

Natural resource tenure and corruption

Query:

"What should you be especially aware of as regards to corruption when you are addressing land tenure security at both national (legislation, systems, policy) and local/municipal (implementation) level?"

Purpose:

"Amongst other activities we are developing a position paper on Natural Resource Tenure (draft attached), where corruption is mentioned) and would be grateful for some expert comments on how to improve the text on the issue of corruption. Please focus on reviewing the paper first rather than the other tasks."

Content:

- Part 1: Introduction to Natural Resource Tenure and Corruption
- Part 2: Review of the Paper
- Part 3: Corruption Prevention Measures
- Part 4: Further Reading

Part 1: Introduction to natural resource tenure and corruption

The enquirer is concerned about the opportunities for corruption in land tenure and in natural resource tenure more generally. In this U4 Expert Answer we focus on revising the "Natural Resource Tenure" draft position paper sent to us.

We start off by defining our terms in order to make this U4 Expert Answer understandable for those who do not have access to the draft position paper. In Part 2, we offer some constructive criticism of the paper by including detailed information about forms corruption can take in natural resource tenure. Part 2 also addresses the enquirer's query regarding the points at which corruption can be a problem when developing and implementing land tenure policy. Part 3 sets out some possible corruption preventive measures in natural resource tenure. We encourage the enquirer to get back to us with any other follow-up queries.

Definition of Terms

"Tenure" in this context refers to an individual's or a community's rights to a natural resource (including land, water etc). Tenure can also be defined as property rights. Tenure includes the means by which individuals or communities control, hold (or do not hold), individually or

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collectively, rights to land and all or part of the natural resources found on the land. Tenure includes both rights and obligations: individual's and communities have the rights to own, use and manage natural resources but also they have obligations not to use resources in a way that harms others as well as obligations to pay the requisite taxes pertaining to the resources.

"**Natural Resources**" can refer to land and all the resources that may be found on the land or extracted from the land. Natural resources can hold different significance for different groups. A tenant may view a piece of land as his home; a miner may view it as a source of extractive materials; a citizen may view the same piece of land as a national park for the protection of wildlife and enjoyment of the community etc.

Part 2: Natural resource tenure and corruption

There are several angles from which to analyse the impact of corruption on natural resource tenure, some of which are touched upon in the draft position paper. In this section we elaborate on the "corruption and governance" issues referred to in the draft position paper and we also make the connection between corruption and environmental degradation.

Corruption and Governance: the Land Tenure System

We recommend specifying in greater detail the forms that corruption can take in natural resource tenure systems. A GTZ publication on "Preventing Corruption in Resource Allocation" (<http://www.gtz.de/de/dokumente/en-corruption-and-resources.pdf>) identifies some of the weak points where corruption can thrive within the land tenure system both at the national systemic level and at the local or implementation level.

At the policy development stage, political corruption can often result in business elites getting certain issues placed on the agenda (for example land reform activities which involve the distribution of privately-owned land or the opening up of "green" zones or protected zones for development).

Legislation dealing with land tenure can be – perhaps deliberately – complicated. Land registration can be a bureaucratic and time-consuming process and public officials may be able to take advantage of the legislative complexity in order to extort bribes.

Land reform legislation which includes governments selecting regions and beneficiaries for lucrative projects may imply economic effects that encourage political corruption as politicians and private interests collude for their mutual benefit. GTZ identifies some suspicious situations such as where certain sections of the population are excluded from participating in such projects through high levels of compensation or protective legislation where public property is being privatised or nationalised.

Tax legislation and legislation governing natural resource management should be scrutinised for corruption-generating opportunities. It may be the case that taxes are only collected from those individuals who do not (or cannot) bribe tax officials. In some cases natural resource protection laws are such that they cannot be complied with. Indeed laws can be ambiguously worded and implementing bodies have wide scope to identify irregularities or claim competences for themselves in order to demand the payment of bribes.

Attention should be paid to resettlement measures as arbitrariness in the allocation of formal land titles to those being resettled can open the way for the generation of illegal income through corruption.

The GTZ publication highlights the selection of sites for allocation as one particularly corruption-prone area. Massive and corrupt payments are sometimes made when new areas for development or urban expansion are designated. In countries such as China (e.g. Greater Shanghai), India (Mumbai) or Egypt (Cairo) such activities can sometimes involve entire (regional) governments, and corruption goes right up to the top. An example from the Phnom Penh area illustrates this point: An urban expansion zone of 150 ha is designated. Middlemen buy land for USD 2 per sq.m. Development and soil amelioration costs amount to USD 8 per sq.m. The land is sold to the end user for USD 40 per sq.m.. A profit of USD 30 per sq.m. multiplied by 150ha (1,500,000 million m²) adds up to around USD 45 billion. The beneficiaries (end users and those rewarded for their services in designating the urban development zone) are three "powerful people in government".

Corruption and Environmental Degradation

Corruption is known to hinder economic development and fuel poverty, but there is also important evidence to suggest that it contributes to environmental degradation. The draft position paper could better highlight this consequence of corruption. Corrupt forestry officials or law enforcement officers who are in the pockets of unscrupulous logging firms will turn a blind eye to illegal forestry activities, threatening sustainable management of the forest's biodiversity storehouse. Similarly, fisheries inspectors endanger the sustainability of fish stocks by accepting bribes from trawling companies intent on ignoring official quotas. More broadly, poor national-level governance may translate into sub-standard environmental policy formulation and implementation, where narrow interest groups determine the common 'environmental good'. And, in extreme cases, high-level political corruption can facilitate the wholesale plunder of a country's natural resource base.

Part 3: Corruption Prevention Measures

The GTZ publication explores approaches to corruption prevention drawn from an evaluation of the general literature and discussions with experts. We modify and reproduce their findings here:

Active Participation in Poverty Reduction Strategy (PRS) Processes

Active participation in PRS processes can offer scope for corruption prevention, for instance through involvement in agenda setting, donor coordination of anti-corruption measures, participation in sector-wide approaches, support of civil society and participation in joint monitoring and evaluation procedures.

Active Participation in FLEGT Processes

Active participation in international processes for Forest Law Enforcement, Governance and Trade (FLEGT) and the support of partners in improving their legal frameworks and law enforcement contribute directly toward preventing corruption. Particularly important is the support of selected partner countries in negotiating Voluntary Partnership Agreements with the EU (FLEGT-VPA). These agreements aim to support partners in fighting illegal logging, and prevent the import to the EU of timber illegally logged or traded; the key instrument is proof of legality, the so-called FLEGT licence.

Promoting Transparency and Social Participation

When delivering advisory services to any major state legal project involving land allocation or allocation processes in other sectors, efforts should be made to ensure that they include civil society participation. When involving civil society groups in monitoring and watchdog tasks, their legitimacy value is crucially important. Since resource allocation often involves very large areas of national importance, and the economic and social impacts of a land reform measure or the creation of a new irrigation scheme can be considerable, in such cases an independent national commission with a pluralist constitution should be employed for implementation monitoring.

Especially when developing and promoting systems of trans-boundary cooperation to fight illegal logging and timber trade, independent observers and peer review mechanisms play an important role.

Supporting Legal Projects through Policy Advisory Services

Advisory services for legal reform or for the reform of legislative procedures within the scope of resource allocation should focus in particular on the impact assessment of laws. This can help bring to light any element of suspicion that political corruption may be taking place where particular interests are being favoured for no apparently good reason.

To help prevent corruption, legislative projects receiving advisory services should be explored to see where new opportunities for creaming off gains might arise, or existing ones reinforced, and how these tendencies might be reduced or eliminated.

Laws with which the population cannot comply should be raised in principle at the government negotiations, and not just in terms of technical-legal deficiencies, but also in terms of the implications for latent or evident corruption.

It is important to support partner institutions in formulating clearly worded laws. This applies with respect to both the provisions governing offences, and the definition of competences and procedures.

Incorporating the Measures into the Promotion of Democratic Decentralisation

The decentralisation of administrative tasks alone does not offer adequate protection against corruption. It is important to strengthen parliamentary monitoring in municipalities, and to complement parliamentary structures with broad citizen participation.

To date, just and fair forest management, also with respect to forest protection, has mainly been achieved where the population themselves have performed management tasks. The best protection against corruption is the creation of a joint management system comprised of representatives of the municipality and legitimate representatives of the local population.

The "One Stop Shop" Principle as a Means to Simplify Administration

The principle of introducing legislation to make administrative procedures more complicated, and involve as many agencies as possible in a given administrative action, should be made a thing of the past by introducing the "one stop shop" principle (as introduced e.g. in Morocco for company licences). A structure of this kind means that for a given approval or land title registration procedure a single agency is appointed that will deal with all administrative aspects. The effect this has of helping prevent corruption can be further reinforced by additional measures to strengthen internal control and external monitoring.

Informing the Public of their Rights

The concerned population are often not even aware of their basic rights, and do not know how to obtain a hearing by legal means. The dissemination of basic information here would be a first contribution toward the improved monitoring of decision-makers by the population.

Good Governance in Forest Management

GTZ recommends the systematic, participatory development of integrated National Forest Programmes (NFPs) on the basis of international agreements and frameworks (Intergovernmental Panel on Forests / Intergovernmental Forum on Forests), supported by the establishment of Forest Partnership Agreements involving all key actors, including civil society. In many NFPs, FLEGT measures play a key role. GTZ recommends developing a national FLEGT strategy within the NFP, which is itself based on a broad social consensus, to promote good governance in forest management and as an instrument to help prevent corruption.

GTZ recommends that a programme of this kind include the following aspects: involvement/participation of target groups and other stakeholders, as well as civil society organisations, from as early on as possible; harmonisation and simplification of the complex and contradictory regulatory frameworks for forest management of the various bodies, as well as development of joint standards, coupled with the creation of all-embracing transparency. This will include inter alia the clarification of ownership issues, taking into account pluralist forms of use, and the creation of transparent conflict management mechanisms; investigation and sanctioning of misdemeanours in the forestry sector by independent bodies with extensive powers (increasing corrupt individuals' risk of detection); FLEGT measures of financial and technical support to develop mechanisms for the legal and sustainable production and marketing of timbers and forest products, in order also to encourage investors to put a stop to illegal practices that distort market prices.

Part 4: Further Reading

GTZ publication on "Preventing Corruption in Resource Allocation"
(<http://www.gtz.de/de/dokumente/en-corruption-and-resources.pdf>)

TI Working Paper on Renewable Natural Resources (forthcoming). For more details please contact Aled Williams at awilliams@transparency.org

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