

Complexities and conflicting systems and structures breeding corruption in the land sector: A case of Uganda

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ABSTRACT

Land is a vital resource that sustains livelihoods mainly across Sub-Saharan Africa, but also one that is heavily prone to corruption. Every second a citizen in Africa in general and in Uganda in particular has been affected by land corruption in recent years.

In Uganda, corruption in the context of land is exhibited mainly in three forms i.e. forms of money corruption, power corruption and resource corruption. Exercising these always lead to either an opaque deal between private investors and local authorities, citizens having to pay bribes during land administration processes, or customary laws that deny women their land rights. Most complaints in the land sector in Uganda originate from land administrative arrangements characterized by mixed tenure systems, multiple layers of administrators and insufficient access to justice system. These have become so complex that an extra mean needs to be used to access a service in the land sector.

This study provides a direct linkage between complex and sometimes conflicting structures and land corruption. Specifically, it seeks to find out how complex and conflicting power, tenure systems, land and corruption intersect and how they affect men, women and the vulnerable. Further, it seeks to find how addressing issues around tenure rights, power overlaps and

inefficient justice system can be used to support anti-corruption efforts in Uganda's land sector. For this study, Primary data was corrected through interviews and focus group discussions with citizens in Eastern Uganda. Secondary data was got from reviewing documents concerning land, corruption and administration.

Limited access to information, complex laws, procedures and institutions regulating land ownership, mixed tenure systems and insufficient access to justice are some of the driving forces behind land corruption in Uganda. Reducing corruption in the land sector calls for closely supervising and monitoring land administration institutions to keep them on check and ensure integrity is upheld at all times, remuneration of local land administrators, Civil Society Organizations holding public land officers to account and informing and educating the greater public of the ways in which to protect their land rights such as registering ownership of the land ownership.

Key words

Land

Corruption

Land Administration

1. INTRODUCTION

Corruption has been a common characterization of human kind and has evolved as human activity, needs and demands evolved. It's therefore a complex form of behavior, practice or activity difficult to draw lines that can best describe it. Corruption is also a concept of perception and therefore its description can depend on the social, psychological, economical or legal perspectives. Corruption can also be described based on the tools used to exercise this practice. In this regard, corruption can manifest as Power corruption, money corruption and material or resource corruption. Transparency International thus defines corruption to include all actions that constitute abuse of all delegated POWERS to achieve personal gains. As a social behavior, corruption is defined as a deviation from the acceptable regular performance for personal or other benefits or it is a violation of norms to achieve personal gains { OSL, 2002}. Where corruption is perceived to be constituted in the social, behavioral and moral fabric of human kind, then addressing it with aid of criminal tools can only address strings of it and not the roots and route.

Corruption of modern day, is however a cause and an effect of failed constituted systems. A system constructed with multiple structures of crisscrossing functions and procedures operating along with and within conflicting and competing structures on the other hand is a conducive breeding ground for corruption. The demands and competing needs for time may not warrant one to spend time in such structures and procedures and therefore corruption becomes an acceptable option.

On the other hand where corruption is entrenched in the performance behaviors, consciously or unconsciously can cause failure of a well constituted structure and system. Where society has normalized acts of corruption, the not corrupt become a mischief of society and in a matter of time they fall suite.

This double end of corruption makes it dynamic and erosive. Understanding and addressing it then calls for a multifaceted approach sharpened more at the edge towards mainstreaming the functions of delivery and less on the behavior and character of the people.

In experience, the more demanded services are a great opportunity for corruption compared to the less in demanded services. The competition for scarce resources falls in this bracket and the jungle law takes precedent. In this case it's not about the cost of the service but the demand for the services. Corruption makes such low cost services very expensive and inaccessible by the majority. The Land sector has fallen victim of the corruption phenomenon.

The consequences of corruption are dire. However when it comes to corruption in the land sector, the spill overs are immense. "Land corruption is an obstacle to development and good livelihood, whether in rural or urban settings. It distorts economic growth, and threatens democracy, the rule of law and human rights. It is a concern for individuals and societies, given that land is an important factor for people who live on it, and is closely intertwined with a sense of belonging, cultural identity, their income, livelihood and food security"¹.

Land is a complex variable to understand. In economics it is a factor of production and socially land is Life especially to the Agrarian Social communities situated in rural areas. Access to land is a way of life to achieve food security especially of the family members, a form of social belonging to posterity and an entitlement as long as one lives. Economically land presents enormous economic development opportunities and access to land and its resources is at the core of creating a conducive climate for investment. The fast and vast competing needs and demands for land, presents the sector at a higher scale of vulnerability to corruption.

2. Corruption in the Land Sector: A case of Uganda

Land governance and administration in Uganda has evolved over time from the precolonial time. The political governance of the time has been consequential to the governance of land and its resources. The colonial system of governance built from an existing system of kings, chiefs and kingdoms that had an elaborate governing system of land and its resources. In

¹Transparency International 2017

that system, the chief or the king was at the epitome of the land governing system and the rest enjoyed use and access right.

The colonial governing system that focused on reorganizing societies and economic activities such as production of cash food and crops, mining and others as well as consolidating political power devised a land governance mechanism that best suited these needs. The system aided by the 1900 Buganda agreement created power centers among the few but gave opportunity to private members of the society to own land leaving the majority with user and access rights. However, the user and access rights slowly dissolved into occupancy as the tenure regime evolved and land became a private poverty. In this period, the reforms introduced other tenure regimes on top of the existing customary tenure regime. These therefore called for another elaborate administration and management system.

The post-independence governments equally attempted to undertake reforms that could in their own right address the land questions and issues that have been emerging following the past reforms. In 1975, the reforms resulted into a land degree that reigned until 1995. The promulgation of the 1995 constitution provided ground for the enactment of the 1998 land Act cap 227 all aiming at streamlining land governance and administration. The National land policy, 2013 therefore came into force to consolidate the various scattered policies on land and natural resources aiming at fostering development.

Land in Uganda is a critical factor of production, and an essential pillar of human existence and national development². The integration of the land sector in economic development was singled out as one of the most crucial strategies for the realization of the Uganda's vision 2040³. The national development plan envisages development only to happen if land enables land holders to plan and invest for the future.

In Uganda, corruption is a wild spread vice across sectors gathering growing attention and attraction among the population. It constitutes a major challenge of businesses operating

² National Land Policy 2013

³ National Development Plan 11

and those planning to invest in the country. Although highly condemned by the public, it is greatly entrenched into the moral fabric of society. The government of Uganda, has established institutions with structures to address this rapid practice in the country. In addition there is a robust legal frame work with anti-corruption act as the apex framework, the penal code, the inspectorate of government act 2002, the public finance management act of 2015 and the leadership code act of 2002. The penal code provides instruments to deal with various corruption offences, the leadership code act on the other hand, was developed to increase transparency and to curb corruption among public officers. In addition it criminalizes attempted corruption⁴.

The land sector identified as the most viable form of investment in the economy has suffered the consequences of corruption. Resources accrued from corruption practices have been invested in land sector making the unregulated land market Volatile. This volatility has not grown commensurately to the capacity of the land governance administration systems and structures.

3. The complexities and conflicts in the land administration and governance systems

Policy and Legal framework

Uganda is currently hosting an elaborate policy and legal frame work on land ranging from the 1995 constitution, the national land policy, the national land act as amended, the registration of titles act and the land Acquisition Act among others. All these frame works are aided by detailed regulations and procedures to support the administrators in offering services and delivering justice. However, these elaborate legal and policy framework has created complexities in procedure, and practice for instance, the national land Act, provides for the four tenure regimes including the Freehold tenure, the Customary tenure, the Leasehold tenure and Mailo tenure, the law further provides for transitions from customary to freehold, a transition that renders one regime inferior to another. The law further provides for multiple rights of both land lords and tenants thereby causing power conflict.

⁴ GAN business anti-corruption portal <http://www.ganintegrity.com/portal/country profile/Uganda> last viewed on July 30th 2019

The national land policy on the other hand recognizes both the informal and formal justice systems however necessary legal reforms have not been taken to operationalize this provision and harmonize the two justice systems. Although, the informal justice system is accessed by the majority of the people with land conflicts, its ruling and conclusions cannot be referred to as court of first instance by the formal justice system. Furthermore these elaborate policy and legal framework has remained complicated and hard for the wider population to comprehend. The administrators of these frameworks and those with privileged access and knowledge have selectively used these frameworks against the weak. For instance, land broadly calls for a civil suit but evidence reveals a manipulation of many land cases to criminal⁵. This manipulation is oiled by corruption.

These contradictions foster conflicts on land and attempts to disentangle these conflicts aid corruption as the assumed superior provisions are used against those whose capabilities could only afford the seemingly inferior provisions.

4. Competing Land administration structures

The legal and policy frame work provides for an elaborate land administration structure with institutions ranging from the sub-county to the national level with prescribed mandates. In the provision of land services related to registration of rights, the structure provides for a recorder who also doubles as the senior administrative secretary at the sub-county, at the same level an area land committee comprising of seven members is appointed. At the district level, a district land board comprising of 5 members is appointed and works alongside the district land office. This dual structure of a team of the appointed with a term limit working alongside a public service system without term limits presents challenges in administration. For instance, there are cases where the term limit of either the area land committee or the district land board expires and new appointments are not made promptly. In addition, the operations of the district land boards, area land committees are dependent on the non-tax revenue generated by the local governments.

5

The fact that the revenue base of local government has greatly dwindled over time⁶, many district land boards and area land committees are not sufficiently financed. The situation then warrants interested parties capable of facilitating these structures to do it in order to access services. Although these is not acceptable by law, it is an acceptable norm by practice.

The procedures followed by these structures to offer certain land services such as registration of rights are scattered in different institutions making it cumbersome for the applicants. For instance, in obtainance of a certificate of customary ownership (CCO), the procedure requires the applicant to obtain form one from the sub-county, fills and returns it, then form 9 is filled for a public notice for 14 days, then the area land committees are invited to inspect the parcel, draw the sketch of the parcel on form 23, generate a report of the activity dully signed by every party including those at the boundary of the person submitted to the district land office for cross checking and verification, brought back to the recorder to register in the abstract book then copies of the CCO is prepared and sent back to the district land board to a fix a stamp and eventually return for the applicant to pick it at the sub-county. Guarantying efficiency and availability of all these parties remains a challenge and where the need of the document is placed, oiling the process in form of corruption is the best option. Obtaining other forms of registration involving titling adds to this complex procedure engagement with private surveyors and involvement of other institutions responsible for titling, registration and catographying. The process further involves paying tax and other dues which brings banks into perspectives. Although the formal cost provided in this processes by law are as low as 10,000ugsh for a CCO, and 1% stamp duty in the case of titling the procedures are cumbersome and corrupting somebody in the names of application relieves the applicant of the burden.

5. Land justice institutions

Just as it is for land administration, the legal and policy framework in Uganda provides for an elaborate land justice system. These ranges from the LC courts, the district land

⁶ The local government revenue mobilization allocation and utilization processes, a case of Kitgum, Lamwo and Pader district, SEATINI (2014)

tribunals, the courts of judicature and subordinate courts. The regulations provide for procedures to be followed in accessing justice from all these institutions. In addition to responses and hearings, land adjudication requires the judicial officer to visit the locus before disposing off a land matter. It is at the discretion of the judicial officer to decide on the number of times he or she visits the locus.

Unlike the courts of judicature, the LC courts are available and easily accessible. The district land tribunals on the other hand have since been non-functional creating a gap in accessibility to justice.

The efficiency of the justice system is characterized as low with an average total time in following up cases ranging from 6.5 months in the customary system, through 13 months in the local council courts to 38 months and above in the magistrate's court⁷. In terms of efficacy (measured in terms of completion success rates) the justice system is described as low reported below 50%. This triangulates with the national statistics reporting the bulk of case backlogs under the civil division to be associated with land and the majority of the backlogs in the criminal division too being associated with land. In the financial year 2017/18 the land division of the high court had 19,990 cases of which 13,761 had been carried forward, 3,171 were disposed of showing a clearance rate of 50.9% and a disposal rate of 15.9%⁸.

“Land justice disputes continue to take up a large proportion of the load in terms of case backlog in the civil arena and they have been noted to contribute to several criminal matters including murders, arsons and trespass”⁹

Justice delayed is justice denied, it is within every person's interest to witness justice being presided over. The clogs in the justice system provide a green ground of manipulation, a manifestation of corruption to accessing justice. According to the GAN business

⁷ Evaluating the impacts of protecting communal lands and resources and comparing the impacts of state and customary land justice systems. Land and Equity Movement in Uganda, (2017)

⁸ Justice Law and Order Sector annual performance report, 2017/18

⁹ Justice Law and Order Sector annual performance report, 2017/18

anticorruption, the police, the judiciary and the procurement are areas where corruption risks are very high and under the table cash payments are expected.

“Nearly half of Ugandans perceive the judiciary as corrupt and also nearly half of those who have come into contact with the courts in the past twelve months indicate having paid a bribe”.¹⁰

Contrary to these structures provided for by law, government has established other multiple and seemingly powerful structures. These include, the police land desk, the land desk in the office of the president, Resident District Commissioner and currently the commission of inquiry into land matters headed by the judge of the high court. The fact that these structures have no legally documented procedure, their operations and processes of handling cases appears to be simple and flexible and therefore assumed to be accessible. They are driven by power and despite their inability to make rulings that are legally sound, the powerful has used them against the weak. Where they have supported the weak, the powerful manipulate the complex formal justice to win the weak.

The justice, law and order sector is among the list public financed institutions, where procedures on handling land cases requires a judicial officer to visit the locus and other procedures that require financing, the limited funding becomes a big barrier. The sector is subsidized by funding from donors and in other cases individuals that are interested in the justice process.¹¹

These contradictions, conflicts, and complexities have yielded into forum shopping as people wish to seek for justice or access land services at a shorter time as may be to other services in the market. The situation has been worsened by the growing forgeries of land and court documents, mistrust and suspicion, incidences of missing documents on file and popular request for money to “fuel” processes such as site visits, witnessing boundary opening and conducting public hearings. The land market being Volatile and land remaining the most feasible tradable item has attracted all forms of malpractices and a complex system makes the situation greener for the culprits at the detriment of the victims.

¹⁰ Global Corruption Barometer, 2015

¹¹ Bertelsmann Stiftung Transformation Index, 2016

6. Consequences of corruption in the land sector

The consequences of corruption in the land sector in Uganda are not any different from those of other countries in the world. The difference is in the impact where in Uganda over 70% of the population is natural resource dependent and land is the sole means through which they derive a livelihood. The impact further goes to the ability of the country to realize its full economic transformation potential through attracting and sustaining investment. The cost of doing business becomes higher than anticipated as corruption is entrenched in the service system of a core sector such as land. The immediate effects are currently experienced in the turbulences fueled by tenure insecurity, land conflicts and disputes all over the country. This has had immediate effects on the household and countries food and nutrition security as well as poverty.

7. Recommendations

Addressing corruption in the land sector requires a multi prolonged approach. The approach must address the structural, systemic, institutional and behavioral characteristics that act as a breeding ground for corruption. Priority should be given to:

- **Harmonizing the legal frameworks:** it's high time the country undertakes a fundamental legal reforms on land to clean out the conflicts and contradictions that have haunted the sector from its colonial history. Maintaining these deep seated contradictions in the legal regime are not only a breeding ground for corruption but a spring board of conflict, conclusion and eventually insecurity on land.
- **Strengthening the land administration institutions by funding, staffing and technology:** the current lay out of the land administration institutions is sufficient to provide land services, mitigate conflict, and where the worst come to the worst offer justice efficiently with efficacy, addressing the challenges of inefficiency of these institutions should stop being the creation of parallel structures but rather equipping the institutions with adequate funding, trained and skilled staffing and state of the art technology that meets the demands of the day. Funding to the land sector is a great opportunity for the economy as the sector exhibited ability to

generate non tax revenue much higher than the annual budget allocation to the sector of lands, housing and urban development.

- **Investment in information, education and communication:** a robust land governance system can only give value to the economy comprising of an informed population. The populations are the ultimate users of the land systems, policies and laws, equipping them with this accurate information will lessen the need for information and process brokers in the sector hence destroying layers of the breeding grounds for corruption.

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