

# **The impact of land corruption on Human rights. Insights from Transparency International's Land and Corruption in Africa programme**

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## **Abstract**

As the United Nations Human Rights Office of the High Commissioner notes, land is not a mere commodity, but an essential element for the realization of human rights. The social, political and economic significance of land makes it susceptible to corruption. It is important to note that the endemic corruption in the land sector poses a huge threat to the realization of human rights that come along with access to, use of and control over land. Through profiling cases of Kenya, Ghana and Zimbabwe, this paper seeks to demonstrate how land corruption violates the human rights of citizens. The paper is also a call to action highlighting why it is important to fight corruption in the land sector. The paper is informed by a review of secondary data some of the data sources includes reports by Global Witness, FAO, TI, Landesa, TI National Chapters and DFID Land Legend.

## **1.0 Introduction**

Whilst there is no codified international right to land, the Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights make the right to shelter a human right, indirectly making land a basic right for shelter is built on land. According to a 2015 report by the United National Human Rights Office of the High Commissioner entitled *Land and Human Rights: Annotated Compilation of Case Law*, land impacts directly on the realization of a number of human rights and, given the interrelation and interdependence of rights, land issues may potentially impact all human rights. Corruption in the land sector is of the issues in land governance that impact all human rights. The social, political and economic significance of land makes land a valuable resource making land susceptible to corruption. Various studies have confirmed that there is widespread corruption in the land sector. A 2011 study by Transparency International (TI) notes that there is a strong correlation between levels of corruption in the land sector and overall public sector corruption in a country, thus corruption in land governance is often

symptomatic of the breakdown of a country's overall governance. Poor governance increases the probability of corruption in the land systems and land administration and intensifies the impact of pressure on the use of the land (FAO 2012). In Africa, every third respondent to TI's Global Corruption Barometer 2013 stated that they had paid a bribe in order to access land services. The 2011, 2012 and 2013 Land Governance Assessment Frameworks (LGAF) by the World Bank make references to a number of corruption incidences in the land sectors of Nigeria, Malawi and Gambia.

## **2.0 Land as a human right**

It is important to build our argument from a basis of how international law frames the right to land. Gilbert (2013) argues that land is rarely seen as a human right and thus it is often excluded in any discussion related to rights based issues. Yet a closer look at land laws across the world relate to specific issues of rights including: the right to own, lease, occupy and bequeath. These rights whilst codified in national constitutions are rarely concomitant with human rights framework and as Gilbert (2013:115) argues, '...but they are rarely associated with human rights law. Internationally, no treaty or declaration specifically refers to a human right to land. In fact, strictly speaking there is no human right to land under international law.' FIAN (2017) argues that because land is an important and finite resource and central to livelihoods it lends itself to many rights issues beyond the mere control of it. Cordes (2017) adds that, given their importance land rights are essentially human rights yet there is still no codified universal right to land. It is therefore in this context that we argue that land corruption increases the need to have clear international codification of land as human right. Our work across Africa highlights the multiple challenges related with land corruption and how it negatively affects vulnerable groups. Land rights are alluded across a litany of international agreements such as International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (1965), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), the International Covenant on Civil and Political Rights (ICCPR) (1966), the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) (1979) and the Convention on the Rights of the Child (CRC) (1989). For groups such indigenous peoples there is a clear human right to land and territories protected under the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (Cordes 2017).

### 3.0 Conceptual framing of land corruption

The term land corruption is a new term in both policy and academic literature (Kakai 2012). Corruption in the land sector is the abuse of power and authority by those in charge of land administration for their own gain or benefit (Mutondoro and Ncube, 2013). Land corruption often involves two parties namely an *individual and or group with interest in land as a resource or other benefits that come along with owning or controlling it* and on *the other hand those with authority and power to decide who can own, use and access land*. Often land corruption is an outcome of the colluding interest between these two parties. Such a collusion is possible when those with power and control over land, abuse such power and authority in parceling out or allowing control, use and ownership over land. Kakai (2012) argues that, in the sphere of land corruption, power is both an exploited resource and the aim of the action undertaken.

It is important to note that land corruption is a global problem that has been motivated by poor land governance in most countries. A 2011 study by TI highlights that corruption in land governance is often symptomatic of the breakdown of a country's overall governance. Poor governance, therefore, increases the probability of corruption in the land systems and land administration and intensifies the impact of pressure on the use of the land (FAO 2012). Land corruption has also been fueled by policies that are riddled with opportunities for corruption and rent-seeking behaviour. Some of these policies include Land Reform, Energy, Housing and Infrastructure development policies. In a number of cases, these policies have opened the floodgates for domestic and international capital to invest in such projects as biofuels production, mining, carbon trade, housing and property development. In a number of cases, these capital investments in land has resulted in the proliferation of land corruption manifesting through bribes, kickbacks, and political patronage. Such investment which are normally non-transparent, have also resulted in numerous cases of *land grabbing, dispossession, homelessness and housing demolitions*. Metadata from TI 's Land and Corruption in Africa Programme indicates that in a number of such situations the terms *development and national interest* have been by the State to legitimize and mask the human rights violations by the state and private capital

Land corruption in African countries has also been made possible by the politicization of land and urban spaces as well as the land tenure regime in most countries. In Zimbabwe, for instance, urban land has been critical in determining the outcome of elections. The ruling party has abused its

power by creating new constituencies to house and accommodate its supporters. Often those who support the opposition party have been displaced as their properties are demolished in various state-sponsored operations. In the rural areas, where the majority of citizens reside, individuals only have usufruct rights. This means that the state through its agencies has the legal right to move them at any time to make way for mining activities as was the case in Chiadzwa with the discovery of diamond. Most African states have maintained the communal tenure system and diminished the freehold tenure. In a way, this scenario has made it possible for political actors to use land as a tool to sustain their patronage tendencies.

Corruption in the land sector poses a threat to the realization of human rights by individuals and groups. Research and advocacy evidence gathered by Transparency International has revealed that land corruption has resulted in dispossession, displacement and housing demolitions. As the paper would show in most cases, this has been done without following the due procedure as the principle of free, prior informed consent, as well as the right to compensation, are disregarded. Land corruption has also exposed women in particular to gendered forms of corruption such as sextortion as well put an end to their gendered land-based livelihoods. A 2018 publication by Transparency International (TI) entitled Gendered Land Corruption and Sustainable Development Goals presents empirics from Zimbabwe, Kenya Uganda, Zambia and Ghana, highlighting how women, in particular, suffer more as a result of land corruption

As a result of land corruption again, individuals have been denied access to land because of lack of money required in land bribery transactions involving. In some cases, access to and ownership of land has been determined not by market forces or pro-poor policies but systems of political patronage and clientelism where only those willing to pay the *political and economic rent* are guaranteed of access to and control over land. Land has therefore been used as a tool to ensure that the political actors get more political votes through parcelling out land on a patronage basis. This is all corruption which violates and negates people 's human rights. This paper which is informed by research and advocacy evidence gathered through Transparency International's Land and Corruption in Africa Programmes sought to direct global focus and attention on the impact of land corruption on human rights. The paper is in response to a realization that there seem to be a limited global appreciation and attention on the manifestation of land corruption and its negative impacts.

## **4.0 Land corruption and human rights in Africa: Insights from TI's work**

### **4.1 Land grabbing and dispossession**

The human right to land across Africa has been illustrated most starkly in the land dispossession and widespread suffering of communal farmers under the emergence of the phenomenon of land grabbing. Dyer (2009) argues that Africa has in recent years, Africa become a major source of land as many outsiders consider the continent as a place where large areas of good agricultural land that aren't already completely occupied by local farmers. For instance, it has been estimated that 80% of the world's reserve agricultural land is found in Africa and South America (Fischer et al. 2002, cited in Cotula et al. 2008). A hallmark of large-scale land deals across Africa is the claim that the land being taken over by corporations is either laying idle or belongs to state. In this narrative the local people living of the land are often made invisible. Oxfam International (2011), in a report entitled *Land and Power* an estimated 227 million hectares of land in developing countries has been sold or leased since 2001 with majority of deals occurring since 2008 and most has been into the hands of international investors. There is rampant corruption in the nature of how the deals are agreed and instituted. Local elites are involved in rent seeking behaviour, taking bribes and making agreements with foreigners that benefit their own interests. According to Transparency International's Global Corruption Barometer 15 percent of people dealing with land administration services had to pay bribes. What is worrying about these land acquisitions is the impact on food security and rural livelihoods. A report by Oakland Institute (2011) notes that nearly half a million hectares of Sierra Leonean farmland had been leased or was under negotiation, while the World Food Programme estimates that about half the population remains food insecure. The report notes how land is being cultivated for agro fuel production as opposed to food production for local markets, raising serious doubts about the value of investments for local food security. These land acquisitions in Sierra Leone are characterised by a lack of transparency and disclosure, weak legal frameworks and confusion surrounding land availability.

#### ***4.1.1 Rights based discourses on land deals***

The current debates on land grabbing require a nuanced grounding into how they impact on human rights of communities in rural Africa. In search of foreign direct investment which promises 'development' and employment; rights of locals to decent livelihoods and food security are being

ignored. These communities are finding little redress yet their rights are being ignored. The discussion below outlines some of the rights issues involved in large scale land acquisitions. A rights-based approach recognizes poor and displaced people as having inherent rights essential to livelihood security rights that are validated by international law

***a) Right to development***

According to the 2004 'Review of progress and obstacles in the promotion, implementation, operationalization, and enjoyment of the right to development' by the UN Economic and Social Council, and on the basis of article 1 and the preamble of the Declaration of the Right to Development, in fact, the right to development is defined as a right to a particular process of development in which 'all human rights and fundamental freedoms can be fully realized'. Pursuing development, rather than being a mere economic process, has to enable people to realize the 'rights and freedoms set forth in the International Bill of Human Rights, in their totality as an integrated whole'. Pursuing development, in other words, is not an end that legitimizes any violation and abuse, but a process that has to be treated as a right, dialectic between state and people where all rights, i.e. economic, social and cultural, as well as civil and political, are realized together. What is needed is for governments, investors and the concerned citizenry to appreciate bottom up development processes that lead to the building up of development compacts. The development compacts have a strong bearing on the individual notions to development and access to land based assets.

***b) Right to food***

Food is central to human existence and as such holds an important position in people's rights. Large scale land deals are fencing people out of access to food sources. Food security is thus threatened by land acquisition. The World Food Summit of 1996 defined food security as existing "when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life". A household is considered food-secure when its occupants do not live in hunger or fear of starvation. Commonly, the concept of food security is defined as including both physical and economic access to food that meets people's dietary needs as well as their food preferences. The food is thus: affordable, safe and healthy; culturally acceptable; obtained in a dignified manner and produced in ways that are environmentally sound and socially just

(<http://www.foodsecuritynews.com/What-is-food-security.htm>). Without access to land, food sovereignty of communities is seriously threatened. Food sovereignty is a term coined by members of *Via Campesina* in 1996 to refer to a policy framework advocated by a number of farmers, peasants, pastoralists, fisherfolk, indigenous peoples, women, rural youth and environmental organizations, namely the claimed "right" of peoples to define their own food, agriculture, livestock and fisheries systems, in contrast to having food largely subject to international market forces (Food First News and Views 2005). Protecting land rights thus maintains food sovereignty of rural communities.

**c) *Right to water***

The process of 'water grabbing' by state and non-state in Zimbabwe has to be understood in the context of international protocols the government signed which view water as a basic human right. Zimbabwe committed itself to meeting the United Nations Millennium Development Goals (MDGs), one of which seeks to provide safe drinking water and sanitation to at least two thirds of its population by 2015. Meeting this target is highly unlikely and as water becomes more of an individually owned asset, poor communities' access to clean water is reduced. Studies in Zimbabwe (Matondi 2001, Nemarundwe 2003, Derman and Hellum 2003, Derman et al 2007) have highlighted how communities in Zimbabwe conceptualize water as a public good for the benefit of all. Fencing out people from safe drinking water is thus an alien concept. In the African cosmology water does not belong to an individual thus all have an equal access to clean water. International Covenant on Economic, Social and Cultural Rights (ICESCR 1996) includes the right to water as a fundamental human right and Zimbabwe is a signatory to this. Derman et al. (2007) notes that United Nations Educational and Scientific Organization (2003) in a global report titled *Water for People, Water for Life* explicitly emphasize right to water.

Article 24 of the Convention on the Rights of the Child, states that a child has a right to clean drinking water, whilst Article 14.2h of the Convention on the Elimination of all forms of Discrimination Against Women states that rural women have a right to 'enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications' on an equal basis with men. Derman et al (2007). African governments including Zimbabwe also recognize the right to water. Article 15 of the Protocol to the African

Charter on Human and Peoples' Rights on the Rights of Women in Africa on the right to food obliges states partly to "provide women with access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food" Derman et al (2007, 250). Recognition of the link between poverty eradication and access to water is undeniable. Given this context, it is clear that the government of Zimbabwe recognize the right to water as one of the fundamental human rights. Water grabbing thus poses a serious threat to the human rights of small holder farmers who are increasingly being fenced out of accessing water.

#### **4.2 Urban land corruption**

Around the world, one in five people report that they had paid a bribe for land services (Transparency International, 2013:11). Kakai (2012:1) reflects that land corruption can be defined as 'illicit acts and the abuses of power committed by those in power (at different levels) when performing their duties' as this relates to different land operations.' In such a scenario, corruption can be considered as essentially a problem of power. The work of urban land corruption is largely based on promoting the vision of the New Urban Agenda and the various rights around cities for all. New Urban Agenda is driven by the:

...vision in the concept of cities for all, referring to the equal use and enjoyment of cities, towns, and villages, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, resilient, and sustainable cities and human settlements, as a common good that essentially contributes to prosperity and quality of life.<sup>1</sup>

The vision however needs to be understood in a context of urban land corruption, opaque local governance processes, unchecked expenditure and poor service delivery for the poorest in the cities. Africa is rapidly urbanising and urban land has emerged as a frontier for contestation with many cases of land corruption emerging which have negatively impacted the poor. In some cases people have lost money through illicit land deals and this directly affects access to housing and shelter in the urban areas. Housing however is a recognised human right and its fulfilment is directly linked to land access. Article 25 of the Universal Declaration of Human Rights recognises the right to housing as part of the right to an adequate standard of living. It states that:

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<sup>1</sup> [http://citiscopes.org/sites/default/files/h3/Habitat\\_III\\_New\\_Urban\\_Agenda\\_10\\_September\\_2016.pdf](http://citiscopes.org/sites/default/files/h3/Habitat_III_New_Urban_Agenda_10_September_2016.pdf)

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also guarantees the right to housing as part of the right to an adequate standard of living. Urban land corruption is directly impeding the fulfilment of these fundamental human rights.