



*Corruption Is Everywhere.*

# Transparency and Land Administration

*Even in an almost corruption-free country like the Netherlands (in the top ten of the TI (Transparency International) Corruption Perceptions Index), a 2005 university survey of 341 representatives of public organizations showed they perceive 3.2% of all civil servants and 5.2% of politicians to be corrupt. In a survey among 1000 citizens, 0.5% reported encountering corruption in civil servants. Although already quite embarrassing, both conclusions were challenged in an investigation by an opinion poll bureau. The findings of this investigation were even worse: its respondents perceived that civil servants are three times and politicians are five times more corrupt than was found in the university survey.*

*By Paul van der Molen and Arbind Tuladhar*

## What about corruption in land?

As corruption is, by nature, hidden, sound statistical data are not available. It is amazing, however, how much has been published openly about land-related corruption practices. Before we report on some of these publications, we will refer to some definitions of corruption. Although there is no universally agreed-upon definition, UN/Habitat defines corruption as 'the misuse of office for private gain'. Some common forms of corruption are

- Bribery ('abuse of discretion in favour of

a third party in exchange of benefits given by the third party')

- Fraud ('abuse of discretion for private gain without third parties' involvement')
- Favoritism, nepotism and clientelism ('abuse of discretion not for self-interest but for the interest of family, clan, political party, ethnic group etc.')

Our intuition says that all three forms of corruption might occur in land issues. Bribery and fraud might easily apply, as the adminis-

tration and management of land belong to the domain of government authority (although cooperation with private-sector and civil parties is common). Formal decisions are necessary to register a property, to grant a mortgage, to impose or lift restrictions and to allocate a particular land use, which implies discretionary powers of the public sector. Favouritism, nepotism and clientelism might also easily apply to land issues, as access to land in many situations is kinship-dependent, especially under customary law.

## Land issues not free from corruption

A literature search, including internet searches during March and April 2006, reveals that land management and land administration are not free from corruption. We report on cases which have been documented and reported in the free press and in open publications e.g. Transparency International reports, newspapers and parliamentary investigations (exact references are available). We present highlights only; much more information is available.

### Europe

In Lithuania 34 per cent of the residents believe land use planning divisions are very corrupt institutions.

In the 1980s an employee involved in land registration in the Netherlands (Amsterdam office) was convicted of discharging mortgages in the land book against payment by land owners/debtors. Bribes to speed up cadastral procedures in Prague's land registry prompted radical changes in the management of its offices. An official in the Land Registry in Dublin (Ireland) has been suspended and is facing 47 corruption charges for allegedly receiving money illegally over a two-and-a-half year period for documents he sold to a Dublin-based legal agent.

#### Central Asia

A household study of 3000 households in Bangladesh shows that 97% of households that bought land had to pay bribes for land registration, 83% had to pay bribes for land surveys, and 40% who received land had to pay bribes.

The India Corruption Study states that 79% of those interacting with the Land Administration Department in the country agreed that there is corruption in the department. Work for which bribes were paid included property registration (39%), mutation (25%), land surveys (12%) and obtaining property documents (4%).

A household survey in Nepal concludes that the respondents perceive land administration as the most corrupt sector; 6.6% of those who used land administration services during 2002 noted that they had faced corruption. Tehsilders (revenue officers) were found to be the main actors in land administration corruption, followed by land surveyors.

In Pakistan 133 out of 1724 respondents recalled encountering corruption when contacting the land administration department. The main reasons for contacting the department were transfer of property (25%), buying land (24%) and selling land (17%). Surveyors and tehsilders (revenue officers) appeared to be the most involved.

In Uzbekistan in January 2003 the father of a large family committed suicide after years of conflict with the local authorities; they had taken the land he had cultivated for many years because the relatives of a prosecutor were interested in it.

In Georgia, 0.5% of all corruption pertains to the registration of property.

#### East Africa

The Kenya Bribery Index 2001 and 2002 ranked the Ministry of Lands and Settlement 4th and 13th. The Kenya Bribery Index 2005 shows that 65.7% of the people visiting the Ministry of Lands might be asked for a bribe and 36.3% of refusals resulted in denial of service.



Cadastral boundary survey.

The Kenyan Minister of Lands and Settlements says that since independence, land has been used as a payback system for political supporters, though limited to certain groups of people. He also observes that the state has large chunks of land for development and research that were irregularly subdivided and sold. The coordinator of the Kenya Land Alliance reports that all land registries, land boards, the land rent collecting offices and the central registry in Nairobi are very prone to corruption. Equally prone to corruption are the offices of the provincial administration because they are in charge of the executive administration of land within their administrative areas. Others include the survey offices and the land tribunal offices, right from the chief district officer to heads of municipalities. All services offered in these offices are highly prone to corruption, he said. The management of trust lands, land which is under the county council for the purpose of nomadic lifestyle and where some leaders have grabbed lands on the river banks, is also prone to corruption, he added.

The Ndungu Report (December 2004) gives a

full and detailed overview of land and graft in Kenya. It talks about the 'unbridled plunder' of urban, state and ministerial lands, of settlement schemes and trust lands, and of forest lands, national parks, game reserves, wetlands, riparian reserves and protected areas, facilitated by the extensive complexity of professionals (lawyers, surveyors, valuers, land registrars, etc.)

Even the former American embassy was constructed on lands allocated illegally under the track of the Southern Bypass of Nairobi. President Kikwete (Tanzania) said that he would sack officers if it was discovered that they had allocated land to more than one person.

One of the slogans in the first anti-corruption campaign in Mozambique was 'don't pay high administration costs asked for by land officers for the registration of land property'.

In Ghana, the struggle for land and the role of the chiefs is related. Although according to customary law the chief should administer the land in the interests of the community, in approximately 65% of case studies the chief himself is the main beneficiary of land sales, giving rise to much local resistance.

#### East Asia

The Malaysian minister of Lands, Kasitah Gaddam, was arrested for misusing his position of chairman of the state lands body to approve the sales of shares it held in plantations, holding 25 per cent of the sales, worth \$10 million, for himself.

A recent survey on corruption in Vietnam showed that land management tops the list of ten fields accused of corruption. There are a multitude of land corruption crimes committed, but the three most popular are (1) taking advantage of state projects to appropriate land, share land, especially in forestation, residential areas and resettlement programs, (2) making corrupt use of power to confer land, for example leasing land plots of large areas, favourable positions, low prices, quickly completing related formalities and seeking profit through the conferring of land, especially for investment purposes, and (3) authoritarian behavior, asking for presents and money while performing formalities related to land, such as land allocation, land lease, land rights transfer, land use certificate granting, land compensation and site clearance.

A special UN rapporteur on housing rights visiting Cambodia reported concerns about significant land grabbing which appears to be exacerbating land disputes and skewed land ownership patterns to the disadvantage of both the rural and urban poor. The land man-

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Open access.

agement system in place has been unable to address this situation as a combined result of (1) the absence of land records, (2) an underdeveloped and non-transparent land registration system, (3) the absence of cadastral index maps, (4) inadequate land laws and procedures, (5) unclear delineation of state land and (6) the weakness of the justice system.

China's Ministry of Lands and Resources announced new measures to crack down on corruption and inefficiency in the land sector. The new rules forbid officials to receive personal benefits from parties under their administration. It is estimated that in 2003 the country faced 168,000 violations of its Land Law. Complaints about corruption in the land and mining sector have increased in recent years, mainly focused on the illegal approval of using farmland for construction and the rights to mine mineral resources at a very low price or even free of charge. The Chinese prime minister, Wen Jiabao, has warned that the rampant seizure of farmland for development amid a rising wave of violent protests is threatening social stability in the countryside. There are more than 230 demonstrations every day. Hopefully, the new Property Law as endorsed

by the National People's Congress on March 16 is a step forward.

#### *Australia*

Corruption was reported in a Local Aboriginal Land Council in Australia, registering false transfers of land in the Land Titles Office.

#### *Southern Africa*

The Directorate on Corruption and Economic Crime in Botswana is investigating 73 cases of land corruption. The head of the Directorate reported that in the last ten years the Directorate received 238 allegations relating to lands that were allocated illegally.

### **Suggestions for Curbing Land Corruption**

Transparency is widely recognized as a core principle of good governance: transparency means 'sharing information and acting in an open manner'; 'it allows stakeholders to gather information that may be critical to uncovering abuses...' says UN/Habitat (2004). The toolkit developed by UN/Habitat and Transparency International includes assessment and monitoring tools, improved access to infor-



Cadastral map.

mation and public participation, promotion of ethics, professionalism and integrity, and increased transparency through institutional reforms.

Although there are many public documents suggesting various measures to curb corruption, we mention here, as an example, only those relating to Cambodia, Kenya, and India. The UN expert on housing rights, visiting Cambodia, recommends (inter alia) (1) prepare a land use plan that clearly identifies the different types of state land and the respective authorities in charge of its management, (2) strengthen public participation, (3) strengthen the monitoring of illegal land sales, (4) announce a moratorium on land 'swaps' and land concessions, (5) declare a moratorium on land sales affecting indigenous people, (6) ensure accountability by disclosing a list of all illegal land 'swaps' that have or are being negotiated by local authorities, and (7) effectively enforce the 2001 Land Law. The Ndungu Report in Kenya recommends (1) an inventory of public lands, (2) computerization of land records, (3) a comprehensive land policy, (4) the creation of a Land Title Tribunal charged with reviewing each and every case of suspected illegal or irregular allocation of land,

and (5) embarking upon a process of revocation and rectification of such titles. Computerization of land records under the 'Bhoomi' project in Karnataka, India, increases efficiency, shortens delay and curbs corruption.



Transparency through computerization.

### Can Land Administration Systems Help?

We believe land administration systems can help to curb corruption. The proposals of TI and the UN are very suitable for the land sector as possession of land is visible to anyone, land cannot be hidden, and making an inventory of land tenure (a 'cadastre') contributes greatly to openness, transparency and the availability of information. (The fundamental meaning of the 'old' principles of land registers and cadastres, 'publicity' and 'specialty', has always been the provision of transparency in the land market....).

Based on real life experiences (e.g. the Bhoomi project in India), a new approach in Georgia, the Land Administration Guidelines of the UN (1996), and the Transparency Toolkit of UN/Habitat (2004), we categorize potential measures against corruption in the land sec-

tor as follows:

- Creation of an inventory of existing land tenure ('cadastre')
  - no ownership is possible without being recorded, to prevent land grabbing
- Open access to information about the ownership, value and use of land
  - open for public inspection, to monitor illegal land sales
  - limited personal privacy protection, to prevent the concealment of illegal interests
- Standardized procedures for the determination, recording and dissemination of information
  - no change in inventory without source document that justifies the change (title application, deed, or other document), to prevent illegal land transactions
  - limited discretionary abilities, to prevent concentration of powers
- Supervision and the possibility of appeal
  - independent audits, to monitor illegal operations
  - working with witnesses, to combat bribery
  - special Land Tribunals to avoid clogging up regular courts
- Computerization
  - essential for dealing with large amounts of data
  - gives people direct access to services
  - better monitoring of progress and processes

### Epilogue

Land administration systems find their rationale in the difference between movable and immovable goods. In many legal frameworks, possession of a movable thing suggests ownership different from possession of an immovable thing. To identify the ownership of an immovable thing and related land transactions, a land register is needed, as well as for situations of legal pluriformity. The very essence of land administration systems therefore is – transparency.

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Transparency through property titles.