urban Curator is against the law or against any urban regulation, the Planning Office has the right to revoke a construction permit. This oversight helps ensure that public interests are preserved and upheld.

THE ONGOING CHALLENGES OF REFORM

Having the private sector negotiate what was typically a public sector role, has not always been easy. A number of issues emerged.

7. COLOMBIA

- 1) Lack of communication. The introduction of Urban Curators was not necessarily well managed in terms of the changeover and caused confusion amongst the public in particular. The change occurred within a 1 month period and confused some applicants who were not adequately prepared for the new system. Furthermore, some new Urban Curators were not prepared themselves to cope with the details of the work involved.
- 2) Lack of clarity within the government as to who oversees the Curators. The law does not specify which part of the government is responsible for overseeing the Curators and they complain that multiple agencies (national and local) ask for the same kind of documents and the same information. Furthermore, government regulators may not be sure what to ask Urban Curators because are not trained to deal specifically with construction.
- 3) Lack of clarity around fees and potential for discrimination and corruption. Urban Curators currently set their fees according to the size and complexity of a project, so bigger projects pay larger fees. As a result, some builders complain

that smaller and less lucrative projects don't get the necessary attention.

BENEFITS OF THE COLUMBIA'S REFORM

Almost fifteen years after its initial implementation, the system's impact on the construction process is clearly demonstrated. The improvements include shorter waits for construction permits and the construction industry has expanded significantly. In 1996, 11.3 million square meters for construction were approved. Just under ten years later, the number had climbed to 19.2 million square meters or 70% more meters of construction. At the same time, the construction sector's share of the country's gross domestic product (GDP) has increased significantly. In 1996, it was 6% and by 2007 it is 7%. Perhaps the most dramatic numbers are seen in the time saved to get the permits processed. In 1995, obtaining a building permit took an average 1,080 days or approximately 3 years. By 2008, this wait dropped to just 63 days – a time saving of around 2 years and 9 and ½ months.

The change has also improved the administrative system. The builders can now submit documents and then follow up on their progress online. There

is a case management system to keep customers up-to-date on the status of their permit. Furthermore, since customers in Bogota can bring their business to any one of the 5 offices providing Curators (known as Curadurías), the competition has generated more innovative and quality services. The reforms have also taken some of the politics out of the process because the regulatory environment has been streamlined. Construction reforms that cut out excessive regulation and improve infrastructure can also help the broader economy because the construction sector directly and indirectly affects other economic activities such as employment and industrial output. The change has also benefited the local government of Bogota. The Planning Office now focuses on its intended mission of urban planning and other positive projects have been implemented (public parks, sidewalks and a successful omnibus mass transit system).

SOURCE

World Bank Cost of Doing Business Case Studies. Espinoza, Alejandro (2009). Private Help for a Public Problem. At: <http://www.doingbusiness.org/~media/FPKM/Doing%20Business/Documents/Reforms/Case-Studies/2009/DB09-CS-Colombia.pdf>

7. COLOMBIA



An informal settlement on the Picacho Hill in Medellín, Colombia 2012. Photo © UN-Habitat/ A. Padros.

QUESTIONS

- What were some of the changes and tools utilized to bring about change to Colombia's construction permit system?
- What laid the foundations for the private-public sector partnerships and was this method effective?
- Do you think the local government of Bogotá was 'progressive' in its approach? Why or why not?
- What other tools might be put in place to reduce the risk of corruption amongst the new privatized building inspectors?

8. SOUTH KOREA

8. SOUTH KOREA: INSTITUTIONAL REFORMS LAYING THE FOUNDATIONS TO IMPROVE BUILDING CODE AND THE PERMITS PROCESS FOR BUILDING CONSTRUCTION

INTRODUCTION

Rapid growth over the past three decades has transformed Korea into the world's 13th largest economy. Exports were a big driver of that growth, which averaged 6.4% a year between 1981 and 2009. The economy's heavy reliance on foreign trade, however, made it especially vulnerable to the global economic crisis of 2008–09. The government's policy response to the global economic crisis recognized the important role played by small and medium-size enterprises, especially in stabilizing employment. At the end of 2008 Korea's 3 million small and medium sized enterprises accounted for 99.9% of all companies in the economy, almost 90% of employment and about 50% of production. In the wake of the 08-09 economic crisis, the government took steps to reduce the tax and regulatory burden on these businesses, building on reforms begun earlier in the decade. The building trade was viewed as a key part of the reform process.

BACKGROUND

Much of the reform process in Korea was driven by an understanding that the country had to continue to be very competitive. As the country's President stated, 'in the process of recovery of the world economy, the competition will be fiercer. Therefore, we need to make an effort to be more competitive. We have to endeavor to make a country good for enterprise and investment'. A number of significant institutional reforms were undertaken that laid the foundations for improving the business climate for the construction industry and paved the way for specific changes that directly improved their capacity to do business.

KEY TOOLS UTILISED TO MAKE CHANGES

Korea implemented a range of broad based fundamental institutional reforms that created the right environment for more specific reforms in the building industry. These broader reforms included:

- 1) Development of independent bodies to overview the reform process. In the course of the reform process, the government established two key groups to oversee specific parts of the reform process.
- a) The establishment of the 'Presidential Council on National Competitiveness' with a broad mandate to revive the economy by improving Korea's competitiveness. Regulatory reform was identified as 1 of 4 pillars for the initiative, along with public sector innovation, investment promotion, and legal and institutional advancement. In an effort to bring regulations up to date, the council applied sunset clauses to more than 600 regulations and 3,500 administrative rules.
- b) The establishment of a public-private Regulatory Reform Task Force with the Korean Chamber of Commerce to monitor and resolve difficulties faced by businesses. Every year the council reports statistics on the issues the task force investigates and resolves through cooperation with relevant authorities.
- 2) Undertaking multi-sectorial consultation process: For a number of years, the council has been holding meetings twice a month to discuss Korea's competitiveness strategy, bringing together representatives from a range of different sectors.
- 3) Utilising web-based technology: Many of the reforms of business regulation, such as the launch

8. SOUTH KOREA

of an online system for business registration and the introduction of an electronic single window to facilitate trade, reflect Korea's broader push toward e-government.

A number of specific reforms were undertaken in the building industry including:

- 1) Review of and improvement to the building code. In 2005/06, South Korean updated its building code. Small construction projects were exempted from the requirement to apply for an advance building permit. This enabled regulators to focus their energy on the more complex projects.
- 2) Improving the building permit process. In 2010 Korea started a general licensing reform (this does not yet apply to matters such as construction permitting). Until recently Korean licensing laws that had a 'prohibition of a license' as the principle and 'permission for license' as the exception. In 2010, 'permission' became the principle providing a more conducive business environment for the construction industry. The goal for the coming years is to establish a licensing council, a one-stop shop that will bring together all administrative agencies and process applications within 20 days as a general rule.

BENEFITS OF THE KOREA'S REFORM

Many of the broad changes in Korea are still ongoing but the important point is that both a legal and policy framework as been set in place to provide the fundamental platform from which tangible changes can be put in place that specifically benefit the building and construction sector. In terms of the building and construction sector, the fact that the building codes and permit process have been reviewed and the government has started to implement its e-governance technology is certain to provide a more productive environment for the construction industry.

SOURCE

World Bank Cost of Doing Business Economy Case Studies (2011). Korea: better business regulation and improved competitiveness. At: <http://www.doingbusiness.org/~media/FDPKM/Doing%20Business/Documents/Reforms/Case-Studies/2011/DB12-Case-Studies-Korea.pdf>

QUESTIONS

- What was the most important institutional reform adopted by Korea was and why?
- How did these broad reforms assist the building industry specifically?
- What other specific reforms might need to be adopted? What specific tools could also have been used?



Seoul, Korea Republic.
Photo © UN-Habitat/ Madanmohan Rao

APPENDICES

1.4 APPENDICES

APPENDIX 1: ANTI-CORRUPTION QUIZ FOR SESSION 1: LAND GOVERNANCE AND TRANSPARENCY

When it comes to taking action about corruption in land administration, I'm of the opinion that:	1 Strongly Disagree	2 Disagree	3 Agree	4 Strongly Agree
1. Corruption is everywhere - it's endemic. So what's the big deal?				
2. Corruption is part of human nature. It's always existed. So, there is little we can do about it.				
3. Corruption is culturally determined. What's seen as corruption by some might not be seen that way by others. Better not to get involved.				
4. Getting rid of corruption in land administration would require a wholesale shift in attitudes and values. Nobody has the time and energy to face these challenges.				
5. Corruption isn't harmful. It's just the way the political and economic systems operate.				
6. There's nothing that land administration can do when corruption becomes so engrained that it is the accepted way of doing business.				
7. Worrying about corruption in land administration would be waste of time – given everything else we need to do.				
8. Corruption in our land administration doesn't exist – at least to the extent that we should worry about it.				
9. The costs of curing and preventing corruption in land administration would far out-weigh the benefits.				
10. Any effort to cure and prevent corruption in our land administration system could hurt a lot of innocent people – so it's better to ignore it.				
ADD YOUR TOTAL SCORES FOR EACH COLUMN				

Source: Restore the Health of your organization: a practical guide to curing and preventing Corruption in Local Government and communities. Volume 1, Concepts and strategies by Fred Fisher. UN-Habitat and Partners Foundation for Local Development, FPD, 2006; pages 1-2

1.4 APPENDICES

APPENDIX 2: GROUP CASE STUDY FOR SESSION 3: ASSESSMENT STORY FROM ZAMBIA

In 1995 the government, requested by donors, implemented land reform legislation with the aim of stimulating investment and agricultural productivity. This section explores how these land market reforms have played out on the ground, particularly in relation to the ninety-four per cent of the land that is held in 'customary' tenure.

There is little reliable quantitative data on how land-ownership in the country has changed since land market reform was introduced. There are also few systematic assessments of the impact of the land reform at a local level. To gain an understanding of land administration at the central level and to place the Land Act in its historical and political context, therefore, this assessment began in the capital with interviews of government officials, current and former politicians, academics, land lawyers, surveyors, members of the donor community and civil society activists.

These interviews, along with primary and secondary sources such as contemporary and archival newspaper articles, case studies compiled by the country's Land Alliance and other civil society organizations, and published and unpublished field studies, highlighted a number of 'hot spots' where conflicts over the

conversion of customary to leasehold tenure were particularly virulent. Field trips were made to seven of these 'hot spots' to gather specific case studies and to gain an understanding of the specific social, political and economic context in which contestation over land was taking place. In each field site structured and semi-structured interviews with district-level officials, chiefs, headmen, local and outside investors, those embroiled in land disputes, small holders of titled land and customary rights holders were carried out. These interviews were supported by direct observation and participatory research methods. Here are a few key findings:

1. Chief XXX granted a long-resident safari guide ten hectares along the XXX River. Shortly afterwards the safari guide sold the land for \$70,000. In another case, an investor was able to acquire even more land from the chief. Once he had the title, the investor returned to his home town where he sold the title for \$200,000. In both cases, the chief was led to believe that these particular individuals were investing for the long term and thought that he was granting them the use, but not the ownership, of these lands.
2. When making any request to a chief, villagers and outsiders are expected to offer an honorarium – often a bag of sugar, maize meal, or a small amount of cash. In some cases involving requests for land conversions, however, this courtesy has mutated to the extent that recent 'facilitation' payments to secure a chief's letter of approval have included new palaces, vehicles, or cash. Several chiefs in the south, for instance, have acquired new four-wheel drive vehicles from investors in the past few years. In another example, the palace of one of the chieftainesses on the outskirts of the capital is currently being rebuilt; courtesy of one of the new investors in her area.
3. Lack of capacity coupled with hierarchical decision-making (e.g. all leases must be approved by the central government) has created bottlenecks and backlogs. In 1998, the backlog of land applications was estimated to be 30,000 – a figure that the land sector officials concur has not declined in the years since. This backlog of applications has created a strong incentive for applicants to look for informal ways to expedite the registration process and jump the queue. In such circumstances, graft and corruption are all but inevitable.

1.4 APPENDICES

APPENDIX 2: GROUP CASE STUDY FOR SESSION 3: ASSESSMENT STORY FROM ZAMBIA ... continued

QUESTIONS

1. Based on your understanding of corruption / transparency, how do you characterise / classify the findings above?
2. Does this excerpt contain ideas of transparency assessment you have in mind? Why? Why not?
3. What specific assessment messages does the story convey in terms data, methodology, actors and their roles, etc?
4. What is the value added that 'hotspots' bring to assessment?



Improving how records and information is kept Photo © UN-Habitat/ Mark Garten.

1.4 APPENDICES

APPENDIX 3: GROUP CASE STUDY FOR SESSION 5: ETHICAL DECISION MAKING MODEL

From what you know, Mrs. Anna has been waiting for her land title for many years, because you have seen her come into the office many times to enquire about the land and complain about the delays in obtaining the title.

Mr. Gupta, your immediate boss, is in charge of Mrs. Anna’s case. It seems like Mr. Gupta is being threatened by his senior boss to make some land available to his senior boss’ relatives, and to use Mrs. Ama’s land for this.

You have been working for Mr. Gupta for five years and he is a lovely, supportive boss, and you have always trusted him. You came across what has happened to Mrs. Annaa’s case when you saw her file in the office and overheard a telephone conversation by Mr. Gupta.

You have a small baby and you need your job desperately.

What do you do?

STEPS	RESPONSE BY THE GROUP
Evaluate the situation and check the facts	
Identify the ethical issue(s) that is/are at stake	
How are the others affected? What are the possible solutions?	
Do these solutions comply with the codes of conduct in the office?	
Who can you seek help from? Who can you trust?	
You are upset about what you experienced/seen and heard. How can you fulfil your own responsibility and take a positive action?	
What assistance and or instrument would have been useful for you to remain professional and also maintain your integrity?	

Source: Adapted from the UN Office of Human Resource Management and Ethics Office, “Working Together: Professional Ethics and Integrity in our daily Work.” n/d

APPENDIX 3: GROUP CASE STUDY FOR SESSION 5: ETHICAL DECISION MAKING MODEL ... continued

YOUR NAME, ORGANIZATION AND COUNTRY	
IDEA TO IMPLEMENT	
Internal context: problems/obstacles and strengths/opportunities	
External context: opportunities and threats	
Who must be involved?	
What resources are needed?	
How will you introduce this idea?	
When will you initiate it?	
Are there any other issues to raise or comments to make?	

Source: Adapted from the UN Office of Human Resource Management and Ethics Office, "Working Together: Professional Ethics and Integrity in our daily Work." n/d

ABOUT GLTN

THE GLOBAL LAND TOOL NETWORK

The main objective of the Global Land Tool Network (GLTN) is to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure.

The Network has developed a global land partnership. Its members include international civil society organizations, grassroots, multi-lateral and bi-lateral organizations, international research and training institutions, and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. These include the establishment of a continuum of land rights, rather than a narrow focus on individual land titling, the improvement and development of pro-poor land management, as well as land tenure tools. The new approach also entails unblocking existing initiatives, helping strengthen existing land networks, assisting in the development of affordable gendered land tools useful to poverty stricken communities, and spreading knowledge on how to improve security of tenure.

The GLTN partners, in their quest to attain the goals of poverty alleviation, better land management and security of tenure through land reform, have identified and agreed on 18 key land tools to deal with poverty and land issues at the country level across all regions. The Network partners argue that the existing lack of these tools, as well as land governance problems, are the main cause of failed implementation at scale of land policies world wide.

The GLTN is a demand driven network where many individuals and groups have come together to address this global problem. For further information, and registration, visit the GLTN web site at www.gltn.net.



Czech Republic

Belarus

Georgia

Macedonia

Senegal

Burkina Faso

Ghana

Benin

Tanzania

Zambia

Namibia

Malawi

Egypt

Pakistan

Bangladesh

Nepal

Sri Lanka

Korea

Vietnam

Philippines

Indonesia

Honduras

Columbia

ABOUT THIS PUBLICATION

This publication forms a part of a two volume training package on Tools to Improve Transparency in Land Administration. The training package comprises a Training Toolkit and a Trainers' Guide. The first provides content and the latter training methods. The publication is a product of a series of training workshops implemented across Sub-Sahara Africa, South and South East Asia. Under the leadership of the GLTN/UN-Habitat, the training brought together six universities from the global South and one from Europe. Much of the content compiled in the publication was produced by highly experienced experts drawn from these universities. The content was used, critiqued and revised in the course of implementing the training. Practitioners from each region were also identified to write region specific case studies that facilitated problem based learning and contextualized the training. A consultant conducted additional research to find and incorporate content and case studies which enhanced the global flavor of the content. The publication pulls together all these resources and provides generic content, case studies and indicative methodological guidance that allow designing and implementing country or specific training without or with very minimal support of experts from the GLTN/UN-Habitat and ITC of the University of Twente.

HS Number: HS/010/13E

ISBN Number: (Volume) 978-92-1-132549-2

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME
UN-Habitat
Urban Legislation, Land and Governance Branch
Land and GLTN Unit
P.O. 30030, Nairobi 00100, Kenya
Tel: +254 20 76 23120
Fax: +254 20 762 4266
Website: www.unhabitat.org

For more information please contact us:
GLTN Secretariat
Facilitated by UN-Habitat
P.O. 30030, Nairobi 00100, Kenya
Tel: +254 20 76 5199
Fax: +254 20 762 4256
E-mail: gltn@unhabitat.org

www.gltn.net

UN HABITAT
FOR A BETTER URBAN FUTURE

