

**NON-TECHNICAL PATHWAYS AS COMPLEMENTS TO REDUCING CORRUPTION IN
LAND GOVERNANCE INSTITUTIONS IN AFRICA**

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1. INTRODUCTION

Land governance, usually influenced by routine policy, legal and administrative decisions, determines access to and use of land resources, and the prompt resolution of any associated disputes and conflicts. Good land governance will therefore be associated with equitable access to land, functional institutional processes and the optimal utilization of land within a jurisdiction, all buttressed by efficient and reliable dispute resolution processes. Weak land governance, often characterized by inequitable land distribution, inefficient institutions and poor land use, remains of major concern on the African continent. Leaders of Africa's land governance institutions have a major role to play in ensuring that these institutions serve Africa's needs as best possible.

A key contributor to weak land governance in Africa's land governance institutions is corruption. The *Framework and Guidelines for Land Policy in Africa*¹ identifies it as contributory to the factors that impede the implementation of land policies in the continent. Administrative corruption is also identified as one of the key sources of weak governance². And in a yet to be published study undertaken by the African Land Policy Centre (ALPC) on *Needs Assessment for Short Course Training on Land Governance in Africa*,

¹*Framework and Guidelines on Land Policy in Africa*, Addis Ababa, AUC-ECA-AfDB Consortium, Addis Ababa, Ethiopia, 2010.

²*Good governance in land tenure and administration*, Food and Agriculture Organization of the United Nations, Rome, 2007

land sector stakeholders across Africa included land-related corruption as one of the most pressing challenges that they face in their routine work.

1.1 Corruption in land governance

Once it takes root in institutions, corruption undermines technical processes, prevents optimization of available land and records, and blurs the career growth of otherwise very well trained professionals. It informs disputes and court cases that can cause violent conflicts, undermine social order, unnecessarily clog and overwork judicial institutions. This increases the cost of doing business, hence undermines economies. Poor land governance may also contribute to the political instability of states, especially in instances where land governance institutions are perceived to promote the preferential distribution of land resources.

Inappropriate land use, which thrives in the absence of appropriate land use plans and guidelines, or absence of enforcement mechanisms, will ordinarily undermine rural and urban economies, then ultimately national growth. Much as the comprehensive cost corruption in land governance in Africa is yet to be empirically quantified, perception surveys³ and studies around Africa identify corruption as one of the impediments to Africa's economic development. Indeed, the United Nations Convention against Corruption observes that Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development around the world⁴. African Union member states must therefore establish mechanisms to eliminate and reduce corruption in land governance institutions in order to unlock development in other sectors of their economies.

The table below, developed from personal experience and country studies, gives an indication of the characteristics of weak land governance that fuel corruption in institutions and the key remedy drivers. Without getting into the details of the elements, the table helps us to appreciate that an effective response to the challenges highlighted will require a combination of technical and non-technical options will be discussed in sections 2 and 3.

³ *Measuring corruption in Africa: The international dimension matters-African Governance Report IV*: United Nations Economic Commission for Africa, Addis Ababa, Ethiopia, 2016

⁴ *United Nations Convention Against Corruption*, United Nations, New York, 2004

Characteristic of weak institutional governance	Remedy drivers
<ul style="list-style-type: none"> • Political interference • Absence of policy • Absence of enabling law and regulations 	<ul style="list-style-type: none"> <input type="checkbox"/> Executive <input type="checkbox"/> Line Ministry <input type="checkbox"/> Parliament
<ul style="list-style-type: none"> • Absence of land use plans and guides 	<ul style="list-style-type: none"> <input type="checkbox"/> Line Ministry
<ul style="list-style-type: none"> • Grabbing of public and community land • Poor land use 	<ul style="list-style-type: none"> <input type="checkbox"/> Line Ministry & state agencies <input type="checkbox"/> Traditional authorities
<ul style="list-style-type: none"> • Unavailable information • Delayed or poor services • Informal payments • Destruction and misplacement of records • Incorrect records or information • Overstated and understated land values • Preferential land distribution 	<ul style="list-style-type: none"> <input type="checkbox"/> Line Ministry <input type="checkbox"/> Investigation agencies <input type="checkbox"/> Judicial organs <input type="checkbox"/> Professional bodies <input type="checkbox"/> Land owners <input type="checkbox"/> Traditional authorities
<ul style="list-style-type: none"> • Rampant disputes • Lengthy court cases 	<ul style="list-style-type: none"> <input type="checkbox"/> Line Ministry <input type="checkbox"/> Judicial organs
<ul style="list-style-type: none"> • Inadequate technical capacity • Low uptake of technology • Poor staff attitudes and culture • Poorly motivated staff , without commitment to integrity and ethics • Poor infrastructure and security of records • Absence of internal assessment and appraisal mechanisms • Lack of codes of conduct and service charters 	<ul style="list-style-type: none"> <input type="checkbox"/> Line Ministry

2 TECHNICAL OPTIONS TO IMPROVE LAND GOVERNANCE

Land governance institutions have in recent years embarked on measures to improve institutional infrastructure and the collection, input, processing and dissemination of data. This includes thorough scrutiny of existing processes, re-engineering some of these and replacing some of the traditional systems of data collection and processing with technology-driven ones. Depending on their history and policies, countries in Africa are at different stages of adopting technology-driven options in perfecting technical processes to minimize or eliminate inconsistencies, delays, flaws and opportunities for corruption. This will ordinarily involve:-

- i. *Reviewing and re-engineering technical processes*

This involves mapping, review and rationalization of existing processes so that they are in tandem with the core business of the institution. This may involve cutting out unnecessary process steps, integrating some service desks and introducing congruity in the flow and processing of records for efficiency or in preparation for automation.

ii. *Harnessing technology in technical processes*

This involves the use of modern equipment and technology in field data collection, data input, processing and dissemination. This could apply for both spatial and attribute data in planning, survey, valuation and land registration units. It may call for the establishment of comprehensive spatial and attribute databases whose information may be shared by two or even more units for a variety of purposes. Institutions are establishing modern platforms around which digital data is managed and shared to serve internal and external customers and to drive routine technical and management decisions.

Unless in circumstances where the data fed is in error, is deliberately altered or deleted, these automated systems eliminate the typical human errors associated with land administration, minimize human interactions hence greatly reduce opportunities for the payment of informal rents. The range of services that could be supported through technology-driven systems include: submission and processing of survey records; purchase of maps; obtaining official land searches; payment of annual land rates and premiums; payment of stamp duty and related property taxes; property conveyance; approval of development applications and the approval of lease extension. Indeed, automated systems can be customized to provide services pertinent to any land governance institution provided that the necessary political and policy authority is in place.

Institutions that transform into harnessing technology need to ensure that internal and external users of the new systems are trained to use such systems, provided that the necessary security protocols are put in place.

It should also be noted that due to budgetary constraints, many land governance institutions in Africa may not afford adoption of technology in the short-term, even where the case may be quite compelling. This then means that we must have alternative options of improving land governance even while necessary funds are sought. Besides, even after adopting technology, some level of human interface must still be tolerated. Effort must therefore be made to ensure that the use of technology is sufficiently complemented by appropriate competence, integrity, culture and attitude of the staff within institutions. This can be ensured by the use of some strategic non-technical paths.

3 NON-TECHNICAL PATHS TO IMPROVE LAND GOVERNANCE

It has been noted that due to budgetary constraints, some institutions may not be able to afford technology-driven solutions to minimize corruption. Furthermore, in some instances, the user public still reports frustrations even where automated systems are in place. This is particularly so where the integrity of staff responsible for such systems, even though technically competent, is poor. As a result, data uploaded onto automated systems is not validated, is corrupted or is deleted and exchanged once on the database. In such instances, user prompts will provide incorrect results. In other instances, results from user prompts are withheld to coerce informal payments. This could particularly affect users who wish to access and print out products such as parcel maps or official searches. Staff mischief could also sabotage data back-up and occasion deliberate information gaps to be exploited for self-gain.

For these reasons, use of technology will need to be ring fenced by other options that improve the overall operational environment and also punish deliberate system breaches, sabotage or acts of a criminal nature. Such options will need joint efforts from various actors to complement the use of technology. These actors include Universities and higher training institutions; professional associations; regulatory agencies; investigation agencies and the senior institutional managers.

3.1 Universities and other training institutions: professional ethics

Universities and other institutions of higher learning have a key role to play in improving land governance in Africa. A recent but yet to be published study by the African Land Policy Centre⁵ revealed that Africa's contemporary needs are different from the pre- and post-colonial ones. While the traditional technical land governance courses in planning, surveying, law, land management and economics remain necessary, the study found that graduates from such courses need to have other soft skills to make them more relevant. In this regard, a good grounding in professional ethics helps to provide a foundation upon which graduating professionals may grow. Such modules should be able to get students to appreciate the importance on professional integrity in their professional practice upon graduation. The learners should be made to appreciate the primary importance of authentic and correct land records, and the importance of the citizen as customer. It must be underscored that the skills they obtain during training should be used to promote national development, besides earning them a living.

⁵ LPI Study on *Land Curricula Needs Assessment and Mapping of Existing Land Training Centres in Africa*, AUC-ECA-AfDB Consortium, 2016.

The learners must be made to understand the place of professional integrity and conduct⁶ in their careers, and that they must demonstrate fidelity to values such as honesty, transparency and accountability in whatever tasks they set to deliver. The delivery of their tasks must be guided by professional objectivity, and not by their personal whims or self-interests. Graduates must also beware that while serving clients, one must restrict themselves to their area of knowledge, and refer, or seek the support of other professionals for matters outside their realm. Besides, they must treat their clients and their peers with respect and be ready to take a firm stand where put under pressure to act unprofessionally. Universities and other training institutions should aspire to ensure that this simple but fundamental message is carried by graduating students, who, hopefully, will be able to relate with it once they move into working environments. In circumstances where demand justifies, these institutions could consider and establish short courses for practicing professionals within which training on professional ethics can be continued. Universities keen on reviewing their curricula to embrace the wider land governance concerns in Africa will find the Africa Land Policy Centre's *Guidelines for the Development of Curricula on Land Governance in Africa*⁷ helpful.

3.2 Professional Associations: codes of professional conduct

Professional associations ordinarily look into matters relating to the welfare and professional progression of professionals in active practice. Most of them provide a gradual path for admitted professionals to move from one member category to another based on assessments and mentoring. These associations are therefore very well placed to influence the conduct and practice of professionals. Invariably, such associations are guided by a code of professional conduct⁸, or code of ethics, and also provide Continuous Professional Development (CPD) to their members. In Kenya for instance, the Institution of Surveyors of Kenya (ISK) has its rules of conduct⁹ which binds its members. Such codes of conduct prescribe some guiding principles meant to bind member professionals in the conduct of their professional work, whether in the public or private sector. Such associations may in addition require members in various categories to spend some specified amount of time in

⁶ *Ethics and Professional Standards for Surveyors towards a Global Standard?* Frances PLIMMER and Sarah SAYCE, United Kingdom: Paper presentation in FIG Working Week, Paris, France, April 13-17, 2003

⁷ *Guidelines for the Development of Curricula on Land Governance in Africa*, AUC-ECA-AfDB Consortium, Addis Ababa, Ethiopia, 2017

⁸ *Best Practices—Creating Codes of Ethics in Professional Associations, 2008* Institute for Global Ethics, 2008

⁹ *Discipline and Rule of Conduct*, Valuers & Estate Management Surveyors Handbook, The Institution of Surveyors of Kenya, 2000

⁹ *Code of Conduct for licensed surveyors*, Republic of Kenya, Government Printers, 1997

activities or training aimed at ensuring that they remain committed to the tenets of professionalism, even with changes in technology, market trends and time.

Professional associations therefore wield a good tool around which to grow practicing professionals. Their codes of professional conduct, to which all members commit, provide a basis for assessing their behavior in practice. Such associations could therefore demonstrate commitment to ethical principles by not only rewarding professionals who demonstrate excellence and commitment to professionalism, but also by censuring, suspending or even expelling those accused and proven to be in breach of the principles. They can also demand that professionals are exposed to training on professional ethics as part of CPD menu. If professional associations became proactive in enforcing their codes, and in providing appropriate CPD, they would gradually make a good contribution towards improving services in land governance institutions.

3.3 Regulatory agencies: standards and codes of ethics

These are government or state agencies charged with the mandate to register and regulate the practice of various professionals such as surveyors, valuers, planners, land administration managers and estate agents. In Kenya, the registration and practice of surveyors who undertake cadastral surveys is for instance regulated by a state organ known as the land surveyor's board. Once registered, these professionals are expected to adhere to the standards stipulated in the national law that governs title surveys, the Survey Act¹⁰. They must also conform to a code of conduct for licensed surveyors¹¹.

Usually, state regulatory organs for professionals work in tandem with their respective professional associations. A good working rapport between the two, along with vigilance in ensuring that registered professionals observe the standards stipulated on statute, and that their practice is guided by their code of conduct, would help a great deal. Indeed, the two should embrace the practice of organizing periodic joint seminars for professionals in the public and private sectors. But quite often, this does not happen. These organs are known to have challenges holding regular meetings and effectively monitoring the conduct of registered professionals. This leaves professionals in public and private sectors wide latitude, which is at times abused to undermine professionalism and promote corruption. So line ministries charged with oversight responsibility for such regulatory organs should empower them with the requisite technical and financial resources. In return, parent Ministries should ensure that the organs effectively discharge their statutory regulatory duties.

3.4 Investigation agencies: competent investigations and prosecution

¹⁰ *The Survey Act*, Cap 299, Republic of Kenya, Government Printers, 1963

¹¹ *Code of Conduct for licensed surveyors*, 1997: <http://www.lsb.or.ke/download/licensed-surveyors-code-of-professional-conduct-1997/>

These agencies are usually invited to investigate and prosecute those suspected of omissions or commissions of a criminal nature while discharging their duties. Where such agencies are efficient, have good understanding of land governance processes and have political goodwill, they can play a useful role in promoting integrity in land governance institutions. Good investigations leading to successful prosecution act as good internal lessons and deter recurrence. But where such agencies have integrity issues, or are incompetent, their involvement in investigating officials in land governance institutions could have the opposite effect of demotivating the good officers. Criminal commissions that go unpunished as a result of incompetent investigations also promote impunity.

But since some technical processes in land governance institutions can be quite complex to those outside the realm of land professionals, it is easy for investigation and prosecution agencies to miss out on key steps and details of such processes and end up unsuccessful. It is therefore suggested that land governance institutions work closely with such agencies to first ensure that investigation officers are given a good grounding on the technical processes pertinent to the institution. In addition, such agencies may invite experienced professionals, especially those who have demonstrated consistent fidelity to ethical practice, to help unravel complex technical matters under investigation. Such professionals may include surveyors, planners, valuers or conveyancing lawyers. Information Technology (IT) professionals will also come in handy in our contemporary time, where technology drives many sub-systems in land governance institutions. In this regard, investigation agencies may consider developing multi-disciplinary databases of land professionals from which to identify suitable land experts whenever investigations so demand.

3.5 Senior managers: effective oversight through induction, in-service training and appraisal

The senior managers in land institutions have a fundamental duty to promote the use of non-technical approaches. Even where their institutions recruit professionals with background training on professional ethics, senior managers should appreciate the place of tools like induction courses to turn around newly recruited staff, periodic appraisal to gauge performance, in-service training to keep staff updated on any technological and policy changes and service charters to help monitor service timelines.

The induction courses particularly help to cultivate a sense of belonging to new professionals and help to inculcate institutional values and standards, and an ethical culture in practice. Such induction also provides an opportunity to map young professionals onto seniors who can effectively mentor them. The early formative phase is perhaps the most defining stage for most professionals and therefore institutional managers should make special efforts to ensure effective induction for those newly

recruited. In-service courses are good for peer learning and retraining where technology, methods, laws or policy may have changed. Appraisals help managers to understand the performance, or even the routine challenges, that face land governance staff. Service charters help in evaluating adherence to set targets and timelines in the various service lines and desks.

Because they have their unique structures and practice, traditional authority leaders, charged with the duty to oversee land administration and management in their respective regions, will have to devise mechanisms to stem any unethical practice in their jurisdictions. This paper provides a basis around which these authorities can also interrogate and mitigate corruption in their circumstances.

4. CONCLUSION

This paper articulates that effective land governance, which is necessary for the optimization of the land resource in Africa, is critical for the sustainable development of states. It does however identify corruption as a major impediment to the promotion of good governance in country-level land governance institutions. States must therefore rise up to the challenge of managing this menace in an effective and sustainable manner. The pursuit of good land governance must remain guided by the overarching global and regional commitments, and the underlying principles.

Modern technology provides good options for minimizing corruption since it reduces, and in some cases eliminates, the human interface in the collection, input, processing and dissemination of land information needed by the user constituency. Land governance institutions must therefore make efforts to embrace technological solutions suited to their circumstances. The exclusive focus on technology may however not provide an optimal path to reducing and eliminating corruption in land governance institutions. The paper therefore argues that only land governance institutions which innovatively embrace technology-driven and non-technical options will be able to successfully deal with institutional corruption.

The paper highlights some of the helpful studies recently undertaken by ALPC, and whose findings can complement country-level efforts to mitigate corruption, especially through early interventions in Universities and tertiary level training institutions. Universities and such training institutions have an excellent opportunity to influence young scholars by exposing them to requirements once in practice. This can be done through their regular course content, and could be complemented by short courses to which practicing professionals can be periodically exposed.

This will however need to be followed through by other actors along the way such as professional associations, regulatory and prosecution agencies. Professional associations

and regulatory boards occupy a very strategic space to influence land professionals as they walk their career path. They can do so by ensuring that professionals are gradually exposed to their respective codes of conduct and are provided with appropriate content during their continuous professional development seminars. These bodies can also use mechanism such as rewarding compliant and exemplary professionals, censuring, punishing and even expelling the errant ones.

Investigation agencies have the challenge of intervening to prosecute those found to have veered into omissions and commissions of a criminal nature. The paper however points out that ineffective investigations, hence unsuccessful prosecutions, can have the unintended result of promoting impunity in corrupt institutions. These agencies are therefore urged to ensure that investigators and prosecutors are well grounded to understand the technical and complex land governance processes, and also make efforts to seek the support of ethical and experienced professionals, in order to drive successful investigations and prosecutions. Such success will serve as good deterrent.

Senior managers in land governance institutions also occupy good space around which to influence the performance of technical and management staff, enhance integrity and ethical practice in institutions. This may require the use of institutional tools like induction courses for newly recruited staff, periodic appraisals, in-service training and service charters. These tools provide regular opportunities to engage staff, and are hence good entry points to monitor and influence staff attitudes and commitment to codes of professional conduct.

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