

Tools to Improve Transparency in Land Administration, FIG Working Week, 6-10 May 2010, Abuja, Nigeria



Introduction

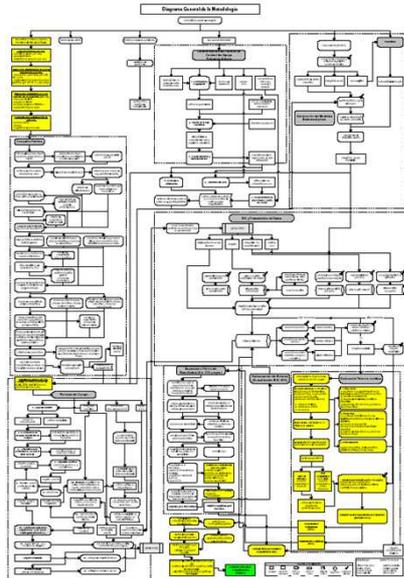
Objectives

- To show the transparency dimension of land governance
- To introduce a training package

Presentation outline

- A teaser: a quick dive into the toolbox
- A quick recap of TLA training rationale
- Brief introduction of tools included in the TLA training
 - Zooming in on assessment by way of whetting the appetite
- Conclusions

Land administration systems and process can get complex



Opening question: is it possible to tackle corruption?



If we have the ability to send a satellite to the moon, why is it so difficult to send all corrupt officials to prison?

Wu Mingifa, a farmer from Xichang, China. The country launched its lunar probe on October 24.

Time Magazine, 25 October 2007

The magnitude of the problem

Findings from a TI survey in 2009 suggest that the government bodies which oversee the land sector are one of the public entities most plagued by service-level bribery. Similar to other sectors affected by bribery, the findings show that lower income groups are often more affected.

While one out of every two respondents in high income countries said corruption in land management was a serious problem, nearly four out of every five people in low income countries shared the same concern.

Corruption

Definition

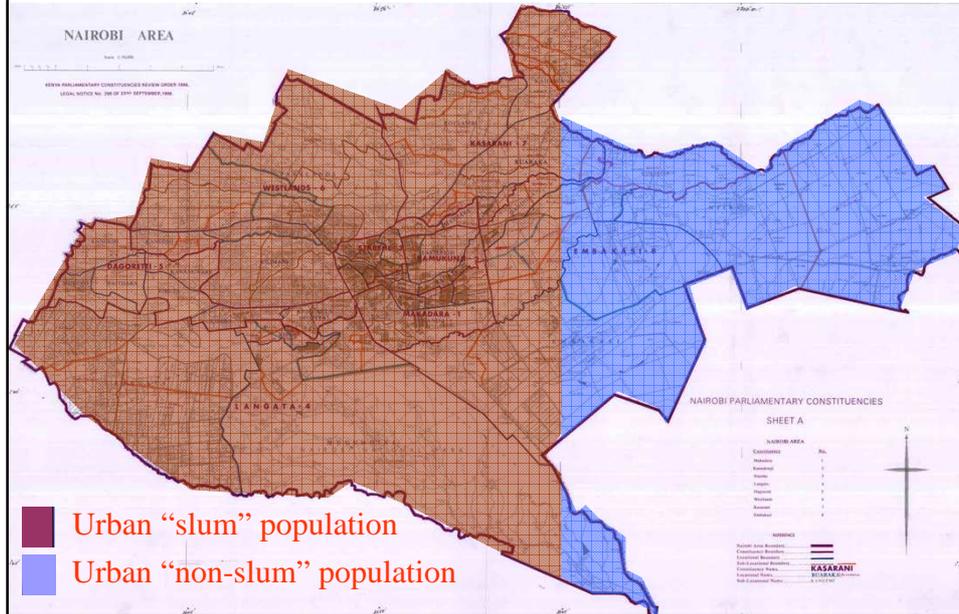
▪Corruption is the misuse of entrusted power for private gain. $C = (M+D-A)/E$ where *C* stands for corruption, *M* for monopoly power, *D* for discretion by officials, *A* for accountability and *E* for Ethical ambience

▪Corruption thrives when and where transparency is missing

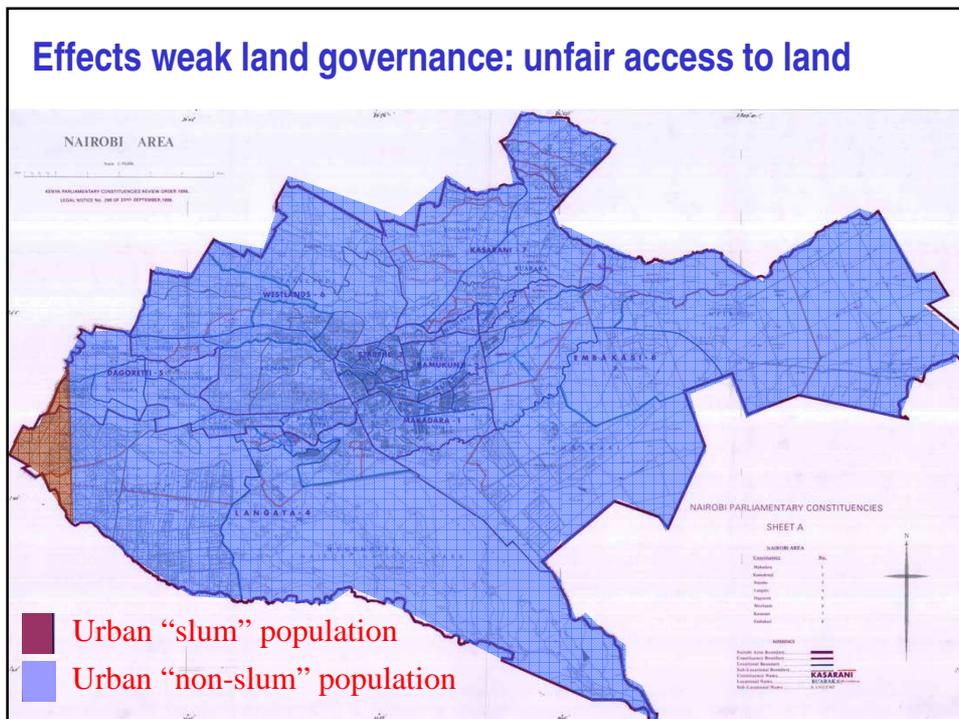
Broad classes of corruption

- State Capture/Grand/political corruption
- Petty/bureaucratic/administrative corruption

Effects weak land governance: unfair access to land



Effects weak land governance: unfair access to land



What should be made transparent?

- **Policy, laws, regulations, charters, codes, rules**, etc should be publicly available; Statutory instruments that govern LA should be comprehensible including **LEGAL LITERACY**
- **Structural transparency**: organizational set-ups, tiers of decision making
- **Processes and procedures**: provide info leaflets, checklists, guides, forms, etc that specify the steps, time required to complete processes, means of access including routes of appeal, etc
- **Facilities and offices**: should be open to the public; periodic tours and open houses should be held periodically

What should be made transparent?

- **Functional transparency**: info brochures and directories that help figure out who does what? Who is responsible for what? Who processes applications? Who makes decisions? are vitally important
- **Data / information**
 - Avail understandable and accessible input data/operating information collected, processed, and acted upon (land rights allocated, converted, leased, titled; value of land; use of land; tax rates, etc)
 - Incomplete, outdated, or poorly organized data creates uncertainty and risk for both the land agency and users

Issues that point to corruption (examples)

- multiple titles
- Missing files or records
- Abnormal land uses or land use changes / permits that have no technical merit
- Incidences of questionable valuations (to evade tax, to tamper with compensations)
- spontaneous and brutal evictions (often used to make way for vested interests)
- Sale of public land for less than it is worth
- Increasing incidences of informal / unregistered land transfers
- backlog of land cases in ministries/ in courts; 'facilitation payments to jump queues
- over-regulation : the more the no. of steps / actions needed to complete transactions, the higher the probability for corruption
- high service fees: encourage informality and semi-informality in doing business
- tenure based on administrative allocations (human beings aren't angels!)
- absence of publicly available info(in some countries land use plans are secret!)
- ambiguous land use plans: providing scope for variable "interpretation"

Tools to improve transparency

- Tools to understand and assess transparency
- Tools to improve access to information and public participation
- Tools to improve integrity and professional ethics
- Tools to reform organizations and institutions

Assessment - why?

- Not to determine whether or not corruption exists;
 - There is no institution that is perceived to be totally free from corruption;
 - Corruption has some common characteristics. For example, it occurs in all countries regardless of the level of social and economic development.
- To determine the extent and level corruption including whether it is systemic or episodic; where it occurs and how; why; what forms it takes; *whether it is petty or grand; its cost implications;*
- To determine whether or not anti-corruption strategies, programs and institutions are in place and functioning

Assessment – indicators of corruption

- **Experience based indicators:** actual levels of victimizations
 - Corrupt practices: personal involvement gauged using questions measuring the incidence of transfers made to expedite service or break the law;
 - Corruption pressure: pressure experienced personally gauged using questions measuring the incidence of officials directly asking / “hinting” at an informal transfer (gift, favor, money).

Assessment – indicators of corruption

- **Perception based indicators:** perceptions about corruption in society
 - **Tolerance of corrupt practices:** questions that probe whether specific practices (bribe, conflict of interest, trading in influence, etc.) are acceptable for certain officials
 - **Perceived spread of corruption:** questions about perceived levels of corruption and its “effectiveness” in getting things done.
 - **Expectations relating to the ability and resolve of government** to deal with corruption.
- **System (vulnerability) indicators**
 - Questions that probe whether or not anti-corruption strategies, programs, etc are in place and being practiced.

Sample assessment questions

- In the past 12 months have you or anyone living in your household paid a bribe in any form to each of the following institutions/organisations?
- How serious do you think is in this country the problem of bribes being paid to land authorities to obtain favourable decisions in selling, buying, leasing, inheriting and registering land, or in land tax declaration, or in handling land disputes?
- How serious do you think the problem of grand or political corruption in land matters is in this country?

Assessment tools

Surveys are the tools typically employed

- Take many different names:
 - citizens report cards
 - vulnerability assessment
 - Land governance assessment framework
 - rapid anti-corruption assessment
 - customer satisfaction surveys
 - service delivery surveys

Land Governance Assessment Framework (LGAF)

- a holistic diagnostic review at country level that can inform policy dialogue in a clear and targeted manner.
- built around five main areas for policy intervention:
 - rights recognition and enforcement;
 - land use planning, land management, and taxation;
 - management of public land;
 - public provision of land information; and
 - dispute resolution and conflict management.
- 21 land governance indicators in the 5 key areas
- a consensual and participatory assessment by local experts
- implementation takes place in a number of discrete steps that are overseen by a local coordinator

Assessment tools

- Usual format is HH survey (other clusters: businesses, civil society, public service, etc);
 - Quantitative sample surveys or qualitative interviews (e.g., with focus groups)
- Typical statistical methods (e.g., samples) and data processing tools used (e.g., Access, SPSS)
 - Typical findings: e.g., % of people are highly, moderately dissatisfied with the land registry)
- Surveys gauge quality of services provided, help identify reasons why citizen like and use some services and not others, assess demand for new services (e.g., web based land services)

Assessment : DOs and DONT'S

- Focus on institutional weaknesses (not on individuals) and clearly communicate this objective
- Don't overstep the assessment mark / don't encroach the turf of law enforcement and clearly communicate this objective
- Secure political clearance
- Where possible secure assessment mandate and legitimacy (e.g., NGOs routinely do citizens report cards / satisfaction surveys)
 - Watchdog status
 - Internal oversight
 - research
- Ensure confidentiality and anonymity
- Make assessment non-threatening

Assessment challenges

- The inefficiency factor: corruption can be disguised as inefficiency
- The fear factor : reluctance to give info
- The cover-up factor : corruption doesn't leave a paper trail; info hardly available in official records; hence, why we need to focus on victims' (actual and potential) experience and perceptions
- The evidence factor : due to failure to distinguish assessment from investigation, the tendency to overvalue evidence

Access to information and public participation

- The tools under this are anchored in the rights-based concept.
- The **right element** of transparency recognizes people's right to receive information and to participate in decisions affecting their lives. **Hence, tools to improve access to information and public participation.**

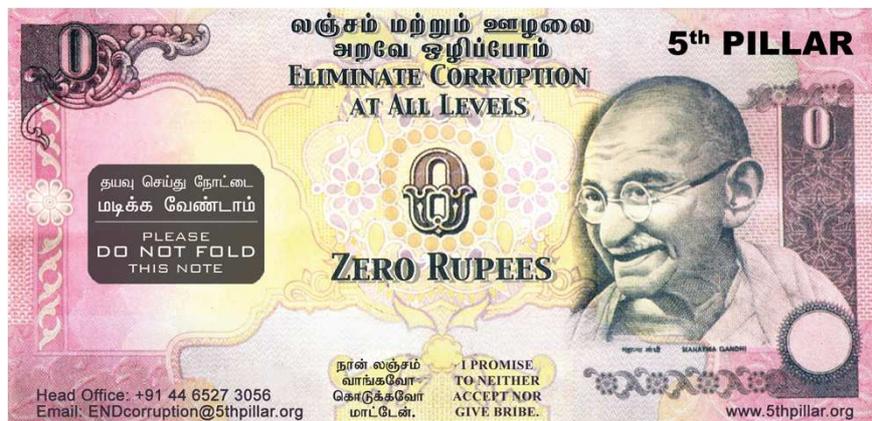
Various types of tools:

- Legal tools:
 - Information Law (e.g., Right to Information Act)
- Technological tools:
 - Computerization,
 - Land Information Management Systems

Access to information and public participation

- Formal mass communication tools
 - Media publications (e.g., draft land policy)
- Informal administrative tools
 - Publication of minutes of official meetings
 - Town halls (Land use planning department officials meeting residents of an area slated for rezoning)
 - Public sessions on important community issues (e.g. mass evictions, compulsory acquisition, etc)

Public participation tools: grassroots / community activism through civil society; downward accountability;



Tools to improve professional ethics and integrity

- The target here is the individual involved in land administration.
 - Public servants
 - Professional bodies
 - Private sector operators (surveyors, lawyers, valuation experts, etc)
- Tools to empower, enable and protect individuals
 - Ethics training
 - Codes of conduct/ codes of professional ethics
 - Conflict of interest law
 - Whistleblower protection

Organizational and institutional reform: Two dimensions

- Two types of interventions : **service delivery oriented** and / or **malpractice oriented**
- Two targets
 - Institutions: the humanly devised constraints that structure human interactions. They are made up of formal constraints (rules, laws, constitutions), informal constraints (norms of behavior, conventions and self-imposed codes of conduct) and their enforcement characteristics.
 - Organizations (people, facilities, systems and processes)

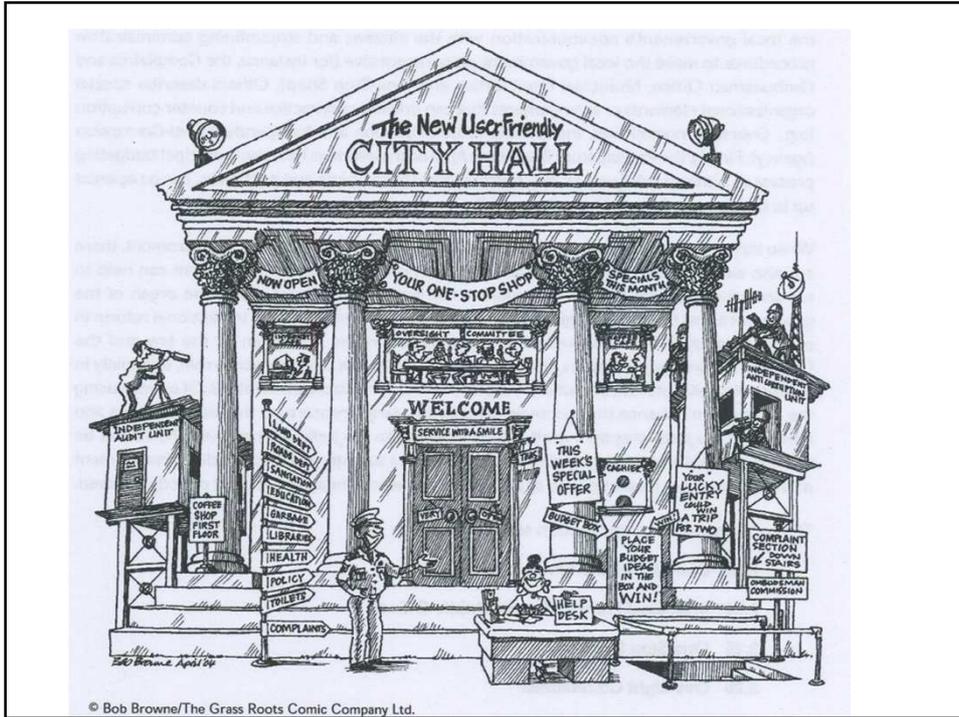
•

Organizational/institutional reform: service delivery oriented

- One-stop shop / one-window services
 - Provision of several services from one place / window reduces red-tape and opportunities for corruption
- Customer service charters
- Front office / helpdesk
 - First office encountered by public (where to go? how to obtain info? advices on problems) and facilitates access to services
- Transparent service provision (e.g., open office plans, banking halls, etc)
- Quality management systems

Organizational / institutional reform: malpractice-oriented

- An oversight system
 - Internal/external independent audit / oversight that provides second opinion on operations, performance
- A functional complaints handling system (formal and informal)
 - Administrative mechanisms
 - Ombudsman
- Independent anti-corruption watchdogs



Bottom line: There is enough [land] to satisfy every man's need, but not every man's greed

