



THIS BEAUTIFUL LAND

**Corruption, discrimination and land rights
in Sub-Saharan Africa**



The Equal Rights Trust exists to eliminate all forms of discrimination and ensure equal participation in society for all. We work in partnership with civil society organisations, lawyers, legislators and others using the law to create an equal world – providing them with the support they need to secure the adoption and implementation of equality laws.

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This Beautiful Land

Corruption, Discrimination and Land Rights in Sub-Saharan Africa

Transparency International launched the “Land and Corruption in Sub-Saharan Africa” programme in 2015 to address the prevalence of corrupt practices within systems of land administration and management, known simply as land corruption. Led by Transparency International’s Secretariat in Berlin, the programme develops innovative approaches to understanding, tracking and overcoming land corruption, in collaboration with chapters in Cameroon, Ghana, Kenya, Madagascar, South Africa, Uganda, Zambia and Zimbabwe. This programme is currently funded by the German Federal Ministry for Economic Cooperation and Development (BMZ). For many publications, articles, videos and training resources on the issue, visit:

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**Never, never, and never again shall it be that this beautiful land will again
experience the oppression of one by another.**

Nelson Mandela – 1994.

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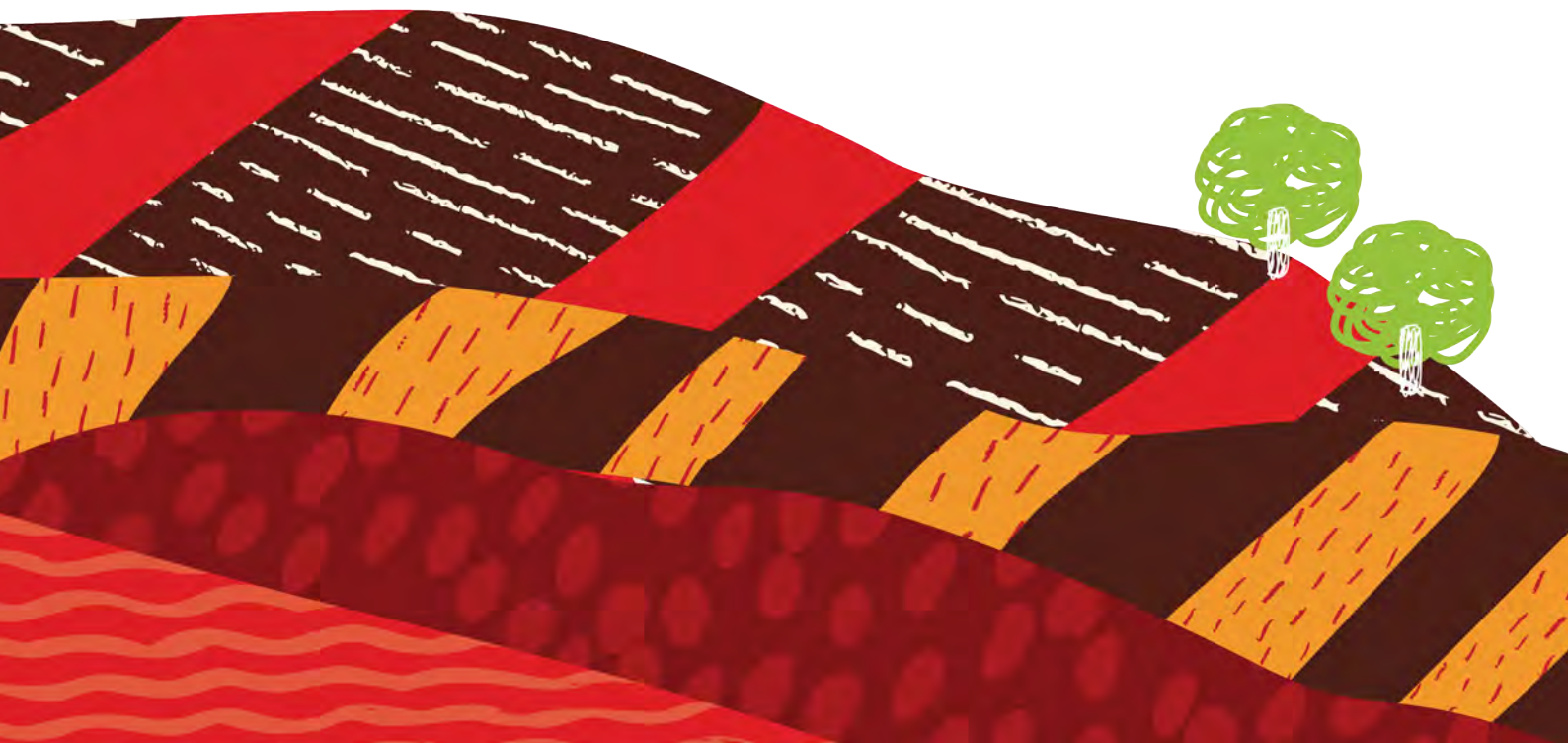


EXECUTIVE SUMMARY

Across the globe, corruption denies people access to the land and resources they rely upon for their survival. At the same time, discrimination, direct and indirect, on grounds ranging from disability to ethnicity and from gender to religion, acts to deny land rights to the most marginalised. There is extensive evidence of corruption and discrimination impeding the equal enjoyment of land rights. To date, however, the relationship between these phenomena has been underexplored. This report seeks to fill that gap.

In 2021, Transparency International and the Equal Rights Trust published *Defying Exclusion: Stories and Insights on the Links between Discrimination and Corruption*. Bringing together a diverse group of case studies from across the globe, it documented and illustrated the mutually reinforcing links – the vicious cycle – between discrimination and corruption. *Defying Exclusion* marked the first attempt to

systematically explore the phenomena we termed “discriminatory corruption”. This new publication explores – for the first time – the dynamics of corruption and discrimination in the land sector. It examines evidence and presents case studies from seven countries in Sub-Saharan Africa to understand how these harms exacerbate one another and fuel land inequalities.



1 INTRODUCTION

This report aims to document, map and analyse discriminatory corruption in the land sector in order to identify where and how laws, policies and practice need to change. It is the result of an ongoing collaboration between Transparency International and the Equal Rights Trust and forms part of Transparency International's wider Land and Corruption in Africa initiative. To develop this report, the Equal Rights Trust worked with Transparency International chapters in Cameroon, Ghana, Kenya, Madagascar, South Africa, Uganda, Zambia and Zimbabwe to explore the links between corruption and discrimination in the land sector and to identify factors that may drive or exacerbate these harms.

2 DEFINITIONS AND TERMINOLOGY

Land, corruption and discrimination are complex topics that draw upon different strands of legal, political, social and economic theory. Acknowledging this, we set out our understanding of key terms.

Land tenure has been described as the "relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land." The interests that a person has in land can be understood as a form of "property" – what is often referred to as "property rights to land". People can have different interests in the same land at the same time: property in land can be viewed from the perspective of a "**bundle of rights**", with the different interests that a person has in land thought of as "sticks in the bundle". A distinction is sometimes made between formal

land rights and informal land rights, or between statutory rights and customary rights. These distinctions can be confusing. At the national level, different processes have emerged through which land may be administered and may be divided into different categories – public, private, customary or collective. These terms are not used consistently, and in practice, different systems may operate within these classifications. Recognising these complexities, we refer to a person's "**access to, use of, and control over land**", or simply to "**land rights**."

Corruption is defined by Transparency International as "**the abuse of entrusted power for private gain**." Corruption is often described as being "grand" or "petty" in nature. **Grand corruption** refers to "acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders ... to benefit at the expense of the public purse and the greater good."

Petty corruption involves "everyday abuse[s] of entrusted power by low and mid-level public officials in their interactions with ordinary citizens, often as they attempt to access basic goods or services." Corruption may involve both collusive and coercive practices. A **collusive** practice is "an arrangement between two or more parties designed to achieve an improper purpose." A **coercive** practice is defined as "impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party."

Discrimination involves unfavourable treatment or disproportionate impact that arises in connection with one or more protected characteristics or grounds of discrimination. Discrimination can arise in connection with any one or any combination of more than



30 **grounds** recognised under international law, including but not limited to: age; caste or descent; disability; gender identity; health status; race or ethnicity; religion or belief; sex or gender; sexual orientation; or other status. Discrimination takes different forms: **direct discrimination, indirect discrimination, denial of reasonable accommodation, harassment and segregation**. Section 3 of Chapter 2 explains the personal scope of the right to non-discrimination and the recognised grounds; provides definitions for each of the forms of discrimination; and explains the material scope of the right to non-discrimination.

3 LAND AND INTERNATIONAL LAW

Chapter 3 of the report examines the treatment of land and land rights in international law, acknowledging the ambiguous role which that body of law has played throughout history, serving both to entrench land inequalities whilst also providing a potential means to address them.

This part of the report traces the history of land rights and understandings of land, starting with the roots of modern conceptions in the work of national law theorists. It examines how these understandings were used to legitimise colonial land appropriation and exploitation, before looking at the evolution of international human rights law and its engagement with issues of land rights.

Having examined the “inauspicious beginnings” of land rights in international law and the later failure of the early human rights instruments to clearly codify land rights, this chapter examines current international standards, as reflected in the 2023 **General Comment on Land and**

Economic, Social and Cultural Rights issued by the UN Committee on Economic, Social and Cultural Rights. This General Comment reflects the importance of “secure and equitable access to, use of and control over land” to the realisation of human rights, and sets out States’ obligations to respect, protect and fulfil rights related to land. The obligation to **respect** requires States to refrain from practices that violate human rights, including discrimination and corruption. As part of the obligation to **protect**, States are required to “adopt measures to prevent any person or entity from interfering with the rights enshrined in the Covenant relating to land.” This includes private actors, such as investors and business entities. Finally, as part of the obligation to **fulfil**, States should take measures to promote “secure, equitable and sustainable access to, use of and control over land” for marginalised and disadvantaged communities.

4 DISCRIMINATION, CORRUPTION AND THE GLOBAL LAND CRISIS

Discrimination and corruption are each both a cause and consequence of land inequalities. Chapter 4 explores these dynamics to contextualise the analysis of discriminatory corruption in Chapter 5.

This chapter begins with a short introduction to some of the **global drivers of land inequality** – key themes that recur throughout the report. It considers the global food crisis and its impact in driving transnational agricultural deals, the associated risks of “large-scale land-grabbing” and the disproportionate impact of this trend on women and young people. It discusses the way in which the climate crisis – through rising sea levels, desertification and extreme

weather events – is limiting the availability and accessibility of land. It examines the interplay between land disputes and violence, highlighting World Bank data indicating that 65 per cent of contemporary conflicts are land-related. Together, these issues are contributing to a global land crisis, in which land is rendered increasingly inaccessible to those who rely upon it for their wellbeing.

This chapter then examines some of the common patterns of **land discrimination**: the different ways in which discrimination prevents the most marginalised from exercising rights over land on an equal basis.

It considers the extensive evidence of the gendered dimensions of land inequality and **women's** experience of discrimination as a result of factors ranging from patriarchal social norms and gender stereotypes to discriminatory laws in areas such as succession. It looks at some of the evidence of discrimination affecting **persons with disabilities** in respect of land, including institutionalisation and the denial of legal capacity. It highlights the available evidence on the role of social stigma in denying equal access to, and use of, land by **persons with leprosy** and **persons with albinism**, among others, and reviews evidence that both **older persons** and **younger persons** are exposed to age discrimination when seeking to exercise their land rights. The exploitation of land and natural resources was a defining feature of the colonial period, creating situations of economic dependency that continue to contribute towards disparities in access to land and housing for **racial and ethnic** minorities. Disputes concerning the allocation or distribution of land – particularly along ethnic lines – continue today. Finally, it highlights some

of the evidence of discrimination arising for groups with a special relationship to land, in particular **Indigenous communities**.

Corruption in land governance takes many forms and involves a wide range of actors. At the **institutional level**, government officials may seek to adopt or amend legislation or policies or may undermine the effectiveness of established mechanisms to benefit private actors. Corruption risks appear heightened in **large-scale land acquisitions** and where **public purpose provisions** are utilised.

Bureaucratic corruption is a widespread problem: according to a 2013 Transparency International survey, one in five people around the world reported paying a bribe for land services. Within the **judicial system**, corruption can occur when judges receive bribes to accept or ignore evidence, to decide a case more quickly, or to make a finding in one party's favour. In each of these aspects and others, petty and grand corruption continually interact, as a wide range of actors work to profit from the system. What this brief survey underlines is that systems of land registration and management are highly prone to corruption, for a variety reasons – structural, legal and institutional.

5 LAND, CORRUPTION AND DISCRIMINATION IN AFRICA

This chapter of the report presents the findings of the research conducted in the seven focus countries. It begins with a brief discussion of the recent history of the countries in focus, acknowledging that contemporary land governance cannot be understood in isolation from the legacies of colonisation and post-colonial development policy. This includes a discussion of the impacts of the crimes of slavery and colonisation, including in respect of mass displacement and exploitation. Every country reviewed in the report was colonised either by Britain or France. The authorities of these States claimed rights over lands they deemed vacant, creating highly racialised and segregated land tenure systems. Land and people were exploited, while alien systems of land tenure and governance were imposed. This legacy – coupled with the debt burden faced by the newly-independent countries – created environments where land is a key economic good and where land claims remain contested and contentious.

The findings of the research are divided by country. For each country, we describe the land administration and registration system and discuss the history of land use and management in the country in question. This includes discussion of the impact of colonisation and examination of attempts at land reform in recent decades, followed by discussion of the legal, policy and institutional framework and the different forms of land ownership. We then present the information shared with our researchers about experiences of land corruption and discrimination, providing deep insights into the enjoyment of land rights by marginalised communities. Each country includes a case study examining a specific example of discriminatory corruption in the land sector, brief summaries of which are provided below:



Farmer-Herder Conflict in Ghana

Transparency International Ghana investigated allegations of discriminatory corruption in the context of a long-standing dispute between nomadic Fulani cattle herders and settled farming communities. In the driest months of the year, Fulani herders drive large herds of cattle across relatively wet and fertile regions, including lands used for farming. In the absence of established grazing routes, this movement can result in the destruction and contamination of crops or water used by farmers. The conflict centres on contested claims for compensation following these incidents. TI Ghana consulted with both communities and local authorities, speaking to a total of 186 people. According to those interviewed, farmers claim that some herders refuse to pay compensation, or that compensation is inadequate, while herders claim that calls for compensation are often

inflated. Both sides suspect corruption and discrimination on the part of the police or in the informal justice mechanisms which established to adjudicate disputes. The complexities of the conflict are deepened by the marginalised position of farmers, who experience tenure insecurity as a result of land investments which can result in dispossession and attempts by traditional authorities to take possession of land intentionally left fallow. The situation is also exacerbated by the cultural isolation of the Fulani, who frequently reside in segregated areas and lack access to basic services. Inter-ethnic tension fosters a situation where both sides perceive bias and corruption within justice mechanisms, undermining confidence and impeding progress towards peaceful resolution.



Corruption, Discrimination and the Nubian Community in Kenya

Transparency International Kenya set out to investigate the situation of the country's Nubians, a community descended from Sudanese nationals who were forcibly conscripted into the British army in the late nineteenth and early twentieth centuries. Nubians were neither granted Kenyan citizenship nor repatriated, and as a result, many Nubians settled on land reserved for them by colonial authorities – a small area outside Nairobi later named “Kibera”. When Kenya became independent, the question of Nubian citizenship was unresolved and the community were rendered *de facto* stateless. One consequence of their statelessness is that Nubians have no formal title to the land in Kibera – despite the community's relationship with the land for more than 100 years. In 2015, the African Commission on Human and Peoples' Rights held Kenya in violation of its Charter obligations for failing to recognise the legal status of Nubians and their equitable rights to land. However, despite some progress, recent reports indicate that the judgment has not been implemented. TI Kenya spoke with members of the Nubian community whose testimonies illustrate the continued challenges they face. Many Nubians do not have national identity card – documentation which is essential for registering legal interests in land. When applying for identification, many Nubians are subject to a vetting process that does not apply to other members of the population and which requires documentation which many do not have or cannot access. The vetting process is not provided for by law, and is described as “inconsistent and arbitrary” with much “left to the discretion of individual committee members, with the result that corruption and prejudice are common.” In the absence of documentation and lacking representation, Nubians live under a constant threat of eviction.

Land and Persons with Albinism in Madagascar

In 2022, the UN Independent Expert on the enjoyment of human rights by persons with albinism conducted an official visit to Madagascar. The Expert found evidence of discrimination in various areas of life. While violence against persons with albinism is less prevalent than elsewhere in the region, there has been a sharp increase in recent years, driven partly by harmful superstitions. The resultant security concerns, coupled with a lack of accessibility measures to meet their particular needs, prevent persons with albinism from exercising their rights. Transparency International Madagascar set out to investigate the experiences of persons with albinism in accessing land, conducting focus groups in different regions before selecting four individual cases for further review. These individual cases revealed troubling experiences of discriminatory corruption. Three individuals explained that they had lost access to land following the death of a family member, due to the competing inheritance claims of other family members – something which they attributed to their albinism. Allegations were made of collusion with traditional and public authorities. In another case, an individual explained that after his land was earmarked to make way for the construction of a new road and he was forced to leave his home, he was the only one of his neighbours to receive no compensation. One respondent explained that she did not dare complain to administrative offices for fear of being detected by kidnappers and abducted.

Farm Worker Equity Schemes in South Africa

In a nation defined by the historic injustices of apartheid, the “land question” in South Africa is deeply rooted in patterns of racial inequality. Almost 30 years after the end of apartheid, racial inequalities – particularly in the land sector – remain significant; there is also significant evidence of corruption in the land sector. Corruption Watch – the Transparency International Chapter in South Africa – set out to investigate one intersection of corruption and discrimination in the land sector: the abuse of Farm Worker Equity Schemes. As a consequence of apartheid, in the 1980s, it was estimated that “60,000 white commercial farmers owned 12 times as much land as the 14 million rural poor.” Farm Worker Equity Schemes were established as one element of a wide-ranging programme of land restitution and redistribution. Under these schemes, the government provides a grant, supporting workers to become beneficial shareholders in a farm, which entitles them to a portion of the ownership of the business and related entitlements. Corruption Watch interviewed 35 members of these schemes at different farms in Western Cape. A number reported seeing few or no benefits from the scheme. Despite raising concerns, members often did not receive an explanation for the low rate of payment. There were concerns regarding a lack of transparency and access to information as well as exclusion from shareholder meetings. Labour conditions remained hard and the accommodation which was provided to workers was insecure and inadequate. Ultimately, participants believed that farm owners benefitted from government grants without providing the support and payments required under the terms of their agreement.

Compulsory Land Acquisition in Uganda

Compulsory land acquisition is the power of government to “acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.” In Uganda, where compulsory acquisition is deemed necessary, the Constitution provides for “prompt payment of fair and adequate compensation” and a right to legal challenge. Transparency International Uganda set out to document the ramifications of compulsory land acquisition for the development of the Tilenga oilfield in Western Uganda. Under a framework agreement for the scheme between the government and TotalEnergies, it was agreed that the government would value the land being acquired, while the company would manage compensation and resettlement. During the first Resettlement Action Plan, implemented over 2017 and 2018, 17 out of a total of 622 project-affected persons alleged that their land was undervalued and rejected the compensation. TI Uganda interviewed five of these individuals, as well as two further project-affected persons, finding significant irregularities in the compensation process. These included inadequate information about the land valuations, limited participation in decisions regarding compensation types, and the inclusion of other property in the valuations. As a result, all respondents were offered compensation packets that they perceived to be inadequate or unfair. In some cases, there were significant delays in payment. At least three of those interviewed speculated that corruption had influenced the valuation and compensation process. Those we spoke to stated clearly that women had been hit hardest, having been excluded from participating in the compensation process.

Corruption, Discrimination and Access to Land for Persons with Disabilities in Zambia

In 2021, allegations emerged that a land allocation scheme designed for the benefit of persons with disabilities had been used to facilitate illegal logging of Mukula, a rare species of rosewood. The matter was taken up by law enforcement and in September 2021, a moratorium was placed on the logging, but the allegations remained unresolved. Transparency International Zambia decided to investigate, speaking to 33 people in directly affected communities. Persons with disabilities face significant exclusion in Zambia: stereotype and stigma, combined with inaccessible infrastructure, expose them to discrimination in many areas of life. In respect of land, they face particular challenges: socio-economic disadvantage that means they are often unable to afford to purchase land; discrimination from public officials; and physical accessibility challenges. As a result of these factors, the land of persons with disabilities may be targeted by corrupt actors. Respondents indicated that bribes are commonly required to obtain State land – demands which persons with disabilities are less likely to be able to meet. In customary land settings, there is a risk of persons with disabilities' land being claimed or “grabbed” by influential community members. This context of discrimination, corruption and impunity has created the space for corrupt actors to abuse the land allocation scheme to facilitate illegal logging.

Land and Intergenerational Justice in Zimbabwe

Land in Zimbabwe is deeply politicised, given the history of racially discriminatory dispossession during the colonial era and the violence which accompanied post-colonial redistribution programmes. In recent decades, there have been increasing disputes over communally owned land, which are rooted in this history, in complex land holding structures and in contemporary political dynamics. Transparency International Zimbabwe conducted research in a community at the heart of one such dispute in Insuza District. Those we spoke to were granted access to the land through a government resettlement scheme in 1983. As part of the scheme, some land was set aside for the future children of community members. Starting in 2020, land which had been set aside began being distributed to new users. The community was not given any official information but reported that the new settlers “simply told us that they were politically connected.” New settlers paid fees to those responsible for the resettlement process – so-called “land barons” who illegally allocated land and used political connections to avoid accountability. The new settlements are unregistered and unlawful, and those who occupy them do not pay monthly rates like other users, but the community feels unable to challenge the situation due to the political connections of those involved. There was a strong perception of corruption. According to respondents, a former village head was replaced after raising concerns and a new village head was installed, purportedly to facilitate illegal land parcelling. The situation has exacerbated patterns of discrimination. Notably, delays in processing allocation for the existing community, combined with the awarding of land to new residents, has frustrated youth who had expected land allocations. Conflicts are emerging within households, as young people feel let down by their elders in accessing land they believe is theirs by right.

6 THE DYNAMICS OF DISCRIMINATORY CORRUPTION: KEY FINDINGS

The testimonies received paint a compelling picture of the links between corruption and discrimination in the land sector, which can be seen to manifest in five overlapping, mutually reinforcing ways:

First, discrimination can result in greater exposure to corruption. The relatively weaker position of disadvantaged groups in society increases their exposure to corruption. This is particularly true where identities are stigmatised, stereotyped or criminalised. Excluded from justice mechanisms and denied effective redress and support, discrimination means that individuals may be required to pay to access rights that should be available under law. At the same time, discrimination incentivises corrupt behaviour among perpetrators looking to exploit the less powerful, while eroding the political, ethical and legal standards that work to constrain such behaviour. The perception that a person is unlikely or unable to challenge corruption when it occurs can embolden those who seek to do harm.

Second, certain acts of corruption are directly discriminatory. Some corrupt acts are directly discriminatory – that is, there is a direct causal link between the corrupt or practice and the differential, unfavourable treatment of a protected individual or community. Cases of collusive corruption between members of politically dominant ethnic groups in Kenya, for example, demonstrate how corruption can result in the discriminatory denial of access to land and other public goods. Similar patterns were observed in Zimbabwe, where there are cases of corruption in the allocation of land which are clearly linked to political affiliation, although here, the corruption in question has a more coercive form.

Third, the impacts of corruption are felt disproportionately by groups exposed to discrimination. The impacts of corruption are often felt differently by groups for reasons linked to their protected status, identity or beliefs. Numerous examples of this dynamic were observed in the compiling of this report. From religious minorities in South Africa, who face losing access to places of worship and sites of religious importance as a result of development projects, through to the youth of Zimbabwe, who sit on housing waitlists and risk losing a generational right of access to land due to corruption in rural land governance, the impacts of corruption are felt hardest by communities on the fringes – those that face exclusion and marginalisation in everyday life and have fewer avenues of support.

Fourth, both discrimination and corruption result in the denial of justice. The political and social marginalisation of groups exposed to discrimination can impede their ability to challenge corrupt practices and respond to rights violations. A perception of corruption within justice mechanisms and enforcement bodies may also act as a disincentive. In several countries, respondents expressed concern regarding the ability of individuals who experience land corruption to raise complaints due to the possibility of retaliation. The most serious allegations were raised in South Africa, where anti-corruption and land activists had reportedly been subject to violent reprisals on account of their work. In almost every country reviewed, other barriers to justice were also highlighted: the weak capacity of accountability mechanisms, fragmentation of legal frameworks and a lack of rights awareness were all said to raise barriers to justice, whilst creating space for corruption to occur.

Fifth, corruption impedes the effectiveness of measures designed to advance equality.

A new dynamic identified through the research for this report – which had not been identified during the development of the *Defying Exclusion* report – concerns the role of corruption in the development and implementation of initiatives aimed at promoting equality. The research shows how corruption can frustrate programmes aimed at redressing disadvantage for marginalised communities. Allegations of the abuse of land allocation schemes in Zambia to facilitate illegal logging epitomise the problem.

7 RECOMMENDATIONS

Addressing the harms of discriminatory corruption in the land sector necessitates comprehensive action, while also requiring policy responses which are tailored to context. To this end, we identify a set of core principles to guide future work. Recommendations are addressed at three groups of actors.

Recommendations for States

- **Recognise land rights and ensure effective tenure security.** States should review their policy frameworks to ensure that the legitimate tenure rights of all land users are respected and protected. Particular attention should be given to the individual and collective rights of Indigenous Peoples, persons living in rural areas, and other groups who enjoy a special relationship with land.
- **Promote improved land outcomes.** Land reform processes should recognise the unique challenges experienced by marginalised communities in exercising their land rights. Positive action measures, including land restitution and redistribution programmes, should be adopted.
- **Develop comprehensive anti-corruption and anti-discrimination frameworks.** Anti-corruption measures should be mainstreamed in all land governance laws, policies and regulations. States should adopt and implement comprehensive anti-discrimination legislation.
- **Integrate equality impact assessments at all stages of public decision making.** The duty to undertake equality impact assessments should be established in law and implemented in practice.
- **Respect free, prior and informed consent.** States should ensure that the free, prior and informed consent of communities is obtained before any decision is taken regarding their land.
- **Ensure effective participation in community land structures.** Communities should be empowered to define the rules that govern the collective use and management of their land.
- **Create an enabling environment.** States must ensure effective protection for those working to address discriminatory corruption and take into account the particular risks they face.
- **Ensure equal access to information and improve data-collection and monitoring.** States should facilitate access to information, particularly in the context of land acquisitions and investment, and should monitor the impact of their laws and policies.
- **Establish independent and effective accountability mechanisms.** Those who experience corruption and discrimination are entitled to remedy and redress. Effective independent accountability mechanisms should be established, with clear equality and anti-corruption mandates.

Recommendations for the International and Regional Community

- **Mainstream efforts to challenge discriminatory corruption.** We urge the United Nations to establish a dedicated special UN Human Rights Council mandate focused on discriminatory corruption
- **Foster collaboration, reciprocal training and sensitisation.** We urge intergovernmental bodies to increase collaboration, mutual understanding and shared knowledge between those working in the anti-corruption, anti-discrimination and land governance fields at the international level.

Recommendations for Civil Society

- **Establish effective cross-sectoral partnerships.** We urge civil society organisations working in the areas of anti-corruption, anti-discrimination and land governance to explore the potential for collaboration, both in documenting discriminatory corruption and advocating solutions to the problem.
- **Identify new pathways to justice.** Traditional approaches to addressing discrimination and corruption have been reactive – seeking to remedy a past wrong – rather than proactive and preventative. Research on enforcement regimes is needed to identify new pathways to justice.
- **Conduct collaborative research, identify tailored solutions and promote change.** Our research underscores the need for systematic research at the national level.



CHAPTER 1: INTRODUCTION

In a sunny coastal village, located in Kenya's Kilifi County, Faiza spent her childhood shaded by the palm and mango trees of her father's four-acre estate.¹ When her father passed away in the 1970s, Faiza's sibling took a loan from a neighbour, which remained unpaid at the time of his death in 1996. Faiza, alongside her late brother's widow, determined to settle the matter by paying the outstanding debt in a process overseen and mediated by the local village chief. However, the issue was not resolved. Shortly after the money was paid, people began to trespass on Faiza's land. It later transpired that the plot Faiza depended on for her livelihood had been fraudulently registered in the name of Katana Samba – the head of the family that provided the loan. Faiza was convinced that Mwari Katana, Samba's son, had colluded with the village chief to obtain the legal title.

Over the coming months and years, Faiza witnessed her land being parcelled up and sold off to developers for the construction of new housing. Unable to afford the costs of a protracted court battle, Faiza's six children were pulled out of school and forced to shelter in temporary accommodation erected at the edge of her uncle's estate. Landless, impoverished and denied the means to obtain a decent standard of living, Faiza and her family face a bleak existence, sustained only through the sale of palm wine that barely covers the basic cost of food. With her father and brother gone, so too is the beautiful land of Faiza's past. Her future, and that of her children, is uncertain. "This injustice has happened because we are women ... because we are widows," Faiza explained. "If my father and brothers were alive, things would have been different."²

Faiza's story is not unique. Across the globe, discrimination and corruption are conspiring to deny people access to the land and resources they rely upon for their survival. Since 2014, Transparency International has worked to monitor land corruption and document its impacts on marginalised communities. From the women of rural Sierra Leone forced to pay bribes to avoid eviction from their homes to the Indigenous Xinka people of Guatemala who risk losing their lands to mining companies granted licences by corrupt officials, disadvantaged groups face unique challenges accessing and exercising their rights over land as a result of corrupt and discriminatory practices.³ To date, however, the relationship between these phenomena has been underexplored.

In 2021, Transparency International and the Equal Rights Trust published *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*.⁴ Based on a selection of case studies covering a wide variety of contexts, countries and personal characteristics, the report uncovered evidence of a vicious cycle in which discrimination reduces the constraints on corrupt behaviour, and corrupt practices in turn reinforce existing patterns of disadvantage. *Defying Exclusion* marked the first attempt to systematically explore the phenomena we termed "discriminatory corruption". However, it also recognised the need for further research in this area and initiated a call to action. In this report, we take up that call. For the first time, this ground-breaking publication examines the dynamics of land, corruption and discrimination in Sub-Saharan Africa. In a continent scarred by the legacies of conflict and colonisation, discrimination and corruption in this region cast wide shadows, and their impacts are especially pronounced.

1 STRUCTURE OF THIS REPORT

This report is the result of an ongoing collaboration between Transparency International and the Equal Rights Trust. It forms part of Transparency International's Land and Corruption in Sub-Saharan Africa initiative and builds upon a number of recent publications in this area.⁵ Led by the International Secretariat in Berlin, the programme brings together national partner chapters (Transparency International chapters) from across the continent, including Cameroon, Ghana, Kenya, Madagascar, South Africa, Uganda, Zambia and Zimbabwe, to chart and document the links between corruption and discrimination and to identify factors that may drive or exacerbate these harms in the context of land governance. The report is divided into seven chapters, which may be grouped into three overarching areas of analysis.

In the initial sections of the report, we set the scene, providing an insight into the research process, an overview of core themes and definitions, and a review of current international law standards relating to land. The analysis included in these chapters is applied across the subsequent sections and used to evaluate practice at the national level. **Chapter 1** sets out the report structure, its methodology, scope and limitations. **Chapter 2** provides an introduction to land, corruption and discrimination concepts. These topics are highly complex, often contested, and use specialised terminology that may deviate from day-to-day usage. In this chapter, we establish our understanding of key terms, clarify common misconceptions and explore the different ways in which each area relates to one another. **Chapter 3** of the report situates land governance within the broader human rights law framework. Despite some inauspicious beginnings, this framework has developed considerably in recent decades.

Today, States' obligations to respect, protect and fulfil land rights are better articulated and more widely understood than at any previous point in history.

In the mid-sections of this report, we explore the mechanics of land corruption and discrimination in greater detail. As explained in **Chapter 4**, both corruption and discrimination undermine rights protections and can have potentially devastating impacts on affected communities. Building upon the main findings of reports issued by human rights mechanisms and civil society organisations since 2010, in this chapter, we seek to improve understanding of the ways in which discrimination and corruption operate to impede equal land outcomes. In **Chapter 5**, we apply these learnings in the national context. This chapter presents the bulk of the testimony gathered during the data collection phase. For each of the seven countries under review, we begin by providing a brief historic analysis and summary of the governing land framework. Combining desk-based research with key stakeholder interviews, this section aims to paint a broad picture of discrimination and corruption within a State. Each country section includes a case study prepared by a national partner chapter that explores the intersections of corruption and discrimination as they relate to members of a particular community or area of practice.

Chapter 6 presents the report's main findings. In this section, we return to the concept of discriminatory corruption, consolidating the analysis of the previous chapters to explain how discrimination and corruption combine to prevent fair land outcomes. Having charted these interactions, the report examines the wider implications of the analysis for land governance. The diversity of land systems and experiences of disadvantage means that all policy solutions must be tailored to local needs and contexts.

To this end, in **Chapter 7**, we identify a set of core principles to guide future action. Recommendations are made at three levels: to States, to the international and regional community, and to civil society. Collaboration between these different stakeholder groups will be essential if the harms of discriminatory corruption are to be addressed.

This report is designed to be read holistically, with each new section building upon the last, growing the analysis, layer upon layer. However, some chapters will be more relevant to some readers than others. Those who are new to the topics of land, corruption and discrimination, should begin by reviewing Chapter 2, which details some of the complexities and nuances in each of these areas. Readers who are interested in learning more about the current international law framework on land should review Chapter 3. Those who wish to gain a high-level understanding of the ways in which corruption and discrimination may impact a person's land-related outcomes should review Chapters 4 and 6 respectively. Readers who wish to gain an appreciation of experiences of land corruption and discrimination within a particular country should review Chapter 5. Those who wish to learn more about the concept of discriminatory corruption should review Chapters 2 and 6. Finally, readers who are interested in the implications of the analysis for land governance should review Chapters 6 and 7. At different points in the report, textboxes are used to explore discrete topics and themes that will be of broad relevance to land, anti-corruption and equality activists.

2 METHODOLOGY

The research for this report was undertaken in three overlapping phases of work. In the **first phase**, the Equal Rights Trust conducted a desk-based review of existing literature on land, corruption and discrimination, with a focus on reports issued by United Nations (UN) human rights treaty bodies and special procedure mandate holders since 2010.⁶ The results of this assessment were mixed. While references to land and discrimination appear regularly within these documents, land corruption is rarely discussed, and the links between discrimination and corruption have not been systematically explored at the international level. As a result, the decision was taken to widen the scope of the review to include additional publications issued by specialised UN agencies and civil society organisations. The principal findings of the literature review are presented in Chapter 4.

In the **second phase**, each Transparency International chapter undertook a series of semi-structured interviews with stakeholders at the national level. The interviews were designed to generate a broad profile of land corruption and discrimination and assist in the identification of country-specific case studies, allowing for a deeper level of analysis. Proposed case studies were suggested by chapters and agreed in consultation with the Transparency International Secretariat and Equal Rights Trust in view of the need to ensure coverage of a representative range of protected characteristics and thematic areas of focus. Once agreed, chapters conducted field visits and consulted with members of directly affected communities. The key findings of this consultation phase are set out in Chapter 5.

Based on the evidence collected during the research and consultation stage, in the **third phase**, a first draft of the present report was compiled.

The report was subsequently validated by in-house and external reviewers who provided written comments and overarching feedback on the draft. Based on the responses received, a second draft of the report was produced and shared for further consultation. The report's final conclusions and recommendations were informed by the outcomes of a meeting of national partner chapters held in Johannesburg in August 2023.

An **equality-by-design** approach was taken to the research methodology, ensuring that the programme was equality-focused in its aims and equality-sensitive in its delivery. Prior to the key informant interviews and community-level consultations, each Transparency International chapter undertook a mapping exercise aimed at identifying individuals with a relevant stake in the project and ensuring that the means of engagement were accessible, appropriate, sensitive and safe. In some cases, adaptations to the project design were required to overcome identified barriers to participation. For instance, to overcome linguistic barriers, some interviews were conducted in a language other than English and subsequently translated. To overcome regional disparities in access to internet services, some interviews were conducted in person and a summary of the findings was prepared in lieu of a full written transcript. To ensure the safety of participants, some interviewees have been anonymised. Further information on these adaptations are reflected in the scope and limitations section below.

3 SCOPE AND LIMITATIONS

Documenting discrimination and corruption is challenging. Both practices are typically underreported and difficult to prove as the evidence of their existence often lies in the hands of the party responsible for the harm.

In some cases, as demonstrated in the latter sections of this report, individuals may be pressured into paying bribes to access land services and rights that they are entitled to under the law. As such practices are prohibited, victims may be reluctant to go on the record about their experiences. Similarly, high levels of stigma or social disapprobation (particularly in cases involving "sextortion") can mean that some individuals are hesitant about sharing information or disclosing relevant facts.⁷ Grand corruption is particularly difficult to document on account of the secretive nature of dealings, which may be plausibly denied by those in positions of authority.

For these reasons, this report does not claim to provide a complete account of the relationship between land corruption and discrimination. More modestly, we seek to identify situations in which a risk of discrimination or corruption occurring is especially pronounced, combining secondary data with first hand testimony drawn from different jurisdictions. To the largest extent possible, we have sought to present the opinions of national actors in their own voice, whilst drawing together the different threads to paint a broad picture of discriminatory corruption within a State. Where we rely upon a summary of a conversation, or where an interview was conducted in a language other than English, this is reflected in the accompanying citation. Because of the sensitivity of this area, some contributors requested not to be named. We have respected these individuals' wishes by anonymising their contributions.⁸

This research is the outcome of an exploratory process and marks the first attempt to systematically examine the intersections of land corruption and discrimination. The research methodology, which relies heavily on the testimonies of national stakeholders, reflects this approach.

While we have sought to ensure the active involvement of a wide range of stakeholder groups – including academics, traditional authorities, lawyers, government representatives, land administrators and organisations working with and on behalf of groups exposed to discrimination – the report cannot, and is not intended to be, taken as representative or comprehensive. Further research is needed to corroborate the evidence gathered at the national level and to identify tailored solutions. Moreover, the report’s limited geographic scope means that some of the findings may be less applicable to other global regions.

As the findings indicate, the presence of corruption and discrimination means that many disadvantaged groups lack a voice and are prevented from participating in society on an equal basis with others. Some groups are particularly marginalised or stigmatised on account of their personal characteristics, such as their age, religion, disability status or health status. This is mirrored by a lack of scholarly attention paid to their situation. To the best of our ability, we have tried to highlight the experiences of these different groups to shed light on their circumstances and stimulate future action. However, the nature of the research means that in some countries and contexts, there may be greater or lesser degrees of discussion. A clear evidence gap was identified in relation to Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex (LGBTQI)+ persons. Further work is needed to understand the land-related experiences of members of this community, particularly in Africa, where many States maintain laws criminalising same-sex sexual conduct and individuals are actively prevented from living in conformity with their true gender identity or chosen modes of gender expression.

Prevailing land-use patterns in Sub-Saharan Africa mean that many of the testimonies received are skewed towards rural and

agricultural communities. A lack or loss of access to land for members of this group has clear implications for their socio-economic development and ability to maintain an adequate standard of living.⁹ While place of residence and socio-economic disadvantage are recognised as distinct grounds of discrimination under international law, in this report we treat each as an intersectional or cross-cutting theme.¹⁰ In doing so, we aim to generate more concrete data on the links between corruption and discrimination and to give voice to rural minorities whose experiences of disadvantage differ from those of the majority population and would otherwise be obscured. Grounds of discrimination often overlap, and as a result, the situation of some groups may be combined under a single heading or be disaggregated across categories.

Acknowledging these unavoidable limitations, the authors of this report find that the research provides an unparalleled and unique insight into experiences of land corruption and discrimination that have previously gone unacknowledged. The testimonies reveal a harrowing situation in which the land rights of marginalised communities are habitually undermined. What is more, the report demonstrates the remarkable interconnectedness of these phenomena. While corruption and discrimination are often presented as parallel (albeit equally important) development concerns, the research shows that they are unavoidably and inexorably interconnected. This finding has important ramifications for all those working in the land governance, anti-corruption and anti-discrimination space. As the voices presented in the following pages attest, discriminatory corruption is a cyclical process. Each harm perpetuates and is nourished by the other. Recognising these intersections is essential to effective action.



CHAPTER 2: DEFINITIONS AND TERMINOLOGY

Land, corruption and discrimination are complex topics that draw upon different strands of legal, political and economic theory. The language of land is itself contested, and the definitions used are a frequent source of disagreement.¹¹ Words given their ordinary usage may be infused with a discrete meaning, reflective of a broader worldview or philosophical position. For a person located in Europe, where private land ownership is common, the notion of customary tenure may appear novel. However, in many parts of Africa, customary tenure is the norm, coexisting

with other tenure systems in a delicate “state of legal pluralism”.¹² Across Africa, there is extraordinary diversity in the ways in which land is framed and understood. *Mailo* tenure, which is unique to Uganda, is just one example of a system that has developed in intimate connection with a country’s history and colonial heritage. Discrimination and corruption are each highly complex areas of legal practice with their own contestations and definitional challenges. In this chapter, we set out our understanding of key terms, examine areas of overlap and address common misconceptions.¹³

1 WHAT IS LAND TENURE?

Land tenure has been described as the “relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.”¹⁴ The interests that a person has in land can be understood as a form of “property” – what is often referred to as “property rights to land”.¹⁵ Historically, property was thought of as a thing – something tangible that could be touched, used, experienced, and in some cases, bartered or sold. However, this description does not explain how people can have different interests in the same land, or how disputes and disagreements can be resolved.¹⁶ Over time, a new metaphor emerged, which views property from the perspective of a “bundle of rights”.¹⁷

The different assortment of interests that a person has in land can be thought of as “sticks in the bundle”.¹⁸ So, for example, one person may have a right of access to land, allowing them to take their cattle across a field. Another might have withdrawal rights, allowing them to use the products of the land such as harvesting sorghum and selling it at market; whilst a third may possess management rights, allowing them to make decisions on land use, such as the decision to construct a barn.¹⁹ A multitude of overlapping interests and claims in the same land can exist simultaneously.²⁰ For ease, in this report, we synthesise these various prerogatives by referring to a person’s “access to, use of, and control over land”, or – in even simpler terms – to “land rights”.²¹

A distinction is sometimes made between formal rights, which are legally protected by the State, and informal rights, which lack official recognition.²² In some cases, authors also differentiate statutory rights, based on

legislation or judicial decisions, and customary rights, based on traditional and communal practice.²³ These distinctions can be confusing. Whilst customary land is often associated with informality, increasingly, States are legislating to recognise customary tenure, which is viewed as highly legitimate in local contexts.²⁴ Whilst the land and housing situation of people living in “informal settlements” may not be officially acknowledged, the rules in place that determine access are often clearly defined, possessing a degree of formality.²⁵ Formal and informal rights can overlap, and statutory and customary tenure systems often interface. This is particularly true in peri-urban areas, where internal migration and population growth have pushed cities to expand beyond their historic boundaries.

For some of these reasons, UN-Habitat and others have suggested thinking about land rights as part of a continuum.²⁶ The continuum metaphor recognises that rules of tenure “fundamentally shape – and are shaped by – the relations between people and the natural world, as well as relations among people.”²⁷ While legislation or court decisions operate as “one source” of norms, property rights to land also emerge organically as a result of “social relationships and memberships, which in turn will define the content of the right or claim and then underwrite the exercise of that right.”²⁸ In this perspective, property rights to land are essentially human-centred.²⁹ They may be “legitimated through different sources of norms” varying from the “formal/legal” to the “informal/illegal”.³⁰

At the national level, different processes have emerged through which land may be administered. A wide range of actors are involved in these processes including public and customary authorities.³¹ Land is often divided into different categories, being described as public, private, customary or collective in nature. However, these terms are not used consistently across States, and in practice, different tenure systems may operate within these classifications. In Kenya, for instance, “community land” is defined to incorporate customary, freehold and leasehold tenure.³²

Closely linked to land tenure is the concept of “tenure security” which has been defined by the Food and Agriculture Organisation of the United Nations as “the certainty that a person’s rights to land will be recognised by others and protected in cases of specific challenges.”³³ In recent years, efforts to formalise land rights and consolidate land systems have been undertaken in many countries. Development approaches have focused on the roll out and implementation of land-titling programmes. The success of these programmes has been the subject of vigorous debate. Private titling is intended to promote tenure security by clarifying individual property rights to land, ensuring that users’ rights are recognised and protected against competing claims.³⁴ In turn, the land can be used as collateral to gain access to credit; a pre-condition for investment.³⁵ However, tenure security is both contextual and cumulative, drawing upon a wide range of sources.³⁶ Whilst titling may be appropriate in some contexts, the resultant “commodification of property rights” can also promote tenure insecurity, whilst registration processes are prone to manipulation and abuse.³⁷

2 WHAT IS CORRUPTION?

Corruption is defined by Transparency International as “the abuse of entrusted power for private gain.”³⁸ Here, “abuse” refers to misuse or mistreatment, “entrusted power” refers to the authority granted to duty-bearers and decision-makers on the premise that they act with integrity to advance the public good, and “private gain” refers to the self-serving benefits (financial, material, political or social) that accrue to individuals or specific interest groups at the expense of society at large.

Corruption can manifest in different ways and is often described as being “grand” or “petty” in nature.³⁹ Grand corruption, as it is used in this report, refers to “acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders – political office holders or well-connected individuals – to benefit at the expense of the public purse and the greater good.”⁴⁰ Political corruption is a type of grand corruption that involves the “manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth.”⁴¹ Petty corruption involves “everyday abuse[s] of entrusted power by low and mid-level public officials in their interactions with ordinary citizens, often as they attempt to access basic goods or services.”⁴² Within the literature, petty corruption occurring within land governance is sometimes referred to as “administrative” or “bureaucratic” corruption.⁴³

Corruption may involve both collusive and coercive practices. According to the World Bank, a collusive practice is “an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.”⁴⁴ When it comes to corruption, collusive practices typically involve coordination between “insiders” and their clients to obtain an undue advantage or to avoid an obligation. Examples include bid rigging during procurement processes, in which a favoured firm wins the tender in return for paying kickbacks to the procuring entity, or backroom deals between firms and legislators or regulators to secure “sweetheart deals”. While collusive corruption can doubtless be profitable for those party to the arrangement, it invariably entails a wider negative cost to others. As the phenomenon of corrupt land-grabbing in regions inhabited by Indigenous Peoples clearly demonstrates, marginalised groups are less likely to be the beneficiaries of collusive corruption and more likely to bear the cost.

A coercive practice is defined as “impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.”⁴⁵ Corruption is often coercive in nature, whereby corrupt actors leverage power asymmetries through the use of implicit or explicit threats and intimidation to extort goods, money, services or even sexual acts

from their selected victims in return for access to entitlements such as health care, education or identification papers. The literature indicates that marginalised groups suffer from an above-average chance of being the victims of coercive corruption, in which corrupt actors intentionally target them for exploitation.⁴⁶ Growing attention to the phenomenon of “sextortion” – the abuse of power to obtain sex – shows how pernicious this can be, with enormous hidden costs for individuals and communities subject to these practices.

Corruption encompasses a range of discrete acts and practices and can occur through different mechanisms, such as bribery, patronage and cronyism.⁴⁷ The United Nations Convention against Corruption (UNCAC), which has been ratified by a majority of States worldwide, does not define corruption as such, but rather lists and defines a series of offences that should be criminalised in every jurisdiction covered by the Convention. These include the bribery of national and foreign public officials and in the private sector, embezzlement, money laundering, concealment and obstruction of justice.⁴⁸ As the world’s only binding anti-corruption instrument, the Convention captures States’ commitment to addressing corrupt practices and represents a global response to a truly global problem.

3 WHAT IS DISCRIMINATION?

International law guarantees to all persons the right to freedom from discrimination. Almost every State in the world – including each of the seven countries examined as part of this report – has accepted obligations to eliminate discrimination and advance equality by ratifying human rights treaties.⁴⁹ In 2023, the UN Human Rights Office published *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*. The Guide synthesises international law standards in this area and “provides clear and complete guidance for States on the laws which are required to meet their obligations to respect, protect and fulfil the rights to equality and non-discrimination and to deliver their ambitions to leave no one behind.”⁵⁰

Discrimination is prohibited on the basis of certain “grounds” linked to a person’s identity, status or beliefs. Discrimination can occur based on a single ground (such as a person’s sexual orientation, gender, race, or ethnicity) or at the intersection of different grounds. This is known as multiple or intersectional discrimination.⁵¹ Under international law, a person does not need to prove that they possess a particular characteristic to benefit from protection against discrimination. In some cases, discrimination occurs due to a perception (whether real or mistaken) that a person belongs to a protected group, or due to their association with a person who does.⁵² Whilst the earliest human rights treaties enumerated a relatively small number of grounds, this list is not fixed, and a wide range of additional statuses have been recognised as protected forms of “other status”:



*Discrimination is prohibited on the basis of age; birth; civil, family or carer status; colour; descent, including caste; disability; economic status; ethnicity; gender expression; gender identity; genetic or other predisposition towards illness; health status; indigenous origin; language; marital status; maternity or paternity status; migrant status; minority status; national origin; nationality; place of residence; political or other opinion, including human rights defender status, trade union membership or political affiliation; pregnancy; property; race; refugee or asylum status; religion or belief; sex and gender; sex characteristics; sexual orientation; social origin; social situation; or any other status.*⁵³

Some people are treated differently to others for reasons relating to their protected status. This is known as direct discrimination. However, anti-discrimination law requires more than facially equal treatment. In fact, treating everybody the same, without regard to their personal circumstances, can be a source of inequality. A policy that prohibits animals from government premises, for instance, could have the effect of disadvantaging persons with visual impairments who require a guide dog to safely move around a building. This is an example of indirect discrimination. To overcome barriers to participation, adjustments to policies or practices may be required. These are known as reasonable accommodations. A failure to make such an accommodation (for instance, by introducing an exception to the above policy that relates to guide dogs), is discriminatory.

Additional forms of discrimination have been recognised under international law. Consolidating practice in this area, the UN Human Rights Office has defined these prohibited conducts as follows:

Direct discrimination occurs when a person is treated less favourably than another person is, has been or would be treated in a comparable situation on the basis of one or more protected grounds; or when a person is subjected to a detriment on the basis of one or more grounds of discrimination.

Indirect discrimination occurs when a provision, criterion or practice has or would have a disproportionate negative impact on persons having a status or a characteristic associated with one or more grounds of discrimination.

Ground-based harassment occurs when unwanted conduct related to any ground of discrimination takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Reasonable accommodation means necessary and appropriate modifications or adjustments or support, not imposing a disproportionate or undue burden, to ensure the enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms and equal participation in any area of life regulated by law. Denial of reasonable accommodation is a form of discrimination.

Segregation occurs when persons sharing a particular ground are, without their full, free and informed consent, separated and provided different access to institutions, goods, services, rights or the physical environment.

The right to non-discrimination applies in all areas of life regulated by public authorities.⁵⁴ This includes the provision of goods and services and would encompass all aspects of public land administration.⁵⁵ While the State is the primary duty-bearer under international law, it is responsible for protecting individuals against discrimination by regulating the conduct of private actors, including businesses and corporate entities.⁵⁶ Increasingly, it is also recognised that States possess extraterritorial obligations to respect, protect and fulfil human rights beyond their national borders.⁵⁷

In some cases, there may be authentic reasons to enact laws, policies or practices that affect some groups more than others. International law establishes a clear justification test to determine whether or not an act of discrimination has occurred. First, measures must pursue a legitimate aim. This could include, for example, the requirement that a doctor obtains medical certification, which is necessary to protect public safety. Second, the means of achieving that aim must be appropriate. Measures that are based on discriminatory stereotypes or generalisations will fail this limb of the test. Third, measures must be necessary, meaning that other less restrictive means could not achieve the same objective. Finally, measures must be proportionate, meaning that the harm does not outweigh the potential benefit.⁵⁸ Direct discrimination can be justified very rarely.⁵⁹

In addition to refraining from discrimination, States are required to adopt positive action measures designed to advance equality and overcome historic patterns of disadvantage.⁶⁰ A wide variety of measures have been implemented pursuant to States' international law obligations, ranging from the awarding of scholarships and bursaries to the introduction of preferential quota systems.⁶¹ Because positive action involves treating groups differently, specific rules have been established to ensure that measures do not result in discrimination.⁶² Such measures will be always be illegitimate when they result in segregation, or the perpetuation of stigma and stereotypes.⁶³

4 THE LINKS BETWEEN LAND, CORRUPTION AND DISCRIMINATION

Corruption and discrimination are complex topics and the terms are sometimes used interchangeably. Both corruption and discrimination can result in groups being treated differently. Both are social harms that undermine good governance, sustainable development and the effective enjoyment of human rights. Both require dedicated legal and policy responses. However, the two are not the same. As described above, discrimination and corruption have acquired discrete meanings under international law. Anti-corruption frameworks are perpetrator-focused. They aim to prevent the abuse of power by those entrusted to wield it. Anti-discrimination law, by contrast, is victim-oriented. It centres on protection against harms linked to a protected characteristic. These distinctions are important and a failure to understand them can lead to the misapplication of terms. Not all corrupt

acts perpetrated by government officials, for instance, will involve discrimination on the basis of political opinion.⁶⁴ Yet for all their differences, corruption and discrimination share a number of commonalities, and in some cases the phenomena are inseparably interlinked.

At its broadest level, corruption results in the misallocation of resources, therefore depriving governments of funds that are needed for the delivery of important public services.⁶⁵ As some groups are more likely to rely upon these services than others, many instances of corruption can be said to have discriminatory impacts.⁶⁶ This is an important finding. But it is also unsatisfactory. If discrimination is treated as the inevitable consequence of corrupt practices, its value as an analytical tool is diminished. Each concept risks collapsing into one another. For the harms of discrimination and corruption to be addressed, a deeper understanding of their relationship is needed.

In 2021, Transparency International and the Equal Rights Trust published *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*.⁶⁷ The study demonstrates the myriad of ways in which corruption and discrimination combine to deny human rights and perpetuate experiences of disadvantage. While not all acts of corruption are discriminatory and not all acts of discrimination are corrupt, discrimination can act as a causing, enabling or exacerbating factor in all phases of a corrupt interaction. *Defying Exclusion* marked the first attempt to systematically categorise the linkages between corruption and discrimination. In the following sections of this report, we test our original hypothesis and refine the research methodology based on a review of practice in seven African countries. The research finds that

the two phenomena are mutually reinforcing in at least one of the following ways.

Discrimination can result in greater exposure to corruption. Discrimination reduces the constraints on corrupt behaviour, increasing the risk that marginalised groups fall prey to corrupt practices. Structural inequalities mean that many of those affected lack the necessary voice, resources and capacity to respond.⁶⁸ Corruption and discrimination are causally linked.⁶⁹ Some acts of corruption are directly discriminatory: individuals may be targeted by corrupt actors or denied access to rights, goods and services on account of their status, identity or beliefs.⁷⁰ Even where a corrupt act does not purport to confer or deny benefits to members of a particular community, the impacts of

corruption are felt disproportionately by groups exposed to discrimination. Both discrimination and corruption result in the denial of justice, operating to prevent individuals from claiming their rights and challenging rights violations. Corruption can also impede the effectiveness of measures designed to advance equality. In this way, corruption prevents States from addressing the structural conditions that embolden corrupt actors and allow them to operate with impunity. These dynamics are constantly at play, exerting pressure at different stages of the corruption lifecycle. Discriminatory corruption is as a dynamic process that entrenches and perpetuates disadvantage.

Discrimination, Marginalisation and Land Inequality

Human beings are diverse. Our unique combinations of identities, beliefs and statuses are something to be recognised and celebrated.⁷¹ This understanding of equality lies at the heart of the human rights-based approach, which underpins all contemporary human rights instruments.⁷² Substantive equality, as it is understood at international law, has four central tenets.⁷³ First, it requires redress for disadvantage.⁷⁴ Eliminating discrimination, addressing socio-economic disparities and advancing the rights of historically disadvantaged groups through targeted equality measures are each required to promote equality in practice.⁷⁵ Second, it requires the accommodation of difference. Equality is not the same as uniformity and equality law does not seek to level behaviour or assimilate individual or group identities.⁷⁶ Instead, it aims to redress the disadvantage that attaches to difference.⁷⁷ This requires, inter alia, adjustments to existing rules, policies, practices and structures, and the identification and elimination of accessibility barriers.⁷⁸ Third, equality requires recognition. Non-recognition or misrecognition, through stereotypes, stigma and prejudice, perpetuate discrimination and foster exclusion.⁷⁹ Finally, substantive equality requires the full and effective participation of marginalised communities in society.⁸⁰

Marginalisation and discrimination are a direct cause and consequence of inequality, although the concepts are mutually distinct.⁸¹ Throughout this report, we refer to both “marginalised” and “disadvantaged” groups. In doing so, we seek to draw attention to those structural determinants that result in communities being pushed to the fringes of society as well as the specific expressions of inequality these communities face for reasons linked to their protected characteristics.⁸² The discussion of “land inequality” in this report relates principally to disparities of access to, use of and control over land.⁸³ However, land inequalities also have broader dimensions and may encompass additional factors such as the non-recognition of communities’ legitimate tenure rights, exclusion from decision-making on land, tenure insecurity arising as a result of discrimination or violence, and the failure to recognise every person’s equal dignity and inherent capabilities.

In the final sections of this report, we explore the dynamics of discriminatory corruption situated within the context of land governance. A common thread runs through the analysis: the role of power.⁸⁴ Most established definitions of corruption explicitly refer to the misuse of entrusted power. Uneven power dynamics are also central to many experiences of discrimination. Racism, for example, is typically based on hierarchical power relationships between racial and ethnic groups. In agrarian societies, how privilege and status is maintained is closely linked to the governance of land and natural resources. A loss or denial of access to land is a source of disempowerment, depriving individuals of their homes, livelihoods and

ability to maintain an adequate standard of living.⁸⁵ Conversely, in rural economies, the accumulation of land is a means to acquiring political capital.⁸⁶ Power relations and social hierarchies are not static. They are layered and intersectional.⁸⁷ Groups privileged in one context may be disadvantaged in another.⁸⁸ However, the preceding analysis implies a need to foreground ingrained power asymmetries to understand the nuanced and complex interactions between land, corruption and discrimination. As outlined in the following sections of this report, marginalisation and a lack of representation reproduce inequalities that facilitate corrupt practices.



CHAPTER 3: LAND AND INTERNATIONAL LAW

Land is central to the realisation of human rights. Clean water, nutritious food, biodiversity, housing, work, physical and mental health, and a clean, healthy, and sustainable environment, alongside a myriad of other rights, all depend on land.⁸⁹ Land occupies an important position in national economies and provides the location for social, cultural and spiritual practice and the development of individual and community identities.⁹⁰ The borders within which land rights are exercised or contested are inseparable from the land itself, long marked by legacies of conflict, struggle and colonisation. International law emerged largely in response to these dynamics, although its role has been decidedly ambiguous, serving to entrench land inequalities on the one hand whilst also providing a potential means to address them.⁹¹

1 INAUSPICIOUS BEGINNINGS

Modern understandings of land and property owe much to the writings of natural law theorists, whose works were later cited in support of colonial expansion.⁹² According to John Locke's theory of labour, "only the land used or cultivated should be recognised as property."⁹³ Lands that were not exploited to their full economic potential, and which did not fall under the dominion of a political sovereign, could not properly be understood to establish property rights. They were, therefore, considered "vacant" and free for appropriation by colonising nations.⁹⁴ In later years, these theoretical foundations were given force through the emergence of the international law doctrines of discovery and *terra nullius*.⁹⁵



Contemporary human rights law rejects these doctrines on account of their racially discriminatory impacts and limitations on the right to self-determination.⁹⁶ However, they continue to be asserted in some parts of the world, and their effects are still being felt today.⁹⁷

By the early twentieth century, the express justifications for colonial rule had begun to shift. Rather than claiming vacant land, it was deemed the responsibility of Western States to support the peoples of “less advanced” nations and steward them towards stronger development outcomes.⁹⁸ The Covenant of the League of Nations – an intergovernmental organisation formed in the aftermath of the First World War – makes this role explicit. Article 22 establishes the duty of Member States to bring the peoples of occupied territories under their tutelage and ensure their collective wellbeing.⁹⁹ In practice, wellbeing was cast in narrow economic terms, and throughout the colonial period, the labour, lands and natural resources of colonised territories were systematically exploited in a system that purported to benefit both the occupiers and the occupied.¹⁰⁰ International law served an undesirable function, working to legitimise the “colonial project” and its corresponding impacts on affected communities.¹⁰¹

2 DEVELOPMENTS IN INTERNATIONAL LAW

The year 1945 marked something of a turning point. In October, the Charter of the United Nations came into force, proclaiming its faith in fundamental human rights, human dignity and the equality of all persons.¹⁰² Three years later, this statement of principle was given practical form when the Universal Declaration of Human Rights was adopted by the UN General Assembly in Paris. Set out over 30 Articles, the Declaration is considered a landmark in human

rights protection, and many of its provisions have come to be recognised as forming part of customary international law.¹⁰³ However, its immediate impacts were muted. There is no reference to land in the document, and allusions to the status of colonial territories are apparent at different points of the text.¹⁰⁴ Importantly, as a non-binding instrument, the Declaration did not impose direct obligations on States. However, work soon commenced to bridge this gap.

A Commission on Human Rights – chaired by Eleanor Roosevelt – was given the task of drafting a new “international covenant on human rights”. In the early discussions that took place, land was clearly in the mind of policymakers, who deliberated at length on the inclusion of a property rights clause and the appropriate conditions for expropriation.¹⁰⁵ However, political disagreements, reflecting wider geopolitical tensions, resulted in an impasse. The text was eventually divided into two separate instruments – what would become the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹⁰⁶ Bar an opaque reference in their non-discrimination provisions, neither of these documents directly refer to land or property.¹⁰⁷

Nonetheless, progress was being made, and by the time these instruments were opened for adoption in the mid-1960s, independence movements were taking hold across the globe. The change of mood is reflected in common Article 1 of the Covenants, which recognises the right of all peoples to self-determination, including the free disposal of their natural wealth and resources. States are required to take measures to promote the realisation of this right, which should be provided on an equal and non-discriminatory basis.¹⁰⁸

The Universal Declaration served as inspiration for the treaties that followed it. Several of the core UN human rights conventions do contain property rights provisions,¹⁰⁹ which have been elaborated in reference to the land rights of Indigenous Peoples, rural communities and other disadvantaged groups.¹¹⁰ In their work, both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have engaged with these themes, with the latter issuing important guidance on protections against forced evictions.¹¹¹ These standards have been endorsed at the regional level and continue to inform contemporary practice.¹¹²

In recent years, the international human rights law framework on land has developed considerably. In 2012, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) were adopted by the Committee on World Food Security. The Guidelines were the product of a collaborative process that involved a diverse range of stakeholders and have been noted for their perceived legitimacy.¹¹³ Through their voluntary commitments, States undertake to “recognize and respect all legitimate tenure right holders and their rights,” including those exercised according to customary arrangements, and to protect the collective use and management of common-pool resources.¹¹⁴ The Guidelines reinforce the centrality of non-discrimination and anti-corruption measures to healthy land systems.¹¹⁵ References to these concepts are made throughout the document, addressed to both State and non-State actors.¹¹⁶ Other sections reflect common concerns, noting, for example, the need to mainstream the rights of marginalised communities in land and resource governance and ensure their effective participation in decision-making processes.¹¹⁷

A range of additional soft law documents have since been adopted that address different aspects of land governance and human rights protection.¹¹⁸ States have also sought to recognise the special relationship that certain communities enjoy with their land and natural resources. Particularly important in this regard is the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007; and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), adopted by the Human Rights Council in 2018.

Important developments have also taken place at the regional level. In 2010, the “Framework and Guidelines on Land Policy in Africa” was published as a joint initiative of the African Union Commission, the UN Economic Commission for Africa and the African Development Bank. Around the same time, the African Commission on Human and Peoples’ Rights adopted a set of Principles and Guidelines on the implementation of economic, social and cultural rights under the African Charter.¹¹⁹ Flowing from their Article 14 obligations, the Guidelines call on States to “ensure security of tenure to rural communities and their members”, while recognising as protected “rights guaranteed by traditional custom and law to access to, and use of, land and other natural resources held under communal ownership.”¹²⁰ The African Commission and Court on Human and Peoples’ Rights have both issued important decisions pertaining to the land rights of Indigenous communities and other groups that enjoy a special relationship with land.¹²¹

The Human Right to Land: An Equality-Based Approach

Land is often positioned as an entry-point to the enjoyment of other human rights.¹²² Without land, food cannot be produced, farmers would lose their livelihoods, and there would be no place for housing, hospitals or schools. All human rights are considered interdependent and indivisible under international law. However, this asymmetric framing generates specific protection challenges.

In many parts of the world, human rights arguments have been deployed to support decisions on land that separate individuals from their culture and livelihoods. Indigenous Peoples, for example, have found themselves evicted from their ancestral homelands to protect forested areas.¹²³ Rural communities have been displaced to make way for development projects aimed at promoting employment and growing the national economy.¹²⁴ In some contexts, the right to food has been claimed to justify the removal of “unproductive” land users from their plots.¹²⁵ The impacts of these decisions are borne disproportionately by the most marginalised in society. Persons with disabilities have found themselves removed from their land due to stereotypes concerning their physical capacity.¹²⁶ Women, displaced from their homes, have been forced to travel long distances to find water for their family, reinforcing patterns of structural gender discrimination.¹²⁷ Meanwhile, religious and belief minorities have lost access to their family burial grounds and places of worship.¹²⁸

For these and related reasons, commentators have called for the recognition of an independent human right to land.¹²⁹ Some positive progress has been made at the international level. Both the UNDRIP and UNDROP, discussed above, recognise a right to land for members of their titular groups and call for the adoption of implementing measures to ensure that the right is fulfilled.¹³⁰ It is now well established that Indigenous Peoples possess a right to their traditionally occupied territories and natural resources.¹³¹ Recently, the Committee on Economic, Social and Cultural Rights also noted the existence of an “implied” right to land for peasants and other people in rural areas whose wellbeing is intrinsically linked to the land they work.¹³² Nonetheless, recognition gaps remain, and without a proper analytical framework, human rights abuses are bound to occur.

An equality-based approach can help to bridge the gap by drawing attention to the impacts of land rights violations on individuals and groups. Under international law, the right to non-discrimination is freestanding: it applies in all areas of life regulated by law.¹³³ A wide range of characteristics have been recognised as protected by UN treaty bodies, generating opportunities for increased human rights protection.¹³⁴ Importantly, whilst some rights are progressively realisable, subject to a States’ maximum available resources, the right to non-discrimination is immediately applicable.¹³⁵ A State cannot, therefore, explain its failure to meet its non-discrimination obligations by reference to purely resource-based considerations.¹³⁶

Equality law recognises the need to treat groups who are in different situations differently, according to their circumstances.¹³⁷ Consequently, the land-related needs of Indigenous Peoples and other communities that hold a special cultural or spiritual attachment to land may differ from those of other land users. Recognising both the individual and collective dimensions of land rights is central to ensuring equality in practice.¹³⁸ Measures that would result in the compelled separation of a protected group from their land without their free, prior, and informed consent, are *prima facie* discriminatory.¹³⁹ Differential treatment or impacts may only be justified in narrowly defined circumstances as an appropriate, necessary and proportionate means of achieving a legitimate aim.¹⁴⁰

Land, Corruption, Discrimination and the 2030 Agenda for Sustainable Development

In 2015, States came together to express their joint vision for a sustainable future. The result was the Sustainable Development Goals (SDGs) – a set of global commitments agreed to by all 193 Member States of the United Nations. The ambition of the Sustainable Development Agenda is encapsulated in the global pledge to “leave no one behind.”¹⁴¹ Equality lies at the heart of the SDG framework, with specific goals and targets aimed at eliminating inequality between States, addressing the global gender gap and ensuring non-discriminatory laws and policies.¹⁴² Anti-corruption measures are also essential. The development of peaceful, just and inclusive societies, the provision of adequate healthcare, education, and the eradication of poverty are all undermined where corruption exists and is enabled to spread its roots.¹⁴³

Under Goal 15, States undertake to “protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and biodiversity loss.” Land rights are also relevant to several other goals and targets, forming the basis for food security, clean water and sanitation, physical and mental health, decent work, sustainable cities and communities, and a clean and healthy environment.¹⁴⁴ As detailed in the following sections of this report, corruption and discrimination combine in a variety of ways to frustrate the achievement of these goals. Only by uniting efforts and sharing resources, knowledge and understanding can land, anti-corruption and equality movements hope to address the harms of discriminatory corruption, secure land rights and ensure the creation of a world in which all persons can participate in society on an equal basis with others.¹⁴⁵

3 THE RESPECT, PROTECT, FULFIL FRAMEWORK

In 2023, the Committee on Economic, Social and Cultural Rights published its General Comment No. 26 on Land and Economic, Social and Cultural Rights. The General Comment reinforces the need for a human rights-based approach to land, whilst highlighting the specific responsibilities of both State and non-State actors in ensuring rights protection. The General Comment reflects – as is equally well-evidenced by the growing tide of land-based claims that have succeeded before human rights bodies¹⁴⁶ – the importance of “secure and equitable access to, use of and control over land” to the realisation of human rights, and the implementation of States’ obligations under international law.¹⁴⁷ Parties to the ICESCR – including every State examined as part of

this report – have agreed to be bound by its requirements and undertake to respect, protect and fulfil the rights contained therein.¹⁴⁸

The obligation to *respect* requires States to refrain from practices that violate human rights, including discrimination and corruption.¹⁴⁹

Legitimate tenure rights should be recognised and respected, with relevant communities enabled to “manage their lands according to internal modes of organisation.”¹⁵⁰

All persons should be accorded “a reasonable degree of tenure security,” including under customary tenure systems.¹⁵¹ Where a decision on land stands to impact communities’ access to resources or traditional modes of practice, the community should be effectively

engaged in the decision-making process. Forced evictions are *prima facie* incompatible with the Convention. Any decision to evict a person from their land must be carried out in accordance with clear rules established by law and be subject to judicial review.¹⁵² States must work proactively to identify measures to mitigate the negative equality impacts of their activities.¹⁵³ As part of their extraterritorial human rights obligations, States are required to review their laws and policies – such as those relating to trade, investment, development and the environment – to ensure that they do not impede the enjoyment of human rights beyond their national borders.¹⁵⁴

As part of the obligation to *protect*, States are required to “adopt measures to prevent any person or entity from interfering with the rights enshrined in the Covenant relating to land.”¹⁵⁵ This includes private actors, such as investors and business entities, who should be mandated to undertake human rights due diligence to mitigate harms associated with their activities.¹⁵⁶ States should ensure that users’ interests are protected in processes that involve the transfer of tenure rights, including as a consequence of investment, land redistribution or land consolidation programmes.¹⁵⁷ The law should establish clear safeguards to ensure that land-based investments respect the human rights of affected communities, and do not result in unequal or concentrated patterns of ownership.¹⁵⁸ Protections against

discrimination should be adopted and cover the actions of both public and private actors, including individuals exercising *de facto* public functions, such as traditional authorities.¹⁵⁹ These protections should sit alongside clear measures designed to address corruption in land administration and related areas of practice.¹⁶⁰

Finally, as part of the obligation to *fulfil*, States should adopt a wide range of action designed to promote “secure, equitable and sustainable access to, use of and control over land” for marginalised and disadvantaged communities.¹⁶¹ Such communities should be supported to access and exercise their rights. The provision of legal aid and assistance, alongside wider accessibility measures, are essential in this regard.¹⁶² Agrarian reform and land redistribution programmes promoting the more “equitable distribution of land” should be accompanied by training, education and other forms of support to boost the capacity of intended beneficiaries.¹⁶³ Such reforms should concentrate on improving “access to land of young people, women, communities facing racial and descent-based discrimination and others belonging to marginalized groups” whilst respecting and protecting “the collective and customary tenure of land.”¹⁶⁴ Long-term planning should also be undertaken to ensure the sustainable use of land and natural resources.¹⁶⁵



CHAPTER 4: DISCRIMINATION, CORRUPTION AND THE GLOBAL LAND CRISIS

Despite advances in international law, in many countries, land inequalities are growing.¹⁶⁶ It has been estimated that 1.4 billion people directly rely on the land for their wellbeing.¹⁶⁷ Yet the bottom half of rural populations capture just a fraction of agricultural land value.¹⁶⁸ Complicated investment structures and value-chains obscure the true scale of the disparity, but the effects are clear to see.¹⁶⁹ As land concentrates in fewer and fewer hands, communities are being driven from the land and forced to find new ways to support themselves and their families. What is more, recent indicators developed as part of the Land Inequality Initiative suggest that patterns of land concentration are significantly higher than previously reported.¹⁷⁰

Land inequalities sit at the heart of a broad range of human rights and development challenges.¹⁷¹ Climate change, food insecurity, conflict, migration and related factors are each contributing to the harms that communities face, while generating new barriers to rights protection.¹⁷² Large-scale development and infrastructure projects, linked to agribusiness, extractive mining, and so-called “green investments” are often framed as a solution to these problems, purporting to boost employment, increase food production and grow the economy to the benefit of local populations. In practice, these projects are

highly resource intensive, and in some cases have served to deepen – rather than redress – conditions of inequality. As land is increasingly commodified and repackaged as a global economic good, its essential social function risks being diminished. Within this context, it is the most marginalised in society who are being left behind.

Discrimination and corruption are both a cause and consequence of land inequalities. In this chapter, we explore these dynamics, building upon the main findings of reports issued by civil society organisations and UN human rights mechanisms since 2010.¹⁷³ We begin with a discussion of the global drivers of land inequality. In this section, we provide a short and non-exhaustive introduction to key themes that recur regularly throughout this report. We go on to chart some of the different ways in which discrimination and corruption have been shown to play out in land systems at the global level. Following the dominant approach in the literature, in this chapter, each topic is examined separately. In the latter chapters of this report, we present new evidence on the impacts of discrimination and corruption in national settings, before re-joining the analysis in Chapters 6 and 7, where we return to the concept of discriminatory corruption and consider its key implications for policy reform.

1 GLOBAL DRIVERS OF LAND INEQUALITY

Between 2007 and 2008, a global food crisis saw vast tracts of land parcelled up and sold to investors.¹⁷⁴ Approximately 1,560 transnational agricultural deals were concluded in the two decades since the start of the millennium, with over 300 more targeted for completion.¹⁷⁵ The size of these deals is remarkable, representing a total land mass of around 30 million hectares.¹⁷⁶ The available data may underrepresent the true number and size of the deals that have taken place, and when land acquired for non-agricultural purposes is accounted for, the total climbs higher.¹⁷⁷ Large-scale land investments have brought new challenges for land governance, and heightened fears for rural communities whose land is targeted for investment. These deals also generate significant corruption concerns, being linked to an increased risk of land-grabbing and forced evictions.¹⁷⁸

It has been estimated that between 70 and 80 per cent of the world's smallholder farmers are women.¹⁷⁹ Members of this group risk

being displaced when their land is acquired to facilitate large-scale agribusiness or extractive projects.¹⁸⁰ While the job-enhancing potential of these industries is often promoted, in practice it has been observed that “natural resource extraction employs relatively few people and can actually decrease the poverty-reducing impact of other sectors.”¹⁸¹ The same is true for large-scale commercial agriculture, which – across all areas of production – is less labour intensive than traditional smallholder farming models.¹⁸² Women are often “the last in line for formal employment in the industries”, and may be forced to turn to casual labour and sex work to support their families.¹⁸³ These areas typically lack formal labour and anti-discrimination protections, opening new opportunities for rights abuses.¹⁸⁴ The changing dynamics of work and employment also raise intergenerational justice concerns,¹⁸⁵ with rising levels of youth unemployment risking “a social and economic disaster of massive proportions” in the world's rural agricultural economies.¹⁸⁶

“Tainted Lands” – Corruption, Discrimination and Large-Scale Land Grabbing

In 2011 the International Land Coalition issued the Tirana Declaration. The Declaration offered one of the first definitions of “large-scale land-grabbing”, which can be said to occur whenever land acquisitions or concessions violate human rights, fail to assess environmental or equality impacts, rest upon the terms of ambiguous or non-transparent contracts, lack meaningful participation and oversight, or fail to ensure the “free, prior and informed consent of the affected land users.”¹⁸⁷ Land obtained through corrupt means – described by Global Witness and the International Corporate Accountability Roundtable as “tainted lands” – would meet the definition of a land grab because many of these factors (such as respect for human rights, transparency and democratic accountability) are absent whenever corruption is present.¹⁸⁸ Based on these same factors, large-scale land deals that result in discrimination would also constitute a land grab for the purposes of the Declaration.

Across the globe, the climate crisis is wreaking a devastating toll, with rising sea levels, desertification and extreme weather events each limiting the availability and accessibility of land.¹⁸⁹ A study produced by the International Federation of Red Cross and Red Crescent Societies found that 97.6 million people were impacted by natural disasters in 2019, resulting in over 24 thousand deaths.¹⁹⁰ Owing to the precariousness of their social position, groups exposed to discrimination are less able to anticipate and respond to climate-related risks, and their needs may be ignored in relief efforts.¹⁹¹ The agribusiness sector has itself been identified as a “major driver of biodiversity loss” with deforestation contributing towards greater greenhouse gas emissions and the global impacts of climate change.¹⁹² While industrial farming has increased food production, “land degradation owing to overuse, poor management and unsustainable agricultural practices” has also resulted in food insecurity.¹⁹³ Meanwhile, the “more sustainable land use practices of small-scale producers, family farmers and Indigenous Peoples are threatened” as members of these communities lose access to their lands and natural resources.¹⁹⁴ Megaprojects can also produce damaging local environmental impacts that prevent project-affected persons from returning to their homes.¹⁹⁵

Within communities, the rise of extractives is fostering division, with disagreements regarding land and natural resource management sometimes spilling over into violence.¹⁹⁶ Tensions are often deep-rooted. Perceptions of discrimination and corruption in access to land, including long-standing grievances linked to the historic injustices of colonialism and apartheid, have been identified as a key driver of conflict.¹⁹⁷ Recent World Bank data suggests that 65 per cent of contemporary conflicts are land-related.¹⁹⁸ These conflicts are usually protracted and especially prone to relapse.¹⁹⁹

Competing claims to land – particularly following displacement – can impede the identification of durable solutions.²⁰⁰ In some countries, individuals working to defend land rights have faced retaliation by State and non-State actors.²⁰¹ A recent report, published by Global Witness, found that a land and environmental rights defender was “killed approximately every two days” between 2012 and 2021.²⁰² Those working to address the harms of discriminatory corruption may face heightened risks and unique protection challenges.²⁰³

Together, these issues are contributing to a global land crisis, in which land is rendered increasingly inaccessible to those that rely upon it for their wellbeing. Climate change, population growth, environmental degradation, conflict and related development challenges – in some cases driven by trade and investment policy – are perpetuating land inequalities, which in turn are being felt disproportionately by those who lack the voice, power and capacity to respond. The relationship between these phenomena is complex, comprised of an elaborate web of interconnections. While rural communities are bearing the brunt of land-related harms, displacement and tensions over land are also driving migration towards urban centres.²⁰⁴ Within these settings, the financialisation of housing markets is deepening the socio-economic divide, and as the number of “ultra-high-net-worth individuals” is predicted to rise, so too is the number of people residing in informal settlements.²⁰⁵

As governments struggle to respond to competing global pressures, land systems are showing signs of strain. What is more, measures intended to address the root causes of land inequality can deepen situations of disadvantage when an equality-sensitive approach is not taken to their design and implementation.

For instance, in some countries projects aimed at protecting forests have led to the displacement of Indigenous Peoples.²⁰⁶ Carbon mitigation measures are fuelling competition for land and renewable energy sources in the Global South, with a resultant impact on the land rights of local communities.²⁰⁷ When underlying structural inequalities are not addressed, measures to return displaced populations to their land in post-conflict situations have been shown to reinforce harmful gender norms.²⁰⁸ Discrimination and corruption emerge as both a consequence and driver of these wider dynamics. As detailed in the following sections, land inequality is a self-perpetuating cycle that fuels and reinforces patterns of disadvantage.²⁰⁹

2 LAND AND DISCRIMINATION

Land inequalities have clear spatial and socio-economic dimensions.²¹⁰ Yet within and between communities, experiences of disadvantage vary widely. Discrimination means that some people are prevented from exercising their rights over land and may feel the impacts of land inequality – as well as its drivers – differently to others. Much work has taken place at the international level to document these links, and in this section, we distil some of the key findings. However, experiences of discrimination are not monolithic, and high levels of marginalisation means that situation of some groups is not well-documented. Moreover, some people face unique risks and challenges at the intersection of their different identities, statuses and beliefs.

A substantial body of evidence has been collected on the **gendered** dimensions of land inequality.²¹¹ For many women, the primary means of acquiring land is through inheritance, but discrimination in law and practice means that some do not enjoy equal

inheritance rights.²¹² In customary settings, widows have seen their land grabbed by relatives and other community members, and in extreme cases have been compelled to marry the brother of their deceased husband to avoid displacement.²¹³ Even where national law provides for women's equal rights to own and administer property, land titling programmes can favour men, preventing them from registering their legal interests.²¹⁴ A lack of access to land and resources can deepen socio-economic inequalities, which in turn can prevent women from pursuing justice through formal judicial processes.²¹⁵ While informal dispute resolution mechanisms may reduce access barriers, patriarchal values and harmful gender stereotypes have been shown to disadvantage women in land and family disputes.²¹⁶ The discrimination that women face is mirrored in global statistics: despite comprising half of the world's population, women "own less than 20% of the world's land."²¹⁷

Structural inequalities can deepen situations of disadvantage. Displacement following land-related conflicts disproportionately affects **persons with disabilities** who face increased protection challenges due to a lack of accessible infrastructure and support mechanisms.²¹⁸ The "extreme marginalisation" of women with disabilities in decision-making structures, alongside "pervasive discrimination in return and resettlement communities", can also impede the identification of durable solutions.²¹⁹ Persons with disabilities who are forced to migrate may encounter new barriers to rights protection as a result of discrimination in the private housing market.²²⁰ In many countries, persons with intellectual and psychosocial disabilities are precluded from signing contracts, administering land and property, and accessing finance due to national legislation governing legal and mental capacity.²²¹

Where the discriminatory practice of institutionalisation persists, members of this group risk being segregated from the wider community and being abandoned during emergency situations.²²²

Stigma, stereotypes and prejudice expose some groups to a heightened risk of land rights violations. For centuries, **persons affected by leprosy** were forcibly separated from the majority population and relocated to special “colonies”, over 2,000 of which remain active.²²³ The descendants of these groups have not been granted property rights over the occupied land and many affected persons continue to experience human rights violations as a result of customary law and practice.²²⁴ Some persons with leprosy face challenges finding jobs and selling their produce at market. As many agricultural workers with leprosy do not own the land they work, the coronavirus pandemic has had a marked effect on their ability to maintain an adequate standard of living.²²⁵ Similar issues have been reported to affect **persons with albinism**, who – in parts of Africa – have been subject to violent attacks, motivated by harmful superstitions and “witchcraft beliefs”.²²⁶ The risk of violence means that some persons with albinism are unable to access or work their land out of fear for their safety.²²⁷

As the global population continues to rise, rapid urbanisation linked to renewed demand for land and housing is having pronounced effects on the enjoyment of rights by **older persons**. Ageist assumptions linked to older age, such as the perception that older people are “frail, sick and dependent”, legitimise discriminatory policies and obscure the experiences of members of this group.²²⁸ Age is often used as a criterion to determine access to credit, without which older persons may be prevented from obtaining housing that is adapted to their

needs.²²⁹ As gentrification processes redefine urban landscapes, older persons have been subject to harassment and forced evictions, separating them from their homes.²³⁰ Age discrimination also affects **younger persons**, who are frequently excluded from decision-making processes, and may be prevented from accessing land due to corruption involving public and customary authorities.²³¹ Children are especially vulnerable to the impacts of displacement, and in some contexts have resorted to “harmful coping mechanisms” including child labour and early marriage in order to survive.²³² Child marriage has also been used as a means to resolve disagreements between families and secure arrangements relating to land and property.²³³

The exploitation of land and natural resources was a defining feature of the colonial period, creating situations of economic dependency that continue to contribute towards disparities in access to land and housing for **racial and ethnic** minorities.²³⁴ In parts of Africa politicians have sought to leverage long-standing grievances regarding land as part of their political campaigns, which have been accompanied by acts of hate speech and other serious human rights violations.²³⁵ Disputes concerning the allocation or distribution of land – particularly along ethnic and political lines – have sometimes culminated in violence.²³⁶ In cities, discrimination in urban planning has led to the spatial segregation of racial minorities, which in turn has increased their exposure to pollution, leading to worse health outcomes.²³⁷ In many countries **descent** and **caste**-based minorities experience tenure insecurity as a result of the non-recognition of their land rights, deepening socio-economic inequalities and entrenching existing social stratification.²³⁸

Free, Prior and Informed Consent and the Ban on Segregation

Segregation has long been recognised as a form of discrimination, and over time the concept has been applied to an increased number of protected characteristics and range of circumstances.²³⁹ Synthesising these developments, the UN Human Rights Office has defined segregation to occur whenever “people sharing a particular ground are, without their full, free and informed consent, separated and provided different access to institutions, goods, services, rights or the physical environment.”²⁴⁰ Based on this definition, large-scale land investments or development projects that result in the compelled separation of a protected group from their land are prima facie discriminatory.²⁴¹ The ban on segregation has wider implications for land governance. For example, zoning or land use planning decisions that result in the spatial segregation of urban minorities would also fail to meet international law requirements.²⁴²

Some groups have a special relationship to land, which is essential to the maintenance of their spiritual and cultural identity. Yet, in many countries, customary tenure systems are not adequately respected, exposing users to a risk of displacement when others negotiate access to their land.²⁴³

Tenure insecurity is “a serious issue” for **religious and belief** minorities, whose status renders them “vulnerable to pressure, exploitation and discrimination.”²⁴⁴ In some cases, adherents have been targeted by armed groups resulting in the seizure of their land and property, whilst megaprojects have led to the destruction of places of worship, cemeteries and other sites of religious importance.²⁴⁵ Conflict and religious tensions compound experiences of marginalisation. Land-grabbing, whether perpetrated by foreign or domestic actors, has been identified as both a driver of hate-motivated violence and a predictor of religious discrimination.²⁴⁶ In some countries allegations of blasphemy – carrying serious criminal penalties for those found guilty – have been raised based on land and property disputes.²⁴⁷

A lack of political representation means that the cultural and communal practices of **Indigenous Peoples** are increasingly under threat. Over decades, communities have “lost their land and resources to colonists, commercial companies and State enterprises” with decisions on land use frequently taken without the free, prior and informed consent of community members.²⁴⁸ Human rights mechanisms have expressed growing concern regarding the unlawful dispossession of Indigenous Peoples’ lands and resources by private actors, which police and security services have allowed to occur with impunity.²⁴⁹ It has been noted that the law may be applied more “assiduously” to members of this group.²⁵⁰ The challenges of non-recognition are reflected in global statistics. According to some estimates, Indigenous Peoples “hold and use more than 50 per cent of the world’s land but have secure tenure to just ten per cent.”²⁵¹

Indigenous Peoples in Africa

For historic reasons, rooted in the colonial legacy, the recognition of Indigenous Peoples' rights has proven to be a "sensitive issue" in Africa.²⁵² On the one hand, objectors have noted that there is no consensus on the definition of "Indigenous", which may have different connotations in the region when compared to other parts of the world.²⁵³ On the other, concerns have been raised regarding the establishment of differing levels of rights protection, that may "obstruct the State from pursuing developmental endeavours."²⁵⁴ The practical effect of these objections is that in many parts of Africa, the land rights of Indigenous populations are not officially recognised.²⁵⁵

The term "Indigenous" is not defined under international law.²⁵⁶ The United Nations Declaration on the Rights of Indigenous Peoples takes a flexible approach, recognising the "diversity and richness" of Indigenous "civilisations and cultures" and the right of Indigenous Peoples to self-determination.²⁵⁷ In an important judgment, delivered in 2017, the African Court on Human and Peoples' Rights identified a set of common factors that may be considered in the identification of Indigenous communities. This includes, for example, shared linguistic, cultural, and spiritual traditions; "priority in time" in the use and occupation of a specific territory; and historic experiences of discrimination and marginalisation.²⁵⁸ Although contexts and circumstances may vary, the right of Indigenous Peoples to self-identify is paramount.²⁵⁹

In line with their international and regional commitments, some States have sought to bridge the recognition gap. In 2020, the Democratic Republic of the Congo adopted a new law on the rights of Indigenous Peoples.²⁶⁰ This was followed, in 2022, by legislation on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples.²⁶¹ In other parts of the Continent, however, progress has been slow, and non-recognition remains a significant challenge.²⁶² From the Benet community of Uganda, deprived of access to their homelands in the Benet forest, to the Maasai of Tanzania, forcibly evicted from community land in Loliondo, Indigenous Peoples in Africa are experiencing devastating, and sometimes violent, denials of their land rights.²⁶³

Discrimination can serve to obscure the land-related experiences of some communities.²⁶⁴ In many countries around the world, including five of the jurisdictions covered by this report, States maintain laws that criminalise sexual intimacy between same-sex partners.²⁶⁵ In 2023, the Ugandan Anti-Homosexuality Act was signed into law by President Yoweri Museveni, whilst in Ghana a "Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill" has recently been adopted by Parliament.²⁶⁶ These and similar initiatives

have the effect of stigmatising members of the LGBTQI+ community, generating opportunities for extortion and exploitation.²⁶⁷ Where a person's sexual orientation, gender identity or gender expression does not conform to societal expectations, exclusion may follow. Members of this group may also face unique challenges in reporting land rights violations as a result of their *de facto* illegal status.

3 CORRUPTION IN LAND GOVERNANCE

Throughout history, land has served as a source of power and political capital. As the global population has increased and land has become scarcer, its value has risen, fuelling speculation in urban housing markets and competition for access to mineral-rich and agriculturally fertile grounds in rural settings.²⁶⁸ These factors aggravate the risk of corruption, the impacts of which are pronounced. Corruption has been linked to increased levels

of poverty and hunger, deepening economic inequalities, forced evictions, displacement and environmental degradation.²⁶⁹ The presence of corruption within a society can erode confidence in public institutions, weaken the rule of law and undermine public order.²⁷⁰ In extreme cases, land corruption can lead to conflict, when aggrieved actors “resort to extra-legal means of asserting their land claims or expressing their sense of injustice.”²⁷¹

Corruption, Discrimination and the Work of the UN Treaty Bodies

Corruption themes have not featured prominently in the work of UN treaty bodies, and the links between corruption and discrimination remain undertheorised at the international level. A report published by the Centre for Civil and Political Rights in 2020 found that corruption (or corruption-related terms) were referenced in just 32 per cent of all concluding observations issued between 2007 and 2019.²⁷² Those treaty bodies with a ground-specific anti-discrimination mandate, including the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on the Elimination of Racial Discrimination (CERD) made the lowest number of references to corruption, which was discussed in just 16 per cent, 6 per cent and 4 per cent of reviews, respectively.²⁷³ This situation does, however, show signs of improving.²⁷⁴

In 2021, a collection of UN treaty bodies issued a joint statement on corruption and human rights.²⁷⁵ The statement notes the pernicious impacts of corruption, which results in the diversion of national wealth into the hands of private actors, thus preventing States’ from realising human rights to the maximum of their available resources.²⁷⁶ The impacts of corruption are felt disproportionately by women, persons with disabilities, children, migrants, persons living in poverty and other marginalised communities, preventing their equal and effective participation in society.²⁷⁷ While the statement does not directly address land rights, a recent general comment issued by the Committee on Economic, Social and Cultural Rights recognises States’ obligations to combat corruption in land governance and promote “substantive equality” in this area.²⁷⁸

Corruption in land governance takes many forms and involves a wide range of actors. At the institutional and policy level, government officials may seek to adopt or amend legislation to make it easier for land to be claimed by the State and passed on to private actors.²⁷⁹ Political corruption can lead to the establishment of unfair land demarcation, titling or redistribution programmes, and the adoption of rules that cap the compensation available to individuals' dispossessed of their land.²⁸⁰ Those in power may also work to prevent the enactment of new laws or policies that seek to address existing land-based inequalities, or limit the discretionary powers of public officials.²⁸¹ Even where robust protections are established under the law, political actors may attempt to undermine their effectiveness by limiting the human and financial resources of accountability mechanisms, or by failing to enact necessary implementing regulations.²⁸²

As discussed in the previous section, in many countries the tenure rights of Indigenous Peoples, pastoralists, peasants, and other rural communities who depend on the commons for their livelihood and the maintenance of their traditional way of life are inadequately respected.²⁸³ In some cases, governments have declared the lands held by these communities "vacant" or "underutilised", allowing them to be sold or redeveloped.²⁸⁴ Eminent domain or public purpose provisions may also be used to compulsorily acquire land, which is then passed on to an interested party in return for bribes or other favours.²⁸⁵ Where compensation is

provided, corruption in the valuation of land means it may be inadequate.²⁸⁶ Increasingly, it has been observed, States' powers have been deployed based on "vague promises of economic development for the public."²⁸⁷

Corruption risks appear heightened in large-scale land acquisitions.²⁸⁸ Grand corruption can lead to policy frameworks that allow investors to access land at below-market rates.²⁸⁹ Land targeted for investment may be re-classified or forcibly acquired to the detriment of existing occupants.²⁹⁰ When large-scale land deals are negotiated, it is common for investors to undertake certain obligations designed to mitigate the negative human rights impacts of their activities and generate benefits for the local population through infrastructure development.²⁹¹ However, corruption can allow investors to skirt these requirements, or prevent authorities from effectively monitoring compliance.²⁹² Corruption risks arise at each stage of land deals as elites seek to "capture the process of distributing benefits from investment" through bribery, embezzlement and other nefarious means.²⁹³ Even if local communities are legally required to provide their "consent" before their land is acquired, research suggests that it is rarely sought.²⁹⁴ Instead, investors may collude with the relevant authorities to make concessions "on behalf" of a community, or to facilitate a "staged" consultation process whereby "consent" is forcibly obtained "through the use of threats and intimidation."²⁹⁵

Land, Corruption and Discrimination in Customary Tenure Systems

The Food and Agricultural Organization of the United Nations has recently documented an increase in “corruption by community or customary leaders”.²⁹⁶ Traditional authorities may demand gifts to allocate land held under trust for the community, reallocate or sell the same plot of land to multiple parties, or agree to the sale or leasing of land to investors without ensuring the free, prior and informed consent of their constituents.²⁹⁷ Customary norms can also be a source of discrimination, denying women and other marginalised groups effective access to, use of and control over land.²⁹⁸ If States are to meet their international law obligations, it is essential that both the individual and collective dimensions of human rights are guaranteed.²⁹⁹ In this regard, land frameworks that recognise the rights of communities to self-govern are essential. However, this authority cannot be boundless: transparent procedures, access to information, and measures to ensure the effective participation of groups that have historically been excluded from decision-making structures are all needed to ensure that everybody’s human rights are respected, protected and fulfilled. In this regard, anti-discrimination law and anti-corruption measures play an important facilitating function.³⁰⁰

Bureaucratic corruption is frequently encountered within land administration. According to a survey published by Transparency International in 2013, one in five people around the world reported paying a bribe for land services.³⁰¹ Corruption risks appear most pronounced in land titling and demarcation.³⁰² Bribes may be paid to officials to fast track processes, obtain a competitive advantage, or – in cases where a persons’ existing rights are not adequately respected – to actively avoid harm, such as a risk of forced eviction.³⁰³ Fraud, patronage and kickbacks are common, resulting in the falsification of land records and the circumvention of standard administrative procedures.³⁰⁴ Other areas of land governance also raise corruption concerns. For instance, bribes may be paid to ensure the approval of proposals that would ordinarily be deemed to violate planning or zoning requirements.³⁰⁵ Land may be over- or undervalued as a way to facilitate lower taxes or increase profit from sales.³⁰⁶ In land distribution programmes, political and bureaucratic corruption may combine to exclude disadvantaged groups from programmes intended to benefit them.³⁰⁷ In urban contexts, illegal land transactions have been linked to money laundering and real estate speculation

perpetrated by domestic actors for their own benefit.³⁰⁸

Where disputes surrounding land emerge, corruption can prevent the fair adjudication of cases.³⁰⁹ Within the judicial system, corruption can occur when judges receive bribes to accept or ignore evidence, to decide a case more quickly or to make a finding in one party’s favour.³¹⁰ Others involved in the administration of justice, such as the police and prosecutorial staff, may also be enlisted to intimidate victims or to engage in evidence tampering.³¹¹ Political corruption can erode judicial independence, resulting in decisions that disproportionately benefit the ruling elite.³¹² Even where a person receives a judgment in their favour, corruption can impede implementation, meaning that they do not have their land returned and are denied effective redress.³¹³ At its broadest level, corruption affects the quality of justice and can undermine faith in the system. Formal justice often lies beyond the reach of marginalised communities,³¹⁴ and while alternative dispute resolution mechanisms may help to overcome these barriers, corruption can also penetrate informal justice systems.³¹⁵

Tackling Land Corruption and Discrimination: Complementary Approaches

In many countries, acts of corruption are prohibited by criminal law, where it must be established beyond all reasonable doubt that a perpetrator acted with a clear, criminal intent. These evidentiary requirements, when combined with the often-secretive nature of corrupt practices, the risk of state-capture of the judicial system, and a broader reticence displayed by many courts to appear to involve themselves in “political” matters, mean that corruption is often very difficult to prove. In turn, a failure to hold corrupt actors to account may encourage “others to engage in similar misconduct” culminating in a state of impunity in which the rights of victims are routinely undermined.³¹⁶ Some of these factors have led anti-corruption practitioners to search for “alternative pathways” to justice.³¹⁷

Similar challenges arise in discrimination cases. However, anti-discrimination law has developed unique evidentiary and procedural rules to overcome barriers to justice. Most discrimination cases – not involving the use or threat of violence – are dealt with as a matter of civil and administrative law.³¹⁸ The standard of proof in these proceedings is typically lower than in criminal cases, meaning that it is easier to make a successful claim. International law recognises that discrimination can take place with or without a discriminatory motive and provides for a shift in the burden of proof once sufficient evidence that an act of discrimination may have occurred (a *prima facie* case) is presented by a claimant. The respondent is then required to demonstrate that their actions were not discriminatory or were otherwise justified.³¹⁹

As detailed later on in this report, land corruption often has discriminatory impacts. However, because traditional approaches to tackling corruption are perpetrator- (rather than victim-) oriented, remedies are often skewed towards criminal sanctions, which carry a high evidentiary burden. In this regard, anti-discrimination law can add a powerful new tool to the arsenal of anti-corruption practitioners. By exploring the dynamics of discriminatory corruption, activists can help shine a spotlight on the experiences of marginalised communities, thereby opening up new pathways to justice, and with them, new prospects of redress. This relationship also works in the opposite direction. For instance, in some countries, evidence of corruption has been used to invalidate arguments relating to the potential justification of discriminatory land policies.³²⁰

In each of these aspects, petty and grand corruption continually interact, as a wide range of actors work to profit from the system. A politician with knowledge of a proposed development project may proactively purchase land in that area with the intention of later selling the land at a profit. Administrative officials may receive bribes or kickbacks to approve the plans, whilst valuers may be encouraged to increase the land's value to ensure a high sale price. Meanwhile, groups who have traditionally occupied the

land may be prevented from having their legitimate tenure rights recognised due to gaps in legislation, the designation of their land as unused, the application of eminent domain provisions, sale by a customary authority, or corruption in land administrative services. Corruption in formal and informal justice mechanisms, combined with broader inequalities in society, can prevent those whose rights have been violated from achieving remedy and redress.

4 ENSURING EQUAL LAND OUTCOMES

This section explores some of the different ways in which discrimination and corruption work to undermine equal land outcomes. The assessment is, by its nature, incomplete, both in its exploration of the drivers of land inequality and in its coverage of the myriad groups that may be affected by discrimination. It does, however, serve to demonstrate the global scale of the challenges that countries and communities are currently facing. Land inequalities are deepening, and the impacts are being felt disproportionately by those least able to respond. Corruption is exacerbating land crises and frustrating effective action. As the value of land has risen, new actors have come to the table, with politicians, traditional authorities, foreign investment firms and low-ranking public officials each seeking to extract profit from the system.³²¹

Without significant action aimed at addressing structural inequalities and curbing the abuses of power that corrode institutions and undermine good governance, there is a risk that land inequalities will deepen over time, exacerbating conflict, driving food insecurity and stunting sustainable development. In the following sections, we highlight how corruption and discrimination are conspiring to undermine the enjoyment of land rights in national settings. Whilst the evidence presented cannot hope to capture the full scale of the problem, it is clear that these phenomena are widespread and impactful. Tackling them will be essential if States are to meet their international law obligations and ensure that no one is left behind. Unfortunately, as the following discussion indicates, governments are presently failing in their responsibilities.



CHAPTER 5: LAND, CORRUPTION AND DISCRIMINATION IN AFRICA

Contemporary land governance in Africa is complex and cannot be understood in isolation from the legacies of colonisation and post-colonial development policy. For centuries, the continent “was the site of rapacious human extraction” underpinned by the transatlantic slave trade, which saw millions of people sold into servitude.³²² The abolition of the trade in the nineteenth century did not put an end to slavery (which remained highly lucrative), nor did it deter States from making further inroads into Africa. To the contrary, the desire to capture the region’s abundant (and largely untapped) mineral wealth and raw materials provoked intense competition between colonising nations.³²³ At the Berlin Conference (1884-1885), a plan for the partitioning of Africa was set in motion, and by the early twentieth century, a majority of continent had been brought under the control of European colonial powers.³²⁴ While experiences of colonisation varied from country to country, the colonial era was characterised by mass displacement and the exploitation of African labour and natural resources.³²⁵ Within their respective spheres of influence and control (encompassing every country reviewed as part of this report), British and French authorities claimed rights over

lands they deemed vacant, legitimating their claims through a variety of legal documents.³²⁶

Colonisation resulted in the creation of highly racialised and *de facto* segregated land tenure systems in many parts of Africa. In settler colonies, non-Africans benefitted from private property protections, typically on the most valuable tracts of land, while so-called “natives” shared customary holdings, with administration overseen by government officials or local elites favoured by the ruling regime.³²⁷ By the mid-twentieth century, the influence of colonial powers had begun to wane. The expense of a costly Second World War, accompanied by the emergence of grassroots nationalist movements opposed to foreign rule, called for an urgent reappraisal of the colonial mandate.³²⁸ Over the coming years, successive countries achieved their independence. However, in the decades that followed, African debt began to soar. Structural adjustment policies, encouraged by leading financial institutions in the early 1980s, sought to bring the situation under control, promoting market liberalisation as a means to foster economic growth.³²⁹ Most countries were not in a strong position to negotiate terms and committed to making the required changes.³³⁰

Land titling was seen as a key implementing measure.³³¹ While titling was not new in Africa, the scale of governance reforms in this period, and their propensity towards privatisation, is noteworthy.³³²

Over time the landscape of land governance in Africa has become ever more diverse. Whereas land use historically centred on communal practice, reforms to land systems in the post-independence era have displayed a clear tendency towards private ownership.³³³ Hundreds of large-scale land deals have taken place in Africa since the year 2000, resulting in millions of hectares of land changing hands.³³⁴ Eminent domain and public purpose provisions, which allow the State to compulsorily acquire land when it is deemed to be in the public interest, have enabled these deals, which have resulted in communities who depend on the commons for their wellbeing and the maintenance of their traditional way of life being divested of their land and natural resources.³³⁵ As described in Chapter 3, the genetic lineage of these provisions can be clearly traced to early understandings of property rights to land.³³⁶ Recent policy initiatives may suggest a slowing of this trend, with several States legislating to formally recognise customary tenure. However, the notion “that the sovereign has ultimate control over the land” has proven to be persuasive, and as the following sections illustrate, tenure insecurity remains a significant challenge, particularly for those based in rural areas.³³⁷

In a region where land, power and status are highly correlated, land is an essential commodity. But for many it is much, much more. As the impacts of contemporary global crises of climate change, environmental degradation, food insecurity, unemployment and conflict continue to mount, land systems are coming under renewed stress

and competition for land is growing.³³⁸ This competition emerges “at all socio-economic levels” and is not limited to government officials or investment actors.³³⁹ Members of a particular community may intrude upon each other’s plots, or contest decisions on inheritance or the transfer of property rights in customary settings. Customary authorities and low-ranking public officials may abuse their positions to acquire land and facilitate its sale or leasing to clients, despite lacking the requisite legal authority.³⁴⁰ Together, these issues are generating perverse incentives for land users to formalise their claims and protect themselves against future threats.³⁴¹ In this environment, corruption risks are ever-present. Owing to existing patterns of land distribution in Africa, the impacts are being shouldered disproportionately by rural communities. Yet within these communities, deeper power dynamics are at play, producing unique expressions of inequality and experiences of disadvantage.

In the following pages, we explore the links between land, corruption and discrimination based on a combination of desk-based research and key stakeholder interviews conducted in seven countries. The resulting analysis illustrates the intense struggle over land and natural resources that is currently taking place in Sub-Saharan Africa. Despite reforms, many communities who rely upon the land for their survival are being denied the ability to access it. Corruption and discrimination are driving land inequalities. While in some cases these phenomena appear to operate independently of one another, in others they are difficult to separate, working in close concert to deny individuals access to their rights and legal entitlements. In the final chapters of this report, we return to this point and interrogate the nature of this relationship in closer detail.

1 GHANA

For much of the twentieth century, the territories that make up modern-day Ghana formed part of the British Empire: the Gold Coast and Ashanti were both British colonies, while the Northern Territories were established as a British protectorate in 1901.³⁴² The western portion of Togoland – a former German colony – officially became a British Mandated Territory in 1922.³⁴³ In 1957, Ghana became one of the first African States to achieve independence from British rule.³⁴⁴ Since then, the country has embarked upon a considerable programme of land reform, which culminated in the adoption of a new Land Act in December 2020. The Act seeks to streamline land administration by consolidating the legal framework and defining the various interests that a person may hold in land.³⁴⁵ However, it is clear that much work remains to be done: according to recent statistics, “more than one quarter of the adult population feels insecure about their tenure rights.”³⁴⁶

Contemporary land governance in Ghana is complex, reflecting the realities of many post-colonial States. For the purposes of this report, land may be divided roughly into one of two categories: public land, which is vested in the President and administered by the Lands Commission, and customary land (including stool, skin and family land), which is maintained by traditional authorities and heads of families and overseen by Customary Land Secretariats.³⁴⁷

Different rules apply in relation to these systems, which were previously governed by a complicated network of laws and regulations. It has been estimated that around 80 per cent of land in Ghana is managed according to customary tenure, with the remaining 20

per cent comprising state-administered public land.³⁴⁸ This divide was apparent in stakeholder submissions, many of which focused on corruption and discrimination occurring within communal and family settings. Whilst – under the Constitution – stool land is held on trust for the community,³⁴⁹ several respondents noted that chiefs in some parts of Ghana tend to view the land as their own private property, leading to deals that ignore community concerns and the interests of those affected.³⁵⁰



There have been a lot of instances whereby land has been taken away from people through their chiefs without the people's consent, and without proper payment of compensation. If you ask any Ghanaian on the street, who owns the land? They will tell you it is the chief.

Land corruption in Ghana takes a variety of forms and can occur at different stages of land administration. Experts interviewed as part of this report expressed particular concern regarding land titling and registration processes which were said to be “fraught with inefficiencies” and delays.³⁵¹ Individuals may have to work through intermediaries with the ability to influence the system to have their documents processed. Only those that “are able to pay beyond the official fees” can gain access, posing challenges for legitimate tenure holders, who risk losing their land when competing claims are expedited by corrupt officials.³⁵² Similar issues were reported in relation to other land services, for instance, in cases where individuals are required to pay authorities to obtain a necessary building permit.³⁵³



When you come to the government agencies, we look at issues of extortion. People are paying money for things that ought not to attract fees. Or better still, they are paying higher fees than is stipulated by law or for services to be rendered that do not require any fee to be paid.³⁵⁴

Corruption risks were frequently identified in land acquisitions, where inefficiencies in the system may be exploited by those in positions of authority to sell land to multiple parties.³⁵⁵ In such circumstances, it was noted that the “highest bidder” usually secures the land, irrespective of its past history of use or occupation.³⁵⁶ Within customary settings, chiefs may commission the sale of land despite lacking the legal authority.³⁵⁷ Middlemen may also enter the process, providing fraudulent documents to unsuspecting clients. Corruption in these areas, it was observed, often takes place “between the chiefs and government agencies.”³⁵⁸



You find sometimes that the government acquires land and begins to apportion it to its cronies. It is not using the land for the purpose for which it was acquired.³⁵⁹

Particular concern was raised regarding the acquisition of land by the State for sale to private investors. It was noted that individuals may seek to leverage their political connections to obtain land at subsidised rates, which may then be sold on at inflated prices.³⁶⁰ Ghana’s economy is heavily dependent on extractive industries, which in 2018 made up approximately 18 per cent of all government revenue.³⁶¹ Respondents observed that large-scale land investments – including mining operations – frequently override community interests, leading to the displacement of farmers and others in rural areas, many of

whom have held the land for decades.³⁶²

Where individuals raise objections, “the state will use its coercive powers to silence you,” one respondent explained.³⁶³ While individuals are entitled to compensation when their land is acquired, the compensation provided is often inadequate and sometimes fails to materialise.³⁶⁴



The non-transparency of the entire large-scale land transaction brings the abuses of rights. [The] government has acquired large tracks of land, and for most of them, the people have not been compensated. Because of land subsidies, nepotism, insider dealing and influence peddling, investors are able to access land to the detriment of those who occupy it. That is where we see conflict: between community members and an investor.³⁶⁵

Some groups in Ghana appear uniquely exposed to corruption. When moving to a new area, migrant farmers may lose access to their existing family lands.³⁶⁶ Insecurity of tenure means that affected individuals risk being extorted by community chiefs, who seek to exploit their precarious status by demanding increased rent, backed by the threat of eviction.³⁶⁷ With nowhere else to turn, individuals “tend to pay, or to adhere to the new terms,” one respondent explained.³⁶⁸ Several interviewees drew attention to the precarious situation of women, whose access to land is often secured through marriage or inheritance.³⁶⁹ Although practice is uneven in this area, in customary settings, men traditionally stand to inherit land.³⁷⁰

Whilst national legislation formally entitles women to own land and property, prevailing gender norms mean that men may be viewed as the legal owners, even if a woman acquired the land herself or holds it jointly with her partner.³⁷¹ This situation generates specific corruption risks.



A man and a woman invest in a farm. Let's assume the money they used to do the farming all belongs to the woman. Once that man passes away, the assumption is that the farm and the investment was done by the man. So, the man's family turns up to take ownership.³⁷²

It was noted that family members may collude with authorities to prevent women from exercising their inheritance rights, leading to the unequal distribution of property within families.³⁷³ Due to gendered cultural expectations, a woman may be required to work through third parties to acquire land.³⁷⁴ This may entail the payment of additional fees, which some simply cannot afford.



Some women have to be able to pay to be able to access land from some of the traditional leaders, because on a normal day, they won't give land to women. So, if you are a woman, then you have to make sure that you exchange some money to be able to access land.³⁷⁵

Stigma, stereotypes and discrimination mean that some groups face unique challenges in accessing land. For instance, it was observed that persons with disabilities and those living with HIV and AIDS may be refused plots owing to concerns regarding their capacity to use land productively.³⁷⁶



When people realise that they have HIV, they don't want to give them access to land, because they may not live long enough to use it for anything profitable.³⁷⁷

Under the law, individuals possess a range of options to challenge land rights violations. However, formal complaint mechanisms are sometimes seen as exclusory, and it was noted that few people use official channels.³⁷⁸ Court and legal fees can prove dissuasive, and broader challenges including the length of cases, delays in proceedings and a lack of legal aid were each identified as potential barriers to justice.³⁷⁹ A person's location can also impede equal outcomes due to the non-availability of services in rural areas.³⁸⁰ On account of their status, marginalised groups are more likely to experience socio-economic disadvantage, compounding the challenges they face in achieving redress.³⁸¹



Affordability, it's all about access. Once access becomes difficult, it gives landowners the opportunity to be corrupt, by selling land to different people. When there is litigation between a man and a woman, certainly the women will be the one to back out. Many women are not able to go through the long system of litigation on land.³⁸²

Within customary settings, discrimination and harmful cultural practices can prevent certain groups from challenging corruption and claiming their rights.³⁸³ "In our custom, no person with disabilities is allowed to see a chief," one respondent remarked.³⁸⁴ "So if you are a person with disabilities, blind or deaf ... and your rights are being abused, you cannot appeal to your chief or the traditional authority; to use traditional mechanisms to seek redress."³⁸⁵ Similar issues were said to affect

younger persons within *Akan* communities, where the adult is often “deemed to be right” irrespective of the circumstances of a case.³⁸⁶ Where people do speak out, it was noted that they risk being alienated within the community. For those who already experience challenges exercising their rights and rely on community members for support, this can act as a powerful constraint on action.



*The chief will say that all this parcel of land belongs to me, so I have given it out to an investor. You, as the subject of the chief, do not dare to question the chief, because if you do that, and you are not careful, you may be ostracised by the community.*³⁸⁷

In both formal and informal processes, corruption can impede justice for disadvantaged communities. For instance, it was noted that corruption within police services can prevent the proper handling of complaints.³⁸⁸ Corruption within enforcement mechanisms may also prevent the fair disposition of cases. Unequal power relationships (particularly where state actors or large commercial entities are involved) may also serve to tip the scales of justice in one party's favour.³⁸⁹



*In cases concerning marginalised and disadvantaged communities, those at the advantaged side usually take steps to manipulate the system (being the judiciary or customary authorities) such that the award or judgment is given to their disadvantage.*³⁹⁰

To address some of the challenges presented in this part, experts identified the need for a wide range of measures, aimed, *inter alia*, at filling protection gaps, mapping customary land holdings, fostering cross-sectoral collaboration and addressing inefficiencies within land administrative services. Anti-corruption and pro-equality measures were viewed as essential.

The Land Act is still in its infancy, and in time may go some way to tackling some of the issues discussed in this section. Part three of the Act establishes a range of offences that may be used to address certain forms of corrupt practice. Section 11 includes a novel protection, rendering void any “decision or practice in respect of land under customary tenure” that results in discrimination. Whilst this provision is not without its limitations, it does offer the prospect of challenging inequalities in areas such as inheritance that anti-discrimination laws have traditionally found hard to penetrate.³⁹¹ To ensure the Act's full implementation, the effective participation of marginalised communities is essential.³⁹² As the following case study by Transparency International Ghana demonstrates, marginalisation, when combined with a lack of tenure security, can have potentially devastating consequences.



An Intractable Problem: Addressing Farmer–Herder Conflicts in Ghana

Authored by TI Ghana

In recent decades, the Ghanaian government has grappled with a persistent problem: an ongoing dispute between Fulani herders and farming communities. The dispute centres around competing claims to grazing lands and water sources in particular regions of the country. In some cases, violence has broken out, resulting in deaths, injury and extensive property damage in municipalities and districts such as Agogo, Ejura and Atebubu.³⁹³ These occurrences form part of a series of events that have come to be known as the “farmer-herder conflict”. Conflict between farmers and herders is prevalent in Ashanti and the Eastern regions of Ghana, notably in Agogo and Afram Plains.³⁹⁴ Despite recent initiatives, successive administrations have struggled to find a durable policy solution.

In 2023, TI Ghana travelled to four districts to consult with farmer communities, Fulani herders and local authorities, seeking their views on the conflict.³⁹⁵ In total, 186 individuals participated in the research, which was undertaken through a series of focus group discussions and semi-structured interviews. The results reveal a troubling situation, characterised by deep distrust and brewing resentments. Whilst land is clearly at issue, beneath the surface deeper forces are at work, hampering effective action and the identification of a lasting settlement to the dispute.

SURFACE TENSIONS

Nomadic herders, predominantly hailing from the Fulani ethnic group, arrived in Ghana in the early twentieth century, originating from regions encompassing Burkina Faso, Mali and Niger.³⁹⁶ Within Ghana’s borders, the Fulani people can be divided into three groups: the nomadic, who traverse from the Sahel to southern pastures; the sedentary; and the urban, who reside in centres such as Accra and Kumasi, with pursuits that extend beyond traditional herding.³⁹⁷ The crux of the discord centres around the mobile Fulani, whose unrestrained cattle movement may lead to inadvertent crop destruction and water source contamination in the absence of designated grazing routes.³⁹⁸

According to farmers, the Fulani migration usually occurs between November and February, which are the driest months in Ghana. Large herds of cattle cross the Sekyere/Kwahu Afram Plains, Agogo, Atebubu and Ejura-Sekyedumase. These areas are relatively wet and provide abundant pasture and fertile grazing grounds for cattle during the dry season. The incursion of large cattle herds into farmer areas has consequences that extend beyond agricultural losses, with some farmers raising allegations of serious human rights abuses, purportedly carried out by herders operating within their locality. While it was not possible to corroborate these claims, it is clear that tensions between community members and the Fulani remain high and deep mistrust resounds on both sides of the conflict.³⁹⁹

A CLIMATE OF MISTRUST

According to those we interviewed, disputes most frequently arise when herders decline to provide compensation for damage wrought by their animals upon farmlands. Conversely, from the perspective of the herders, calls for compensation are often inflated, surpassing the actual extent of damage incurred. Farmers suspect law enforcement's complicity in allowing herders' cattle upon their lands, while herders perceive police partiality towards residents.

At the local level, a triad of informal justice mechanisms has emerged to adjudicate disputes. Initial recourse involves direct negotiations between the herder, cattle owner and farmer, aimed at ascertaining the extent of any damage caused to the latter's property. However, these negotiations often falter, prompting herders to lean towards the second tier of adjudication. This involves the establishment of a local committee made up of landowners, youth leaders, cattle proprietors, herders and other important stakeholders. Multiple sessions are usually convened depending on the complexity of the issue at hand. The committee undertakes a deliberative process involving all relevant parties and subsequently delivers its findings, which include a determination of compensation. However, the committee cannot compel the enforcement of its decisions and discontent among farmers frequently arises during the course of proceedings, with allegations of bribery and other corrupt practices often levelled towards committee members.

If adjudication at the committee stage proves futile, the matter is escalated to the local chief for a definitive judgment. Decisions rendered by the chief bear customary binding status,

obligating both the farmer and the herder to comply. Failure to adhere to the chief's directives can lead to banishment or sanctions. However, mirroring the situation of the committee, concerns regarding bias undermine faith in the chief's adjudicatory function. When local interventions fail, the issue may be referred to the local police. However, for herders, police intervention remains an option of last resort, owing to fears regarding their precarious citizenship status and the possibility of reprisal. On their part, many farmers suspect the police of being partial in handling conflict.

TENURE INSECURITY: DEEPENING DIVISIONS

The complexities of the farmer-herder conflict are deepened by the marginalised position of farmers, who experience both tenure and food insecurity. Due to large-scale land investments, facilitated by traditional authorities, farmers face being dispossessed of their lands, which are reallocated to investors. Respondents explained that they were rarely consulted on deals: many only discovered that their land had been obtained after visiting their farms to witness the presence of tractors and individuals engaged in clearing and cultivation activities. In some cases, farmers indicated that they had lost their homes. This issue was exacerbated by a lack of due process: free, prior and informed consent was not obtained, compensation was often lacking and there were few arrangements made for the relocation of affected communities.

The multiple leasing of land parcels was also discussed with anxiety. Farmers sometimes allow portions of their land to lie fallow for soil fertility restoration. But in doing so, there is a risk of the land being classified as unused by traditional authorities. In Jato Zongo in the

Atebubu-Amatin Municipality, interviewees discussed a new directive issued by the *Omanhene* (traditional ruler) of the community. The directive provides that any farmer who fails to cultivate the parcel of land allocated to them will lose their rights to it. If a farmer does not use the land they have been assigned, the chief has the authority to reassign it to a new applicant. The farmers we spoke with saw the directive as a direct threat to their livelihoods and the traditional practices they have relied upon for generations, with the potential to disrupt established farming routines and patterns that are deeply rooted in the community's way of life.

The migration of Fulani herders was seen to compound the situation. This was most clear in areas where the presence of herders made it impossible for farmers to grow the usual crops like yam, plantain and cassava. As farmers increasingly lose access to their main source of livelihood, some indicated that they could no longer afford to make loan repayments, resulting in the recovery of their properties and deepening situations of poverty.

LAND, CORRUPTION AND DISCRIMINATION

The farmer-herder conflict is a multifaceted challenge grounded in historical, cultural and socio-economic dynamics. It is, nonetheless, important to emphasise the remarkable uniformity in the narratives presented by both farmers and herders. The ringing concord in their stories stresses the undeniable similarity of the challenges experienced by each group within their own context.

The Fulani find themselves culturally isolated. Despite being born and residing in Ghana for extended periods, they are often relegated to Zongo enclaves, rendering them outsiders in the community. This cultural marginalisation deepens divisions and perpetuates local tensions. In each of the communities we visited, there was a strong sense of social segmentation, with language barriers heightening the divide. Access to basic services is often limited for herders and their dependents. Frictions are compounded by the complex ethnic interplay between the Fulani and local communities, which results in a tendency to conflate nomadic and sedentary Fulani actions.

For their part, farmers fear for their futures. Tenure insecurity exacerbates an already fraught situation for communities whose lands, livelihoods and traditional modes of practice are increasingly under threat. For both parties, the conflict engenders economic losses, threatens food security, disrupts social cohesion and perpetuates cycles of violence. The perception of bias and corruption within justice mechanisms undermines confidence in the system and progress towards the peaceful resolution of disputes. The conflict is characterised by deep expressions of inequality that manifest in different ways to the detriment of farmers and herders alike.

THE NEED FOR AN EQUALITY-SENSITIVE APPROACH

To date, national responses to the conflict have proven inadequate. Since the late 1980s, government campaigns have seen the mass removal of Fulani, accompanied by the deployment of a composite military-police task force.⁴⁰⁰ As the evidence gathered for this case study indicates, these campaigns have done little to put an end to conflict or to allay the fears of those concerned. More recent programmes – including a national cattle ranching project launched in 2017 – have taken a different tack, demarcating grazing areas in an effort to address one of the surface drivers of the dispute.⁴⁰¹ However, the reception of these initiatives has been mixed. Some herders have expressed concerns, contending that a ranching system may hinder their customary mobility strategies employed during different seasons.⁴⁰² Criticisms have also arisen concerning the perceived lack of inclusivity and consultation within the policy formulation process.⁴⁰³ The result is that tensions continue to linger,

exacerbated by allegations of patronage, collusion and human rights abuses.⁴⁰⁴

There are no easy solutions to the conflict. Both farmers and herders rely on the land for their livelihood and it is clear that the rights of both groups must be recognised and respected.⁴⁰⁵ Any attempts to resolve the situation must take a comprehensive approach, one that acknowledges historic grievances and land injustices, seeks to address the root causes of inequality and discrimination, and looks to challenge corruption – in all its forms – as a barrier to the realisation of rights and the fair distribution of resources. Importantly, a sustainable resolution requires collective efforts that transcend local divisions and foster a shared vision for peaceful coexistence. Only time will tell whether this vision can be achieved.



2 KENYA

Throughout history, land has been a source of conflict and struggle in Kenya. Colonial-era legislation laid the foundations of a new governance system which sought to protect the exclusive property rights and economic interests of European settlers. Special “reserves” were created for Indigenous Kenyans, whose lives were increasingly ordered subject to the authority of the Crown.⁴⁰⁶ By the early 1950s, resentment towards British rule had grown to new levels. Bloody conflicts soon emerged, culminating in the “Mau Mau uprising” which broke out in 1952. Thousands of Kenyans were killed in the ensuing action, which was animated by calls for land restitution and increased political representation.⁴⁰⁷ To diffuse tensions, the government began instituting changes to the land tenure system. Work commenced with the implementation of the “Swynnerton Plan”, which advocated for the enclosure of communal land holdings and the provision of new title deeds to occupiers. Through these actions, the authorities sought to circumvent calls for more drastic redistributive measures, creating “a stakeholder class of conservative cash crop farmers” to support the colonial economy.⁴⁰⁸

Nonetheless, unrest persisted, stirring anxiety within the political establishment. By the end of the decade, independence seemed inevitable, bringing with it the prospect of more expansive reforms and unique risks for landowners whose property was – by definition – immovable. Shortly before the attainment of Kenyan independence in 1963, a land resettlement programme was launched, allowing settler farmers to be bought out of their holdings with financing from the British government and

the World Bank. At its close, millions of acres of land had changed hands and thousands of African families had been rehomed.⁴⁰⁹ However, the scheme was not administered evenly. As different tribes sought to restore the status of their landless constituents, political actors worked to strengthen their position by exploiting the increased competition for access to resources. In this period, landless Kenyans formed a new proletariat, established along clear ethno-political lines; those with connections stood to benefit from the new regime.⁴¹⁰

Inter-ethnic tensions – fomented for decades in the post-colonial State – reached a head in 2007, when thousands of people were killed following a tightly contested presidential election.⁴¹¹ A fact-finding mission, conducted by the Office of the UN High Commissioner for Human Rights in 2008, found that the violence was organised “largely along ethnic lines”, having its roots in the colonial legacy and long-standing grievances regarding the allocation of land.⁴¹² Discrimination and corruption were inexorably linked to the land issue, which had been used by successive governments to consolidate power and grow their support base.⁴¹³ Interviews conducted by the Equal Rights Trust with members of the Turkana community in 2011 demonstrate the close interaction between power, patronage and marginalisation in Kenya.⁴¹⁴ Tensions linger to this day: several experts interviewed for this report expressed concern regarding the vulnerability of minority ethnic communities to land corruption and its impacts.⁴¹⁵



The poor, vulnerable and marginalised face a lot of challenges when it comes to land. The land has always been a huge source of conflict in Kenya since independence.⁴¹⁶

In 2003, a Commission of Inquiry, known informally as the Ndungu Commission, was convened to investigate allegations of misconduct in the allocation of public land. The Commission's final report found evidence of widespread and systemic corruption within government, with an estimated "200,000 illegal titles" created in a forty-year period beginning in 1962.⁴¹⁷ The scale of the illegality was shocking. However, implementation of the report's final recommendations was slow. In 2009, the deadlock was broken when – following a period of intense campaigning by civil society organisations – the National Land Policy was adopted.⁴¹⁸ Just one year later, in 2010, a new Constitution was brought into force.⁴¹⁹ This was followed by a suite of legislation that aimed to transform the Kenyan land governance framework and bring the Constitution's ambition for a just and equal society into reality.⁴²⁰ However, corruption and discrimination have proven difficult to displace, and the Kenyan State continues to confront the realities of its past.



The challenge is that corruption fights back. People want to protect their illicit interests.⁴²¹

Under the Constitution, land is divided into three categories: public, community and private.⁴²² Experts interviewed for this report identified corruption risks in each of these areas. The multiple registration of title

documents remains a key challenge, and was linked to land-grabbing and forced evictions.⁴²³ Petty corruption in land administrative services means that some individuals cannot afford to have their legitimate claims recognised, increasing their vulnerability to harm.⁴²⁴ These issues are exacerbated by the poor management of records and low levels of rights awareness, each of which raises access to justice concerns.⁴²⁵ Moreover, a lack of access to information may prevent individuals from establishing the true nature of a given holding: in some cases, land believed to be communal was subsequently deemed private, generating a risk of displacement and strong perceptions of corruption among those affected.⁴²⁶



There is a tussle on large parcels of land that communities reside in and are deemed private due to historical injustices. The ownership is shrouded in secrecy. There has been no transparency and accountability, It would seem that corruption is at play.⁴²⁷

Many of the concerns raised by interviewees related to rural land governance. In 2016, a Community Land Act (CLA) was adopted by Parliament. The Act establishes detailed rules for the administration of community land, which is vested in the community and may be held under customary, freehold or leasehold tenure.⁴²⁸ Under the law, members of identified communities are required to elect between seven and fifteen members to sit on a community land management committee (CLC), which takes decisions on behalf of community members.⁴²⁹ Any decision to "dispose of, or otherwise alienate community land" should be supported by at least two thirds of the community, whilst other decisions can be

ratified by a “simple majority of the members present in a meeting.”⁴³⁰ In practice, however, respondents indicated that decision-making processes are opaque, and individuals are often unaware of how agreements are reached:



*Members of the community said that “the committee we elected negotiated with the road contractor. Sand was picked, or some murrum was picked for the road. But we don’t know how he was paid!” That tells you, there’s a gap. He presents a title saying he is the one in charge of that community land. The gap exists because you can negotiate, anything can happen. Now it looks like the gate keeper of the community is the one who has the title.*⁴³¹

Whilst respondents tended to view the CLA favourably, weak implementation, a lack of training and support for implementing actors, and complicated registration procedures each increase the risk of land rights violations.⁴³² “Discrimination and corruption on community land happens every other time,” one respondent observed.⁴³³ Without effective oversight, the same respondent warned of a risk that management committees may go “rogue”.⁴³⁴



*Corruption begins at the CLC level. Members of the CLC normally ask each party to a dispute to pay a certain amount of money for the dispute to be resolved. CLC members may request to conduct a site visit to the land in the course of the hearings. Again, parties will be requested to pay some money so that the site visit can be done. Not every person can afford these costs. Now, if you multiply the money by the number of cases, you’ll find out that the committee members use these cases to enrich themselves.*⁴³⁵

The process for registering community land is highly complicated, requiring the completion of multiple forms, each of which can take months to process.⁴³⁶ Despite the requirements of the CLA, when investors come to a new area, it was noted that communities are not effectively consulted.⁴³⁷ “Communities arms are twisted”, one interviewee explained. “Communities have not given consent ... the process is not done well ... at the end of the project, communities realise that they have been cheated.”⁴³⁸ Whilst the CLA is clearly designed to give a voice to communities in decisions affecting their land, it was observed that public participation requirements are often ignored or misapplied to the benefit of potential investors and powerful actors within the community. Corruption was highlighted as a cross-cutting theme in investment deals, with a disproportionate impact on disadvantaged groups due to their relative lack of voice and socio-economic status.⁴³⁹



You ask yourself, who did they engage? They will tell you we had public participation. But what is public participation? Public participation means you meet a community, specifically those who are affected by a project and follow the right procedure in meeting those communities. It doesn't mean you meet the village elder alone, or that you meet a chief alone, or that you meet the elected leaders on their own, or that you meet the governor on his own, or that you meet the MP on his own. That is not public participation.⁴⁴⁰

Similar issues were highlighted in respect of urban land management. Over half of Kenya's urban population reside in informal settlements.⁴⁴¹ Whilst the Urban Areas and Cities Act lists "active participation by residents in the management of the urban area and city affairs" amongst its core principles for urban land governance, in some cases, decisions appear to have been made without the consultation or consent of concerned groups, undermining faith in the system.⁴⁴² Speaking on proposed upgrades to the Kiambiu settlement in eastern Nairobi, one interviewee explained:



Kiambiu is a settlement without any form of title deed. Initially the land was said to belong to the Kenya Air Force, which gave out the land to the poor people settled there. There's a fear of us being kicked out at any time to pave way for an impending upgrade. No one in Kiambiu asked for the upgrading, we just heard that we are being upgraded. Young people came together to look into the titling issue. Along the way corruption came in. Politicians got involved. People got bribed. That ended.⁴⁴³

On account of their status and position within society, marginalised groups are especially exposed to land rights violations and the impacts of land corruption. A lack of inclusion within decision-making structures means that young people and persons with disabilities may be excluded from discussions on land.⁴⁴⁴ A perception of vulnerability can itself drive land-related harms: it was noted, for instance, that persons with disabilities "are considered unable to defend themselves", resulting in greater exposure to corrupt practices.⁴⁴⁵ Similar trends were reported in respect of older persons, whose land may be targeted on account of their age and apparent lack of knowledge of the legal framework.⁴⁴⁶ A lack of accessibility measures compounds the situation of these groups.⁴⁴⁷ For instance, it was observed that many older persons in rural areas do not have access to "new generation identity cards", meaning they are unable to register their land, exposing them to a risk of dispossession.⁴⁴⁸



For young people, if your father passes on, the land is inherited ... But once the village elders know that the man of the house is dead, they might decide to sell the property to another person and drive these young people away.⁴⁴⁹

A number of respondents expressed concern regarding the situation of women in Kenyan society. Whilst the Constitution establishes strong equality guarantees, and some successes were noted in increasing women's land ownership, harmful cultural practices persist.⁴⁵⁰ Traditionally, property passes to men, and even when women are entitled to land under the law, groups may collude to deprive women of their rights.⁴⁵¹ "Gender plays a significant role in land corruption, especially at the local community level," one interviewee remarked.⁴⁵² "Culturally, women are considered subordinate to men," another added.⁴⁵³ In some cases, harmful cultural norms operate at the intersection of different characteristics to perpetuate land inequalities. For instance, in parts of Kenya, it was observed that older women risk being accused of witchcraft, leading to retaliation from community members, thereby allowing their land to be taken.⁴⁵⁴



There is a married lady from a different community to her husband's family. She used her own money to build a house on her husband's property. But now the husband's family feels like their son needs to marry a woman from their own community. She feels like her rights are being violated and wants to report the case. But the area chief is from the same community as the husband's family and she fears bias. She didn't report the case – she wanted to go to court but didn't have enough financial resources.⁴⁵⁵

A variety of formal and informal avenues exist through which individuals can challenge rights violations. However, different factors including cost implications, the length of proceedings and the non-availability of services (particularly in rural areas) can hamper effective enforcement.⁴⁵⁶ Furthermore, corruption within the judiciary and alternative dispute mechanisms risks skewing decisions in favour of a particular party, with a disproportionate impact on marginalised and socio-economically deprived communities who – on account of their status – have fewer modes of influence.⁴⁵⁷ Fear may also prevent individuals from bringing claims, particularly where the opposing party is perceived as well-off or politically connected.⁴⁵⁸



They fear engaging the perpetrators or that they won't have the financial means to pursue the matter if the elders ask for money in the form of a bribe. As a result, the community has lost faith in the local administration officials and the elders as well.⁴⁵⁹

Broader inequalities in society – a lack of wealth, literacy or education – compound the challenges faced by disadvantaged groups, and in some cases can directly implicate their experience of justice. Particular concern was expressed regarding the situation of women. Often responsible for childcare and family responsibilities (amongst other work), it can be challenging for women to raise a complaint. “Finding justice is not a one-day issue,” one respondent explained. “By the time justice is delivered, the family has totally suffered. Families have suffered in the process.”⁴⁶⁰ A lack of literacy means that some groups may be given documents to sign expressing their consent to a transaction, without understanding what they mean.⁴⁶¹ Persons with disabilities and groups with specific language related needs are required to trust the information presented to them by government officials and may be ignored in official processes due to a lack of accommodating measures.⁴⁶²



Most of the people in these groups are facing abject poverty persons in these groups are illiterate and therefore lack awareness of their basic land rights and land administrative procedures. Then there is the issue of bureaucracy in offices where such issues are supposed to be reported. Most people feel that it would be cumbersome because they consider the procedure complex, and beyond their understanding.⁴⁶³

While it was noted that Kenya has made “huge strides” in respect of land governance, benefitted by the creation of a new Environment and Land Court through the 2010 Constitution, the complexity of the legal framework, combined with a lack of political will, was viewed as a significant barrier to justice.⁴⁶⁴ In many cases, land inequalities remain unaddressed. Under Article 67 of the Constitution, a National Land Commission is established with the duty to investigate “present or historical land injustices and recommend appropriate redress.”⁴⁶⁵ This provision was given legal impetus in 2016, through the adoption of the Land Laws (Amendment) Act. However, the timeframe for bringing claims was limited to five years, and claims cannot be registered or processed by the Commission when a court has already been seized of the issue. Whilst an amendment to the relevant legislation – removing the claim limitation period – has recently been introduced in the National Assembly, many cases are unresolved.⁴⁶⁶ One expert interviewed indicated that litigation has been used to frustrate claims and prevent effective action:



When you take your claim to the National Land Commission someone would place a case in court. If your issue has a court case it will not be admitted as a historical land injustice.⁴⁶⁷

Land inequalities are perhaps best illustrated by the experience of Kenya's Indigenous communities. Over several decades, the Endorois and Ogiek have been systematically dispossessed of their land and subject to a wide range of human rights abuses.⁴⁶⁸ Similar issues have been reported to affect the Sengwer, who since the 1980s have found themselves forcibly evicted from their ancestral home in the Embobut forest by the Kenya Forest Service.⁴⁶⁹ Many cases have been brought challenging the treatment of these groups, with some notable successes at the regional level. In 2010, Kenya was found to have violated its obligations under the African Charter for failing to recognise the collective identity of the Endorois.⁴⁷⁰ A similar finding was made in relation to the Ogiek in 2017.⁴⁷¹ While these decisions are welcome, non-implementation remains a key challenge.⁴⁷² Speaking on a recent reparations judgment issued in follow up to the Ogiek case in 2022,⁴⁷³ a representative of the Kenya National Commission on Human Rights suggested that little had been done to give effect to the Court's orders:



There were timelines within which the orders are to be complied with. A period of one year was given. There were other orders that ought to be complied with almost immediately. For instance, the publishing of the decision, recognition of the Ogiek, including their language, culture and way of life; and the payment of compensation to the tune of about 158 million [Kenyan Shillings] (US\$1,341,000) to a Community Development Fund that was to be set up for the funds to be deposited there. That is a challenge. None of that has happened.⁴⁷⁴

The testimony gathered for this report illustrates the complicated dynamics of land, corruption and discrimination. Whereas in the post-colonial period, corruption was primarily identified with public land, it is within communities that harms are currently being felt. Community land – itself wrapped up in complex issues of ethnicity and identity – is quickly becoming the new terrain upon which land rights will be secured or lost.⁴⁷⁵ If the Constitution's transformative vision for an equal society is to be recognised, a "bottom-up" approach is needed – one that recognises difference, ensures effective participation and provides redress for disadvantage.⁴⁷⁶ Yet, as the following case study from Transparency International Kenya clearly illustrates, much work remains to be done.



'It Has Made Us Landless' – Corruption, Discrimination and Kenya's Nubian Community

Authored by TI Kenya

Kenya's Nubian community are descended from Sudanese nationals forcibly conscripted into the British army in the late nineteenth and early twentieth centuries.⁴⁷⁷ Upon being decommissioned, Nubians were granted neither British nor Kenyan citizenship and no arrangements were made for their repatriation to their country of origin.⁴⁷⁸ As a result, many Nubians settled on land reserved for them by colonial authorities – an approximately 42 hundred-acre plot that would later be named "Kibera" (roughly translated as "land of the forest").⁴⁷⁹ When Kenya attained independence in 1963, the question of Nubian citizenship was left unresolved. Lacking identification, community members were *de facto* rendered statelessness – belonging officially to no country – with profound human rights implications.⁴⁸⁰

Sustained awareness-raising campaigns – led and championed by domestic civil society organisations – have brought the plight of Kenya's Nubians to the attention of the international community. In 2015, an important milestone was achieved when the African Commission on Human and Peoples' Rights held Kenya in violation of its Charter obligations for failing to recognise the legal status of Nubians and their equitable rights to land.⁴⁸¹ According to the Commission, Nubians faced unique challenges in acquiring identity documents, which were not experienced by other members of the population. Enhanced vetting procedures, that had "no basis in Kenyan Law" and were "prone to abuse", created novel challenges for community

members. They were, the Commission concluded, unjustified and discriminatory.⁴⁸²

Eight years have now passed since the Nubian decision was published. Yet, despite some progress, recent reports suggest that implementation has been lacking.⁴⁸³ TI Kenya decided to investigate. In 2023, we spoke with nine members of the Nubian community based in the Kibera Langata and Makina sub-counties, alongside a representative of the Nubian Rights Forum. Despite the small sample size, the testimonies received illustrate the continued challenges faced by Nubians in society. The non-recognition of Nubian's legal status, combined with historic and contemporary land injustices and a lack of documentation, creates room for corruption, which in turn may deepen the experiences of inequality felt by this already marginalised group.

IDENTIFICATION AND VETTING PROCEDURES

For Nubians in Kenya, a national identity card serves a gateway to the enjoyment of human rights. Without identification, a person cannot access public services, obtain official employment or participate in elections.⁴⁸⁴ Importantly, for the purposes of this study, the lack of an ID card can prevent a person from registering their legal interests in land. This situation "has made us landless," one participant explained. "We do not have a place we can call our home."

When applying for identification, many Nubians are subject to an additional vetting process that does not apply to other members of the population.⁴⁸⁵ According to the responses received, applicants are usually requested to appear before a committee of elders, consisting of around eight to twelve individuals who ask a series of questions. The committee meets just two days a week in four-hour time slots. As part of the process, applicants are required to submit supporting documentation, such as copies of their birth certificate, school records and the identity documents of their grandparents and great-grandparents. However, many individuals are unable to access these documents because of poor records management and the historic consequences of statelessness. As a result, many of the requested materials do not exist.



Sometimes they can even ask you for a title deed ... they know Nubians do not have titles. So if you ask someone for a title deed, what do you expect and where do you expect them to get it? Or they can ask you for a birth certificate of their great-grandparent ... The issuance of birth certificates just started after the [adoption of the new] Constitution.⁴⁸⁶

The vetting process is not provided for by law, leaving it open to abuse. In some cases, reports suggest, individuals have been denied identification due to a personal disagreement with members of the committee.⁴⁸⁷ Research conducted by the Equal Rights Trust in 2012 found that the “vetting process is inconsistent and arbitrary, with no set questions or procedure”. In consequence, “much is left to the discretion of individual committee members, with the result that corruption and prejudice

are common.”⁴⁸⁸ One respondent, interviewed for this report, explained that documents are frequently lost, with applicants having to part with “something small” to have somebody find them. In some cases, fees were required to be paid to administrative officials in order to “speed up” the process. In addition to preventing the timely receipt of identity cards – which one respondent explained can take up to six years – petty corruption in this area is likely to have a disproportionate impact on Nubian community members, owing to their already weak socio-economic position.⁴⁸⁹

HISTORIC HARMS AND MODERN WRONGS

For many in the Nubian community, land and nationality rights are inseparably interlinked.⁴⁹⁰ For over 100 years, Kibera has provided the setting for community practice and a final resting place for lost relatives.⁴⁹¹ The historic failure of government to recognise the Nubian’s entitlements to citizenship had the effect of rendering their claims to the land void.⁴⁹² The issue is complicated by the legacies of colonisation and the Nubians’ perceived role in it. “The Kenyan government says the Nubians were colonised by the British,” a representative of the Nubian Rights Forum explained. “Members of the public will say Nubians collaborated with the British to violate the rights of Africans or Kenyans in Kenya. But one thing people forget is that the Nubians were forced.”⁴⁹³

While many Nubians cling to historic agreements regarding the size of the settlement in Kibera, these maintain little weight for government. In recent decades, new groups have settled in the area, whilst the amount of land retained by community members – viewed

as informal occupants – has diminished.⁴⁹⁴ Several respondents highlighted concerns relating to their security of tenure. One explained that members of the community live under a constant threat of forced eviction, whilst others discussed land being reallocated by those in authority to those with political connections.

“

*We are one of the first tribes that settled in Kibera but have no ownership. Our land has been taken from us by both private developers and the government. We are now squatters and our land is being referred to as the largest slum in Africa and Sub-Sahara.*⁴⁹⁵

In recent years, the government has made commitments to recognising Nubian rights.⁴⁹⁶ In 2017, some limited progress was made when the community was officially awarded 288 acres of land in Kibera.⁴⁹⁷ Through the work of civil society organisations and international agencies, many Nubians have been supported to access identity documents. In some cases, one respondent noted, individuals had also managed to obtain and register land. Yet, despite these positive developments, it is clear that challenges remain. On account of their position within society, members of the Nubian community face unique difficulties in exercising their land rights. Lacking representation in government and excluded from decision-making structures, respondents indicated that Nubians lack voice, contributing to their marginalisation in society. Discrimination and corruption accentuate the harms experienced by members of this group; addressing them is crucial.



3 MADAGASCAR

The Republic of Madagascar is a country located on the south-eastern coast of Africa. The state is distinguished by its impressive biodiversity, which supports many distinct forms of life. However, this position is increasingly threatened by unsustainable land use practices.⁴⁹⁸ A former French colony and overseas territory, Madagascar attained its independence in 1960. Contemporary land governance can trace its roots back to the colonial period, which saw the establishment of a plural tenure system comprising private titling on the one hand, and customary tenure (encompassing individual and collective ownership) on the other.⁴⁹⁹ Remnants of the colonial regime can still be seen today: some tracks of land – settled for generations by farmers – remain titled to French citizens.⁵⁰⁰ This situation prevents occupiers from having their informal land rights recognised, creating a risk of dispossession and evictions without compensation.⁵⁰¹



*We inherited a land law from colonisation and this law is not adapted to the social and economic conditions of the country.*⁵⁰²

Since 2005, Madagascar has embarked on a programme of land reform.⁵⁰³ The primary means of securing land rights is through certification and titling. However, a range of factors, including the cost and complexity of administrative procedures as well as regional disparities in the availability of services, has meant that many individuals have chosen not to register their interests and lack tenure security.⁵⁰⁴ Whilst customary land practices are seen as highly legitimate, the promotion of

an individualised model of ownership means that these systems are increasingly under pressure.⁵⁰⁵ One expert warned that the current system of land governance is “ill-suited to the country’s reality and Malagasy culture.”⁵⁰⁶ Respondents also expressed concern that a focus on clarifying individual property rights to land may detract from other aspects of land governance, including planning and distribution, which are essential to ensuring that the land is developed sustainably.⁵⁰⁷ As one interviewee described:



*No one wants to settle in places where there are no roads, no drinking water, no schools or to live in insecurity.*⁵⁰⁸

Corruption in the land sector may disincentivise individuals from registering their land, perpetuating tenure insecurity.⁵⁰⁹ A number of risk factors were identified by respondents, many of which relate to land administrative services.⁵¹⁰ It was noted that the current procedures for registering land are overly complex, costly and burdensome.⁵¹¹ Population growth has increased the demand for some services such as surveying and valuation, placing further demands on the system.⁵¹² These inefficiencies have driven land users to pay bribes to public officials. In some cases, officials actively demand payment, imposing fees to provide access to necessary documents or to accelerate processing times.⁵¹³ Fraud was also highlighted as an area of concern: it was observed that different individuals may be sold the same plot of land and provided with false documentation.⁵¹⁴

Corruption risk factors were also highlighted in land investments. Whilst it was noted that not all public officials engage in corrupt practices, a lack of clarity regarding farmers' tenure rights was seen as a natural consequence of government policy, making it easier for land to be allocated to investors.⁵¹⁵ One participant noted that corruption “encourages land-grabbing”, resulting in the displacement of local land users.⁵¹⁶ Another illustrated how corruption has led wealthy individuals to “buy up forests” from state officials and local communities to gain access to land intended to be managed for conservation purposes.⁵¹⁷ A lack of effective communication between various government ministries enhances these risks.⁵¹⁸ In some cases, investors make promises to support development in the local area through the provision of schools or hospitals.⁵¹⁹ However, land obtained for a specific purpose may be used for another. In the event of disagreement, it was noted, courts are likely to side with the most powerful (investment) actor.⁵²⁰



Take the case of the Tsiazompaniry nature reserve. As a general rule, if third parties wish to access or use part of these areas, they must request authorisation from the community. Each type of activity is subject to the payment of a specific fee set and registered on a charge sheet with these communities. In the event of non-compliance, the contract carries penalties known as “dina”. In this case, third parties obtained authorisation to grow food crops in the area. Later, they abusively monopolised the community’s reforestation site. Taken to court, these third parties won their case, to the detriment of the local community, which had already been developing the land for years.⁵²¹

Inequality and harmful cultural practices mean that some groups are affected differently by corruption. We spoke with a representative of the Association of Persons with Albinism in Madagascar, who explained how widespread prejudice and social stigma increases the marginalisation of persons with albinism. Even where such persons have legal documents to justify their land claims, they may be ignored. In some cases, children with albinism have been denied access to their lawful inheritance in favour of other family members.⁵²² Rights violations frequently go unpunished. Each of these factors, it was observed, increases the risk of corruption: where individuals are unable to exercise their rights on an equal basis, they may be forced to resort to unlawful practices to secure their access to land.⁵²³ The perception of vulnerability also creates room for exploitation: for instance, it was noted that authorities tend to ask persons with albinism for bribes when land disputes arise.⁵²⁴

As in other countries reviewed as part of this report, a number of respondents expressed concern regarding the situation of women. Whilst national law provides for women's equal inheritance rights, the practical reality is often very different: a woman's position in society is closely linked to that of her husband, and men are more likely to inherit, own and administer land.⁵²⁵ Because many women lack proof of ownership, cultural norms mean that property often passes to men.⁵²⁶ Whilst compensation may be paid in some circumstances, the level of compensation typically does not reflect the value of the plot, and women have little choice in the matter.⁵²⁷ In some cases, public officials are reportedly bribed by family members to gain access to a woman's land.⁵²⁸

Similar patterns were identified in relation to marriage. In parts of Madagascar, traditional (as opposed to civil law) marriages are the norm. These marriages lack legal recognition, creating a risk that widows will lose their land to the family of their deceased husband.⁵²⁹ Children born within traditional marriages are also disadvantaged: under the law, it was noted, these children are considered "illegitimate", meaning that they are unlikely to inherit from their father's estate.⁵³⁰

Whilst some women have been able to acquire land, many lack accepted forms of identification. To overcome these and related challenges, women may be pressured into making facilitation payments to public officials. However, as many cannot afford to pay, they are left without recourse, returning home without having had their documents processed.⁵³¹ The resultant tenure insecurity can have profound and far-reaching human rights implications: in cases of domestic violence, it was explained that women may

be unable to leave their home because they have no other "means of survival".⁵³² Experiences of inequality are compounded for certain communities. For example, women with disabilities were said to be particularly disadvantaged in respect of inheritance and accessing land services.⁵³³

A number of respondents explained that individuals from marginalised groups, including younger persons, persons with disabilities, women, and persons working in rural areas, are unaware of their rights, and unable to demand enforcement action.⁵³⁴ These same groups are typically excluded from decision-making processes.⁵³⁵ Discrimination in society and unequal access to land means that some groups cannot afford to bring cases even where they wish to do so. For instance, a representative of the *Réseau SOA* platform explained that many farmers do not have the resources to hire a lawyer.

These same groups are also unlikely to be able to obtain compensation when their land is taken for development purposes.⁵³⁶ Even when judicial proceedings are initiated, power imbalances between parties can prevent the fair disposition of cases: "those with money or power win" one interviewee commented.⁵³⁷ This issue is aggravated when formal and informal tenure systems come into conflict. It was noted that the courts are more likely to enforce the rights of an individual that possesses the legal title to a plot of land than those of a farmer who has used and cultivated the land and is recognised as the traditional owner.⁵³⁸ Where an individual is unsuccessful in their claim, they may also be required to pay compensation that they cannot afford.⁵³⁹



In terms of justice, the law of the strongest would prevail, which means that only those with money or power win, to the detriment of the weak and vulnerable.⁵⁴⁰

Several respondents expanded on the links between socio-economic disadvantage, marginalisation and tenure insecurity. There is a perception that “only the rich and well-off have the right to free and easy access to land,” one interviewee observed.⁵⁴¹ Another suggested that the rights of investors are promoted over the those of small farmers as investors are able to pay more and can commit to local construction and development projects.⁵⁴² Wealthier individuals may also “use the power of their money” to pay bribes or “mobilise their knowledge to coerce” local officials.⁵⁴³ Socio-economic disadvantage has direct implications for a person’s ability to access justice. As the poor cannot afford the expense of legal proceedings, they tend to be treated less favourably than those with resources.⁵⁴⁴



Sometimes, individuals willingly give their consent to third parties to exploit or use the resources of their land in exchange for inappropriate compensation. This is mainly due to their precarious economic situation which makes them easy to influence.⁵⁴⁵

In legal processes, it was observed that a lack of education creates barriers to justice, with those who are unable to read or write less likely to obtain a positive outcome.⁵⁴⁶ Illiteracy was identified by several respondents as a key factor in enabling corruption. These dynamics are – in turn – linked to wider inequalities in

society, with a clear gendered dimension. For example, in the situation in which a family cannot afford to send their children to school, boys’ education is typically given preference.⁵⁴⁷ In those rare circumstance where a woman lodges a complaint, it was noted that cultural beliefs may prevent them from achieving effective redress:



The justice system accepts that this is tradition and that a family matter can be settled within the family. It’s as if the law doesn’t exist. Women find it difficult to win their case in the legal system, given their vulnerability.⁵⁴⁸

According to World Bank data, in 2020, Madagascar experienced a recession “that was about three times deeper than in the rest of Sub-Saharan Africa.”⁵⁴⁹ Slow economic recovery was further impeded by the coronavirus pandemic, which “reversed more than a decade of gains in income per capita for people and pushed poverty to a record high.”⁵⁵⁰ Madagascar is one of the countries most impacted by climate change, and long-periods of drought have resulted in severe food insecurity, affecting almost a third of the total population.⁵⁵¹ In this challenging environment, the State has sought to instigate economic growth by opening up the market to foreign investment.⁵⁵² However, as the recent (and deeply-contested) process of amending the law governing untitled private property illustrates, without putting communities at the heart of decision-making, these reforms risk leaving behind the most marginalised communities and deepening their experience of disadvantage.⁵⁵³

Those interviewed for this report identified a range of measures that are needed to improve land governance in Madagascar. The consolidation and simplification of administrative procedures, improving access to land services by strengthening decentralisation efforts, and increasing transparency in land management were all identified as essential actions.⁵⁵⁴ Addressing corruption and

discrimination is key. The testimonies received show how these phenomena operate to impede the effective realisation of rights. Some groups are disproportionately exposed to a risk of land corruption, as the following case study by Transparency International Madagascar clearly demonstrates. To date, however, efforts to address these joint ills have been underwhelming.



‘There is No Corruption Without Discrimination’ – Land and Persons with Albinism in Madagascar

Authored by TI Madagascar

Albinism is a rare genetic condition that commonly results in a lack of pigmentation in the skin, hair and eyes.⁵⁵⁵ Persons with albinism are prone to skin cancer and many experience visual impairments.⁵⁵⁶ Consequently, albinism is often considered a form of disability status.⁵⁵⁷ Due to their distinctive appearance, some persons with albinism may also experience discrimination on the basis of their colour, which is recognised as a form of racial discrimination under international law.⁵⁵⁸ Throughout Africa, persons with albinism are highly stigmatised, living under a constant threat of attacks, kidnappings and accusations of witchcraft.⁵⁵⁹ Violence against members of this group prompted the development of a Regional Plan of Action on Albinism in Africa in 2017.⁵⁶⁰ The African Union adopted a revised, continent-wide version of the plan in 2019.⁵⁶¹

In September 2022, the UN Independent Expert on the enjoyment of human rights by persons with albinism conducted an official visit to Madagascar. The final report, published in 2023, found evidence of discrimination occurring in broad areas of life, an issue exacerbated by the “hypervisible” status of community members.⁵⁶² While acts of violence are a relatively nascent phenomenon, there has been a sharp increase in recent years, particularly in Southern Madagascar where a majority of the population live in poverty.⁵⁶³ In part, these incidences have been attributed to harmful superstitions, such

as the belief that a person with albinism’s eyes “can help in locating precious stones” or help cattle thieves avoid discovery.⁵⁶⁴ The resultant fear and security concerns prevent persons with albinism from accessing and exercising their rights; an issue compounded by a lack of reasonable accommodation and accessibility measures.⁵⁶⁵

The Independent Expert’s report provides a brief glimpse into the life of one of Madagascar’s most marginalised communities. However, to date, the land-related experiences of members of this group have gone largely unexamined. TI Madagascar decided to find out more. In 2023, we conducted four focus group studies in the Atsimo Andrefana, Anosy, Haute Matsiatra and Diana regions of Madagascar with a total of twenty-five participants. Three of these regions, Atsimo Andrefana, Anosy and Haute Matsiatra, are located in Southern Madagascar where discrimination and violence against persons with albinism have seen the most notable increase.⁵⁶⁶ From these focus groups, four individual cases were identified for further review, which raised specific concerns of land corruption and discrimination.

FOUR EXPERIENCES OF HARM

A death in the family is never easy. But for persons with albinism, it can be a particularly stressful experience. Not only do they mourn the loss of a loved one, but they also face immense anxiety regarding the status of their land. Three of the four individuals we spoke with explained that they had lost access to their plots due to the competing inheritance claims of family members. While each interviewee believed that they were entitled to inherit the land in question, their status rendered them exposed to abuse. Perceptions of corruption were high. Many allegations were made concerning suspected acts of collusion with traditional and public authorities. While it was not possible to establish the veracity of these claims, it was clear that participants saw corruption and discrimination as inseparable from the harms they had experienced. As one respondent succinctly described:



Discrimination always leads to corruption and there couldn't be corruption without discrimination.

A second issue identified through the interviews concerned the provision of compensation following the compulsory acquisition of land. After his land was earmarked to make way for the construction of a new road, one respondent was forced to leave his home. He was not the only person in the area to be affected. However, unlike his neighbours, he was never remunerated. As with other individuals we spoke with, he believed that his status – combined with a lack of knowledge of the legal framework – was the central explanation for his differential treatment.



Ignorance leads to fear of going to the land registry office (...) especially as the government doesn't make much effort to explain our land rights.

Concerns of corruption and discrimination – in this instance involving local officials – were raised. However, the position of persons with albinism in Madagascan society means that it is often difficult to disentangle the two phenomena. Stigma, stereotypes and the threat of violence render members of this community susceptible to human rights abuses in almost every aspect of their of lives.⁵⁶⁷

JUSTICE DENIED: STIGMA, STEREOTYPES AND EXCLUSION

Perhaps the most illuminating information to emerge from the interviews concerned the participants' perceptions of justice. Whilst two of the respondents had wanted to access enforcement mechanisms, the recent increases in acts of violence against persons with albinism prevented them from doing so. One explained that she did not dare approach administrative offices for fear of being detected by kidnappers and abducted. Having seen reports of kidnappings reported in the media, a second expressed their concerns for their physical safety and that of their loved ones. The fears of one interviewee were deepened by the limited protection she received from local authorities. As she relied upon her family for protection from kidnappers, she worried that if she sought to raise a complaint, she would be abandoned.⁵⁶⁸

In the course of the interviews, other risks factors were identified that may undermine access to justice. One respondent explained that she felt she could not achieve redress through informal justice mechanisms on account of her gender. In this case, patriarchy, combined with the broader position of persons with albinism in society, generated a risk of multiple discrimination.

The case study of persons with albinism in Madagascar highlights the complicated dynamics of stigma, stereotypes and exclusion. On account of their status, participants felt they had been denied the rights accorded to them by the law. Whilst many felt they had been wronged and suspected the actions of

those in positions of authority, there was little they could do to remedy the situation. The UN Independent Expert's report touches upon these themes. It explains how "stigmatisation and discrimination" may combine to "perpetuate the dehumanisation of persons with albinism." In turn, dehumanisation works to remove the social and ethical standards that would ordinarily prevent rights abuses from taking place.⁵⁶⁹ While the interviews conducted for this study cannot hope to portray the full range of land-related harms felt by members of this group, they do shine a spotlight on factors that can deepen experiences of disadvantage and create room for corruption to occur.



4 SOUTH AFRICA

In a nation defined by the historic injustices of apartheid, the “land question” in South Africa is deeply rooted in patterns of racial inequality. Colonial rule saw significant changes instituted to land tenure systems across the region. Customary arrangements gave way to a new, individualised system of land ownership that displaced Indigenous practice and set the scene for the mass land dispossessions and spatial segregation that were to characterise the apartheid state.⁵⁷⁰

Legislation introduced in the first half of the twentieth century resulted in Black South Africans being forced to leave their homes and relocate to culturally and ethnically diverse reserves known as “Bantustans” or “homelands”.⁵⁷¹ These areas were overseen by traditional authorities and local elites co-opted by the ruling regime.⁵⁷² So-called “natives” were formally prohibited from buying, selling or leasing land outside of scheduled areas.⁵⁷³ This systematic denial of land rights continued throughout the twentieth century, a driver and symptom of the official apartheid policy and rampant inequalities that penetrated every aspect of society.

Throughout the 1980s, the fight for equal rights dominated political discourse, but it was not until the early 1990s that the apartheid regime was formally toppled. The Constitution of South Africa, enacted in 1996, lists equality and human dignity amongst its founding principles, and both are recognised as substantive human rights.⁵⁷⁴ The Constitution also establishes a right to property and goes on to define the contents of that right, requiring the State to take action aimed at fostering equitable access to land and redress for historic inequalities.⁵⁷⁵

A range of land laws and policies have since been enacted, built upon the four limbs of restitution, redistribution, tenure reform and improved tenure security.⁵⁷⁶ In practice, however, the scars of apartheid run deep, continuing to define a country that remains one of the most unequal in the world.



*We have been struggling with transformation for the longest time ... We have been struggling to get things to change from the colonial legacy of land administration.*⁵⁷⁷

Since the mid-1990s, socio-economic disparities have grown – rather than declined – and spatial inequalities (differences between urban and rural areas) are pronounced, a continuing legacy of segregation and colonial rule.⁵⁷⁸ Recent data suggests that the top 10 per cent of the South African population possesses over 70 per cent of the total wealth, whilst the bottom 60 per cent holds just seven.⁵⁷⁹ These inequalities have a clear racial dimension: according to the World Bank, in 2018 “racial differences were the largest contributor to income inequality” in the country.⁵⁸⁰

A combination of agrarian reform, land restitution and redistribution programmes have led to a significant tracts of land changing hands.⁵⁸¹ However, land continues to be concentrated in the hands of the few, and these reforms have done little to address underlying structural inequalities. Recent estimates suggest that 0.28 per cent of the country’s farms “produce around 80% of the value of agricultural production”, with a majority of smallholder farmers in rural areas unable

to meet their basic needs.⁵⁸² The opening up of the agriculture sector to international markets, following the lifting of economic sanctions in the early 1990s, was expected to boost economic growth and lift people out of poverty.⁵⁸³ In practice, however, the benefits of growth have not been distributed evenly, and many farmers remain impoverished:



People have land, but there's no contribution from that land to the fiscus ... we are actually poorer than we were before the land was in the hands of the so-called White farmers.⁵⁸⁴

Experts interviewed as part of this report expressed concern regarding the weak implementation of land reform programmes, which have been stymied by a lack of transparency, accountability and oversight.⁵⁸⁵ Fragmentation of the legal framework aggravates the issue, creating obstacles for those whose rights have been violated to bringing claims and achieving redress.⁵⁸⁶ Against this backdrop, perceptions of corruption are high. Various examples were presented by interviewees which ranged from cases of nepotism in government institutions to unlawful rent-seeking by public officials.⁵⁸⁷ "Land is allocated to friends and relatives by the department," one respondent explained, "Nothing happens to [it] and we are unaware of who actually owns it". Ultimately, "the land we were promised was allocated to other people."⁵⁸⁸ A separate expert drew attention to corruption in land redistribution schemes, explaining:



A whole bunch of farms were declared ... open for redistribution. These were all farms that had previously been redistributed [under the land reform programme] ... A journalist went and scratched below the surface and found that there was someone in the local office who demanded his own rent, and if you didn't pay it, he could just reassign.⁵⁸⁹

A report issued by Corruption Watch in 2019 illustrates the scale of land corruption in South Africa. Based on 706 submissions received in a six-year period between 2012 and 2018, the report found evidence of a wide variety of corrupt practices including the bribery of public officials, embezzlement, the misuse of public procurement processes and the distortion of laws and policies by political elites to facilitate the capture of land by business for development purposes.⁵⁹⁰

Corruption was most pronounced in rural areas, where land is often held by communities and administered in accordance with local custom or tradition.⁵⁹¹ Whilst privately held land was less frequently cited in corruption complaints, experts we spoke to expressed concern regarding the situation of persons living in informal settlements, which are often located around urban centres.⁵⁹² Tenure security is often limited in these settings and in some cases, it was reported that residents had been forcibly evicted after purchasers colluded with authorities to obtain land for less than its market value. In other cases, councillors were said to have enriched themselves by proactively purchasing land targeted for development, or by building and letting substandard accommodation on land designated for the provision of low-cost public housing.⁵⁹³ On account of their socio-

economically disadvantaged status, individuals living in informal settlements have few options available to them to challenge eviction orders or achieve redress:



The poor and marginalised are isolated. We feel that we do not count in the eyes of the state, we don't count in the eyes of society in general. Those who are rich see us as criminals. When you live in the shack, when you live in the informal settlement, you are not regarded as a human being. You are not regarded as somebody who's worthy of a dignified life.⁵⁹⁴

As the price of land has increased, mineral-rich plots, including those located in the former “homelands”, have become ever more valuable.⁵⁹⁵ Mining is an important source of jobs in South Africa, which contains “over 80 per cent of the world’s platinum reserves.”⁵⁹⁶ As countries move increasingly towards green energy production, respondents expressed their fears that natural resource exploration would increase as companies search for new materials in areas that have previously been left untouched.⁵⁹⁷ In addition to their implications for land use practices, these projects often have significant environmental and health impacts.⁵⁹⁸ Working conditions are often poor, and a lack of monitoring and oversight means that the proposed developmental benefits are rarely felt.⁵⁹⁹

Under the law, communities with informal tenure rights are required to be consulted before decisions are made on land use. However, in 2002, new legislation was passed which appears to forego this requirement, permitting mining companies to enter into agreements with government for permission to mine without obtaining community consent.⁶⁰⁰ Recent court cases have sought to re-establish the status quo, emphasising the importance of community engagement.⁶⁰¹ In practice, however, respondents noted that community members are often excluded from decision-making processes. Instead, consent is sought from traditional authorities, who make decisions on behalf of affected groups, giving rise to a perception of corruption.⁶⁰²



Land is administered by traditional leaders, although it's legally owned by the state ... and the minister is the trustee. But practically, traditional leaders are like a law unto themselves. They've become, in many ways, a fourth tier of government, making decisions on land allocations, land use, land dispossessions, entering into deals for land to be developed and mined ... The practice is, as long as you are an elite, your voice is heard and your needs are met ... The people we work with are not, so in practice, they are silenced.⁶⁰³

The economic implications of the “land question” were addressed by several respondents. Whilst the benefits of investment on communities are often promoted for their positive effect on employment and improved economic outcomes, interviewees noted the tensions that may exist in a society that views land as both an “economic” and “cultural” unit.⁶⁰⁴ As one expert described:



The commercial use of land is more important in this government than the social value. We want to use land for our survival, so that we can live in it. And the state decided to set it to private ownership – The relationship between the marginalised people in this country and land has been, and still is today, that the ones who have money and those who have access to better opportunities, are the ones who benefit out of the land.⁶⁰⁵

For many in South Africa, land is not only an economic proposition. It also forms the basis for communal, cultural and spiritual practice. Without secure tenure, people may risk losing their ability to access sites of religious importance.⁶⁰⁶ In some cases, it was noted, tombstones had been damaged, graveyards had been disturbed and religious buildings destroyed as a result of forced evictions and development projects.⁶⁰⁷ Few avenues of redress were available in such circumstances.⁶⁰⁸ One expert gave the example of a plot of land that was being used to house a Lutheran church. A mining company, which had obtained approval for a new project, had local residents removed from their homes:



A traditional leader and mining corporation had them evicted from the land. Police were called to escort the members off the land. Private interests can exercise an undue and corrupting influence. It's where parts of the State are corrupt, and it's where the people who should protect you take the path of least resistance. Having managed to keep their home through apartheid – this was how they lost it. And – if I remember correctly, their homes were actually burnt as they were being taken away.⁶⁰⁹

Almost 30 years after the fall of the apartheid regime, vast inequalities continue to permeate South African society, preventing individuals from exercising their land rights on an equal basis with others. Whilst the state has developed a robust anti-discrimination framework, non-implementation remains a challenge and some areas have proven particularly difficult for the law to infiltrate. Historically, Black women in South Africa were prevented from owning or inheriting land.⁶¹⁰ Whilst the Constitution now provides for equality between men and women, in some rural areas, traditional beliefs and practices continue to confine women to fixed roles within the family, *de facto* preventing them from administering property.⁶¹¹ Those who are seen to challenge traditional authority, or do not conform to social expectations (for instance, on account of their sexual orientation) face exclusion within the community.⁶¹² Due to their marginalised status, it was noted that certain groups of women, such as widows and divorcees, may face unique corruption risks, being seen as “soft targets” for dispossessions.⁶¹³



Women's land rights are protected. We know this legally, but in reality ... you can't even walk your plough fields for a certain period of time ... You're not getting a chance to participate in community meetings. You're not able to go and change your land. You can't take your livestock out ... There are a number of practices which are holding women back. Although legally ... on paper we have equality, the reality is very different.⁶¹⁴

Ambiguities and inconsistencies in national legislation means that many are unsure of their rights, increasing the difficulty of challenging abuses when they occur.⁶¹⁵ This, in turn, creates space for corruption, as motivated individuals seek to exploit weaknesses in the system to their own benefit. Complicated and lengthy legal procedures, inaccessible institutions, under-resourcing and a lack of effective accountability mechanisms exacerbate the issue, which may be felt differently by marginalised communities because of their relative lack of voice and position within society.⁶¹⁶ Despite legal protections, it was noted that persons with disabilities continue to experience challenges accessing land and housing.⁶¹⁷ And whilst recent changes to the law means that legal aid is now available in land cases, accessing support is still a challenge for socio-economically disadvantaged groups.⁶¹⁸ These and related concerns led one commentator to conclude that:



The legal system in South Africa is not designed for ... marginalised groups.⁶¹⁹

Non-implementation of the legal framework was a common theme in respondent submissions. In some cases, serious human rights abuses were reported. Individuals that had raised complaints regarding corruption and land rights violations had reportedly been subject to violent reprisals by the State.⁶²⁰ Reports were also received concerning acts of sexual violence occurring on farms. A lack of tenure security and the perception of corruption within police services were each identified as factors that prevented individuals from raising complaints.⁶²¹ These issues contribute towards a generalised climate of fear and mistrust of public institutions that impedes the effective functioning of the law, allowing corrupt actors to operate with impunity. For their part, national courts have sought to uphold Constitutional values and ensure that the rights of historically disadvantaged groups are observed. However, without effective enforcement, the impact of such decisions is substantively limited:



The courts have rich judgments when it comes to issues of land ... You have the jurisprudence that advances much quicker to ensuring the protection of marginalised communities than the legislature has. The courts have said that communal land is perfectly attainable through traditional processes, through custom. That's not what the legislature says. The legislature says that there needs to be a traditional governance structure in order for you to have land ownership ... The problem is there's not much you can do with a good judgment. As beautiful as those judgments are, as well-written as they are ... if [practice] does not catch up to what is said in courts whether in implementation or in monitoring then all you have is a really good judgment."⁶²²

Addressing the challenges of land governance in South Africa requires a concerted range of action. Whilst some progress has been made, as the following case study demonstrates, reform processes have failed to produce the kind of transformative equality impacts envisioned by the Constitution. The testimony received for this report – whilst limited in scope – paints the picture of a country struggling with the problems of the past and a land system creaking under the weight of its own history. Further reform is needed. Yet land invokes a range of interests, and to date, political will has been lacking.⁶²³ On two occasions since 2004, the Constitutional Court has been forced to strike down legislation adopted by government that would grant traditional authorities the power to enter into agreements on behalf of communities without their consent, for want of public participation.⁶²⁴ Whilst new legislation, establishing a dedicated Land Court, gives cause for hope, much more is needed to challenge corruption and inequality within the land sector.



Farm Worker Equity Schemes: Failing to Deliver

Authored by Corruption Watch

Following the formation of the democratic government in 1994, land reform was high on the policy agenda. Centuries of colonisation and apartheid rule saw Black South Africans systematically dispossessed of their land, which concentrated in the hands of the (White) settler population.⁶²⁵ In the 1980s, it was estimated that “60,000 white commercial farmers owned 12 times as much land as the 14 million rural poor.”⁶²⁶ To redress the imbalance, and overcome a torrid history of racial segregation, the state embarked on a progressive programme of land restitution and redistribution.

One of the earliest measures to be introduced was Farm Worker Equity Schemes (FWES).⁶²⁷ These schemes seek to support beneficiaries to become shareholders in a farm, typically in an area of high agricultural value, whilst equipping them with the skills and support necessary to establish their livelihoods.⁶²⁸ As these schemes are voluntary in nature, the precise details can vary between farms based on terms agreed between the landowner, the relevant government department and the proposed beneficiaries. However, each follows a similar format: the government provides a grant, supporting workers to become beneficial shareholders in a farm, which entitles them to a portion of the ownership of the business and related entitlements, such as voting rights and dividends.⁶²⁹

Whilst farm worker equity schemes have been around since the early 1990s, public information on them is limited. An unpublished

government report obtained by Corruption Watch does, however, provide some insight. Since their introduction, hundreds of equity schemes have been rolled out, a majority of which are located in the Western Cape. By 2013, almost 700 million South African rand (US\$69 million) had been paid to privately-owned farms, and almost 24 thousand hectares of land had been redistributed.

Despite these impressive figures, concerns abound regarding the implementation of the schemes.⁶³⁰ In 2009, a brief moratorium was introduced by the (then) Department of Rural Development and Land Reform.⁶³¹ However, the moratorium was soon lifted, and in 2014, the Department developed a new set of policy proposals that placed farm equity schemes at their heart.⁶³² New pilot schemes have since been introduced, and it is clear that the farmer-worker shareholder model remains a key part of the government’s current redistribution agenda.⁶³³

Nevertheless, concerns remain. It is within this context that Corruption Watch – a chapter of Transparency International working to fight corruption in South Africa – decided to investigate. In 2023, we interviewed 35 members of eight farm businesses located in the Western Cape. Each participant discussed their experiences of FWES, with many highlighting serious issues with the implementation of the scheme. Perceptions of corruption amongst beneficiaries are high, and despite initial hopes, for a majority, the intended equality benefits are yet to be felt.

MISSING MONEY: TRANSPARENCY AND PARTICIPATION

Although the exact terms of each scheme differs, beneficiaries under the FWES are expected to receive dividends corresponding to their share. However, a number of participants reported seeing few or no benefits from the scheme. In one case, it was reported that workers received a payment in the mid-2000s and did not receive a second until 2022. In other cases, dividends were paid seldom and irregularly. Despite raising concerns, beneficiaries at several farms did not receive an explanation for the low rate of payment. Whilst some interviewees were occasionally provided financial statements (displayed on screens during meetings and presentations) this was a rare occurrence. When workers raised their concerns, they were often ignored, being told that “business was not looking good” and that they should sell their shares if they were not happy.

A number of those interviewed expressed concern regarding a lack of transparency and access to information. In one case, participants explained that they were never told the details of their scheme. They simply received papers which they were told to sign so that the farm owner could receive government funding. Beneficiaries also lacked clear guidance from public officials on how the FWES were intended to operate. Once workers had agreed to participate in a scheme, they were rarely provided information on the financial status of their shares, despite their legitimate concerns.

A range of participants indicated that they had been excluded from shareholder meetings and were unable to participate in decisions that affected the running of the business. On one farm, shareholder workers nominated four trustees who would attend meetings on their behalf. However, when the farm went bankrupt, the trustees and shareholders suspected they had not been provided access to all the relevant information, which resulted in many workers signing over their shares without fully understanding the causes and consequences of the bankruptcy. Workers on another farm were also represented by trustees. However, the shareholders explained that they had no say in who was appointed and were provided no information on the decisions that were made.

These issues resulted a strong perception of corruption amongst interviewees. When beneficiaries received fewer dividends than expected, when businesses went bankrupt without warning, or when they were asked to sell back their shares to the landholder having received little or no prior payments, many believed that they had been taken advantage of. Some believed that farm owners benefitted from government grants without providing the support and payments they should have under the terms of their agreement. However, a lack of oversight and regulation means that these terms are often obscured: individuals do not know what the farm owners’ obligations are, and have few avenues to report their concerns, beyond internal channels.

EQUALITY IMPEDED BY CORRUPTION: A MISSED OPPORTUNITY

Whilst farm worker equity schemes were designed to raise up disadvantaged workers, few participants felt that their situation had changed. Whilst some had received dividends when times were well, conditions on the farm remained hard, and labour rights violations were reported. Improper accounting processes and unregulated time-sheet record-keeping practices which impacted on wages paid were discussed. Unsafe working conditions, including a lack of protective clothing and equipment was highlighted by one participant, whilst several reported the unavailability of trained medical support. In one case, a worker explained that they had to wait several days for an ambulance to arrive following a medical incident. Where transport to nearby medical facilities was provided, it was only available on certain days and at certain times.

One of the biggest concerns raised by participants related to land and housing. While accommodation was regularly provided as part of one scheme, it was only temporary, and workers explained that there was no guarantee they could stay on the land after they finished working. There was also no possibility of family members inheriting the home and living conditions were said to be poor. One interviewee explained that their house was in a state of disrepair but the landowner would not fix the issue or provide funds for the occupier to do so themselves. In several interviews, the ability for family to visit and reside on participants' property was said to be limited. One worker reported they had to pay for their children to live with them and several others explained that they needed to register visitors, and if they failed to do so, they would be removed. Across the board, individuals appeared unsure of their entitlements, or whether they were being treated fairly in relation to their housing situation. Because FWES typically grant beneficiaries a share in

the business (rather than the land they work), tenure security remains weak.

In some cases, examples of discrimination on farms were reported. Whilst some participants noted that men and women tended to be treated equally, others indicated that women were paid less, despite performing work of equal value. Discrimination against persons with disabilities was also highlighted. On some farms there were no ramps and no bathroom modifications. In one case, we were alerted to abusive behaviour towards a deaf person. The foreman, according to one of the participants, would shout expletives at the worker whenever instructions were misunderstood. As many shareholder workers are formally employed by the farms they work on, they are entitled to legal protections under the Employment Equity Act. However, a lack of knowledge of their legal rights means that many feel they have nowhere to turn when abuses take place.

Farm worker equity schemes are a case study in the challenges of effective governance. The novel design of the scheme, which seeks to redress historic harms by democratising agricultural systems, represents the best of South African ingenuity. But governance failures, including a lack of transparency, oversight, resourcing and effective implementation, mean that the ambition of the scheme has not been fulfilled. Instead, workers feel as though they have been failed. The result of this failure is that patterns of discrimination persist. Disadvantaged workers still lack equal opportunities to participate in agriculture to the same extent that larger commercial (and mostly White-owned) farms have. Colonisation and apartheid did not just dispossess farmers of their businesses, but also of the land on which they lived. Yet for many, tenure security remains a distant reality. Corruption risks impeding equality. If change is to be achieved, accountability is sorely needed.



5 UGANDA

During the early twentieth century, much of modern-day Uganda was administered as a British protectorate. Buganda was the first to achieve protectorate status in 1894, and in later years, the British mandate was expanded to encompass a range of additional districts and territories.⁶³⁴ Unlike in other parts of East Africa, including neighbouring Kenya, mass settlement was not a defining element of British development policy. The early years of the colonial project were marked by high levels of social and political unrest, which came at great financial cost to the Crown and dissuaded European settlers from populating the region.⁶³⁵ Instead, colonial powers adopted a strategy of “divide and rule”, working within existing social structures and exploiting long-standing inter-ethnic and inter-community tensions as a means to consolidate power.⁶³⁶ Beginning in the early 1900s, with the adoption of the Buganda Agreement, local elites were awarded large tracts of land in reward for their support of the new regime.

When independence was finally achieved in 1962, tensions fomented in the colonial State reached a climax.⁶³⁷ A coup in 1971 saw Idi Amin rise to power. The Amin dictatorship inflamed ethnic tensions and was accompanied by serious acts of violence: within a two-year period it was estimated that over 100,000 individuals were killed.⁶³⁸ Thousands of Ugandan Asians – many of whom were descendent of indentured labourers pressed to work on the construction of the Uganda railway – were forced to leave the country and saw their land expropriated.⁶³⁹ In 1975 a decree was adopted declaring that all land belonged to the State, with existing plots converted into

statutory leasehold. In practice, this directive was “largely ignored”, but it was not until 1993, under the Museveni administration, that the traditional Kingdoms of Uganda were formally reinstated.⁶⁴⁰

In 1995, a new Constitution was adopted, with a discrete chapter dedicated to land and the environment.⁶⁴¹ The Constitution recognises four tenure systems: customary, freehold, leasehold and *mailo* – a “customary system of freehold tenure” that operates in Central (and some parts of Western) Uganda.⁶⁴² A majority of land in Uganda is held customarily and “governed by rules generally accepted as binding and authoritative by the class of persons to which it applies.”⁶⁴³ According to some estimates, there are around “600,000 registered landowners in Uganda”, just under 1.5 per cent of the total population.⁶⁴⁴ Under the Constitution, the government may regulate the use of land in accordance with national laws and policies.⁶⁴⁵ The primary piece of legislation is the Land Act, which sets out detailed rules on the use and administration of land, and the mandate and responsibilities of implementing bodies. Later legal and policy initiatives have sought to consolidate the land governance framework and clarify land users’ legal entitlements. However, the legacies of division remain, continuing to inform contemporary land disputes and experiences of disadvantage.⁶⁴⁶ From the time the Constitution was adopted through to the present day, land has dominated political discourse in Uganda and is inseparable from wider issues of ethnicity, region and power.



I happen to have been on the Constituent Assembly. I was nominated by the President in 1995 when we were writing the new Constitution of the Republic of Uganda. The President was very clear that he wanted land to belong to the State but the Constituent Assembly members were politically worried. There were worried in the sense that the National Resistance Movement would stand to lose if land was vested in the State. So under that pressure, the President yielded so that land in the Constitution belongs to the citizens.⁶⁴⁷

In 2013, a national land policy was adopted. The policy recognises the unique challenges experienced by women, ethnic minorities, pastoralists, children, persons with disabilities, persons living with HIV and AIDS, older persons, internally displaced persons and other marginalised communities in accessing and exercising control over land.⁶⁴⁸ Tailored strategies, designed to overcome land inequalities and improve human rights protections for members of these groups, are set out at different points of the text. However, the policy lacks the force of law, and as the testimonies received for this report indicates, discrimination remains prevalent, contributing to worse land outcomes.

Particular concern was expressed regarding the situation of women. Despite performing a majority of agricultural work, respondents noted that women are often seen as “secondary” land users, whose position in society – particularly in rural areas – is made dependent upon their relationship to men.⁶⁴⁹ Whilst the law formally entitles women to own and administer property, in practice many

women are limited to usage and access rights, acquired through marriage, inheritance and pre-existing family networks.⁶⁵⁰ Inequalities in this area have far-reaching and intersectional impacts. Early and child marriage is seen as a means to gain access to land for women, and in some cases, has led to children dropping out of school.⁶⁵¹ In the event of divorce or the death of a husband or father, women were said to face an increased risk of losing their land to relatives of the deceased or other community members, leaving those affected with nowhere to turn.⁶⁵²



Women are still at a disadvantage when it comes to issues of land ... We've seen a number of laws and policies in place that [aim to] protect women when it comes to their position in society. But these laws and policies are still in black and white. The women are still marginalised. Men still have control over land and resources on land. We are carrying out land mapping and documentation ... out of the 203 parcels that have already been mapped in [one] particular parish, only six of them were in the names of women.⁶⁵³

Stereotypes and stigma combine to impede equal land outcomes. In customary settings, respondents explained that persons with disabilities face challenges acquiring land owing to the perception that they are unable to work the land productively.⁶⁵⁴ Within families, members of this group may be provided smaller plots than their siblings when land is being allocated.⁶⁵⁵ Disability related stereotypes mean that individuals with certain forms of impairment are not treated as equally capable decision-makers. In one case, a respondent explained how the family members and neighbours of a person with epilepsy had – without that person’s consent – made the

decision to till their land, with the intention of later sharing the profits.⁶⁵⁶ It was only with the support of civil society that the person in question was able to regain access to their plot.⁶⁵⁷

Different respondents discussed the unique challenges experienced by persons living with HIV and AIDS in accessing land. “They are written off in the community,” one respondent explained, “they are assumed to be dying.”⁶⁵⁸ Where a person acquires HIV, they may face pressure to transfer their land to “healthy” members of their family.⁶⁵⁹ The perception that a person is a carrier or cause of illness was said to increase their exposure to violence and limit their access to land and natural resources.⁶⁶⁰

Land inequalities in Uganda have clear spatial and socio-economic dimensions. “It is more common that the poor are dispossessed from their land than the rich or economically advantaged,” one respondent explained.⁶⁶¹ Peasants and others working in rural areas often rely upon the land to generate income and produce food to support their families.⁶⁶² As described further in the case study prepared by Transparency International Uganda, when the land of such individuals is lost as a result of large-scale land investments and development projects, the human rights impacts can be profound.⁶⁶³

Respondents noted that the most fertile agricultural land is often targeted for acquisition, leaving farmers with poorer plots “affecting the quality of their produce.”⁶⁶⁴ Effective community consent is not always obtained, and may be negated when land is compulsorily acquired.⁶⁶⁵ Indigenous Peoples were said to experience similar challenges, as they are evicted from their ancestral lands, ostensibly “in the name of conservation.”⁶⁶⁶

Losing land can push people into poverty and encourage migration to urban centres, where large informal settlements have emerged. These settlements, one respondent explained, often lack basic amenities including clean water and electricity.⁶⁶⁷



*The acquisition process is not transparent. It is done behind closed doors. These communities are not consulted ... Once somebody loses their land in Uganda, he or she loses their entire livelihood – they are pushed into a state of helplessness.*⁶⁶⁸

Corruption in land governance can exacerbate situations of disadvantage and a wide range of risk factors were identified by respondents. Allegations of fraud and bribery featured heavily in the testimonies received. Transparency International’s 2022 Corruption Perceptions Index ranked Uganda 142nd out of 180 countries, placing it in the top 21st percentile for public sector corruption.⁶⁶⁹ In 2017, a “Commission of Inquiry into the effectiveness of laws, policies and processes of land acquisition, land administration, land management and land registration in Uganda”, also known as the Commission of Inquiry on Land Matters, was established. While the Commission’s findings have not been made public, media coverage indicates that several corrupt practices were uncovered.⁶⁷⁰

Bribery was identified as a key enabler of corruption within the land sector. A 2013 survey found that two in every five people in Uganda had paid bribes to access land services – almost double the global average.⁶⁷¹ This trend was reflected in respondent submissions. “Almost everyone pays a bribe,” one interviewee

observed.⁶⁷² There are “back door fees” that must be paid “before you get the service,” another added.⁶⁷³ Because of their precarious position within society, respondents noted that disadvantaged communities were less able to pay bribes, increasing their vulnerability to harm, particularly where competing claims are expedited by corrupt officials.⁶⁷⁴ Bribery was also discussed in customary settings, where traditional authorities may request payment from parties to a dispute in order to find in one side’s favour.⁶⁷⁵

Across Uganda, it was noted that individuals may work with public officials and middlemen to acquire counterfeit land documents.⁶⁷⁶ In some cases, these documents have been used to sell land to non-nationals, who are targeted as potential clients, only realising in time that their land titles are legally invalid.⁶⁷⁷ When land is being demarcated, it was noted that administrative officials may collude with surveyors to produce fake measurements and reserve plots for themselves.⁶⁷⁸ Individuals may also pay to access information on expired leases and use the acquired data to gain access to land that is already occupied.⁶⁷⁹ When public bodies do not fully investigate claims or conduct site visits, there is a risk that people may lose access to their property in contravention of the law.⁶⁸⁰ Courts were said to be reluctant to order inspections when claims are contested, raising discrete access to justice concerns.⁶⁸¹

Discrimination can increase an individual’s exposure to corruption and generate specific corruption risks. Respondents explained that the land of some groups may be targeted by corrupt actors on account of their perceived inability to respond to rights violations.⁶⁸² Several interviewees expressed concern regarding the fraudulent sale of land belonging

to women and younger and older persons.⁶⁸³ Women were believed to be particularly exposed to corrupt practices owing to their unequal position in society. When land is being valued, it was noted that women’s land may be valued at a lower rate than men’s.⁶⁸⁴ Similarly, it was noted that women may be charged more than men to access information on land and to use land services.⁶⁸⁵

Land in Uganda is a source of power.⁶⁸⁶ Yet, on account of their status, some groups are excluded from decision-making structures and are unable to affect decisions on land use, contributing towards broader patterns of marginalisation.⁶⁸⁷ On account of their socio-economic status, and corruption in land allocation, younger persons were said to face challenges acquiring land in customary settings. “Towns have become populated by younger people doing nothing,” one respondent explained.⁶⁸⁸ When individuals are able to access land, corruption may prevent them from formalising their claims. “People lose hope and give up in the process of documenting their land because they run out of resources to finance corruption,” a separate interviewee attested.⁶⁸⁹ In some cases, respondents noted, women who are unable to pay face being extorted for sex.⁶⁹⁰



Another form of corruption – is sexual extortion, where women are being forced to offer their bodies in exchange for land services.⁶⁹¹

Different mechanisms are established under the law to deal with land rights violations. However, wealth disparities and uneven power relationships means that there is often an inequality of arms between parties to a dispute, impeding effective access to justice.⁶⁹² One expert interviewed as part of this report indicated that individuals who are threatened or intimidated into leaving their land may be prevented from accessing police protection because the police typically play a role in evicting occupants.⁶⁹³ Broader challenges, including remote and inaccessible court infrastructure, a lack of legal representation and complicated judicial procedures, each work to impede justice for disadvantaged communities.⁶⁹⁴ While local dispute resolution mechanisms were viewed positively by some participants, others expressed concern regarding the effect of discrimination on the process of adjudication. One interviewee described the challenges faced by persons living with HIV and AIDS in achieving redress:



Local authorities are not really well-educated and are not trained on the issues of HIV stigma and discrimination. So, you find that when you take your case to the local committee the chairman will ask about “the person who is about to die.” That alone disempowers that person and denies that person the opportunity to proceed forward or to get a fair hearing. The biggest challenge has been that those mechanisms for redress at the community level are not aware – or are perpetrators – of HIV stigma and discrimination.⁶⁹⁵

In recent years there have been some positive developments at the judicial level. In 2019, the High Court of Uganda held that the lack of “adequate procedures governing evictions” violated the Constitution, ordering the State to take specific measures to address the situation.⁶⁹⁶ Despite this ruling, Amnesty International notes that “forced evictions continue to be carried out”, and in July 2023, it was reported that plans to amend the Land Act had been put on hold by the President.⁶⁹⁷ Gaps in national laws and practice generate significant corruption risks and impede the realisation of rights for the most marginalised in society. Notably, whilst the Land Policy of 2013 identifies the need to eliminate discrimination in respect of land, it makes no reference to corruption. Yet, as the following case study illustrates, these phenomena are inseparably linked.



“This Project is a Curse to Us” – Compulsory Land Acquisition in Uganda

Authored by TI Uganda

Compulsory land acquisition has been defined as the power of government to “acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.”⁶⁹⁸ Referred to by a variety of names including “expropriation”, “public purpose” or “eminent domain”, it allows government to obtain land for the purposes of public infrastructure development.⁶⁹⁹ Compulsory land acquisition is controversial, given the disruption it can cause to the lives of citizens, which may not be fully mitigated by compensation packages. It is also prone to abuse, due to the wide discretion given to government, particularly in contexts where land tenure is insecure or where corruption is widespread.⁷⁰⁰ Under international law, expropriation is deemed permissible in only a narrow range of circumstances.⁷⁰¹

In cases where compulsory acquisition is deemed necessary, the Ugandan Constitution makes provision for “prompt payment of fair and adequate compensation” as well as “right of access to a court of law by any person who has an interest or right over the property.”⁷⁰² The Land Acquisition Act provides for the appointment of an assessment officer to conduct valuation assessments of land to be used as a basis for compensation.⁷⁰³ The Act also provides for the establishment of

District Land Boards whose mandate includes compiling and maintaining compensation values within their jurisdiction.⁷⁰⁴

These legal provisions ostensibly seek to ensure that the power of eminent domain is exercised prudently and in a manner that protects ordinary citizens from the arbitrary deprivation of their property by setting standards that should be followed by government entities while acquiring private land rights. Transparency and accountability are key tenets. However, while these safeguards exist, in practice they can be flouted or ignored by corrupt actors for private gain. Compulsory acquisition can also be wielded to justify the expropriation of land for illegitimate or illegal means,⁷⁰⁵ rendering those who live off the land exposed to land-grabbing, unlawful eviction, inadequate compensation and discrimination.

To better understand the risk of corruption in compulsory land acquisition and its impact on communities who experience discrimination, Transparency International Uganda set out to document the ramifications of a case of compulsory land acquisition in the so-called Tilenga Project in Western Uganda, a project which impacts thousands of households.⁷⁰⁶

THE TILENGA PROJECT

In 2016, as part of Land Acquisition and Resettlement Framework between the Ugandan Government and the implementing partner TotalEnergies, land in the Lake Albert region of Uganda (mainly the Buliisa and Nwoya Districts) was designated for the Tilenga oilfield development project. The framework set out the terms of the acquisition: the Ugandan Government would set the values of the land and properties, but compensation and resettlement of the project-affected persons (also known as PAPs) would be managed by TotalEnergies. TotalEnergies contracted a private company called Atacama Consulting to handle the land acquisition process, including managing compensation.

The first Resettlement Action Plan was planned and implemented by Atacama Consulting over 2017 and 2018, affecting 622 PAPs. During this process, 17 landowners representing nine families alleged that their land was undervalued due to irregularities in the valuation and compensation process and rejected the compensation. In response, in 2020, the Attorney General initiated legal action to force these landowners to accept the compensation. Some of these landowners accepted the compensation, while the remaining landowners had their compensation deposited in the High Court after losing the case in April 2021. Some of these landowners have refused to collect the compensation from the High Court in protest against what they view as their unfair treatment by authorities.

In July 2023, staff from Transparency International Uganda travelled to Buliisa District to interview five of these individuals who had rejected the compensation. Transparency International Uganda also interviewed two additional respondents – one of whom accepted the compensation but deemed the amount to be inadequate, and another respondent who was part of a later resettlement plan and refused to be relocated from his land. The testimonies of these respondents paint a disturbing picture about the integrity of the compensation process, including a failure to follow due process and strong perceptions of corruption. The respondents also chronicle the long-term consequences of their displacement, with evidence suggesting that marginalised groups, including women and older people, have suffered disproportionate impacts.

IRREGULARITIES IN THE COMPENSATION PROCESS

In interviews with TI Uganda, those interviewed highlighted concerning irregularities at various stages of the land acquisition processes, resulting in unfair or inadequate compensation. During the planning and scoping phase of the land acquisition, the Land Acquisition Act stipulates that the government should publish details of the land acquisition and provide those affected with timely information on the valuation and compensation process to inform their decision-making, including access to compensation lists. However, multiple respondents reported that they had not been provided with adequate information including their rights under compulsory land acquisition, compensation lists and land values.



The project started as rumours until one day when Atacama Consulting acting on behalf of TotalEnergies, without prior notice, came and surveyed my land. They came back two weeks later to communicate the cut-off date for the valuation of land.⁷⁰⁷

Several respondents also reported limited participation in decisions related to the type of compensation provided (for example, cash compensation, “land for land” or physical resettlement) and the inclusion of property like crops in the valuation packet. As a result of these processes, all respondents were offered compensation packets that they perceived to be inadequate or unfair.

Aside from inadequate compensation, the testimonies of those interviewed also outline issues with the prescribed timeline. While the Ugandan Constitution requires “fair and adequate compensation, prior to the taking of possession or acquisition of the property” (emphasis added), at least one participant reported that it took years to receive the compensation and another participant alleged that they had been asked to vacate the land before a house was constructed for them.



Compensation did not come in time. It took about two to three years before we received it and this whole time, the land had already been taken. When it eventually came, we were not able to get the same amount of land, so it was eventually squandered by the men that received this. We have since remained in hardship. As ladies we have no authority on land. I noticed that there was undervaluation of our land.⁷⁰⁸

A lack of transparency in land acquisition processes presents a significant risk of corruption as speculators with insider information can use it to the disadvantage of legitimate landowners in the identified areas, and affected community members are more vulnerable to deception or fraud. Amongst respondents, perceptions of corruption were high, with at least three of those interviewed speculating that corruption had influenced the valuation and compensation process. This perception was reinforced by reports of a lack of uniformity and transparency in the calculation of payments and the identification of legitimate rights holders.



There is an individual that was paid 10 million shillings (US\$2,637) for one acre of land while my family was offered 700,000 shillings (US\$185) for crops on 10 acres. Some other people accessed resettlement and houses were built for them, yet they have never lived in Kasinyi. I think there were inside dealings with Atacama because those people got a lot of money. They claim that the houses they built for resettlement cost over 200 million [shillings] (US\$52,739), but you can go and see for yourself.⁷⁰⁹

Beyond the lack of transparency and due process detailed in the testimonies, other concerning trends have emerged. Reported coercion to accept compensation agreements, damage to property to reduce the valuation, and inadequate or absent access to justice or grievance mechanisms together paint a picture of inadequate accountability and vested interests that may be indicative of collusion or private interests.

DIFFERENTIATED IMPACT

Respondents reported a range of harms because of the land acquisition including landlessness, loss of livelihoods and the destruction of property. When compensation was received, in the case of all respondents, it was insufficient to restore their living conditions and livelihoods. This impoverishment, coupled with a lack of access to redress, has reduced the ability of those affected to negotiate with government officials and private entities from a position of strength. The lack of financial and political capital has rendered them exposed to exploitation by predatory actors and driven them further to the margins of society.

The effects of this marginalisation are not felt equally across the community. People at risk of discrimination have been hit hardest by alleged impropriety in the operation of the compulsory land acquisition scheme. The testimony of several respondents suggests that women have been excluded from participating in the compensation process. One respondent reported that his sister's compensation was added to his evaluation form and Transparency International Uganda's analysis of the cases found that most of the compensation lists only had men included as head of families, indicating the compensation would go directly to them. Another respondent reported that, as an older woman, she had been sidelined in the consultation process.

The testimonies highlight the differential impacts of displacement and loss of livelihoods on women, given their frequent role as

caregivers and responsibilities for domestic work. After losing her land, one of the respondents, an older widow, was forced to collect and sell firewood to survive, which she found difficult due to mobility issues linked to her age. A separate interviewee, a single mother, attested to the new challenges she faced caring for her children:



As a single mother, I was using part of the family land to cultivate and support my children. After the land was taken, I now have no means to look after my children, yet I have a son with sickle cell anaemia who needs constant medication.

Given their deep and potentially far-reaching impacts on the enjoyment of human rights, States' powers to compulsorily acquire land must be carefully managed and used only for a legitimate public purpose, according to clear rules established by law. Unfortunately, as this case study has shown, land acquisition can be undertaken in a non-transparent manner and in the absence of effective safeguards, leading to rights infringements. Structural inequalities may deepen the impacts felt by marginalised groups, as this case study found in the case of women. While drilling on the Tilenga oilfields has moved ahead,⁷¹⁰ the issue is far from resolved for those who have experienced displacement, many of whom face uncertain futures having lost access to their lands and livelihoods and lack the means to achieve effective redress.



6 ZAMBIA

For large parts of the twentieth century, Zambia was known by its given title of Northern Rhodesia, which was officially administered as a British protectorate.⁷¹¹ As in other parts of Africa, the colonial period saw Indigenous communities displaced from their land in favour of European settlers, whose claims were legitimated through successive Acts of Parliament and Orders in Council.⁷¹² Since attaining independence in 1964, there have been at least two distinct phases of land reform in Zambia.⁷¹³ However, the hallmarks of colonial rule can still be seen, informing both the development of the land governance framework and experiences of inequality that continue to be felt by marginalised groups.

Under the Constitution, land is divided into two categories: State land and customary land.⁷¹⁴ All land is vested in the President on behalf of the people and is to be administered equitably in accordance with a basic set of principles.⁷¹⁵ In the mid-1970s, freehold tenure was replaced by a system of statutory leasehold, which allows State land to be obtained for renewable periods of up to 99 years.⁷¹⁶ The President is entitled to alienate any land, provided that requirements of the Constitution and criteria laid down in the Lands Act are met.⁷¹⁷ In practice, the President's powers are delegated to the Commissioner of Lands, who oversees the work of relevant government departments situated within the Ministry of Lands and Natural Resources.⁷¹⁸ Local authorities (made up of city, municipal and town councils) act as agents of the Commissioner and are responsible for statutory land administration and land management at the local level.⁷¹⁹

Customary land administration is overseen by local chiefs, who are supported by a network of villagers, known as “headmen” or “headpersons”, the most influential of which sit on a council of *indunas*, which advises on important affairs.⁷²⁰ Traditional authorities are the custodians of customary land. While each actor has a different role to play, collectively they share responsibility for record-keeping, sensitising communities on land acquisition procedures, attending to local needs and resolving land-related conflicts.⁷²¹ Like State land, customary land officially vests in the President. In practice, however, chiefs maintain “nearly exclusive power” within their given locality and are often seen as the legal owners.⁷²² Under the law, any decision to dispose of customary land requires consultation with the chief and the local authority, alongside existing occupants whose interests stand to be affected.⁷²³ Consideration must also be given to local customary law governing land tenure.⁷²⁴

In recent years, population growth has led to a national shortage of State land, placing pressure on the customary tenure system.⁷²⁵ Officially, customary land cannot be bought or sold, but it can be converted into State land, provided that the consent of the local chief and relevant authorities is obtained.⁷²⁶ Unofficially, the informal land market is active, with “many people buying or selling.”⁷²⁷

Because customary land has no official market value, it can be acquired cheaply by investors, who may seek to formalise their claims by retroactively applying for conversion to statutory leasehold.⁷²⁸ In some cases, land appears to have been obtained without the prior knowledge of existing occupants, who

only discover the situation when faced with the possibility of eviction.⁷²⁹ A 2017 report issued by Human Rights Watch found that residents are rarely consulted when customary land is converted.⁷³⁰ Compensation packages for those affected are often agreed “under duress” with threats made to destroy users homes and property if they do not agree to move.⁷³¹ This issue formed the basis of a complaint heard by the Court of Appeal in 2022.⁷³² The case centred on thirteen villagers who were forced to vacate their homes when the land they resided on was – unbeknownst to them – classified as a farm block and sold on to new owners. After examining the history of the land in question, the Court held that the conversion was unlawful due to the failure to consult or consider the interests of those affected.⁷³³ While the decision was welcomed by the appellants,⁷³⁴ others in Zambia continue to face challenges:



In most cases, poor people are not able to participate in decisions or claim what is due to them in case of displacement ... [More] often than not, they are just informed that the community had been looking for an investor who had since been found and we're to lease out the best land to an investor. Unfortunately, the poor people that have a vested interest in the land are not given the opportunity to participate ... They are not on equal terms people are not able to participate in decisions. Sometimes people are just told OK, we have been fighting for this piece of land and we will lease it out to an investor. But those that have a vested interest in the land do not participate ... They are not on equal terms.⁷³⁵

Traditional authorities possess wide-ranging discretion in the allocation of land.⁷³⁶ Corruption can impact the fairness of dispensations, and a number of interviewees raised concerns in this regard.⁷³⁷ “Corruption can happen at any level,” one interviewee observed, “from the headman, way up to the chief.”⁷³⁸ This opinion was shared by others, who discussed the practice of traditional authorities requesting money in exchange for access.⁷³⁹ Following the allocation of land, it is traditional in some parts of Zambia for small gifts to be provided to customary authorities as a gesture of appreciation.⁷⁴⁰ “There is a thin line,” one respondent warned, “between showing gratitude to a traditional leader and actually enticing or inducing them to give you favourable consideration.”⁷⁴¹ It “creates an opportunity for corruption,” another added. “We have heard about communities that have been displaced by traditional leaders; by their chiefs or head persons.”⁷⁴²



There are a lot of cases throughout Zambia where poor small-scale farmers are losing their land because the headpersons and others receiving money in exchange for family/clan land. This is unlawful and results in the affected citizens having no access to land to live on and grow their crops”.⁷⁴³

Land conversions have been linked to the enclosure of “common-pool resources” such as water bodies, grasslands and forests, which are essential to the survival of local communities.⁷⁴⁴ When powerful actors manage to negotiate access through illicit means, traditional occupants risk losing their livelihoods as well as their homes, deepening experiences of poverty and leaving those affected with few available options.⁷⁴⁵ In turn, these factors may encourage customary land-holders to formalise

their claims. Once land is converted, it cannot be converted back.⁷⁴⁶ Users are therefore protected against future threats. However, on account of their socio-economic status many cannot afford the costs of conversion.⁷⁴⁷ Without alternate recourse, some individuals may feel pressured into paying bribes to protect their legitimate interests. At the same time, one respondent observed, those without means are the least likely to be able to pay.⁷⁴⁸



*The poor living in both rural and urban areas are greatly affected by corruption and suffer because their livelihoods depend on land. They cannot enjoy their right to life, dignity and a sense of identity and culture without land. For them, land is life.*⁷⁴⁹

High rates of rural poverty have resulted in greater migration to urban centres.⁷⁵⁰ To obtain land from local authorities, it was noted, payments to administrative officials may be required, with those that refuse left empty-handed.⁷⁵¹ This issue has been reported on several occasions in the national press, when councils have had their licences to alienate land revoked due to allegations of impropriety.⁷⁵² A 2017 policy brief, prepared by the United States Agency for International Development (USAID), found that “land allocation in peri-urban areas is fraught with ... patronage”, with individuals offered plots on account of their political connections.⁷⁵³ Urban growth also has implications for customary land, as councils have increasingly engaged traditional authorities to extend the boundaries of their constituency.⁷⁵⁴ A lack of clarity regarding the status of existing occupants’ rights creates new challenges, and the “subsequent government allocation of plots has been prone to allegations

of corruption.”⁷⁵⁵



*The current Constitution, land policy and Lands Act recognises customary land, but people ignore it thereby creating an impression that the current legal and policy framework does not protect customary tenure. As a result, more people convert their customary land holding to lease hold. The poor living on land under customary tenure who are not able to convert their land due to cost, fear displacement and land loss every day.*⁷⁵⁶

Those who do seek to convert their customary land holding encounter a range of challenges due to inefficiencies in land administration. Once the consent of the relevant authorities has been obtained, the land is surveyed, after which a recommendation will be made to the Commissioner of Lands for a certificate of title to be issued.⁷⁵⁷ However, the process of acquiring title was said to be long, and complicated by the central location of government offices, which are inaccessible to those based in rural areas.⁷⁵⁸ A scarcity of qualified surveyors and limited access to information can also impede progress.⁷⁵⁹ “The information management system is not properly monitored,” one respondent explained, “today the record is there, tomorrow it is not.”⁷⁶⁰ Each of these factors was observed to generate specific corruption risks, with users paying additional fees to access services, and speed up (or circumvent) standard procedures.⁷⁶¹ The forgery of documents, and double allocation of land, facilitated by corrupt officials, were also identified as areas of concern.⁷⁶² One interviewee spoke of growing culture of corruption within government bodies:



Corruption is oftentimes subtle, secretive and hidden. People want to do things away from the public eye because they are not doing the right thing. What we have seen in land administration institutions is that they create an environment in their offices which [results in the] normalisation of bribes and other practices. You find that oftentimes the enablers of corruption are supposed to be the duty-bearers.⁷⁶³

Because of their relative lack of voice and resources, marginalised groups were said to be particularly exposed to corruption in the land sector.⁷⁶⁴ Whilst there are differences between experiences, there are also important commonalities. Land inequalities in Zambia are characterised by non-participation in decision-making processes, stigma, stereotyping and socio-economic disadvantage. The combination of these factors is perhaps best illustrated in the situation of persons with albinism. An especially visible minority, members of this group are reported to experience serious human rights abuses,⁷⁶⁵ with an ever-present risk of violence contributing towards land and housing outcomes.⁷⁶⁶

Women are responsible for a majority of subsistence food production and agricultural work in Zambia and land is crucial to their economic security.⁷⁶⁷ However, patriarchal values and harmful cultural practices mean that accessing land can be challenging, especially in customary settings. Interviewees noted that women may need to work through intermediaries such as their brother, father or eldest son to receive an allocation.⁷⁶⁸ In the absence of a will, the inheritance of statutory land is ordered according to national legislation governing intestate succession.

However, the law does not apply equally to customary settings, meaning that women may be required to renegotiate access to their land with traditional authorities upon the death of their husband.⁷⁶⁹ A lack of participation in decision-making structures enhances women's experiences of inequality, and exposes them to new harms when land is obtained through corrupt means. As one expert described:



If land is dubiously acquired it will affect women more because they are not aware of the decision. When you move to a new place water is very far, and who is going to start drawing water? It is the wife. In the new place, there are no schools there are no hospitals or clinics nearby. People buy the best piece of land. If I am an investor, I want to start growing things. I look for arable land. Who is going to suffer? Women. They will not be in a position to grow what they used to grow. Their livelihood will be affected.⁷⁷⁰

Several respondents highlighted the precarious situation of children and younger persons in Zambian society.⁷⁷¹ Due to an apparent "lack of experience", one respondent explained, younger persons tend to be viewed as unproductive land users.⁷⁷² As a result, they may not fulfil the conditions established for state land allocations and may see their applications to chiefs for customary plots rejected.⁷⁷³ Whilst the Lands Policy reserves 20 per cent of all State land for youth, it was observed that non-implementation is a significant challenge.⁷⁷⁴ Together, these factors may impede access to land for younger persons, leading to disputes within families and intergenerational justice concerns.⁷⁷⁵

In some cases, aspects of a person's identity

interact to produce acute vulnerabilities to discrimination and corruption. Several experts interviewed for this report noted the increased exposure of women and children with disabilities to land grabs and corrupt practices.⁷⁷⁶ A novel issue raised by respondents concerned the intersection of gender, ethnicity and marriage status. In some parts of Zambia, it was explained, women have been prevented from accessing land they shared jointly with their late husband because it was seen to belong to the local “clan”. In such situations, these women – viewed as outsiders to the community – face losing their homes, as well as their source of livelihood.⁷⁷⁷



*When you are a woman with a disability, your chances of acquiring land are further diminished, because [you face] discrimination at two levels: first as a woman and secondly as a woman with a disability. The assumption people have is that you are incapable of developing land and therefore you find that women are in a much more constrained position.*⁷⁷⁸

Socio-economic disadvantage was highlighted as a cross-cutting theme, linked to worsened educational outcomes that prevented individuals from understanding or asserting their rights.⁷⁷⁹ Because of their financial situation, persons living in poverty were less likely to be able to pay bribes, rendering them comparatively more vulnerable to the work of corrupt actors.⁷⁸⁰ Broader inequalities in society – a lack of employment or support – can impact a person’s financial situation, and in turn, their ability to exercise their rights. “Look at citizens with disabilities,” one respondent started. “Most of them are not employed. Most of them are not educated. Most of them do not have access

to financial resources to do business and to develop land.”⁷⁸¹

At its broadest level, corruption may lead to the misallocation of public resources, thereby limiting the effectiveness of measures designed to promote equality.⁷⁸² One expert gave the example of accommodating measures for persons with disabilities.⁷⁸³ Whilst it can be difficult to map the long-term impacts of resource depletion on specific communities, in previous consultations between Transparency International and organisations of persons with disabilities, similar concerns have been raised.⁷⁸⁴



*Whenever we speak to government [they say] disability inclusion is expensive. But look at the lavish expenditure in the country. When you talk about making the environment accessible by installing ramps, working lifts, making roads accessible, improving the transport system, providing information in accessible formats, etc., The response is that resources are not available. The fear is that resources are being syphoned from the public that are supposed to go towards marginalised citizens, like those with disabilities.*⁷⁸⁵

Different mechanisms exist through which individuals can bring claims challenging rights violations. However, respondents identified several factors – including the high cost of formal legal proceedings and a lack of awareness of the legal framework – that operate to limit access to justice in practice.⁷⁸⁶ Physical accessibility barriers and a lack of reasonable accommodation were also said to prevent persons with disabilities from successfully pursuing their claims.⁷⁸⁷

During interviews, respondents highlighted a range of measures that they felt could improve land governance in Zambia. Awareness raising, rights sensitisation for duty-bearers, inclusive education programmes, and the design and implementation of enhanced anti-corruption measures were all seen to be key.⁷⁸⁸ Some participants noted with approval the implementation of positive action schemes, designed to overcome historic experiences of land inequality for women, through the

introduction of a quota system.⁷⁸⁹ While similar initiatives may benefit other disadvantaged groups, interviewees also warned that if broader barriers to rights protection were not addressed, the success of such measures would be limited.⁷⁹⁰ Indeed, as the following case study of Transparency International Zambia demonstrates, corruption and discrimination are multifaceted phenomena, with penetrating roots, that are not easily displaced.



Corruption, Discrimination and Access to Land for Persons with Disabilities in Zambia

Authored by TI Zambia

In 2019, the Environmental Investigation Agency (EIA) published a series of reports concerning the illegal logging of Mukula, a rare species of rosewood that is indigenous to the Miombo woodland of South-Central Africa.⁷⁹¹ The logging of Mukula has placed the species under threat, with consequences for the preservation of local wildlife and traditional land use practices.⁷⁹² The research found that corruption was “a key enabler” of timber trafficking and serious allegations were levelled against high-ranking public officials, who were suspected of complicity in the trade.⁷⁹³

In 2021, fresh allegations emerged: a land allocation scheme, designed ostensibly for the benefit of persons with disabilities, had been used to facilitate the acquisition of production licences, leading to the clearance of thousands of trees in affected areas.⁷⁹⁴ It was unclear whether the schemes’ intended beneficiaries were in fact aware of its existence, or of any of the activities that had taken place.⁷⁹⁵ While the Zambia Agency For Persons With Disabilities – which put forward the names for allocation – denied any wrongdoing,⁷⁹⁶ the Ministry of Community Development and Social Services later announced that the matter had been taken up by law enforcement officials.⁷⁹⁷ In September 2021, a moratorium was placed on the logging and exportation of Mukula trees.⁷⁹⁸ This decision was welcomed by anti-corruption activists, although the report’s findings of impropriety have yet to be fully resolved.⁷⁹⁹

Beyond its immediate impacts, the EIA investigation provides a fascinating, albeit brief, insight into the land-related experiences

of persons with disabilities. Encouraged by the findings, TI Zambia decided to investigate further. In 2023, we travelled to eight districts in five provinces to consult with communities directly affected by land corruption, alongside representatives of local councils and traditional authorities. In total, thirty-three individuals participated in the research. The testimony paints a distressing picture, demonstrating the variety of ways in which corruption and discrimination may combine to impede an individual’s enjoyment of land rights. In a country already marked by high levels of rural and urban poverty, persons with disabilities encounter unique barriers to rights protection that hinder their effective participation in society and increase their exposure to corrupt and discriminatory practices.⁸⁰⁰

STIGMA, STEREOTYPES, AND ACCESSIBILITY BARRIERS

Official estimates of the prevalence of disability in Zambia vary.⁸⁰¹ However, the impacts of exclusion are clear to see. A special procedures report, issued in 2016, found that persons with disabilities had lower literacy rates and worse education outcomes than the general population, were disproportionately more likely to be engaged in informal work, and risked being deprived of their property rights, owing to national laws governing legal and mental capacity.⁸⁰² Stereotypes and stigma, combined with inaccessible infrastructure, rendered persons with disabilities vulnerable to discrimination in broad areas of life.⁸⁰³

Whilst the report did not directly address land-related harms, testimony gathered for this study demonstrates a remarkable convergence of accounts, illustrating how inequalities in society can increase exposure to corrupt practices and amplify their impacts.

Within society, persons with disabilities experience a range of challenges linked to their personal status. Because of their weak socio-economic position, many were said to be unable to afford the costs associated with obtaining state land. When attempting to do so, some respondents explained that they had encountered barriers due to the attitude of public officials: “They looked at me as if I cannot acquire land,” one respondent explained. “It is some kind of discrimination.” Physical accessibility barriers, linked to the design of government offices and a lack of available transport, were also said to have prevented some interviewees from accessing services. Similar issues were reported in customary settings, where a lack of accommodating measures (such as the provision of wheelchairs for persons with physical disabilities, or skin cream for persons with albinism) work to prevent individuals from participating in meetings and decisions that affect their lives.

Traditional authorities wield great authority in the allocation of customary land. It is common for plots that are viewed as dormant or unutilised to be reallocated to new users who are able to use the land more productively.⁸⁰⁴ In practice, this can have serious consequences for persons with disabilities, who – according to the submissions received – lack support from the government and are often perceived to be less productive users. In some cases, respondents suggested that the land of persons with disabilities had been sold on by family members without their consent. Owing to their position in society, and dependence on family and community support networks, there was said to be little people could do in such circumstances.

CORRUPTION AND DISCRIMINATION: IMPEDING EQUALITY

On account of their status and position within society, it was suggested that the land of persons with disabilities may be targeted by corrupt actors. Respondents suggested that bribes were commonly required to obtain State land, with several affected community members indicating that they had received requests for facilitation payments from administrative officials. While some had managed to obtain land, others saw their efforts frustrated. A lack of access to financial resources means that persons with disabilities are less likely to be able to meet the demands of corrupt actors. “I just stopped,” one respondent explained. “I did not have the money”. Rumours of interest among wealthy and “influential” or politically connected individuals were also said to complicate the acquisition process. A member of a local authority spoke of a general culture of corruption within land administrative services. Corruption in Zambia is no longer “over the counter or under the table,” but takes place “within and alongside official duty,” they remarked.

Corruption within customary settings was less frequently discussed, although some of those we spoke with did note the risk of persons with disabilities’ land being encroached or reallocated to new users. In two instances, traditional leaders spoke of their knowledge of land being claimed or “grabbed” by former village headmen, without the consent of affected users. It was also noted that money may change hands during the allocation process, with a disproportionate impact on socio-economically disadvantaged communities. As one traditional leader explained to our research team:



Some traditional leaders request that persons with disabilities pay a fee when they apply for land, without considering that how difficult it is for them to find money – Traditional leaders do not understand the situation for persons with disabilities.

A lack of participation generated risks for persons with disabilities. In one case, a traditional leader explained, a developer had obtained permission from “higher authorities” to occupy customary land, without the apparent knowledge of the local chief. This resulted in a risk of displacement for the 40 persons with disabilities who resided in the area, alongside other community members, who were unable to return to their land due to a fear of “reprisal”. A member of a local authority shared similar concerns, discussing the risk of corruption in the land conversion process. “There are times when the local authority will allow land to be converted, but without following the right procedure and without approval from the local people,” they explained. Whilst the legal procedure is clearly defined, another added, conflicts of interest emerge, particularly during the surveying process.

THE NEED FOR ACTION

Many of those we interviewed for this case study – including community leaders, councillors and persons with disabilities themselves – spoke of the challenges that persons with disabilities face in accessing land and exercising their rights. Stigma and stereotypes, combined with corruption in the land allocation process, result in unfair land outcomes. At the policy level, some progress has been made in recognising these challenges. The National Lands Policy notes the need for a “gender sensitive and youth friendly land sector which is inclusive of persons ... with disabilities and other socially marginalised groups.”⁸⁰⁵ However, while specific targets are introduced for women and youth, the same is not applicable to persons with disabilities. More modestly, the policy speaks of the need to “encourage [the] progressive ... empowerment of persons with disabilities in land allocation.”⁸⁰⁶

Some of the local authority representatives we spoke to indicated that land allocation quotas had in fact been introduced, but others provided different accounts, and much appears to be contingent on local practice. Even where such schemes are adopted, the testimony received demonstrates the pernicious impacts of corruption and the ways in which it can conspire to undermine equal outcomes. However, there is room for hope. What came through clearly from the interviews was the eagerness of implementing actors to improve their own knowledge and understanding of the issues experienced by persons with disabilities. A wide range of action, including increased rights awareness and sensitisation, will be essential if real change is to be achieved. But training will not be enough. Without tackling corruption and its drivers, progress towards equality will be impeded and persons with disabilities in Zambia will continue to be left behind.

7 ZIMBABWE

Shaped by a history of conflict and colonial rule, land has an enduring significance for the people of Zimbabwe. For much of the twentieth century, the State was administered as a British Crown Colony, then titled Southern Rhodesia.⁸⁰⁷ As in other parts of Africa, the colonial era was marked by widespread land dispossessions as local populations were pushed into agriculturally unsuitable and racially segregated “native” reserves.⁸⁰⁸ During this period, Black Zimbabweans found themselves removed from “White areas”, whilst a protectionist agrarian policy worked to ensure an inexhaustive supply of cheap Black labour to support the colonial economy.⁸⁰⁹ Dispossessions continued throughout the 1940s and 1950s, during which time, nationalist movements – politically and culturally disenfranchised – began to grow in number.⁸¹⁰

In the mid-1960s, civil war broke out. In 1965, the self-styled Rhodesian government unilaterally declared its autonomy from British rule, resulting in international sanctions.⁸¹¹ A ceasefire was declared in 1979, and in the same year, an end to the conflict was negotiated at Lancaster House, where the contents of a new Constitution were agreed. Following elections in 1980, Zimbabwe’s future was finally secured when it became the last British colony in Africa to achieve independence.⁸¹² The Independence Constitution established a new bill of rights, which included extensive protections for private property.⁸¹³ Pursuing the same basic roadmap to land reform that was followed in post-colonial Kenya, a resettlement programme was soon launched, and by the end of the 1990s, thousands of African families had been rehomed.⁸¹⁴ However, progress was slow

and land inequalities remained stark. Facing domestic pressure for greater reform, the government soon began to consider a stronger set of measures.⁸¹⁵

At the turn of the millennium, the Fast Track Land Reform Programme was introduced. Under the programme, the land of predominantly White commercial farmers was forcibly occupied and expropriated by the State.⁸¹⁶ These occupations were accompanied by serious acts of violence and widespread allegations of corruption in the reallocation of land, which was seen to benefit those with connections to the political establishment.⁸¹⁷ Whilst the reforms resulted in significant tracts of land being reallocated, the economic benefits of the programme have not been sufficiently felt by marginalised communities.⁸¹⁸ As has been noted elsewhere:



The land was redistributed without facilitating and arranging access of the new small-scale farmers to the necessary technical and infrastructural resources. Meanwhile, commercial farms were divided without clear infrastructural, financial, institutional and technical support. Throughout the last two decades these uncertainties around land tenure have multiplied and continue to contribute to today’s food insecurity crisis.⁸¹⁹

Throughout the early 2000s, the reform programme was subject to legal challenges. On multiple occasions, the courts declared the measures unlawful, prompting fierce reactions from government officials, accompanied by sustained (and ultimately successful) attempts to undermine judicial independence.⁸²⁰ In 2005, changes were effected to the Constitution to expressly permit the compulsory acquisition of land without compensation, while limiting the jurisdiction of the courts to hear related complaints. These amendments formed the basis of a case that was heard by the Southern African Development Community (SADC) Tribunal in 2008.⁸²¹ The Tribunal found that the reform programme had disproportionately targeted White landowners, holding Zimbabwe in violation of its treaty obligations. While land redistribution – aimed at improving the situation of marginalised groups – may serve a legitimate aim, corruption and discrimination in the implementation of the scheme rendered it unlawful.⁸²² The tribunal concluded its analysis by citing a 2001 judgment of the Supreme Court of Zimbabwe:

“

*We are not entirely convinced that the expropriation of White farmers, if it is done lawfully and fair compensation is paid, can be said to be discriminatory. But there can be no doubt that it is unfair discrimination to target farmers who are believed to be supporters of an opposition party, and to award the spoils of expropriation primarily to ruling party adherents.*⁸²³

These findings did not sit well with government, whose subsequent campaign against the SADC's human rights jurisdiction resulted in its eventual suspension.⁸²⁴ Closer to home, the Zimbabwe economy had begun to suffer. A combination of factors, including sanctions levied by the United States of America, European Union and UK Government, resulted

in high levels of inflation culminating in “deep economic crisis”, the impacts of which are still being felt by local populations.⁸²⁵

In 2009, a National Unity government was formed following a narrowly contested general election. Four years later, a new Constitution was brought into force, containing discrete provisions on private property and agricultural land. The compulsory acquisition of land without compensation is still permitted, and national courts are prevented from reviewing acquisition decisions.⁸²⁶ A lack of judicial oversight, combined with a “pervasive environment of corruption”, presents challenges for land governance.⁸²⁷ As the UN special Rapporteur on the right to food reluctantly concluded, following a 2019 visit to the country: “there does not seem to be any security of tenure or respect of property rights: at any given time lands can be confiscated and re-allocated to individuals deemed more loyal to the ruling party”.⁸²⁸ Similar concerns were raised by experts interviewed for this report.

“

*In the early 2000s we had our land reform programme which changed the landscape in terms of land issues. But because of political patronage we have found out that land is actually given based on political affiliations it serves a political purpose.*⁸²⁹

The modern land framework in Zimbabwe is complex and recognises a range of tenure systems.⁸³⁰ At its most basic level, land can be divided into three categories: land which is vested in the state, land held privately under freehold arrangements and land that is managed by local authorities.⁸³¹ Different bodies have responsibilities in each of these areas. However, the complexity of the system, combined with weak institutional capacity, poor coordination and the overlapping mandates of

entrusted agencies, creates specific governance challenges.⁸³² “It becomes very difficult to know who actually administers the land,” one interviewee observed.⁸³³

In urban areas, population growth, combined with weak economic conditions, has led to more people “occupying the land illegally”.⁸³⁴ These same factors have seen the growth of peri-urban settlements, which are increasingly expanding into rural areas, leading to land disputes and tensions between authorities and local communities.⁸³⁵ A number of interviewees expressed concern regarding corruption in residential housing and the associated rise of politically connected “land barons”, who seek to exploit weaknesses within the system for their own personal gain.⁸³⁶ In some cases, it was noted, “fake cooperatives” have been established, with land developed unlawfully and sold on to unsuspecting clients: “they just take the money ... people end up losing their houses.”⁸³⁷ Some of these cooperatives were said to have close links to politically connected individuals.

A shortage of public accommodation means that many people spend years on housing lists awaiting allocations from the local council.⁸³⁸ Those with connections are “put at the front of the queue,” one respondent noted.⁸³⁹ Because of a lack of transparency in the system, officials feel enabled to sell land despite lacking the legal authority.⁸⁴⁰ Even where land is legally obtained, users may not be provided with relevant documentation, meaning that they have little evidence to support their claims in the event of a dispute.⁸⁴¹ The double allocation of residential stands was a common theme in respondent submissions, creating risks for occupants who may find that their land has been sold without their prior knowledge.⁸⁴² These issues mean that many lack tenure security; a situation that can be exploited by those in power as a way to extort or maintain

support for their political party. Where a person is not compliant, “the Council comes and destroys houses,” one respondent explained.⁸⁴³

Among those interviewed, there was a high perception of corruption within urban and rural district councils. “We have seen people approaching councils with an intent to bribe them,” one interviewee described.⁸⁴⁴ In some cases, local officials have reportedly bought up state land – designated for the provision of new residential stands – with the aim of selling it on.⁸⁴⁵ In others, council land appears to have been leased to officials at discounted rates that fall significantly below the current market value.⁸⁴⁶ The result of these issues is that the housing waiting list continues to grow, while users lack clarity regarding the legal status of their homes.⁸⁴⁷ In turn, a lack of monitoring, evaluation and accountability within councils has opened up new opportunities for private actors, who may choose simply to ignore official processes.⁸⁴⁸



It is a whole system rigged with corruption. Because of the volatile economic situation that has prevailed in the last two decades, we have seen a high number of private land developers who are taking advantage of the incapacity of urban or even rural councils to develop land. Developers take advantage of ordinary people, doubling or tripling the prices of stands while failing to deliver in terms of providing roads, and water to these areas.⁸⁴⁹

The challenges of accessing land are exacerbated for Zimbabwe’s most marginalised groups.⁸⁵⁰ A scarcity of public housing can lead to conflicts within families and raise intergenerational justice concerns.⁸⁵¹ Whereas in the past children would tend to move out of the family home, families are increasingly forced to stay together – typically in small buildings that do not provide sufficient space

to meet their needs.⁸⁵² Housing conditions are often substandard: “You will find eight families actually using one toilet,” one respondent explained.⁸⁵³ These conditions can weigh heavily on family members: “As a girl, I want privacy when I am changing so I feel comfortable. But I cannot – there is no space and privacy.”⁸⁵⁴ Although some land may be reserved for the children of existing community members, it was noted that these requirements are frequently ignored.⁸⁵⁵ One interviewee explained that in some parts of Zimbabwe, the untitled land of older persons may be targeted by authorities so that it can be rented out to new users.⁸⁵⁶

Land inequalities in Zimbabwe have a clear socio-economic dimension. Persons with disabilities, older and younger persons and women are more likely to live in poverty and were viewed by respondents as more vulnerable to the impacts of land corruption.⁸⁵⁷ These same groups face exclusion from decision-making structures, preventing them from participating in decisions that affect their lives.⁸⁵⁸ In some cases, discrimination can prevent a person from gaining access to land. For instance, it was observed that people may be denied a residential stand when their “faith” is viewed unfavourably by the relevant authorities.⁸⁵⁹ Corruption and discrimination can also combine to produce unique forms of harm. Based on their recent experience, one respondent noted “a high increase” in sextortion cases, where “sexual favours” are demanded from women “in return for land”.⁸⁶⁰

LGBTQI+ persons are amongst the most marginalised in Zimbabwean society.⁸⁶¹ Same-sex sexual relations are prohibited under national law, and as a result, gay and lesbian couples are *de facto* prevented from purchasing property together.⁸⁶² Access to communal land

is especially challenging as a result of harmful cultural beliefs. Where individuals come out to their families, they may be disowned, meaning that they lose access to their homes and source of livelihood.⁸⁶³ The risk of violence is an ever-present concern and can inform a person’s decision about where to live. “People have been beaten just for looking gay,” a representative of the Bulawayo-based “Voice for the Voiceless” organisation explained.⁸⁶⁴ Although national courts have sought to affirm the human rights of transgender persons – including protections against discrimination – land registration can prove challenging for those whose gender identity or expression does not match their sex assigned at birth.⁸⁶⁵



*The challenge is of having identity documents that do not match your appearance. You’re thinking: how am I going to work out the documentation for the land I bought? There’s a fear of being discriminated against those fears can be daunting.*⁸⁶⁶

Where individuals feel their rights have been violated, different formal and informal mechanisms exist through which complaints can be raised. Participants noted positively the work of civil society and the Zimbabwe Anti-Corruption Commission in addressing concerns.⁸⁶⁷ Litigation is a possibility, although this tends to be expensive and it can take a long time for cases to be heard.⁸⁶⁸ The fear of retaliation from those with political connections, combined with a lack of faith in administrative and judicial institutions, and the risk of being labelled “anti-development”, may actively prevent people from airing their grievances.⁸⁶⁹ “Corruption is the music of our country,” one interviewee opined when discussing the

perception of justice in Zimbabwe.⁸⁷⁰ In some circumstances, an appeal can be raised directly with local councils and traditional authorities. However, a duplication of responsibilities and fragmentation of the legal framework, limits the prospect of success.



Land is handled by different ministries and that those ministries are not in line with each other. The first thing that we can actually do is to try and align our laws and set clear boundaries to say this ministry does this and this ministry does that. At the moment, some people become victims because of those grey areas within our legislation.⁸⁷¹

Even assuming that a person had the necessary voice, resources and support needed to challenge a rights violation, significant confusion appears to exist concerning the true ownership and legal status of land in many cases. In a survey conducted by Transparency International Zimbabwe and the Zimbabwe Anti-Corruption Commission in 2021, 62.7 per cent of respondents highlighted the selective enforcement of the law as major challenge in the fight against land corruption.⁸⁷² In a climate of weak tenure security, the risk of corrupt actors leveraging the legal framework

to advance their political or financial goals is high. One of the most significant illustrations of this phenomena came in 2005, when “tens of thousands of homes, and thousands of informal business properties as well as legal housing and business structures were destroyed” during *Operation Murambatsvina*.⁸⁷³ Testimony collected by Human Rights Watch indicated that the forced evictions formed “an act of retribution against those who voted for the opposition” in the immediately preceding elections.⁸⁷⁴ These events live long in the mind of Zimbabweans, and concerns regarding the links between political party affiliation and an individual’s land prospects continue to surface during election periods.⁸⁷⁵

A number of respondents suggested reforms that are needed to improve land governance in Zimbabwe. Increased accountability, the strengthening of monitoring mechanisms and the clarification of responsibilities were all identified as key measures.⁸⁷⁶ There are no easy solutions to the challenges that the country currently faces. But to be successful, reform attempts must recognise the complicated history upon which the land framework was built, and its inseparable connection to questions of equality, dignity, transparency and justice.



A Broken Promise – Land Corruption and Intergenerational Justice in Zimbabwe

Authored by TI Zimbabwe

Reading any newspaper in Zimbabwe, it is common to see land dominating the headlines. Land supports people's livelihoods and plays an important role in the national economy. Yet for many, land means much more than income. This is especially true for Zimbabwe's rural and peri-urban communities, whose land is inseparably tied to individual and collective wellbeing. Land is the place where families meet and grow and provides the physical location for religious, customary and traditional practices. Unfortunately, in the past two decades, there have been increasing reports of disputes surrounding communally owned land.⁸⁷⁷ These disputes have their roots in complex land holding structures, as well as wider political dynamics. Within this setting, issues of corruption and discrimination emerge, affecting access to land for the most marginalised in society.

This case study aims to explore these links and unravel the multiple meanings attached to land in Insuza District, Matabeleland North Province. In 2023, Transparency International Zimbabwe conducted four focus group discussions with 28 residents. This was followed by key informant interviews with local authorities, youth representatives and civil society organisations working in the area.⁸⁷⁸ The testimonies collected paint the picture of a deeply troubled community. Perceptions of corruption and discrimination in the allocation of communal land are driving disputes and

stoking tensions between older and younger community members. Promised land has not been provided, and without swift action, the situation appears likely to worsen.

A BACKGROUND TO THE DISPUTE

Communal land in Zimbabwe is governed by a wide variety of laws and policies. For the purposes of this report, the main piece of legislation is the Communal Land Act which, amongst other items, sets out detailed rules on land occupation and use.⁸⁷⁹ All communal land is vested in the President and is administered on behalf of communities in accordance with statute and local custom.⁸⁸⁰ A large number of actors play a role in the governance of communal land, including Rural District Councils, traditional leaders, and relevant government bodies, whose powers and responsibilities are set out under law.⁸⁸¹

The Insuza area falls under the jurisdiction of the Umguza Rural District Council – one of the 61 Rural District Councils of Zimbabwe. It is one of seven administrative districts in Matabeleland North province. Community members we spoke to have lived in the area since 1983, after they were granted access to the land through a government resettlement scheme. As part of the resettlement, some of the land was set aside for the future children of community members. In 2018, residents

compiled a list of names (mostly of their children) to request allocations on the land from the Rural District Council. However, they were informed that their request had been put on hold, pending a decision of the Ministry of Lands, Agriculture, Fisheries and Rural Development.

CORRUPTION IN THE SYSTEM

In 2020, community members noticed a problem: the land was being parcelled up and distributed to new users. “We just saw the people setting pegs on our grazing land,” one respondent explained. “Initially there were few people who resettled in the area,” another added. “In a matter of months, we began to see an increased influx of people.” Community members were not made aware of the allocations that had been made. Lacking official information, one respondent directly approached those demarcating the land: “They simply told us that there were politically connected.”

In the intervening period, more residents have settled in Insuza. These individuals pay direct fees to those responsible for the resettlement process – so-called “land barons” who illegally allocate land to clients and use their political connections to avoid accountability. Settlers are informed that their names have been logged with the village head and assured that once the local authority database has been updated, they will be asked to pay monthly rates to the Rural District Council. But that day may never come. Those we spoke with, including a local councillor, indicated that no new settlements have been registered: the settlements are consequently illegal.⁸⁸² However, because of the

political connections of those responsible, they felt they could not act. A separate respondent who had tried to lodge a complaint with the Zimbabwe Republic Police, was informed that the police would only be able to act following a court order.⁸⁸³

Concerned community residents have engaged various stakeholders including the Zimbabwe Human Rights Commission, The Ministry of Lands and Land Development, the Zimbabwe Anti-Corruption Commission and the National Peace and Reconciliation Commission to seek a solution to the challenges they are facing. But to date, their concerns have not been addressed. There was a strong perception of corruption amongst those we spoke to. According to respondents, a former village head who was responsible for development issues in the area was replaced after raising concerns about the allocation of land. A new village head (Sabhuku) was allegedly installed, purportedly to facilitate illegal land parcelling, with the blessing of political elites. As the dispute rumbles on, only pre-existing community members are paying their monthly subscriptions to local authorities. Meanwhile, their children lack access to land. For all concerned, it appears that a promise has been broken.

DISCRIMINATION AND INTERGENERATIONAL CONFLICT

The land issue in Insuza has been politicised leading to complex emerging dynamics of discrimination in the area. In a largely “patriarchal society”, women face challenges exercising their land rights, particularly within customary tenure systems.⁸⁸⁴ Interviewees discussed the impact of the new settlements

on women. The people responsible have reportedly targeted the land of widows and women-led households, subdividing their existing plots so that they can be awarded to intended recipients. Those affected have raised the issue with various government departments. However, very little progress has been made, in no small part – it was emphasised – due to fears surrounding the involvement of powerful political figures.

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I woke up one morning and saw people installing land pegs near my homestead. I asked the basis of resettling someone on my land. They indicated that this is part of the government initiative. Why is this initiative only targeting widows and the vulnerable?⁸⁸⁵

Protracted delays in processing the land allocation requests of existing community members, combined with the awarding of land to new residents has frustrated youths who had anticipated that the local authorities would allocate them land in the area. Unable to establish a livelihood in their own community, villagers indicated that many young people are now migrating to other areas in search of employment. Conflicts are reportedly emerging within households, as young people feel let down by their elders in accessing land. In turn, allegations have surfaced regarding the enlistment of young people by land barons as they seek to identify new land for resettlement. Whilst these claims have not been corroborated, they do spotlight the tensions that have risen in Insuza – a small village whose concerns seem so remote from those in power. For young people, corruption threatens to displace a generational right of access to communal land.



CHAPTER 6: THE DYNAMICS OF DISCRIMINATORY CORRUPTION - KEY FINDINGS

The threads of African history are interwoven with narratives of land, corruption and discrimination. The colonial and apartheid eras were characterised by the mass movement of African populations and the systematic exploitation of African lands, labour and natural resources. Expansive areas were demarcated for the exclusive use and occupation of settler populations, whose claims were legitimated through an assortment of legal instruments. In the mid-twentieth century, opposition to colonial rule reached a tipping point, and colonial powers began preparations for their exit from the continent. After attaining independence, many States instituted reforms to their land frameworks, aimed at redressing the inequalities of the past. Restitution and resettlement programmes were launched in several countries, including Kenya, Zimbabwe and South Africa, which sought to overcome pronounced racial and ethnic disparities in land distribution. However, corruption and discrimination in the implementation of these schemes means that they have largely failed to meet their intended equality outcomes, and the legacies of historic land injustices continue to inform contemporary experiences of disadvantage.

Corruption and discrimination are systemic barriers to effective land governance. The research and testimonies collected for this report indicate both the breadth of these phenomena and their continuing impacts on the enjoyment of land rights in Sub-Saharan Africa. However, despite receiving increased attention from civil society and human rights mechanisms, the relationship between these phenomena has not been systematically explored. In this report, we sought to fill that gap. Transparency International chapters conducted interviews with national stakeholders and directly affected communities in seven countries, hoping to learn and benefit from their experiences. While the testimonies received are – by their nature – partial and illustrative, they show the myriad of ways in which corruption and discrimination may combine to deepen experiences of inequality, impeding fair land outcomes and the achievement of States' voluntary commitments to "leave no one behind". Expanding upon the findings of our 2021 *Defying Exclusion* report, the testimony builds compelling evidence of a direct causal relationship between land corruption and discrimination, which can be seen to manifest in five overlapping, and mutually reinforcing ways:

First, discrimination can result in greater exposure to corruption.

The relatively weaker position of disadvantaged groups in society increases their exposure to corruption. This is particularly true where aspects of a person's identity are stigmatised, stereotyped or criminalised. Discrimination facilitates corruption as it incentivises corrupt behaviour on the part of perpetrators to exploit the less powerful, while eroding the ordinary political, ethical and legal standards that work to constrain such behaviour. These dynamics are most clearly displayed in the case study prepared by Transparency International Madagascar. In recent years, there has been a sharp documented increase in kidnappings and violence affecting persons with albinism, driven by harmful myths and superstitions. In some cases, interviewees explained that their land had been taken by family members. In others, they had been denied compensation that they believed they were owed under the law. Corruption was perceived to play a key role in each of these scenarios. However, because persons with albinism depend upon their family and community for protection from attacks, few avenues of redress are open to them.

The case study prepared by Transparency International Zambia shows how stereotypes and stigma may combine to deny access to land for persons with disabilities. In many countries, land allocation decisions are made according to the potential of users to develop or use a given plot productively. Those perceived as less capable or efficient land users, including women, younger persons, and persons living with HIV and AIDS, are correspondingly less likely to receive a dispensation. For these groups, bribery may be the only way to access land. Conversely, these same groups were

said to face a heightened risk of dispossession as corrupt actors negotiate access to their holdings through illicit means.

The perception that a person is unlikely or unable to challenge corruption when it occurs can embolden those who seek to do harm, increasing the risk of land rights violations and contributing towards a climate of impunity in which corruption thrives. Multiple stakeholders expressed concern regarding the status of women, persons with disabilities, older persons and other disadvantaged groups, who were said to be viewed as "soft targets" for dispossession. As marginalised groups generally face greater barriers to accessing justice, a corrupt actor is less likely to be detected. Even where the corrupt behaviour comes to light, they may have less to fear if they have only targeted those from disadvantaged backgrounds. Exploiting these groups may be viewed as more socially acceptable, and any sanctions imposed consequentially less severe.

Excluded from justice mechanisms and denied effective redress and support, discrimination means that individuals may be required to pay to access rights that should already be available to them under the law. Corruption, in turn, serves a dual function: increasing the risk of land rights violations on the one hand, whilst also facilitating the removal of barriers to entry for groups whose rights would otherwise go unobserved. This dynamic was apparent in multiple countries and contexts. Without exception, respondents in every country under review expressed concern regarding the status of women, whose ability to access land (particularly in customary settings) is often made conditional on their relationship to a man. Widows face significant displacement risks and, in some cases, have been forced

to pay corrupt officials to avoid losing their homes. In other cases, women have attempted to formalise their entitlements by obtaining legal title. However, inefficiencies in land administrative services mean that unofficial payments may be required for documents to be processed. Women who are unable to meet these costs risk losing their land to the competing claims of family members and private actors. Those that do pay have likely committed a criminal offence.

The same factors that foster discrimination and prevent individuals from participating in society on an equal basis with others can also serve to obscure experiences of discriminatory corruption. In five of the seven countries examined, same-sex sexual relations are prohibited under national law. As a consequence, land-related harms affecting LGBTQI+ persons have not been widely documented.⁸⁸⁶ Little information was received through the interviews relating to the situation of religious and belief minorities, refugees and asylum seekers, language minorities and persons affected by leprosy. Further work is needed to spotlight the experiences of these groups and others who are particularly stigmatised or discriminated for reasons linked to their status.⁸⁸⁷

Second, certain acts of corruption are directly discriminatory.

Some corrupt acts are directly discriminatory – that is, there is a direct causal link between the corrupt act or practice and the differential or unfavourable treatment of a protected individual or community.

The example of collusive corruption between members of politically dominant ethnic groups in Kenya serves to demonstrate how corruption

can result in the discriminatory denial of access to land and other public goods. In this setting, corruption serves as a vehicle for discrimination; it is often the means by which certain groups and individuals are conferred or denied benefits by the State. Similar patterns were observed in Zimbabwe, where historic and contemporary accounts of corruption in the allocation of land have a clear link to a person's political affiliation. However, corruption in this country has taken a more coercive form, with those that fail to demonstrate their support for the ruling political party made to suffer worse land outcomes.

A lack of voice and access to support mechanisms contributes towards experiences of marginalisation. In Kenya, members of the Nubian community have been forced to undergo a discriminatory vetting procedure in order to obtain identity documents. These documents are needed to access a range of rights, goods and services under national law. The case study developed by Transparency International Kenya shows that individuals risk being extorted by public officials, who may actively demand payment before documents can be processed. The discrimination and corruption that Nubians face, compounds an already deep situation of inequality for this historically stateless community.

Sextortion is a form of coercive corruption that occurs when a person's access to goods and services is made conditional on the provision of sexual favours.⁸⁸⁸ Research suggests that women are disproportionately targeted by sextortive practices and, on account of their comparatively weak socio-economic position, may be less able to pay bribes in cash.⁸⁸⁹ Owing to the high levels of shame and stigma that are attached to sex in many countries, sextortion is

particularly difficult to document. Nonetheless, its existence has been recorded in various settings, and concerns were raised by some interviewees regarding its presence in the land sector.

Third, the impacts of corruption are felt disproportionately by groups exposed to discrimination.

Corruption is bad for society in general. But its impacts are often felt differently by groups for reasons linked to their protected status, identity or beliefs. In some cases, there is a direct causal link between a corrupt act or practice and the disadvantage experienced by a community.

Numerous examples of this dynamic were observed in the compilation of this report. From religious minorities in South Africa, who face losing access to places of worship and sites of religious importance as a result of development projects, through to the youth of Zimbabwe, who sit on housing waitlists and risk losing a generational right of access to land due to corruption in rural land governance, the impacts of corruption are felt hardest by communities on the fringes – those that face exclusion and marginalisation in everyday life and have fewer avenues of support. Facing economic pressures at home, many States have sought to consolidate their land frameworks, with the aim of encouraging foreign investment and improving the efficiency of their agricultural systems. The result, however, is that land is increasingly concentrated into an ever-diminishing number of private hands. In some cases, corrupt land deals have led to the displacement of rural and Indigenous communities.

Disadvantaged groups are often excluded from decision-making fora, meaning that they

are unable to impact decisions that affect their lives. The case study of Transparency International Uganda explores this dimension of discriminatory corruption within the context of the Tilenga oilfield development project. Following the compulsory acquisition of their land, some women reported being excluded from participating in compensation determination procedures, which – given their frequent responsibilities for care and domestic work – has significantly impacted their lives. A respondent submission from Zambia neatly illustrates the far-reaching effects a loss of land can have on women. Uprooted from their homes and forced to move to a new location – often without their prior consent or input – many face starting a new life, typically on less fertile agricultural land, sometimes far away from water, in a community without access to healthcare, or schools for their children. The outlook for other disadvantaged groups can be just as bleak.

Fourth, both discrimination and corruption result in the denial of justice.

The testimonies received for this report illustrate how the political and social marginalisation that is a fact of life for groups who experience discrimination can impede their ability to challenge corrupt practices and respond to rights violations when they occur. A perception of corruption within justice mechanisms and enforcement bodies may also act as a powerful constraint on action. In several countries, respondents expressed concern regarding the ability of individuals who experience land corruption to raise complaints, due to the possibility of retaliation from the State or private actors. The most serious allegations were raised in South Africa, where anti-corruption and land activists had

reportedly been subject to violent reprisals on account of their work. As discussed further in Section 4.1, discrimination and corruption in this context are closely interlinked.

In almost every country reviewed, similar barriers to justice were highlighted. Formal justice processes are typically seen as exclusory and inaccessible (both spatially and financially) to discriminated groups. Court and lawyer fees, combined with a lack of legal aid and support, puts formal justice beyond the reach of all but the most advantaged in society. Related factors, such as the length of cases and delays in hearings, may prevent individuals from actively pursuing their complaints. The risk of an adverse costs order, particularly in cases involving government or large corporate actors, may also discourage participation in legal proceedings; whilst a fear of reprisals, and corruption in the judicial process, appear ever-present in the minds of those affected.

Informal dispute resolution mechanisms, whilst generally seen as less costly than formal processes, raise specific discrimination concerns. Several participants explained how stereotypes and harmful cultural practices can operate to prevent fair outcomes for members of particular groups. In some parts of Ghana, for instance, it was noted that persons with disabilities are prevented from meeting directly with a chief. Likewise, when disputes arise between older and younger persons, the former is traditionally favoured in decisions. In Madagascar, one respondent explained that family matters are expected to be resolved internally, disadvantaging women whose land rights have been impacted by the competing claims of their close relatives.

The weak capacity of accountability mechanisms, fragmentation of legal

frameworks and a lack of rights awareness were all said to raise barriers to justice whilst creating space for corruption to occur. In Zimbabwe, the selective enforcement of the law, in conjunction with a lack of clarity on the status of individual holdings, has been identified as a significant corruption risk, allowing corrupt officials to exert significant influence in the allocation and reallocation of land. As the Ghana case study demonstrates, perceptions of corruption in adjudicatory mechanisms, when combined with high levels of marginalisation and weak tenure security, can have potentially devastating consequences.

Fifth, corruption impedes the effectiveness of measures designed to advance equality.

Historic discrimination, in areas such as education and employment, means that some groups in society are uniquely exposed to the impacts of corruption. The role of illiteracy in a person's land outcomes was discussed by several participants. Without accessibility measures, individuals may be unable to understand documents they are given to sign, generating discrete corruption risks. Socio-economic disadvantage was another cross-cutting theme that came out strongly in responses. The results indicate that those most affected by corruption are often the least able to bear the costs. If corruption is to be addressed, measures designed to overcome structural inequalities are essential. Yet, despite legal reforms and some positive developments at the national level, several interviewees suggested that a lack of "political will" was preventing effective action, with the clear implication that political corruption is stifling progress.

A new dynamic identified through the research concerns the role of corruption in the

development and implementation of initiatives aimed at promoting equality. At its broadest level, corruption leads to the misallocation of public resources, limiting the availability of funds to spend on equality-enhancing measures. This point was raised in Zambia, where it was noted that corruption may impede efforts to enhance disability inclusion through the design of accessibility measures for persons with disabilities. These factors – when combined with broader inequalities in society – work to prevent the equal participation of members of this group, thereby limiting their development prospects and, ultimately, their ability to access land.

In more concrete terms, the research shows how corruption can frustrate programmes aimed at improving the situation of marginalised communities. Allegations raised by the EIA in Zambia, concerning the misuse of a land allocation scheme to facilitate the illegal logging of Mukula trees, epitomise the problem. This dynamic was most clearly demonstrated in South Africa, where a failure to ensure the accountability of actors involved in farm worker equity schemes has raised serious corruption concerns. Far from feeling the expected equality benefits, those affected feel ignored, and many continue to lack tenure security and experience decent work deficits.

The dynamics explored in this section are not static and should not be considered as hermetically sealed categories. They exist on a spectrum, representing different phases in the lifecycle of the phenomena we term discriminatory corruption. Structural inequalities increase the exposure of certain communities to corrupt practices. In turn, this invariably results in corruption taking place. Discriminatory corruption can be direct. Groups may be targeted by corrupt actors for reasons relating to their status or excluded from benefits accorded to other communities. It can also be indirect. Some of the most far-reaching and pernicious impacts of corruption do not treat groups differently. The land occupied by a particular rural ethnic minority group, for example, may be earmarked for development by government or investors due to its valuable extractive resources, and acquired according to States' generally applicable public purpose provisions, read generously by a corrupt official. Those that are disadvantaged by corrupt practices are often prevented from challenging them owing to the multifaceted barriers to justice these phenomena engender. Measures to address historic discrimination and the root causes of corruption may themselves be undermined by corruption, thereby closing the loop and restarting the cycle.



CHAPTER 7: RECOMMENDATIONS

Addressing the harms of discriminatory corruption will require comprehensive action. The diversity of land systems and experiences of disadvantage means that policy measures must be tailored to local needs and context. To this end, we identify a set of core principles to guide future work. Informed by the Committee on Economic, Social and Cultural Rights' recent general comment in this area, recommendations are addressed at three levels: to States, as the principal duty-bearer; to the international and regional community; and finally to civil society organisations. Collaboration between these different stakeholder groups will be essential to fostering the appropriate conditions for reform and ensuring improved rights protection. All measures should be designed in consultation with affected communities and on the basis of participatory research and inclusive data analysis.

RECOMMENDATIONS FOR STATES

1 Recognition

1.1 Recognise land rights and ensure effective tenure security

While States have adopted laws that recognise customary tenure systems, the research shows that many continue to lack tenure security. Recognition gaps create space for corruption

to occur, with a disproportionate impact on already marginalised communities. In line with best practice, States should review their policy frameworks to ensure that the legitimate tenure rights of all land users are respected and protected. Particular attention should be given to the individual and collective rights of Indigenous Peoples, persons living in rural areas, and other groups who enjoy a special physical, social, cultural or spiritual relationship with land.

1.2 Promote improved land outcomes

Land reform processes should recognise the unique challenges experienced by marginalised communities in exercising their land rights. Positive action measures, including land restitution and redistribution programmes, should be adopted with the aim of redressing historic disadvantage, promoting the equal distribution of land and its benefits, and facilitating the improved enjoyment of rights by disadvantaged groups. All such measures must conform to the rule of law and should be accompanied by clear anti-corruption safeguards, alongside training and education for both beneficiaries and public officials, to ensure that the intended equality benefits are felt. At all stages of land reform, affected communities should play a leading role in the identification, design and implementation of policy solutions.

2 Comprehensive and Effective Protection

2.1 Develop comprehensive anti-corruption and anti-discrimination frameworks

Discrimination increases the exposure of marginalised groups to corruption and amplifies its impacts. In turn, corruption can impede the effectiveness of equality measures and deepen experiences of marginalisation. Addressing these joint-harms requires a comprehensive and holistic approach, starting at the legal and policy level. While there are limits to what the law can achieve, ensuring the existence and operation of these frameworks is a necessary, albeit insufficient, condition for rights protection. Anti-corruption measures should be mainstreamed in all laws, policies and regulations relevant to land governance, and should establish specific responsibilities for both public and private actors. All States should adopt, and effectively implement, comprehensive anti-discrimination legislation in line with international standards.

2.2 Integrate equality impact assessment at all stages of public decision-making

Equality impact assessment is an essential tool that government officials, businesses and other duty-bearers can use to mainstream equality in their work and ensure that their activities or decisions do not result in discrimination. The duty to undertake equality impact assessment should be established under legislation and made applicable to both public and private actors. The assessment should incorporate both quantitative and qualitative data, ensuring the active engagement of groups that stand to be affected. A separate assessment should be conducted after measures have been introduced to ensure that they do not produce unanticipated adverse equality impacts.

The results of the assessment should lead to substantive change. To allow for effective scrutiny, the results should be published and made widely available and accessible.

The Requirements of Comprehensive Anti-Discrimination Law

As part of their human rights obligations, States are required to adopt comprehensive anti-discrimination legislation. In 2023, the United Nations Human Rights Office published important guidance in this area.⁸⁹⁰ To meet the requirements of international law, such legislation should define and prohibit all forms of discrimination, including direct discrimination, indirect discrimination, the denial of reasonable accommodation, harassment, victimisation and segregation. This prohibition should apply on the basis of an open-ended and extensive list of grounds in all areas of life regulated by law, establishing clear obligations for both public and private actors. The law should provide for effective remedy for acts of discrimination and establish the necessary procedural safeguards – including provisions for the transfer of the burden of proof – to ensure access to justice. The law should also require the adoption of positive action measures, designed to redress historic disadvantage and make progress towards equality. Specific equality duties should be established to mainstream the rights of marginalised communities in public policies, practices and procedures and in the exercise of public functions.

3 Participation

3.1 Respect free, prior and informed consent

States should ensure that the free, prior and informed consent of communities is obtained before any decision is taken regarding their land. This principle has developed primarily in the context of Indigenous Peoples' rights, due to its centrality to the right to self-determination. However, it is of wider relevance, and should be applied whenever the land rights of community members stand to be affected by investment or development projects.⁸⁹¹ Anti-corruption safeguards should be applied in all free, prior, informed consent processes, for example, by making provision for safe and accessible whistleblower reporting channels.

3.2 Ensure effective participation in community land structures

Communities should be empowered to define the rules that govern the collective use and management of their land. However, national law should establish clear anti-corruption and anti-discrimination safeguards to ensure that decisions are not influenced by private concerns, and do not lead to the exclusion of marginalised groups.⁸⁹² Those exercising public functions, including traditional authorities, should be held to the same accountability standards as other public officials. Sensitisation measures, awareness raising and training should be provided within community settings on equality and anti-corruption themes. Specific measures – including positive action – should be designed to ensure the active participation of women, persons with disabilities and other disadvantaged groups in community decision-making structures.

3.3 Create an enabling environment

Around the world, human rights defenders play a crucial role in promoting and upholding human rights. However, their efforts are often impeded by State and non-State actors. In many countries, anti-corruption, environmental and community land rights activists have been subject to violent reprisals. Meanwhile, laws and policies are adopted that aim to stifle their legitimate activities and quiet dissenting voices. Because of their work promoting the rights of marginalised communities against powerful interests, activists working on discrimination and corruption are particularly vulnerable to harm. In line with the recent recommendations of UN Special Procedures, States must “ensure the specific protection needs of anti-corruption defenders working on the distinct issue of discriminatory corruption and take into account the particular risks they face as a result of their work.”⁸⁹³ States should protect civic space and foster an enabling environment for those working on these themes, including through the provision of direct financial and technical support.

4 Transparency and Accountability

4.1 Ensure equal access to information and improve data collection and monitoring

States should adopt measures to facilitate access to information. This is particularly important in the context of land acquisitions and investment, where informational asymmetries and the non-disclosure of relevant materials have the potential to do harm. States should monitor the impact of their laws and policies to ensure that they are effective in practice. Monitoring is particularly important in the context of large-scale land investments, owing to the development promises made by investment actors that may be ignored or sidestepped once access to land is secured. National legislation should impose clear obligations on investing companies requiring human rights due diligence, inclusive of anti-corruption compliance procedures and equality impact assessment, at all stages of land deals. Qualitative data should be disaggregated at all levels, ensuring the collection of information on the situation of disadvantaged groups. Existing data collection techniques should be adapted to ensure that they can capture data on corrupt activities. Whenever data is collected, implementers should be sensitive to the potential for misuse so as not to draw attention to individuals who may be exposed to a risk of violence or discrimination.

4.2 Establish independent and effective accountability mechanisms

Those who experience corruption and discrimination are entitled to remedy and redress. Accountability mechanisms should be established with clear equality and anti-corruption mandates. These bodies should be effectively resourced and provided with the financial, technical and human capacity needed to effectively deliver their objectives. The mandates, responsibilities and powers of existing mechanisms should be reviewed to ensure that they are effective in practice. Where bodies have overlapping mandates, clear divisions of responsibility should be delineated, with information provided to citizens in an accessible format. Individuals should not be denied justice on account of their disability status, age, gender, location or other personal characteristics. Accessibility measures should be adopted and procedural accommodations provided to those with particular access needs. States should develop inclusive, safe, localised and confidential anti-corruption reporting mechanisms that are sensitive to the specific needs of groups and individuals at risk of discrimination.

RECOMMENDATIONS FOR THE INTERNATIONAL AND REGIONAL COMMUNITY

5 Promotion

5.1 Mainstream efforts to challenge discriminatory corruption

While the impacts of corruption and discrimination on the enjoyment of land rights are increasingly recognised, insufficient attention has been paid to the links between these phenomena. Mirroring the recommendations of our *Defying Exclusion* report, we urge the United Nations to consider establishing a dedicated special mandate under the UN Human Rights Council focused on the links between discrimination and corruption. This study demonstrates that discriminatory corruption is a problem that is global in scope, affecting the lives of many – if not all – disadvantaged communities, limiting their life chances and frustrating the global effort to “leave no one behind”. It also shows how much more remains to be done to understand this problem, gather data on its scale and scope, and develop effective solutions. The establishment of a special mandate would provide a central point to stimulate, connect and drive these efforts.

6 Sensitisation

6.1 Foster collaboration, reciprocal training and sensitisation

There is an immediate benefit arising from efforts to increase collaboration, mutual understanding and shared knowledge between those working in the anti-corruption, anti-discrimination and land governance fields at the international and regional levels. At the United Nations, for example, significant benefits could be gained through knowledge sharing and reciprocal training between the UN Human Rights Office, the UN Office on Drugs and Crime and the Food and Agriculture Organization of the United Nations. At the African Union level, the African Commission on Human and Peoples’ Rights, the African Union Advisory Board against Corruption, the Africa Land Policy Centre (APLC) and the Network of Excellence on Land Governance in Africa would be some of the institutions to target for the same exercise. We would urge intergovernmental bodies with mandates in each of these areas to take steps to encourage coordination and collaboration, and to invest in programmes of mutual, reciprocal learning, teaching and sensitisation.

RECOMMENDATIONS FOR CIVIL SOCIETY

7 Collaboration

7.1 Establish effective cross-sectoral partnerships

This study is the result of a unique collaboration between two international organisations, one focused on anti-corruption and one on non-discrimination. Working together, we have identified and engaged a diverse range of stakeholders – including land experts – to document the links between discrimination and corruption in the land sector. Throughout this process, the benefits of collaboration – in respect of increased knowledge and understanding, the pooling of resources and the sharing of expertise – have been manifest. With this in mind, we urge civil society organisations working in these areas to explore the potential for collaboration, both in identifying patterns of discriminatory land corruption and advocating solutions to the problem. Organisations working in separate fields often develop niche expertise and solutions to problems that are of broader relevance. If civil society organisations are to advocate effectively for measures to address the harms of land corruption and discrimination, they need to understand and have the capacity to apply the relevant principles, concepts and frameworks. As such, we call on civil society organisations working in these fields to work together to develop mutual, reciprocal training and capacity-building programmes to equip their representatives with the knowledge required to advocate effectively.

8 Research and Advocacy

8.1 Identify new pathways to justice

Traditional approaches to tackling corruption are perpetrator-oriented and rely heavily on the use of criminal sanctions that target individuals who engage in or solicit corrupt practices. Criminal sanctions, while clearly appropriate in some circumstances, also carry a high standard of proof and evidentiary requirements that can inhibit corrupt actors from being held to account. In some countries commissioning a public official to perform, refrain from performing or hasten their official duties is also criminalised.⁸⁹⁴ The research for this report shows that some groups resort to corruption in order to protect their legitimate interests in land and overcome barriers to rights protection caused by corrupt or discriminatory practices.⁸⁹⁵ For instance, women in patriarchal societies who risk losing their land due to the death of their husband may pay bribes to administrators to expedite the processing of their land registration documents.

Although there is little public information on the prosecution of petty corruption offences, there is a risk that criminalisation may serve to discourage reporting, as victims of discriminatory corruption are rendered unapprehended felons for attempting to secure access to their rights. Without examining the role that discrimination plays in the commissioning of corrupt practices, it will be impossible to address such cases if, or when, they arise. Even in the most advanced systems, traditional approaches to addressing discrimination and corruption have been

reactive – seeking to remedy a past wrong – rather than proactive and preventative. Whilst remedy is integral to any legal system, a heavily individualised model of justice means that States are failing to discharge their broader, positive equality and anti-corruption obligations.⁸⁹⁶ Each of these issues highlights the clear need for further research on enforcement regimes, and the identification of new pathways to justice.

8.2 Conduct collaborative research, identify tailored solutions and promote change

As noted above, this study is – out of necessity – selective and illustrative in its presentation of patterns and examples of the links between land, corruption and discrimination. What our research demonstrates is the potential for discrimination and corruption to cause or exacerbate land-related harms. This in turn underscores the need for systematic research at the national level. While the obligation to address these harms rests ultimately with responsible State actors, civil society can and should play a role in undertaking this research and building this evidence base. Bottom-up approaches that build upon the experiences, wisdom and insights of communities affected by discriminatory corruption are needed to identify sustainable solutions. The diversity of land systems means that all solutions must be tailored to local contexts to avoid a risk of doing harm.



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This report involved carrying out hundreds of interviews and consultations with national-level stakeholders across the seven countries featured in this report as well as Cameroon. When possible, those interviewed have been acknowledged in the body of the report, but in some cases, their contributions have been anonymised. These experts were instrumental to our understanding of how corruption and discrimination intersect at the national level, in identifying case studies, and in guiding our research at a community level. We appreciate their willingness to participate in their research and their candour in interviews, without which this report would not have been possible.

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While the individuals interviewed for our case studies are not named in this report for their safety and privacy, their experiences are the heart of this research and their generosity and courage in speaking out deserves special mention.

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ENDNOTES

- 1** This is a summary of an account documented by Mary Maneno and Gareth Benest in “Land Corruption in Coastal Kenya”, *Transparency International*, 20 December 2017. All names have been anonymised to protect the identities of those concerned. The original article can be accessed at the following link: <https://voices.transparency.org/land-corruption-in-coastal-kenya-8ba946565466>.
- 2** *Ibid.*, Mary Maneno and Gareth Benest.
- 3** See illustratively, Transparency International, *Women, Land and Corruption*, 2018, p. 38; Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 65-69.
- 4** *Ibid.*, *Defying Exclusion*, 2021.
- 5** See further, Transparency International, Publications about Land Corruption, updated 2023, available at: <https://www.transparency.org/en/search/filter?priority=land-corruption&type=publication>.
- 6** For each of the core UN human rights treaties a committee of experts is established (the treaty bodies) that are responsible for interpreting the respective conventions and overseeing implementation by States. Special procedure mandate holders are expert mechanisms established under the auspices of the UN Human Rights Council with a specific thematic or country focus. As part of their responsibilities, each mandate holder publishes an annual thematic report which details their activities and explores topical issues relevant to their mandate.
- 7** For the purposes of this report, “sextortion” is defined to occur “when those entrusted with power use it to sexually exploit those dependent on that power.” In the context of land governance, sextortion commonly involves demands for sexual favours in exchange for access to land or services. See further, Transparency International, *Breaking the Silence around Sextortion: The Links Between Power, Sex and Corruption*, 2020, available at: <https://www.transparency.org/en/publications/breaking-the-silence-around-sextortion>.
- 8** As part of the validation process, national stakeholders were provided an advanced draft of the report and asked to confirm that their contributions and testimony were accurately presented. In a small number of cases, stakeholders were unable to review the document. As a safety precaution, we decided to anonymise these contributions. A separate approach was taken to the South African chapter. A report setting out the preliminary findings of the research was published by Corruption Watch to accompany a podcast series which builds upon the testimonies received. Each contributing expert provided their permission to appear in the podcast series, which can be accessed at the following link: <https://www.corruptionwatch.org.za/land-and-corruption-story-of-the-marginalised-podcast-and-report-launch/>.
- 9** According to a recent World Bank report, approximately “60% of the world’s extreme poor” are concentrated in sub-Saharan Africa. See World Bank, *Global Economic Prospects*, 2023, p. 89.
- 10** Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, paras. 34-35. Although different expressions are sometimes used, “socio-economic disadvantage” is the term preferred by this report, on account of its asymmetric formulation. See Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/77/157, 2022, paras. 17-23 and Equal Rights Trust, *Learning Inequality: Using Equality Law to Tackle Barriers to Primary Education for Out-of-School Children*, 2017, pp. 32–35.
- 11** For a contemporary account of some of these debates, see United Nations Human Settlements Programme (UN-Habitat), *Property Theory, Metaphors and the Continuum of Land Rights*, 2015.
- 12** Olivier De Schutter and Balakrishnan Rajagopal, “The Revival of the Commons and the Redefinition of Property Rights”, in Olivier De Schutter and Balakrishnan Rajagopal (ed.), *Property Rights From Below: Commodification of Land and the Counter-Movement*, Routledge (Kindle edn.), 2020, p. 224.
- 13** This framing is intended to guide the reader and has informed the presentation of information in the subsequent chapters of this report. However, as described in the scope and limitations section, within domestic settings and in the testimony of key stakeholders, different language may be used to describe related concepts.

- 14** Following the approach of the FAO, use of the term “land” in this report encompasses natural resources. See Food and Agriculture Organization of the United Nations (FAO), *Land Tenure and Rural Development*, 2002, paras. 3.1-3.2, available at: <https://www.fao.org/3/y4307e/y4307e00.htm>. This definition of “land tenure” has also been used by FIAN International, although some authors have identified challenges with the framing of the definition. See further, FIAN International Secretariat, *the Human Right to Land*, 2017, p. 15; Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/22/46, 2012, paras 21-22; and Alain Durand-Lasserve, “The Security of Tenure: an Introduction”, in Charlotte Mathivet (ed.), *Take Back the Land!*, Ritimo, 2014, pp. 28-29.
- 15** *Ibid.*, FAO, para. 3.6.
- 16** Francesco Parisi, *The Language of Law and Economics*, Cambridge University Press, 2013, p. 33.
- 17** *Ibid.*, Parisi, p. 33.
- 18** *Ibid.*, Parisi, p. 33 and FAO, para. 3.7.
- 19** Schlager and Ostrom distinguish “operational-level property rights”, which include rights of access and withdrawal, and “collective-choice property rights”, which include management, exclusion and alienation rights. See Edella Schlager and Elinor Ostrom, “Property-Rights Regimes and Natural Resources: A Conceptual Analysis”, *Land Economics*, Vol. 68, No. 3, 1992, pp. 250-251.
- 20** See FAO, *Land Tenure and Rural Development*, 2002, para. 3.7. For this reason, some authors prefer to think of property rights to land as a “web of interests”. See Ruth Meinzen-Dick and Esther Mwangi “Cutting the Web of Interests: Pitfalls of Formalizing Property Rights”, *Land Use Policy*, 26, 2008, pp. 36-43.
- 21** This is broadly consistent with the approach of UN treaty bodies in their recent guidance to States. See Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023.
- 22** *Ibid.*, FAO, paras. 3.9 – 3.15.
- 23** *Ibid.*, FAO, paras. 3.9 – 3.15.
- 24** *Ibid.*, FAO, paras. 3.12-3.13.
- 25** Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/22/46, 2012, paras. 28-31.
- 26** United Nations Human Settlements Programme (UN-Habitat), *Property Theory, Metaphors and the Continuum of Land Rights*, 2015, p. 11. See also, *Ibid.*, Special Rapporteur on Adequate Housing, paras. 22 and 27.
- 27** Ruth Meinzen-Dick and Esther Mwangi “Cutting the Web of Interests: Pitfalls of Formalizing Property Rights”, *Land Use Policy*, 26, 2008, p. 37.
- 28** *Ibid.*, Meinzen-Dick and Mwangi, p. 37. See also, De Schutter and Rajagopal, above, p. 224. In addition to custom and statute, property rights to land may emerge from a range of additional sources, such as religious law, international treaties and organisational or donor regulations. See further, Ruth Meinzen-Dick and Monica Di Gregorio (ed.), *Collective Action and Property Rights for Sustainable Development*, 2004, p. 7.
- 29** As De Schutter and Rajagopal note, property rights to land are “completely social” in nature. See Olivier De Schutter and Balakrishnan Rajagopal, “The Revival of the Commons and the Redefinition of Property Rights”, in Olivier De Schutter and Balakrishnan Rajagopal (ed.), *Property Rights From Below: Commodification of Land and the Counter-Movement*, Routledge (Kindle edn.), 2020, p. 224.
- 30** *Ibid.*, De Schutter and Rajagopal, p. 224.
- 31** FAO, *Land Tenure and Rural Development*, 2002, paras. 3.16 – 3.20.
- 32** Community Land Act, Section 4(3). See further, Chapter 5.2.
- 33** FAO, *Land Tenure and Rural Development*, 2002, para. 3.31.
- 34** Sara Berry, *Who owns the land? Social relations and conflict over resources in Africa*, *GLOCON Working Paper Series*, No. 7, 2018. See further, ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016, pp. 15-16; FIAN International Secretariat, *the Human Right to Land*, 2017, pp. 13-14.
- 35** *Ibid.*, Sara Berry, p. 3.
- 36** FAO, *Land Tenure and Rural Development*, 2002, paras. 3.31-3.40. See also, Meinzen-Dick and Mwangi, above, p. 37.

- 37** The implications of titling are discussed further in further detail in the latter sections of this report. See also, Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 31; FIAN International Secretariat, *the Human Right to Land*, 2017, pp. 13-14; and – on the risk of corruption in land registration processes – Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, pp. 11-12.
- 38** Transparency International, “What is Corruption?”, 2017, available at: <https://www.transparency.org/en/what-is-corruption>.
- 39** Transparency International, *Corruption in Urban Planning A Guide for Professional and Trainee Planners*, 2023.
- 40** *Ibid.*, p. 10.
- 41** *Ibid.*, Transparency International, *Corruption in Urban Planning*, 2023, p. 10.
- 42** *Ibid.*, p. 10.
- 43** On administrative / bureaucratic corruption, see Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, p. 10.
- 44** World Bank. “What can the World Bank Group’s Integrity Vice Presidency investigate?”, 2019.
- 45** *Ibid.*, World Bank. 2019.
- 46** Jessie Bullock and Matthew Jenkins, “Corruption and Marginalisation”. Transparency International Anti-Corruption Helpdesk Answer, 2020.
- 47** See further, Transparency International, *The Anti-Corruption Plain Language Guide*, 2009; Transparency International, *Corruption in Urban Planning: A Guide*, 2023, p. 10.
- 48** See Mathias Huter and Ruggero Scaturro, “UNCAC in a Nutshell: A quick guide to the United Nations Convention against Corruption”, Transparency International Anti-Corruption Helpdesk Answer, 2019.
- 49** Within the UN treaty body system, the UN Human Rights Office maintains a database of treaty ratification, which can be accessed at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx. See further, UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 17-18.
- 50** *Ibid.* In December 2022, a range of UN special procedure mandate holders and treaty bodies officially endorsed the guide. See UN Human Rights Office, “Comprehensive anti-discrimination legislation must be a priority, say UN experts ahead of Universal Declaration anniversary”, 7 December 2022.
- 51** *Ibid.*, *Protecting Minority Rights*, 2023, pp. 27-28.
- 52** *Ibid.*, pp. xii and 24-28.
- 53** UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. xii and 19-24.
- 54** *Ibid.*, pp. 47-51.
- 55** *Ibid.*, pp. 47-51. See also, Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 12.
- 56** *Ibid.*, pp. 3 and 48.
- 57** In the land context, see Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, paras. 40-47.
- 58** UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 51-56.
- 59** *Ibid.*, p. 51.
- 60** *Ibid.*, pp. 56-66.
- 61** *Ibid.*, p. 65. For an example within the context of land governance, see the discussion of the South African Farm Worker Equity Schemes in Section 5.4 of this report.
- 62** *Ibid.*, pp. 62-65.
- 63** Committee on the Rights of Persons with Disabilities, General Comment No. 6, UN Doc. CRPD/C/GC/6, 2018, para. 29.
- 64** Although some do. For an example, see discussion of the links between corruption and discrimination in the allocation of land in Zimbabwe in Section 5.7 of this report.
- 65** UN Treaty Bodies, “Joint Statement on “Corruption and Human Rights”, 31 May 2021, paras. 8-9.
- 66** *Ibid.* However, this may not always be the case. For example, the impacts of bribery involving two businesses competing for a contract may not produce discernible impacts on anyone but the organisations concerned.

- 67** Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021.
- 68** For further discussion of these dynamics, see *Ibid.*, pp. 13-16.
- 69** These dynamics correlate broadly to the causation test applied in direct and indirect discrimination cases. In the case of the former, there is a direct causal link between the corrupt act and a protected characteristic. In the case of the latter, there is a causal link between the corrupt act and the disadvantage experienced by a community. See further *Essop and others*, UK Supreme Court, [2017] UKSC 27, para. 25.
- 70** A topical example of this dynamic includes state-sanctioned reprisals against human rights defenders working to challenge land rights violations. See further the discussion in Section 4.1. Human rights defender status is recognised as a form of political opinion under international law. See further, Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, para. 23; UN Human Rights Office, “20th anniversary of the UN Declaration on Human Rights Defenders: Joint Statement”, 30 May 2018.
- 71** See further, UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 191-201.
- 72** See, for example, Committee on the Rights of Persons with Disabilities, General Comment No. 6, UN Doc. CRPD/C/GC/6, 2018, paras. 8-11. For further discussion of the rights-based approach in the context of older persons, see Equal Rights Trust and HelpAge International, *Advancing Equality for Older People*, 2022, pp. 8-11.
- 73** On substantive equality, see Sandra Fredman, “Substantive Equality Revisited”, *International Journal of Constitutional Law*, Vol. 14 (3), 2016, pp. 712-738. The four-dimensional approach to substantive equality advocated by Fredman has been taken up by the Committee on the Rights of Persons with Disabilities and is central to its definition of ‘inclusive equality’ under the CRPD. See *Ibid.*, CRPD Committee, para. 11
- 74** *Ibid.*, Fredman, pp. 728-730.
- 75** A distinction is sometimes drawn between socio-economic (vertical) and ground-based (horizontal) inequalities. However, this distinction is quickly dissolving. Socio-economic disadvantage has been recognised as a ground of discrimination by a number of UN treaty bodies, whilst the term “property”, which is listed in the non-discrimination provisions of both the ICCPR and the ICESCR, translates loosely to “fortune” and “economic position” in the French and Spanish language versions of the texts. See further, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/77/157, 2022, paras. 17-23.
- 76** This point was eloquently explained by the Court of Appeal of Kenya. See *Seventh Day Adventist Church (East Africa) Limited v. Minister for Education & 3 others*, [2017] eKLR, para. 47.
- 77** Sandra Fredman, “Substantive Equality Revisited”, *International Journal of Constitutional Law*, Vol. 14 (3), 2016, p. 720.
- 78** See further, the discussion of accessibility in UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 66-69.
- 79** Sandra Fredman, “Substantive Equality Revisited”, *International Journal of Constitutional Law*, Vol. 14 (3), 2016, pp. 730-731.
- 80** *Ibid.*, pp. 731-732.
- 81** Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, p. 12.
- 82** *Ibid.*, p. 12.
- 83** See further, the discussion in Chapter 4 of this report. See also, broadly, International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020.
- 84** See further, Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, p. 13.
- 85** See FAO, *Tackling Land Corruption by Political Elites*, 2022, p. 6.
- 86** International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, p. 8.

- 87** See Sandra Fredman, “Substantive equality revisited: A rejoinder to Catharine MacKinnon”, *International Journal of Constitutional Law*, Vol. 14 (3), 2016, pp. 747-751. This article forms part of a series of interesting exchanges between Professors Fredman and MacKinnon on the role of hierarchy in substantive equality.
- 88** For instance, older persons may be relatively more likely to participate in decision-making on land, where age is equated with traditional wisdom or authority, but denied access to land, due to ageist assumptions linked to their perceived physical capacity and ability to work the land productively. Variants of this dynamic were recorded in the testimonies of experts, which are presented in Chapter 5 of this report.
- 89** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, paras 1 and 5-11.
- 90** *Ibid.*, paras. 1 and 5-11.
- 91** See Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018.
- 92** Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018, pp. 4-5. For a detailed account, see Samuel Cogolati, “International Law to Save the Commons”, *KU Leuven Faculty of Law*, 2020, pp. 143-150.
- 93** Jérémie Gilbert, “The Human Right to Land”, in Andreas von Arnould, Kerstin von der Decken, and Mart Susi (ed.), *The Cambridge Handbook of New Human Rights*, Cambridge University Press, 2020, p. 98.
- 94** Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018, p. 4.
- 95** *Ibid.* For discussion on the emergence of *Terra Nullius* as a legal doctrine, see Andrew Fitzmaurice, “The Genealogy of Terra Nullius”, *Australian Historical Studies*, 129, 2007. See also Robert J. Miller, “The International Law of Colonialism”, *Lewis & Clark Law Review*, Vol. 15, 2011.
- 96** Report of the Permanent Forum on Indigenous Issues, UN Doc. E/C.19/2014/3, 2014, paras. 3-4.
- 97** Contemporary international human rights law rejects these doctrines on account of their racially discriminatory impacts and limitations on the right to self-determination. See Report of the Permanent Forum on Indigenous Issues, UN Doc. E/C.19/2014/3, 2014, paras. 4 – 15.
- 98** Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018, p. 5.
- 99** Covenant of the League of Nations, Article 22. The concept of trusteeship bore distinctly racial overtones and was not new in 1919. Commenting at the turn of the century on the proposed duration of British rule, the former Special Commissioner to Uganda, Sir Harry Johnstone, explained his view that “the Negro must pass through many years, possibly centuries, of tutelage under the Caucasian, before he could be safely entrusted with unchecked control.” See further, Jerry Dupont, *The Common Law Abroad*, Fred. B. Rothman Publications, 2001, pp. 978 and 984, citing Hayes-Sadler, “Present-day Administration in Uganda”, paper extracted from *Proceedings of the Royal Colonial Institute*, Vol. 36, 1904/05, p. 81.
- 100** Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018, p. 6.
- 101** Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018, p. 21.
- 102** See United Nations Charter, Preamble and Article 1.
- 103** Some national courts have also recognised the customary status of the Declaration. See, for example, *Mitu-Bell Welfare Society v. Kenya Airports Authority & 2 others* [2021] KESC 34 (KLR), para. 141.
- 104** Universal Declaration of Human Rights, Preamble and Article 2. See further, Gordon Brown (ed.), *The Universal Declaration of Human Rights in the 21st Century*, 2016, Chapter 2, paras 23-24, available at: <https://books.openedition.org/obp/3059>.
- 105** UN general Assembly, Draft International Covenants on Human Rights, Annotation prepared by the Secretary General, UN Doc. A/2929, 1955, pp. 65-67, paras. 195-212, available at: https://www2.ohchr.org/english/issues/opinion/articles1920_jccpr/docs/a-2929.pdf.
- 106** *Ibid.* Pinto, M., “International Covenant on Economic, Social and Cultural Rights: Introductory Note”, *Audiovisual library of International Law*, accessed 2023, available at: <https://legal.un.org/avl/ha/icescr/icescr.html>.
- 107** The term “property” in these clauses does not establish an independent right to property. However, in its general comments, the Committee on Economic, Social and Cultural Rights has defined “property status” to include a lack of income or resources, including land tenure. See Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, para. 25.
- 108** International Covenant on Economic, Social and Cultural Rights, Articles 1, 2(1) and 2(2); International Covenant on Civil and Political Rights, Articles 1, 2(1), 2(2) and 26. See also, Human Rights Committee, General Comment No. 12, 1984, para. 6.

109 See, in particular, International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d) (v), and Convention on the Rights of Persons with Disabilities, Article 12(5); and Convention on the Elimination of All Forms of Discrimination Against Women, Articles 15(2) and 16(1)(h).

110 See illustratively, Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 34, UN Doc. CEDAW/C/GC/34 and General Recommendation No. 39, 2022, UN Doc. CEDAW/C/GC/39; Committee on the Elimination of Racial Discrimination, General Recommendation No. 34, 2011, UN Doc. CERD/C/GC/34, para. 4(a); and General Recommendation No. 23, 1997, para. 5. Article 14(2)(g) of the CEDAW expressly recognises the right of women in rural areas to “equal treatment in land and agrarian reform as well as in land resettlement schemes.”

111 See, for example, Human Rights Committee, General Comment No. 23, UN Doc. CCPR/C/21/Rev.1/Add.5, 1994, para. 3.2, recognising the close links between the territory and use of resources by minorities and the enjoyment of their Covenant rights. See also, Committee on Economic, Social and Cultural Rights, General Comment No. 7, 1997.

112 See African Commission on Human and Peoples’ Rights. See African Commission on Human and Peoples’ Rights, *The Nubian Community in Kenya v Republic of Kenya*, Communication No. 317/2006, para. 164.

113 See Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 3.

114 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Guidelines and 8.3.

115 Indeed, human dignity, non-discrimination, equality, justice, sustainability, accountability, transparency, consultation, participation and the rule of law are all listed as guiding principles of implementation. See Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Guideline 3B.

116 The Guidelines call on States to “prevent corruption in all forms, at all levels, and in all settings” and to “prohibit all forms of discrimination related to tenure rights”, whilst recognising the legitimate tenure rights of those groups that lack such recognition. This includes Indigenous Peoples and other communities with customary or communal land tenure systems. See *Ibid.*, Guidelines 3.1(1) and (5) 4.4, 4.6, 7.3 and 7.4. See further, Guidelines 3B(2), 4.4, 4.6, 4.7, 5.3, 6.3, 9.10, 11.3, 12.11, 17.3, 21.3, 21.6, 25.3, 25.5, and 25.7 (non-discrimination); Preamble and Guidelines 3.1(5), 5.8, 6.9, 8.9, 9.12, 10.5, 11.7, 15.9, 16.6, 17.5, 18.5, 19.3, 20.4, and 21.5 (corruption). Interestingly, the terms “discrimination” and “corruption” never appear in the same clause.

117 The FAO has issued a set of technical guides that aim to assist States to operationalise the Guidelines at the national level. Guide five, concerns the rule of law, and provides extended discussion on both discrimination and corruption. For a useful summary of the principal anti-corruption provisions, see FAO, *Tackling Land Corruption by Political Elites*, 2022, pp. 23-24. See also FAO, *Governance of Tenure Technical Guides*, accessed 2023.

118 Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 3.

119 African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, 2010.

120 *Ibid.*, para. 54.

121 See further the discussion of the Endorois, Ogiek and Nubian cases in Section 5.2 of this report.

122 FIAN International Secretariat, *the Human Right to Land*, 2017, p. 17.

123 Indeed, this was the express justification for the removal of Kenya’s indigenous Ogiek community from the Mau Forest. The African Court on Human and Peoples’ Rights rejected this claim. See *African Commission on Human and Peoples’ Rights v Republic of Kenya*, Judgment (Merits), Application No. 006/2012, paras. 130-131 and further, the discussion in Section 5.2 of this report.

124 While the benefits of growth are often touted, in practice they are rarely distributed evenly. See Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/HRC/44/40, 2020, para. 61.

125 FIAN International Secretariat, *the Human Right to Land*, 2017, p. 16.

- 126** See for example, the testimony received from experts in Madagascar and Zambia in Sections 5.3 and 5.6.
- 127** See discussion of the impacts of displacement on women in Uganda and Zambia in Sections 5.5 and 5.6 of this report.
- 128** See, for example, testimony concerning the destruction of religious sites in South Africa in Section 5.4.
- 129** See illustratively, FIAN International Secretariat, *the Human Right to Land*, 2017 and Jérémie Gilbert, “The Human Right to Land”, in Andreas von Arnould, Kerstin von der Decken, and Mart Susi (ed.), *The Cambridge Handbook of New Human Rights*, Cambridge University Press, 2020.
- 130** See the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Article 17(1) and the United Nations Declaration on the Rights of Indigenous Peoples, Article 26.
- 131** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 16.
- 132** *Ibid.*, para. 18.
- 133** See, for example, Human Rights Committee, General Comment No. 18, 1989, para. 12. Other UN and regional bodies have adopted a similar approach. See further, UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 50-51.
- 134** This includes, for instance, place of residence (including rurality and internally displaced status) and socio-economic disadvantage. See *Ibid.*, UN Human Rights Office, pp. p. xii and 19-24, and Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, paras 27 and 34.
- 135** Committee on Economic, Social and Cultural Rights, General Comment No. 18, UN Doc. E/C.12/GC/18, 2006, para. 33. See also, Committee on the Rights of Persons with Disabilities, General Comment No. 6, UN Doc. CRPD/C/GC/6, 2018, para. 12.
- 136** *Ibid.*
- 137** This is reflected in the prohibition of indirect discrimination and the denial of reasonable accommodation, which are fundamental components of anti-discrimination law. See UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, above, pp. 18 and xiii.
- 138** See, for example, Committee on the Elimination of Discrimination against Women, General Recommendation No. 39, UN Doc. CEDAW/C/GC/39, 2022, para. 19.
- 139** This is implied by the ban on segregation. See UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, above, pp. xiii and 42-46.
- 140** A similar test applies regarding forced evictions, which will always be illegitimate when discrimination is present. See Committee on Economic, Social and Cultural Rights, General Comment No. 7, 1997, paras. 10 & 14.
- 141** United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1, 2015.
- 142** See further, Equal Rights Trust, *No One Left Behind: An Equal Rights Approach to Sustainable Development*, 2018, citing Goals 10, 5 and Target 16B.
- 143** See further, Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, pp. 6-7, citing Goals 1, 2, 5, 11 and 16; and more broadly, Transparency International, *Policy Position on Land Corruption and the SDGs*, 2023.
- 144** See, in particular, Goals 2, 3, 6, 8, 11 and 12-15. See also, Committee on Economic Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, paras. 6-11, 18 and 56-58.
- 145** See further, Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 8-9, 16-17, 19 and 84-86.
- 146** For a useful summary of some of these cases, see Olivier De Schutter, “From Eroding to Enabling the Commons”, *CRIDHO Working Paper 2018/1*, 2018, pp. 13-18; and Study of the Expert Mechanism on the Rights of Indigenous Peoples, UN Doc. A/HRC/45/38, 2020. For a slightly more dated account, see UN Human Rights Office, *Land and Human Rights: Annotated Compilation of Caselaw*, 2015.
- 147** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023.
- 148** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, paras. 22-47.
- 149** *Ibid.*, paras. 22 and 23.
- 150** *Ibid.*, para 22.

- 151** *Ibid.*, para. 25.
- 152** *Ibid.*, para. 23.
- 153** *Ibid.*, paras. 24-25. See further on this point, UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 117-119.
- 154** *Ibid.*, para. 41.
- 155** *Ibid.*, para. 26.
- 156** *Ibid.*, para. 30.
- 157** *Ibid.*, paras. 26-27.
- 158** *Ibid.*, paras. 27-29.
- 159** *Ibid.*, para. 12. See also, Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, paras. 11 and 37; and Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, UN Doc. CEDAW/C/GC/28, 2010, paras. 9-10, 13 and 17.
- 160** *Inter alia*, these measures should address potential conflicts of interest. See *Ibid.*, para. 34.
- 161** *Ibid.*, para. 32.
- 162** *Ibid.*, para. 34.
- 163** *Ibid.*, para. 36.
- 164** *Ibid.*, para. 36.
- 165** *Ibid.*, para. 38.
- 166** International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020. In this section, references to “land inequality” refer principally to disparities in access to and control over land.
- 167** International Land Coalition, *Uneven Ground: Executive Summary*, accessed 2024, available at: <https://www.landcoalition.org/en/uneven-ground/executive-summary/>.
- 168** See International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, pp. 10 and 16. Of the countries sampled, the report found that “the wealthiest 10% of the rural population (...) capture 60% of agricultural land value, while the poorest 50% of the rural population, who are generally more dependent on agriculture, control only 3%.”
- 169** *Ibid.*, pp. 45-47. See also, broadly, FIAN International Secretariat, *the Human Right to Land*, 2017.
- 170** The Land Inequality Initiative was launched in 2019. It is composed of a range of partners and coordinated by the International Land Secretariat. A synthesis report, setting out the key research findings of the initiative was published in 2020. When landlessness and the value of agricultural land are taken into consideration, rates of rural land inequality jump by almost 41 per cent. The highest increase was recorded in Africa, where rates of land inequality may be up to 75 per cent higher than traditional datasets would allow. See *Ibid.*, pp. 16-19 and 43.
- 171** *Ibid.*, pp. 7-9 and 23-33.
- 172** *Ibid.* See also, FIAN International Secretariat, *the Human Right to Land*, 2017, p. 5; Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 2.
- 173** This review included a scan of treaty body general comments and special procedure annual thematic reports issued between 2010 and 2021 for use of the terms “land” and “corruption”. Where a report contained multiple references to one of these terms, the report was scanned for the use of the alternate. The review of civil society literature focused on recent publications concerned with land corruption.
- 174** Transparency International, *Land Corruption Topic Guide*, 2018, p. 6.
- 175** Land Matrix, *Taking Stock of the Global Land Rush: Analytical Report III*, 2021, pp. 9 and 19.
- 176** To illustrate the scale of these deals, the total arable land in Nigeria was estimated at 32,000,000 hectares in 2009. See World Bank, “Arable Land (Hectares) Nigeria”, accessed 2023. See, also *Ibid.*, pp. 9 and 19.
- 177** For information on the methodology used, see *Ibid.*, Land Matrix, pp. 37-39.
- 178** See broadly, ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016.
- 179** Report of the Working Group on discrimination against women and girls, UN Doc. A/HRC/26/39, 2014, para. 72.
- 180** *Ibid.* For more detailed discussion on the role of agribusiness, investment and food systems on land rights, see Report of the Special Rapporteur on the right to food, UN Doc. A/76/237, 2021, paras. 17-26.
- 181** Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/HRC/44/40, 2020, para. 61.

- 182** International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, pp. 28-29.
- 183** Report of the Working Group on discrimination against women and girls, UN Doc. A/HRC/26/39, 2014, para. 72. See also, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/68/297, 2013, para. 44; and Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/23/44, 2013, para. 46.
- 184** See further, Equal Rights Trust and the International Lawyers Assisting Workers (ILAW) Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, forthcoming 2023.
- 185** For the purposes of this report, the term “intergenerational injustice” refers to land inequalities occurring between older and younger persons and between present and future generations.
- 186** This is particularly true in Africa. See further, International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, pp. 28-29.
- 187** International Land Coalition, *Tirana Declaration*, 2011, para. 4.
- 188** See further, ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016, pp. 6-7.
- 189** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 56.
- 190** International Federation of Red Cross and Red Crescent Societies, *World Disasters Report*, 2020, p. 84. See also, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, UN Doc. A/77/226, 2022, para. 29.
- 191** Report of the Special Rapporteur on the human rights of migrants, UN Doc. A/67/299, 2012, para. 37. See also, in relation to caste, descent and other inherited status or ascription-based minorities, Report of the Special Rapporteur on minority issues, UN Doc. A/HRC/25/56, 2014, para. 72 and Report of the Special Rapporteur on minority issues, UN Doc. A/HRC/31/56, 2016, para. 92.
- 192** Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/75/181/REV.1, 2020, para. 36. For further discussion on the environmental implications of land and food systems see Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/76/179, 2021.
- 193** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 2(d).
- 194** International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, p. 29.
- 195** Report of the Independent Expert on the promotion of a democratic and equitable international order, UN Doc. A/HRC/33/40, 2016, para. 22.
- 196** Report of the Special Rapporteur on the rights of indigenous peoples, UN Doc. A/HRC/18/35, 2011, para. 37.
- 197** See Report of the Special Rapporteur on minority issues, UN Doc. A/HRC/16/45, 2010, para. 56; Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 48; and Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/73/336, 2018, para. 71.
- 198** World Bank Group, *Strategy for Fragility, Conflict, and Violence 2020–2025*, 2020, p. 18.
- 199** International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020, p. 26.
- 200** Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/73/173, 2018, para. 34; and Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/73/336, 2018, para. 71.
- 201** Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/46/35, 2021, para. 16.
- 202** Global Witness, *Decade of Defiance: Ten Years of Reporting Land and Environmental Activism Worldwide*, 2022, p. 16.
- 203** Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/49/49*, 2021, paras. 92 and 117(l).

- 204** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 2(f); Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/47/37, 2021, paras. 6-8 and 25-28.
- 205** Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/34/51, 2017, paras. 34-38, discussing predicted trends in Africa.
- 206** See, for instance, Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/66/285, 2011, para. 72; Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/47/37, 2021, para. 40. On the negative implications of programmes designed to protect the environment, see Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 2(e).
- 207** See broadly, Oxfam, *Climate Equality: A Planet for the 99%*, 2023.
- 208** Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/23/44, 2013, para. 49.
- 209** For further discussion of land inequality and its links to broader social trends, see International Land Coalition and Oxfam, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 2020. Papers underpinning the research can be accessed at: <https://www.landcoalition.org/en/uneven-ground/report-and-papers/>.
- 210** Despite their comparatively limited access to resources and capacity to anticipate and mitigate risks, the rural poor are shouldering the burden of the current land crisis. Of the estimated three quarters of a billion people in the world living in extreme poverty, “two thirds are agricultural workers and their families.” See Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/76/179, 2021, para. 5; and UN Doc. A/74/161, 2019, para. 26.
- 211** See in particular, Committee on the Elimination of Discrimination against Women, General Recommendation No. 39, UN Doc. CEDAW/C/GC/39, 2022; General Recommendation No. 37, UN Doc. CEDAW/C/GC/37, 2018. and General Recommendation No. 34, UN Doc. CEDAW/C/GC/34, 2016.
- 212** According to some estimates, “in at least 37 countries, women and men do not have equal rights to inherit assets from their spouses.” See Report of the Independent Expert on the enjoyment of all human rights by older persons, UN Doc. A/76/157, 2021, para. 32.
- 213** See Committee on the Elimination of Discrimination against Women, General Recommendation No. 29, UN Doc. CEDAW/C/GC/29, 2013, para. 50.
- 214** See Report of the Special Rapporteur on the right to food, UN Doc. A/65/281, 2010, para. 17; Report of the Special Rapporteur on the right to development, UN Doc. A/74/163, 2019, para. 47.
- 215** See Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/17/30, 2011, para. 22.
- 216** Committee on the Elimination of Discrimination against Women, General Recommendation No. 33, UN Doc. CEDAW/C/GC/33, 2015, para. 57.
- 217** Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/41/43, 2019, para. 11.
- 218** Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/44/41, 2020, para. 56.
- 219** Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/23/44, 2013, para. 49.
- 220** Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, para. 11.
- 221** See broadly, Committee on the Rights of Persons with Disabilities, General Comment No. 1, UN Doc. CRPD/C/GC/1, 2014.
- 222** Similar challenges affect older persons in care facilities. As noted elsewhere, these institutions are often run at a profit and corruption risks are ever-present. See further, Matthew Jenkins and Ellie McDonald, “Corruption and the equal enjoyment of rights for persons with disabilities”, *Transparency International Helpdesk Answer*, 2022, pp. 6-9; Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/49/48, 2022, paras. 24-25; and Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/44/41, 2020, para. 56.

- 223** Report of the Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members, UN Doc. A/HRC/47/29, 2021, para. 10.
- 224** Report of the Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members, UN Doc. A/HRC/47/29, 2021, paras. 10 and 47.
- 225** *Ibid.*, paras. 9 and 16.
- 226** See Report of the Independent Expert on the enjoyment of human rights by persons with albinism, UN Doc. A/72/131, 2017, para. 8-21. The land-related experiences of persons with albinism are explored further in Section 5.3 of this report, in a case study prepared by TI Madagascar.
- 227** See Report of the Independent Expert on the enjoyment of human rights by persons with albinism, UN Doc. A/71/255, 2016, para. 61.
- 228** Report of the Independent Expert on the enjoyment of all human rights by older persons, UN Doc. A/HRC/39/50, 2018, para. 25.
- 229** *Ibid.*, paras. 48-49.
- 230** *Ibid.*, paras. 48-49.
- 231** Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 70-77.
- 232** Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/74/261, 2019, para. 70.
- 233** Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, UN Doc. A/74/179, 2019, para. 36.
- 234** See, Report of the Working Group of Experts on People of African Descent, UN Doc. A/74/274, 2019, paras. 10-15, 53 and 74; and more broadly, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UN Doc. A/HRC/41/54, 2019.
- 235** Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UN Doc. A/73/305, 2018, para. 23.
- 236** *Ibid.*, para. 23. See further, the discussion of post-electoral violence in Kenya in Section 5.2.
- 237** Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/47/28, 2021, para. 93. See broadly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/49/48, 2022.
- 238** See in the context of Dalits and the Muhamasheen, Report of the Special Rapporteur on minority issues, UN Doc. A/HRC/31/56, 2016, para. 32; and Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UN Doc. A/HRC/17/40, 2011, para. 63. See further Equal Rights Trust, *From Night to Darker Night: Addressing Discrimination and Inequality in Yemen*, 2018, pp. 205-206; and Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc. A/HRC/47/37, 2021, para. 38.
- 239** See for example, Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965. See also UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 42-46.
- 240** *Ibid.*, pp. xiii and 42.
- 241** Whilst the national laws of many States do not define segregation as a form of discrimination, the same result can be achieved by applying the ban on indirect discrimination, on account of the disproportionate negative impacts of large-scale land acquisitions on protected groups. Indirect discrimination can only be justified in narrowly defined circumstances. By failing to ensure the full, free and informed consent of affected communities, it is unlikely that the justification threshold can be reached. See *Ibid.*, pp. xiii-xiv, 33-36, 42-46 and 51-56.
- 242** See broadly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/49/48, 2022.
- 243** For illustrative examples see: Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/75/385, 2020, para. 49.
- 244** Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/75/385, 2020, para. 48; UN Doc. A/71/269, 2016, para. 40.

- 245** Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/73/362, 2018, para. 31; Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/HRC/49/44, 2022, para. 30; Report of the Independent Expert on the promotion of a democratic and equitable international order, UN Doc. A/HRC/33/40, 2016, para. 22.
- 246** Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/HRC/13/40, 2010, paras. 30-32.
- 247** A fact recorded by the Supreme Court of Pakistan. See Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/HRC/49/44, 2022, para. 30.
- 248** See illustratively, Committee on the Elimination of Racial Discrimination, General Recommendation No. 23, 1997, para. 3; and Report of the Independent Expert on the promotion of a democratic and equitable international order, UN Doc. A/HRC/36/40, 2017, para. 23.
- 249** Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/40/59, 2019, para. 35.
- 250** Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/71/281, 2016, para. 52.
- 251** Report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/75/385, 2020, para. 48.
- 252** See further, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/62/286, 2007, para. 23; African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, 2005, p. 12.
- 253** African Development Bank Group, *Development and Indigenous Peoples in Africa*, 2016, p. 1.
- 254** *Ibid.*, p. 8.
- 255** *Ibid.*, p. 8. See also, Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples*, 2016, pp. 74-97.
- 256** African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Judgment (Merits), Application No. 006/2012, para. 105.
- 257** United Nations Declaration on the Rights of Indigenous Peoples, Preamble and Articles 3 and 4.
- 258** African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Judgment (Merits), Application No. 006/2012, para. 107. The court also recognises the importance of objective criteria, such as recognition by other groups or by the state that a community forms a "distinct collectivity." A combination of objective and subjective criteria are often applied to identify "minorities" as defined under international law. See *Ibid.*, para. 107 and UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 127-129.
- 259** *Ibid.* See also, United Nations Human Rights Office, "About Indigenous Peoples and Human Rights", accessed 2023; United Nations Declaration on the Rights of Indigenous Peoples, Preamble and Articles 9 and 33; ILO Indigenous and Tribal Peoples Convention (No. 169), Article 1(2); and Dinah Shelton, "The Rights of Indigenous Peoples", in Andreas von Arnould, Kerstin von der Decken, and Mart Susi (ed.), *The Cambridge Handbook of New Human Rights*, Cambridge University Press, 2020, p. 227.
- 260** See for example, discussion of Law No. 5-2011 of the Congo on the Promotion and Protection of the Rights of Indigenous Peoples in UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 163-164; and discussion thereof by the UN Special Rapporteur on Indigenous Peoples, in their 2019 end of Mission Statement, available [here](#).
- 261** The bill received presidential assent in November 2022. See further, Thomas Fessy, "Congo's Indigenous Rights Bill Stalls", Human Rights Watch, 2022; and Marine Gauthier, "New legislation to protect the rights of the Indigenous Pygmy Peoples in the DRC", IUCN, 5 August 2022.
- 262** See illustratively, Committee on the Elimination of Racial Discrimination, Concluding Observations: Zimbabwe, UN Doc. CERD/C/ZWE/CO/5-11, 2022, paras. 25-26.
- 263** See illustratively, Amnesty International, *Thirteen Years in Limbo: Forced Evictions of the Benet in the Name of Conservation*, 2021; and Amnesty International, *Forced Evictions of the Maasai in Loliondo, Tanzania*, 2023. On land-related violence affecting Indigenous Peoples, see further, Report of the Special Rapporteur on the rights of indigenous peoples, UN Doc. A/HRC/39/17, 2018, paras. 27-78.

- 264** Few references to the land-related experiences of LGBTQI+ persons were identified in the literature review, although instances of discrimination in private housing were recorded. See for example, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/76/408, 2021, para. 35; and Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2009, para. 11.
- 265** South Africa and Madagascar are the notable exceptions. See Human Dignity Trust, Map of Countries that Criminalise LGBT People, accessed 2023, available at: <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation>.
- 266** The bill is awaiting Presidential assent, subject to any legal challenges. See Ashwanee Budoo-Scholtz, "Uganda's President Signs Repressive Anti-LGBT Law", *Human Rights Watch*, 30 May 2023; and Catherine Byaruhanga, "LGBT rights in Africa: Will Kenya be the latest to pass anti-gay law?", *BBC News*, 18 July 2023.
- 267** See further, Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 32-39.
- 268** According to one estimate, "60-70 per cent of banking activity in advanced economies is based on speculative land and real estate deals among financial institutions." See *Transparency International, Land Corruption Topic Guide*, 2018, p. 8, citing Zinnbauer. See also, Food and Agriculture Organization of the United Nations, *Tackling Land Corruption by Political Elites*, 2022, pp. 11-12.
- 269** Transparency International, *Understanding Land Corruption as a Basis for Prevention*, 2019, p. 13; Transparency International, *Land Corruption Topic Guide*, 2018, pp. 2-6.
- 270** Food and Agriculture Organization of the United Nations, *Tackling Land Corruption by Political Elites*, 2022, p. 7.
- 271** *Ibid.*, FAO, p. 7.
- 272** Centre for Civil and Political Rights, *Corruption and Human Rights: Improving the Human Rights Dimension of the Fights against Corruption*, 2nd Edn., 2020, p. 38.
- 273** *Ibid.*, p. 38 and pp. 25-30 and 33-34.
- 274** In a 2019 resolution, the Human Rights Council called on UN treaty bodies and special procedure mandate holders to consider the impacts of corruption as part of their work. Since the resolution was published, there have been notable developments in this space. See Human Rights Council Resolution 41/9, UN Doc. A/HRC/RES/41/9, 2019, para. 11. For recent examples, see Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/44/43, 2020; and Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/44/27, 2020.
- 275** UN Treaty Bodies, "Joint Statement on "Corruption and Human Rights", 31 May 2021.
- 276** *Ibid.*, para. 9.
- 277** *Ibid.*, para. 8.
- 278** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, paras. 12, 22, 34, 52 and 53.
- 279** FAO, *Tackling Land Corruption by Political Elites*, 2022, p. 14.
- 280** Transparency International, *Land Corruption Topic Guide*, 2018, p. 9.
- 281** FAO, *Tackling Land Corruption by Political Elites*, 2022, p. 14.
- 282** *Ibid.*, FAO, p. 14. For a more concrete discussion of some of these challenges in national contexts, see FAO, *Statutory Recognition of Customary Land Rights in Africa*, 2010.
- 283** FAO, *Tackling Land Corruption by Political Elites*, 2022, FAO, p. 14.
- 284** *Ibid.*, FAO, p. 16. See also, ICAR and Global Witness, *Tainted Lands*, 2016, pp. 21 and 25-26.
- 285** ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016, pp. 21 and 25-26.
- 286** *Ibid.*, p. 28.

- 287** For some of these reasons, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context has called for a “critical re-evaluation of eminent domain as legal doctrine.” See UN Doc. A/HRC/47/43, 2021, paras. 75-77. See also, Olivier De Schutter and Balakrishnan Rajagopal, “The Revival of the Commons and the Redefinition of Property Rights”, in Olivier De Schutter and Balakrishnan Rajagopal (ed.), *Property Rights From Below: Commodification of Land and the Counter-Movement*, Routledge (Kindle edn.), 2020, p. 224.
- 288** A report issued in 2016 by the International Corporate Accountability Roundtable and Global Witness found “a statistically significant correlation between levels of perceived corruption and the likelihood of large-scale land deals.” See ICAR and Global Witness, above, pp. 20 and 24-29.
- 289** Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, p. 16.
- 290** *Ibid.*, Transparency International, p. 16.
- 291** ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016, p. 29.
- 292** *Ibid.*, ICAR and Global Witness, p. 29. See also, Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, p. 16.
- 293** *Ibid.*, Transparency International, p. 16.
- 294** Land Matrix, *Taking Stock of the Global Land Rush: Analytical Report III*, 2021, p. 43.
- 295** FAO, *Tackling Land Corruption by Political Elites*, 2022, p. 3.
- 296** *Ibid.*, FAO, p. 17.
- 297** *Ibid.*, FAO, p. 17.
- 298** Committee on the Elimination of Discrimination against Women, General Recommendation No. 39, UN Doc. CEDAW/C/GC/39, 2022, paras. 16-22.
- 299** *Ibid.*, para. 19.
- 300** Indeed, the need for such institutions has been recognised by the FAO. See, in particular, FAO, *Governance of Tenure Technical Guide 8*, 2016, Strategy 1, para. 3, pp. 25-26. For a detailed discussion of these points, including the role of traditional authorities in community land governance structures, see Olivier De Schutter and Balakrishnan Rajagopal, “The Revival of the Commons and the Redefinition of Property Rights”, in Olivier De Schutter and Balakrishnan Rajagopal (ed.), *Property Rights From Below: Commodification of Land and the Counter-Movement*, Routledge (Kindle edn.), 2020, pp. 202 – 227. See also, the recommendations included in Chapter 7 of this report.
- 301** Data based on responses. Transparency International, *Global Corruption Barometer*, 2013, p. 11.
- 302** Transparency International, *Land Corruption Topic Guide*, 2018, p. 9.
- 303** This trend has been observed in countries such as Sierra Leone and Liberia. See Transparency International, *Understanding Land Corruption as a Basis for Prevention*, 2019, p. 6.
- 304** *Ibid.*, p. 7.
- 305** FAO, *Tackling Land Corruption by Political Elites*, 2022, p. 16.
- 306** *Ibid.*, FAO, p. 16.
- 307** Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, p. 15.
- 308** See for example, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, *Trends in Urban Corruption and how they Shape Urban Spaces*, 2020. See further, Transparency International, *Corruption in Urban Planning: A Guide for Professional and Trainee Planners*, 2023.
- 309** For broad discussion of corruption within justice mechanisms, see Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/67/305, 2012 and UN Doc. A/HRC/44/47, 2020.
- 310** Transparency International, *Gendered Land Corruption and the Sustainable Development Goals*, 2018, p. 12.
- 311** *Ibid.*, p. 12.
- 312** Transparency international gives the example of judicial decisions made following the seizure of land in Zimbabwe. This topic is discussed further in the Section 5.7 of this report. See *Ibid.*, p. 12.
- 313** FAO, *Tackling Land Corruption by Political Elites*, 2022, p. 17.

- 314** In part, this can be attributed to factors including the cost, complexity and duration of legal proceedings, a lack of accessible infrastructure, and evidentiary and proof requirements. See further, Equal Rights Trust and the ILAW Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, forthcoming 2023.
- 315** This theme was highlighted in respondent submissions and is discussed further in later sections of this report.
- 316** Guilherme France, “Alternative Pathways to Address Impunity in Grand Corruption Cases”, *Transparency International Helpdesk Answer*, 2023, p. 1.
- 317** *Ibid.*, France.
- 318** By “ordinary” cases, we refer to cases not involving violence or otherwise inherently criminal acts. See UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 30-31, 77-78 and 166-171.
- 319** *Ibid.*, pp. 77-78, and 93-96.
- 320** See, for instance, discussion of cases concerning the Fast Track Land Reform in Zimbabwe in Section 5.7.
- 321** For an overview of some of the different actors involved in land governance, see Lucy Koechlin, Julian Quan and Hari Mulukutla, “Tackling Corruption in Land Governance”, *Legend Analytical Paper 1*, 2016, p. 23.
- 322** See further, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UN Doc. A/HRC/41/54, 2019, para. 23.
- 323** ISSC, IDS and UNESCO, *World Social Science Report 2016, Challenging Inequalities: Pathways to a Just World*, 2016, pp. 59-60.
- 324** Greenpeace and the Runnymede Trust, *Confronting Injustice: Racism and the Environmental Emergency*, 2022, p. 23.
- 325** See further, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UN Doc. A/HRC/41/54, 2019, paras. 22-28.
- 326** Sara Berry, “Debating the Land Question in Africa”, *Society for Comparative Study of Society and History*, 2002, pp. 641-642.
- 327** This is particularly true in former British colonies, although similar practices were implemented by other colonial actors. See Robert Home, “Culturally Unsited to Property Rights: Colonial Land Laws and African Societies”, *Journal of Law and Society*, Vol. 40, No. 3, 2013, pp. 409-410. See also *Ibid.*, p. 642.
- 328** Sara Berry, “Who owns the land? Social relations and conflict over resources in Africa”, *GLOCON Working Paper Series*, No. 7, 2018, p. 3.
- 329** Sara Berry, “Debating the Land Question in Africa”, *Society for Comparative Study of Society and History*, 2002, p. 652.
- 330** *Ibid.*, pp. 652-653.
- 331** Sara Berry, Who owns the land? Social relations and conflict over resources in Africa, *GLOCON Working Paper Series*, No. 7, 2018, p. 3.
- 332** *Ibid.*, pp. 3-4.
- 333** See An Ansoms, et. al, “From Transgression to Normative Innovation”, in Olivier De Schutter and Balakrishnan Rajagopal (ed.), *Property Rights From Below: Commodification of Land and the Counter-Movement*, Routledge (Kindle edn.), 2020, p. 54 and Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/47/43, 2021, paras. 75 – 77.
- 334** Africa has been particularly targeted for investment. Conversely, it is also the location where deals are most likely to fail. See Land Matrix, *Taking Stock of the Global Land Rush: Analytical Report III*, 2021, p. 31, and ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016, p. 10.
- 335** Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/47/43, 2021, paras. 75 – 77.
- 336** Jérémie Gilbert, “The Human Right to Land”, in Andreas von Arnould, Kerstin von der Decken, and Mart Susi (ed.), *The Cambridge Handbook of New Human Rights*, Cambridge University Press, 2020, p. 98.

- 337** *Ibid.*, p. 98. The effects of titling programmes and large-scale land investments have been explored at length, and their broader implications for the governance of tenure and natural resources go beyond the scope of this report. When appropriately conceived, and within certain contexts, each may serve an important function. See illustratively, FIAN International Secretariat, *The Human Right to Land*, 2017, pp. 13-14; and ICAR and Global Witness, *Tainted Lands: Corruption in Large-Scale Land Deals*, 2016, broadly and pp. 15-19.
- 338** See further, the discussion in Chapter 4 of this report.
- 339** Sara Berry, “Debating the Land Question in Africa”, *Society for Comparative Study of Society and History*, 2002, pp. 653-654.
- 340** *Ibid.*, p. 654. These themes come out strongly in the following sections of this report.
- 341** *Ibid.*, p. 654. The challenges associated with the conversion of customary holdings into statutory land in Zambia discussed in Section 5.6 provides a useful illustration. As the land around them is increasingly enclosed, communities face pressure to formalise their holdings, whilst simultaneously risking losing access to common-pool resources that are essential to their wellbeing and survival.
- 342** See further, Sir Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, Stevens & Sons, 1966, pp. 788-789.
- 343** *Ibid.*, p. 789.
- 344** Jerry Dupont, *The Common Law Abroad*, Fred. B. Rothman Publications, 2001, p. 900
- 345** The Act identifies six discrete “interests in land” which include allodial title, common law freehold, customary law freehold, usufructuary interests, leasehold interests and customary tenancy. See Land Act 2020, Section 1.
- 346** Anne Hennings, “Ghana – Context and Land Governance” *Land Portal*, 2021.
- 347** Constitution of Ghana, Articles 36(8), 257 and 258. See also, Land Act, Sections 13-14.
- 348** See David Anaafo, Anthonia Ayamga & Paul Bata Domanban, “Custom, modernity, and stability of land rights in Ghana: An empirico-legal review”, *Cogent Social Sciences*, 9:1, 2023, p. 7.
- 349** Constitution of Ghana, Article 267(1).
- 350** Interview with Dr Obiri Samuel, Executive Director, Centre for Environmental Impact Analysis (CEIA) and Interview GH03.
- 351** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 352** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 353** Interviews with Dr Stan Adiaba, Lecturer, University of Professional Studies and Lawyer Lambert Luguniah, Special Assistant to the Commissioner, Commission on Human Rights and Administrative Justice.
- 354** Interview with Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission.
- 355** Interview GH03 and Interview with Lois Aduamoah Addo, Programme Officer, Women in Law and Development in Africa – WiLDAF Ghana.
- 356** Interview with Lawyer Lambert Luguniah, Special Assistant to the Commissioner, Commission on Human Rights and Administrative Justice.
- 357** Interview with Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission.
- 358** Interview with Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission.
- 359** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 360** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 361** EITI, *Ghana: Country Summary*, accessed 2023, available at: <https://eiti.org/countries/ghana>.
- 362** Interviews with Elvis Oppong Mensah, Programme Officer, Civic Response and Dr Charles Nyaaba, Executive Director, Peasant Farmers Association of Ghana.
- 363** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 364** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 365** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 366** Interview GH03.
- 367** Interviews with Elvis Oppong Mensah, Programme Officer, Civic Response and Dr Charles Nyaaba, Executive Director, Peasant Farmers Association of Ghana.

- 368** Interview with Elvis Oppong Mensah, Programme Officer, Civic Response.
- 369** Interview with Lois Aduamoah Addo, Programme Officer, Women in Law and Development in Africa – WILDAF Ghana.
- 370** Interview with Dr Obiri Samuel, Executive Director, CEIA. As one interviewee explained, where a woman has brothers “it will be the (...) brothers who inherit those lands.” See Interview with Dr Charles Nyaaba, Executive Director, Peasant Farmers Association of Ghana.
- 371** Interviews with Lois Aduamoah Addo, Programme Officer, Women in Law and Development Africa – Wildaf Ghana and Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission.
- 372** Interview with Elvis Oppong Mensah, Programme Officer, Civic Response.
- 373** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 374** Interview with Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission.
- 375** Interview with Lois Aduamoah Addo, Programme Officer, Women in Law and Development in Africa – WILDAF Ghana.
- 376** Interview with Lois Aduamoah Addo, Programme Officer, Women in Law and Development in Africa – WILDAF Ghana.
- 377** Interview with Lois Aduamoah Addo, Programme Officer, Women in Law and Development in Africa – WILDAF Ghana.
- 378** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 379** Interview with Dr Obiri Samuel, Executive Director, CEIA and Interview GH03; Interviews with Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission and Lawyer Lambert Luguniah, Special Assistant to the Commissioner, Commission on Human Rights and Administrative Justice.
- 380** For instance, it has been noted that the Commission on Human Rights and Administrative Justice does not have offices in “all of the districts in Ghana” meaning that individuals may be required “to travel long distances” to file a complaint. Interview with Lawyer Lambert Luguniah, Special Assistant to the Commissioner, Commission on Human Rights and Administrative Justice.
- 381** Interviews with Lawyer Christopher A. Atanga, Regional Lands Officer, Lands Commission; and Lawyer Lambert Luguniah, Special Assistant to the Commissioner, Commission on Human Rights and Administrative Justice.
- 382** Interview with Lois Aduamoah Addo, Programme Officer, Women in Law and Development in Africa – Wildaf Ghana.
- 383** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 384** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 385** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 386** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 387** Interview with Dr Obiri Samuel, Executive Director, CEIA.
- 388** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 389** Interview with Dr Stan Adiaba, Lecturer, University of Professional Studies.
- 390** Interview with Torgbui Wiennya, Traditional Ruler of Anlo and Executive Director of the Center for Alternative Dispute Resolution and Advocacy.
- 391** Notably, Section 11 includes a closed list of protected characteristics, which may limit its procedural scope.
- 392** Interview with Elvis Oppong Mensah, Programme Officer, Civic Response.
- 393** Adomako, Margaret. September 2019. Addressing the Causes and Consequences of the Farmer-Herder Conflict in Ghana. Policy Brief 6, Accra: Kofi Annan International Peacekeeping Training Centre (KA IPTC). Accessed 2023, p. 1.
- 394** Adomako, Margaret. September 2019. Addressing the Causes and Consequences of the Farmer-Herder Conflict in Ghana. Policy Brief 6, Accra: KA IPTC. Accessed 2023, pp. 1-2.
- 395** Specifically, this list included the Asante Akim North Municipal District, Ejura-Sekyedumase District, Atebubu-Amatin Municipal District and the Sekyere Afram Plains.

- 396** Agyemang, E.O. (2017). Farmer-Herder Conflict in Africa: An Assessment of the Causes and Effects of the Sedentary Farmers Fulani Herdsmen Conflict. A Case Study of the Agogo Traditional Area, Ashanti Region of Ghana. Accessed 2023, p. 16.
- 397** Issifu, A. K., Darko, F. D., & Paalo, S. A. (2022). Climate change, migration and farmer-herder conflict in Ghana. *Conflict Resolution Quarterly*, 39(4), 421–439. <https://doi.org/10.1002/crq.21346> Accessed 2023, p. 422.
- 398** Issifu, A. K., Darko, F. D., & Paalo, S. A. (2022). Climate change, migration and farmer-herder conflict in Ghana. *Conflict Resolution Quarterly*, 39(4), 421–439. <https://doi.org/10.1002/crq.21346> Accessed 2023, p. 422.
- 399** *Ibid.*
- 400** See the discussion of “Operation Cow Leg and Operation Livestock Solidarity” in Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Ghana – Current Issues*, accessed 2023; Emmanuel Agyemang (2019). Resolving farmer-herder conflict in Agogo traditional area of Ghana: an assessment of the government policy of expulsion, accessed 2023, p. 77.
- 401** Abubakari Ahmed & Elias Danyi Kuusaana (2021). Cattle Ranching and Farmer-herder Conflicts in sub-Saharan Africa: Exploring the Conditions for Successes and Failures in Northern Ghana, *African Security*. Accessed 2023, pp. 132-155.
- 402** *Ibid.*
- 403** *Ibid.*
- 404** For a recent illustration of the impact of these tensions, see Rashid Obodai, “We’ll attack all Fulani Herdsmen if one person is attacked in our community – Chief warns”, *Rainbow Radio Online*, available at: <https://rainbowradioonline.com/2023/10/25/110004/>, 25 October 2023. See also, Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Ghana – Current Issues*, available at: <https://minorityrights.org/country/ghana/> accessed 2023.
- 405** Committee on Economic, Social and Cultural Rights, General Comment No. 26, UN Doc. E/C.12/GC/26, 2023, para. 19.
- 406** Ambreena Manji, *The Struggle for Land and Justice in Kenya*, Boydell & Brewer, 2020, pp. 31-33.
- 407** *Ibid.*, pp. 34-41. See also, Equal Rights Trust, *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*, 2011, p. 29.
- 408** *Ibid.*, Manji, pp. 38-39.
- 409** *Ibid.*, Manji, pp. 35-38.
- 410** *Ibid.*, Manji, pp. 31 and 37-38; Equal Rights Trust, *In the Spirit of Harambee*, 2011, pp. 48-52.
- 411** *Ibid.*, Equal Rights Trust, pp. 48-50.
- 412** Office of the UN High Commissioner for Human Rights (OHCHR), *Report from OHCHR Fact-finding Mission to Kenya*, 6-28 February 2008, pp. 3, 5, 10 and 15-16.
- 413** Equal Rights Trust, *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*, 2011, p. 48.
- 414** *Ibid.*, pp. 60-64. See also, Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 40-43 and 47-50.
- 415** Several experts interviewed as part of this report raised concerns regarding the vulnerability of particular ethnic minority tribes to the effects of land corruption. See Summary of Interviews with Mahmoud Barrow, Founder, Msambweni Human Rights Watch, Mohammed Ferunzi, Coordinator, Vanga Development Forum and Omar Weko Hassan, Founder, Kenyans for Green World Community-Based Organisation (CBO); Interview with Evans Wamiru, Law Student, volunteer, Kiambu Justice and Information Network.
- 416** Summary of Interview with Zedekiah Adika, Chairperson, Coast Civil Society Network, Programs Officer Kituo cha Sheria.
- 417** Ambreena Manji, *The Struggle for Land and Justice in Kenya*, Boydell & Brewer, 2020, pp. 61-62.
- 418** For a detailed account of the development of this framework, see *Ibid.*, pp. 30 and 98-118.
- 419** In addition to containing a discrete chapter on land and the environment, the new Constitution provided for the devolution of many legislative competencies to the county governments. Devolution has brought with it its own challenges for land governance. See further on this point: Catherine Boone, et. al., “Political challenges in the devolved land administration”, Katiba Institute, accessed 2024, available at: <https://katibainstitute.org/923-2/>.
- 420** Land Portal, *Kenya – Context and Land Governance*, 2 December 2021, available at: <https://landportal.org/book/narratives/2021/kenya>. For further analysis of the Constitution’s equality provisions see Inclusive Futures, *Legal Assessment: Kenya*, 2023, pp. 76-94, available at: <https://inclusivefutures.org/wp-content/uploads/2023/06/Review-of-Legal-Assessment-Report-final-12062022.pdf>.

- 421** Interview with Antony Njenga, Paralegal, Ushauri Community Based Organization.
- 422** Constitution of Kenya 2010, Articles 61 – 64.
- 423** Summary of Interviews with Mahmoud Barrow, Founder, Msambweni Human Rights Watch, Mohammed Ferunzi, Coordinator, Vanga Development Forum and Andrew Mativo, Director, Rapid response CBO Mombasa.
- 424** Interview with Antony Njenga, Paralegal, Ushauri Community Based Organization.
- 425** Interview with Antony Njenga, Paralegal, Ushauri Community Based Organization, Summary of Interview with Charles Njenga, Executive Director, Provident Community Initiative CBO.
- 426** Summary of Interviews with Omar Weko Hassan, Founder, Kenyans for Green World CBO and Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 427** Summary of Interview with Mahmoud Barrow, Founder, Msambweni Human Rights Watch.
- 428** Community Land Act 2016, Section 4. According to Section 5(1), unregistered land is held on trust for the community by the County Government.
- 429** Community Land Act 2016, Sections 7 – 15.
- 430** *Ibid.*, Section 15(5).
- 431** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 432** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 433** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 434** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 435** Summary of Interview with Omar Weko Hassan, Founder, Kenyans for Green World CBO.
- 436** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 437** Summary of Interview with Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 438** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 439** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land; Summary of Interviews with Omar Weko Hassan, Founder, Kenyans for Green World CBO and Hildah Akoth, County Administrator , East African Civil Society Organizations Forum. For a recent example, including members of the Turkana Community, see Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 47-50.
- 440** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 441** UN-Habitat, *A Better Quality of Life for All in an Urbanizing World: Kenya Country Brief*, 2023, pp. 2 and 4.
- 442** Summary of Interview with Zawadi Antony, Project Officer, Teenseed Africa CBO. For an overview of the Urban Areas and Cities Act and its participation requirements, see Friedrich-Ebert-Stiftung Kenya Office, *Towards the Just City in Kenya*, 2020, p. 23. As noted by the authors (pp. 26-27), inadequate public consultation has stymied the implementation of other upgrading projects.
- 443** Summary of Interview with Zawadi Antony, Project Officer, Teenseed Africa CBO.
- 444** Interviews with Hamida Isaac, Convenor, Kinango Human Rights Network and Evans Wamiru, Law Student, volunteer, Kiambu Justice and Information Network; Summary of Interviews with Faki Omar, Director Kwale Community Development Program Civil Society Organisation (CSO) and Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 445** Summary of Interviews with Mahmoud Barrow, Founder, Msambweni Human Rights Watch and Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 446** Summary of Interview with Ali Mwabata, Paralegal, Kwale Civil Society Consortium.
- 447** Summary of Interview with Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 448** Summary of Interview with Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 449** Interview with Evans Wamiru, Law Student, volunteer, Kiambu Justice and Information Network.
- 450** Interview with Hamida Isaac, Convenor, Kinango Human Rights Network.

- 451** Interview with Vexinah Mueni, Programs Officer, Neema Foundation; Summary of Interviews with Omar Weko Hassan, Founder, Kenyans for Green World CBO and Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 452** Summary of Interview with Ali Mwabata, Paralegal, Kwale Civil Society Consortium.
- 453** Summary of Interview with Mahmoud Barrow, Founder, Msambweni Human Rights Watch.
- 454** Summary of Interview with Omar Weko Hassan, Founder, Kenyans for Green World CBO. See further, HelpAge International, *Older people in Kenya must be protected from witchcraft accusations*, 2021.
- 455** Interview with Hamida Isaac, Convenor, Kinango Human Rights Network.
- 456** Summary of Interview with Faki Omar, Director Kwale Community Development Program CSO; Interview with Hamida Isaac, Convenor, Kinango Human Rights Network.
- 457** Interviews with Abdalla Chano, Founder, Central Community Based Organization Kwale and Hamida Isaac, Convenor, Kinango Human Rights Network; Summary of Interview with Ali Mwabata, Paralegal, Kwale Civil Society Consortium; Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 458** Summary of Interview with Faki Omar, Director Kwale Community Development Program CSO.
- 459** Summary of Interview with Mahmoud Barrow, Founder, Msambweni Human Rights Watch.
- 460** Interview with Vexinah Mueni, Programs Officer, Neema Foundation.
- 461** Interview with Hamida Isaac, Convenor, Kinango Human Rights Network.
- 462** Interview with Hamida Isaac, Convenor, Kinango Human Rights Network.
- 463** Summary of Interview with Mohammed Ferunzi, Coordinator, Vanga Development Forum.
- 464** Summary of Interview with Zedekiah Adika, Chairperson, Coast Civil Society Network, Programs Officer Kituo cha Sheria and Interview with Vexinah Mueni, Programs Officer, Neema Foundation.
- 465** Constitution of Kenya 2010, Article 67(2)(e).
- 466** Julius Otieno, "Relief for victims of land grab as bill opens period for filing claims", *The Star*, 30 August 2023. See also, Land Portal, *Kenya – Context and Land Governance*, 2 December 2021.
- 467** Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 468** African Commission for Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Right Group International on behalf of Endorois Welfare Council v Kenya*, Communication No. 276/2003; African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Judgment (Merits), Application No. 006/2012.
- 469** The evictions have been tainted by allegations of corruption, both in the provision of compensation and in the allocation of logging licences. Allegations of corruption have also been made in relation to the eviction of the Ogiek. See Amnesty International, *Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest, Kenya*, 2018, pp. 5 and 61; Ogiek Peoples' Development Program, *Analysis of Land Issues Affecting the Indigenous Ogiek Community in Narok County*, 2021, pp. 18-19.
- 470** African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Right Group International on behalf of Endorois Welfare Council v Kenya*, Communication No. 276/2003.
- 471** African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Judgment (Merits), Application No. 006/2012.
- 472** African Court on Human and Peoples' Rights, *The Matter of African Commission on Human and Peoples' Rights v Republic of Kenya*, Judgment (Reparations), Application No. 006/2012, paras. 74, 123, 124 and 141; and The Centre for Minority Rights Development and others, *Implement Endorois Decision 276/03: Report on the Impact of Non-Implementation of the African Commission's Endorois Decision*, 2022. See also, Committee on Economic, Social and Cultural Rights, *Concluding Observations: Kenya*, UN Doc. E/C.12/KEN/CO/2-5, 2016, paras. 15-16; and Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kenya*, UN Doc. CERD/C/KEN/CO/5-7, 2017, paras. 19-20.
- 473** African Court on Human and Peoples' Rights, *The Matter of African Commission on Human and Peoples' Rights v Republic of Kenya*, Judgment (Reparations), Application No. 006/2012.
- 474** Interview with Cyrus Maweu, Deputy Director, Kenya National Commission on Human Rights.

- 475** See Ambreena Manji, *The Struggle for Land and Justice in Kenya*, Boydell & Brewer, 2020, pp. 75-76.
- 476** The need for a “bottom-up” rather than a “top-down” approach was directly identified by participants. See Interview with Lawrence Kiplagat, Project Lead, Clan Responsible Investment in Community Land.
- 477** African Commission on Human and Peoples’ Rights, *The Nubian Community in Kenya v Republic of Kenya*, Communication No. 317/2006, para. 1; Equal Rights Trust, *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*, 2012, p. 86.
- 478** *Ibid.*, Equal Rights Trust, p. 86.
- 479** *Ibid.*, African Commission on Human and Peoples’ Rights, para. 156. See also, United Nations High Commissioner for Refugees, “Kenya’s Nubians: Then & Now”, *UNHCR*, 17 November 2010.
- 480** *Ibid.*, African Commission on Human and Peoples’ Rights, paras. 5 and 132; Equal Rights Trust, p. 86.
- 481** *Ibid.*, African Commission on Human and Peoples’ Rights, paras. 136-151 and 152-166.
- 482** *Ibid.*, paras. 121-135.
- 483** See Berkley Law and Others, *Digital Identity and the legal obligation to conduct a human rights impact assessment in Kenya*, 2023. In 2017, the Committee on the Elimination of Racial Discrimination expressed its concern that Nubians, alongside other ethnic minority communities, continue to be subject to “lengthy vetting procedures in obtaining identity documents.” See further, Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kenya*, UN Doc. CERD/C/KEN/CO/5-7, 2017, paras. 27-28.
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- 485** By one 2015 estimate, around half of all Nubians were subject to vetting compared to just 7.4 per cent of non-Nubians. See Berkley Law and Others, *Digital Identity and the legal obligation to conduct a human rights impact assessment in Kenya*, 2023, p. 5, citing Open Society Justice Initiative, *Legal Identity in the 2030 Agenda for Sustainable Development: Lessons from Kibera, Kenya*, 2015, pp. 10-11.
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- 487** Berkley Law and Others, *Digital Identity and the legal obligation to conduct a human rights impact assessment in Kenya*, 2023, p. 5.
- 488** Equal Rights Trust, *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*, 2012, p. 87.
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- 490** *Ibid.*, pp. 88-89.
- 491** African Commission on Human and Peoples’ Rights, *The Nubian Community in Kenya v Republic of Kenya*, Communication No. 317/2006, paras. 82-84 and 156.
- 492** *Ibid.*, paras. 82-84 and 156.
- 493** Interview with Yasah Musa, Programs Manager, Nubian Rights Forum.
- 494** *Ibid.* See also, African Commission on Human and Peoples’ Rights, *The Nubian Community in Kenya v Republic of Kenya*, Communication No. 317/2006, paras. 152-166.
- 495** Interview with member of the Nubian Community, 2023.
- 496** See CERD Committee, UN Doc. CERD/C/KEN/8-9, 2022, paras. 76-77. Although it is worth highlighting the States’ assertion that only “deserving” Nubians have obtained citizenship, following “stringent processing”.
- 497** Interview with Yasah Musa, Programs Manager, Nubian Rights Forum.
- 498** Antonelli, A., Smith, R., Evans, B., *Madagascar’s extraordinary biodiversity: challenges & opportunities for the future*, December 2022, available at: <https://www.kew.org/read-and-watch/madagascars-extraordinary-biodiversity>.
- 499** Rick de Satgé, “Madagascar – Context and Land Governance”, *Land Portal*, 2021. See also, Food and Agriculture Organization of the United Nations, Gender and Land Rights Database: Madagascar, 2018, available at: https://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=MDG.
- 500** Interview MA01 (translated).
- 501** For an example, see Rick de Satgé, “Madagascar – Context and Land Governance”, *Land Portal*, 2021.
- 502** Interview MA01 (translated).
- 503** *Ibid.*, Land Portal.

- 504** Interview MA01 (translated) and Interview with Andriamparany Ranoasy, Director of FIFATA, Fikambanana fampivoarana ny tantsaha ou association pour le progrès des paysans (FIFATA) (translated).
- 505** Interview MA01 (translated).
- 506** Interview with Kotondrajaona Rajoeliso, General Secretary, Birao Ifandraisan'ny Mpampiofana eo amin'ny Tontolon'ny Tantsaha (BIMTT) (translated).
- 507** Interview with Eric Raparison, SIF Coordinator, Sehatra lombonan'ny Fananan-tany (SIF) (translated).
- 508** Interview with Eric Raparison, SIF Coordinator, SIF (translated).
- 509** Interview with Andriamparany Ranoasy, Director of FIFATA, Fikambanana fampivoarana ny tantsaha ou association pour le progrès des paysans (FIFATA) (translated).
- 510** This is reflective of a broader trend. According to the most recent findings of the Global Corruption Barometer, 27 per cent of public service users in Madagascar reported paying a bribe in the previous 12 months. See further, Transparency International, *GCB Africa Results: Madagascar*, 2019, available at: <https://www.transparency.org/en/gcb/africa/africa-2019/results/mdg>.
- 511** Interview MA01 (translated) and Summary of Interview MA05 (translated).
- 512** Interview with Eric Raparison, SIF Coordinator, SIF (translated).
- 513** Interview MA05 (translated) and Interview with Andriamparany Ranoasy, Director of FIFATA, Fikambanana fampivoarana ny tantsaha ou association pour le progrès des paysans (FIFATA) (translated).
- 514** Interview Summary of Interview MA12 (translated).
- 515** Interview with Eric Raparison, SIF Coordinator, SIF (translated).
- 516** Interview MA05 (translated).
- 517** Summary of Interview MA06 (translated).
- 518** Summary of Interview MA06 (translated).
- 519** Interview with Andriamparany Ranoasy, Director of FIFATA, Fikambanana fampivoarana ny tantsaha ou association pour le progrès des paysans (FIFATA) (translated).
- 520** Summary of Interview MA06 (translated).
- 521** Summary of Interview MA06 (translated).
- 522** Summary of Interview MA02 (translated).
- 523** Summary of Interview MA02 (translated).
- 524** Summary of Interview MA02 (translated).
- 525** Interview MA04 (translated) and Summary of Interview MA12 (translated).
- 526** Interview with Emiliènne Mavanirina, Director of women's promotion, Ministry of Population (translated).
- 527** Interview MA04 (translated).
- 528** Summary of Interview MA12 (translated).
- 529** Interviews with Harilala Rakotonaivo Sariaka, Jurist, C-for-C (translated) and Mavanirina Emiliènne, Director of women's promotion, Ministry of Population (translated).
- 530** Interview with Emiliènne Mavanirina, Director of women's promotion, Ministry of Population (translated).
- 531** Interview MA04 (translated).
- 532** Interview MA04 (translated) and Interview with Harilala Rakotonaivo Sariaka, Jurist, C-for-C (translated).
- 533** Summary of Interview MA05 (translated).
- 534** Interview MA05 (translated), Kotondrajaona Rajoeliso, General Secretary, BIMTT (translated), Emiliènne Mavanirina, Director of women's promotion, Ministry of Population (translated) and Summary of Interview MA011 (translated).
- 535** Interviews MA01 (translated) and MA04 (translated) and Summary of Interview MA06 (translated).
- 536** Interview MA01 (translated).
- 537** Interview with Eric Raparison, SIF Coordinator, SIF (translated).
- 538** Interview with Eric Raparison, SIF Coordinator, SIF (translated).
- 539** Summary of Interview MA06 (translated).
- 540** Interview MA03.
- 541** Summary of Interview MA02 (translated).
- 542** Interview with Andriamparany Ranoasy, Director of FIFATA, Fikambanana fampivoarana ny tantsaha ou association pour le progrès des paysans (FIFATA) (translated).

- 543** Summary of Interview MA06 (translated).
- 544** Summary of Interview MA06 (translated).
- 545** Summary of Interview MA06 (translated).
- 546** Summary of Interview MA06 (translated).
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- 549** World Bank, *Madagascar Economic Update: Navigating Through the Storm*, 2023, p. 2.
- 550** *Report of the Independent Expert on the enjoyment of human rights by persons with albinism*, UN Doc. A/HRC/52/36/Add.1, 2023, para. 6.
- 551** *Ibid.*, paras. 6-7.
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- 553** For an account of the reform process, and the important role played by civil society in securing further amendments to the law, see Laurent Delcourt, *Madagascar: L'agrobusiness contre l'agriculture paysanne*, 2022, pp. 16-20.
- 554** Interview MA01 (translated) and Interview with Kotondrajaona Rajoeliso, General Secretary, BIMTT (translated).
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- 556** *Ibid.*, para. 18.
- 557** *Ibid.*, para. 18.
- 558** *Report of the Independent Expert on the enjoyment of human rights by persons with albinism*, UN Doc. A/76/166, paras. 19-20.
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- 585** Interviews with Le Fras Nortje, Strategic Land Acquisition, Department of Agriculture & Land Reform; Terrence Corrigan, Writer, Institute for Race Relations; and Annuschka Williams, Programmes Manager, Surplus People Project.
- 586** Interview with Mashudu Masutha, Member of the Portfolio Committee on Energy & Natural Resources.
- 587** Interview with Mapula Debra, Founder, South African Women In Farming.
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- 594** Interview with Thapelo Mohapi, Secretary General, Abahlali Basemjondolo.
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- 611** Interviews with Mashudu Masutha, Member of the Portfolio Committee on Energy & Natural Resources; Kearabetswe Moopelo, Landness Coordinator, Landness; and Annuschka Williams, Programmes Manager, Surplus People Project.
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- 650** Summary of Interview with Doreen Kobusingye, Facilitator, National Land Coalition.
- 651** Interview with Jimmy Ochom, Land Rights Coordinator, Oxfam Uganda and Interview with Geoffrey Ssebagala, Executive Director, Witness Radio.
- 652** Interview with Nyeko Pen-Mogi, Chairperson, Uganda Land Commission.
- 653** Interview UG06.
- 654** Interview with Denis Odwar, Policy & Rights Manager, National Union of Disabled Persons of Uganda.
- 655** Interview UG06.
- 656** Interview UG06.
- 657** Interview UG06.
- 658** Interview UG14.
- 659** Interview UG14.
- 660** Interview UG14.
- 661** Summary of Interview UG01.
- 662** Interview with Jimmy Ocham, Land Rights Coordinator, Oxfam Uganda.
- 663** See further, Human Rights Watch, *Our Trust is Broken: Loss of Land and Livelihoods for Oil Development in Uganda*, 2023.
- 664** Summary of Interview with Agnes Kirabo, Executive Director, Food Rights Alliance.
- 665** Interview with Geoffrey Ssebagala, Team Lead, Witness Radio. To the contrary, the Human Rights Watch investigation noted the risk of land users being intimidated through the threat of court action and the use of security services. See further, Human Rights Watch, *Our Trust is Broken: Loss of Land and Livelihoods for Oil Development in Uganda*, 2023, p. 2.
- 666** Interview with Jimmy Ochom, Land Rights Coordinator, Oxfam Uganda. See further, Amnesty International. *Thirteen Years in Limbo: Forced Evictions of the Benet in the Name of Conservation*, 2021.
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- 674** Interview with Jimmy Uchom, Land Rights Coordinator, Oxfam Uganda and Summary of Interview with Doreen Kobusingye, Facilitator, National Land Coalition.
- 675** Interview with Frances Birungi Odong, Executive Director, Uganda Community Based Association for Women and Children's Welfare.
- 676** Summary of Interview UG02.
- 677** Summary of Interview UG01 and Interview UG06.
- 678** Interview UG03 and Interview with Jimmy Ochom, Land Rights Coordinator, Oxfam Uganda.
- 679** Interview with Nyeko Pen-Mogi, Chairperson, Uganda Land Commission.
- 680** Interview with Nyeko Pen-Mogi, Chairperson, Uganda Land Commission.
- 681** Interview UG03.
- 682** Interview with Denis Odwar, Policy & Rights Manager, National Union of Disabled Persons of Uganda and Interview UG14.
- 683** Summary of Interview UG01 and Summary of Interview with Doreen Kobusingye, Facilitator, National Land Coalition.
- 684** Summary of Interview with Doreen Kobusingye, Facilitator, National Land Coalition.
- 685** Interview with Jimmy Ochom, Land Rights Coordinator, Oxfam Uganda.
- 686** Interview with Jimmy Ochom, Land Rights Coordinator, Oxfam Uganda.
- 687** Summary of Interview with Doreen Kobusingye, Facilitator, National Land Coalition and Interview with Frances Birungi Odong, Executive Director, Uganda Community Based Association for Women and Children's Welfare. See further, Transparency International, *Women, Land and Corruption: Resources for Practitioners and Policy Makers*, 2018, pp. 41-42.
- 688** Interview with Biira Kiwanuka, Head of Programs, Recreation for Development and Peace.
- 689** Summary of Interview with Odella Brian Paul, Programs Officer, Shelter and Settlement Alternatives.
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- 712** See further, Land Portal, *Zambia: Context and Land Governance*, 2022; Yuh Jin Bae, "Analysing the Connection between Customary Land Rights and Land Grabbing: A Case Study of Zambia", *Land*, 12(1) 200, 2023
- 713** *Ibid.*, Yuh Jin Bae.
- 714** Constitution of Zambia, Article 254
- 715** Constitution of Zambia, Article 253 and 254; Lands Act, Section 3(1).
- 716** For a useful overview of the Zambian land framework, see Lauren Honig and Brian Mulenga, "The Status of Customary Land and the Future of Smallholder Farmers Under the Current Land Administration System in Zambia", *Food Security Collaborative Working Papers 229597*, Michigan State University, 2015.
- 717** *Ibid.*, Lands Act, Section 3(2) and broadly; Constitution of Zambia, Article 254. See also, Article 16 of the Constitution, which establishes detailed rules relating to the compulsory acquisition of property.
- 718** *Ibid.*, Constitution of Zambia, Article 254. See further, Ministry of Lands and Natural Resources, *About Us – The Ministry: Commissioner of Lands*, accessed 2023, available at: https://www.mlnr.gov.zm/?page_id=2276.
- 719** See further, USAID, *Land Tenure Dynamics in Peri-Urban Zambia: Policy Brief*, 2017, p. 6.
- 720** USAID, *Zambia Customary Land Documentation Tenure Assessment*, 2017, p. 13.
- 721** See further, USAID and Land Portal, *Customary Land Recognition: Zambian Approach to Documentation and Administration*, 2018.
- 722** USAID, *Zambia Customary Land Documentation Tenure Assessment*, 2017, p. 9.
- 723** Lands Act, Section 3(4).
- 724** Lands Act, Section 3(4)(b).
- 725** Republic of Zambia, National Lands Policy, 2021, pp. 12 and 15-16.
- 726** Lands Act, Section 8.
- 727** Interviews ZA09 and ZA06. This much has been acknowledged by government. See Republic of Zambia, National Lands Policy, 2021, p. 16. See also, Lauren Honig and Brian Mulenga, "The Status of Customary Land and the Future of Smallholder Farmers Under the Current Land Administration System in Zambia", *Food Security Collaborative Working Papers 229597*, Michigan State University, 2015.
- 728** USAID, *Land Tenure Dynamics in Peri-Urban Zambia: Policy Brief*, 2017, p. 4.
- 729** ZA05
- 730** Human Rights Watch, *Forced to Leave: Commercial Farming and Displacement in Zambia*, 2017, pp. 11-12.
- 731** *Ibid.*, Human Rights Watch, pp. 11-12.
- 732** See, *Molosoni Chipabwamba and 12 Other displaced village owners v Yssel Enterprises Limited and 7 Others*, Appeal No. 104/2020, 2022.
- 733** *Ibid.*, paras. 8.1-8.6. The judgment was subsequently appealed to the Supreme Court of Appeal. The case was heard in March 2023, and is pending judgment. See further, Southern African Litigation Centre, "Zambia: Challenging the displacement of communities from customary land in the Serenje District", *SALC*, 2023.
- 734** Southern African Litigation Centre, "Zambia Court of Appeal affirms displaced community's customary land rights", *SALC*, 22 April 2022.
- 735** Interview ZA05.
- 736** USAID, *Zambia Customary Land Documentation Tenure Assessment*, 2017, pp. 9 and 13.
- 737** Interviews ZA03, ZA04, ZA08, ZA09 and ZA11.
- 738** Interview ZA03.
- 739** Interviews ZA04 and ZA08.

- 740** USAID, *Zambia Customary Land Documentation Tenure Assessment*, 2017, p. 13.
- 741** Interview ZA03.
- 742** Interview ZA11.
- 743** Interview ZA09.
- 744** LandLinks, *Country Profile: Zambia*, 2017, available at: land-links.org/country-profile/zambia/.
- 745** On the human rights implications of displacement, see further, Human Rights Watch, *Forced to Leave: Commercial Farming and Displacement in Zambia*, 2017, pp. 40-74.
- 746** USAID, *Zambia Customary Land Documentation Tenure Assessment*, 2017, p. 4.
- 747** Interview ZA09.
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- 749** Interview ZA09.
- 750** LandLinks, *Country Profile: Zambia*, 2017, available at: land-links.org/country-profile/zambia/.
- 751** Interviews ZA01 and ZA07
- 752** USAID, *Land Tenure Dynamics in Peri-Urban Zambia: Policy Brief*, 2017, p. 6.
- 753** USAID, *Land Tenure Dynamics in Peri-Urban Zambia: Policy Brief*, 2017, p. 6.
- 754** USAID, *Land Tenure Dynamics in Peri-Urban Zambia: Policy Brief*, 2017, pp. 4-5.
- 755** USAID, *Land Tenure Dynamics in Peri-Urban Zambia: Policy Brief*, 2017, pp. 4-5.
- 756** Interview ZA09.
- 757** Interview ZA06.
- 758** Interview ZA01.
- 759** Interviews ZA03 and ZA08.
- 760** Interview ZA08.
- 761** Interviews ZA01, ZA03 and ZA08.
- 762** Interview ZA01.
- 763** Interview ZA03.
- 764** Interview ZA01.
- 765** Interview ZA12.
- 766** Interview ZA02
- 767** See further, Wise Zambia, "Indispensable: The Role of Women in Agriculture in Rural Zambia", accessed 2023.
- 768** Interview ZA08.
- 769** See the Intestate Succession Act, Section 2(2). See also ZA08.
- 770** Interview ZA05.
- 771** Interviews ZA06, ZA08 and ZA09.
- 772** Interview ZA11.
- 773** Interview ZA03.
- 774** Interview ZA11.
- 775** Interview ZA06.
- 776** Interviews ZA10 ZA02, Interview ZA03 and Interview ZA12.
- 777** Interview ZA11.
- 778** Interview ZA03.
- 779** Interview ZA02.
- 780** Interview ZA10.
- 781** Interview ZA10.
- 782** Interview ZA12.
- 783** Interview ZA10.
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- 785** Interview ZA10.
- 786** Interviews ZA05, ZA02 and ZA08.
- 787** Interviews ZA02 and ZA12.
- 788** Interviews ZA01, ZA02, ZA06, ZA08, ZA10 and ZA11.

- 789** Interviews ZA02, ZA03 and ZA05.
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- 791** See Environmental Investigation Agency, *Scheduled Extinction: Our Last Chance to Protect the Threatened African Mukula Trees*, 2019, and Environmental Investigation Agency, *Mukula Cartel: How Timber Trafficking Networks Plunder Zambian Forests*, 2019.
- 792** See *Ibid.*, pp. 4 and 3-4, respectively.
- 793** *Ibid.*, p. 1.
- 794** Environmental Investigation Agency, “Forest Campaign: Mukulagate”, 16 September 2021, available at: <https://us.eia.org/blog/20210908-mukulagate/>.
- 795** *Ibid.*, Environmental Investigation Agency, *Mukulagate*.
- 796** Transparency International Zambia, “EIA Mukulagate Report has been validated”, *TI-Z*, 17 September 2021.
- 797** MCDSS, Recruitment of Director General of the Zambia Agency for Persons With Disabilities: Press Release, 2022, available at: <https://www.mcdss.gov.zm/wp-content/uploads/2022/09/Media-Statement-ZAPD.pdf>.
- 798** Transparency International, “Zambia: Mukula Trade Suspension Welcome Move, Further Audit Needed For Corruption Allegations”, 29 September 2021.
- 799** In 2020, a defamation claim was made against the Environmental Investigation Agency by three individuals named in the original report. One of these individuals subsequently withdrew from the case, while in October 2023, the remaining two claimants requested an adjournment, due to illness. See further, EIA, “Defending Forests and People in Court: The Zambia Case”, 31 March 2022; Kingsley Ndubuokwu, “Tasila Lungu Withdraws Corruption Defamation Case in Zambia”, *News Central Africa*, 15 June 2023; and Zondiwe Mbewe, “Lubinda is sick, can’t talk, Kapata can’t sit, lawyer tells court”, *News Diggers*, 11 October 2023.
- 800** In its most recent report to the CRPD Committee, the government noted that “persons with disabilities in Zambia are amongst the most vulnerable groups in the country.” See Committee on the Rights of Persons with Disabilities, *State Party Report: Zambia*, UN Doc. CRPD/C/ZMB/1, 2020, paras 20-22.
- 801** See the contrast between census data, and the results of the 2015 National Disability Survey in Cleaver, S., “Competing (ac)counts of disability: situating prevalence studies in Zambian disability policymaking”, *Disability Studies Quarterly*, Vol. 42 (3-4), 2023, table 1. According to the latter, around 10.9 per cent of the adult population have some form of impairment, with a slightly higher prevalence recorded among those living in urban, as opposed to rural, areas. See further, Central Statistical Office, *Zambia National Disability Survey 2015*, 2018, p. 39.
- 802** Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, UN Doc. A/HRC/34/58/Add.2, 2016, paras. 45-49, 52 and 64.
- 803** *Ibid.*, paras. 27-37.
- 804** USAID, *Zambia Customary Land Documentation Tenure Assessment*, 2017, p. 14.
- 805** National Lands Policy, 2021, p. 27.
- 806** *Ibid.*, p. 27, Objective 8(iv).
- 807** See further, Jerry Dupont, *The Common Law Abroad*, Fred B Rothman Publications, 2001, pp. 1089 – 1092.
- 808** For an excellent overview of the history of land governance in Zimbabwe, see Rick de Satgé, “Zimbabwe – Context and Land Governance”, *Land Portal*, 2021.
- 809** Report of the Special Rapporteur on the right to food, UN Doc. A/HRC/43/44/Add.2, 2020, para. 81.
- 810** Rick de Satgé, “Zimbabwe – Context and Land Governance”, *Land Portal*, 2021.
- 811** *Ibid.*
- 812** Jerry Dupont, *The Common Law Abroad*, Fred B Rothman Publications, 2001, p. 1092.
- 813** These provisions *de facto* prevented the compulsory acquisition of land by government without compensation for a period of ten years. See the Independence Constitution, Sections 16 and 52(4).
- 814** As noted in Section 2 of this chapter, the reform programme, which was also based upon the “willing-buyer willing-seller” principle, proved effective in containing nationalist calls for more potent redistributive measures. See further, Ambreena Manji, *The Struggle for Land and Justice in Kenya*, Boydell & Brewer, 2020, pp. 35-39.
- 815** Rick de Satgé, “Zimbabwe – Context and Land Governance”, *Land Portal*, 2021.

- 816** Mkodzongi, G., Lawrence, P., "The fast-track land reform and agrarian change in Zimbabwe", *Review of African Political Economy*, vol 46, No. 159, 2019, p. 1.
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- 818** Report of the Special Rapporteur on the right to food, UN Doc. A/HRC/43/44/Add.2, 2020, paras. 88-91.
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- 829** Interview with Dr Malinga, Academic, Lupane State University.
- 830** Food and Agriculture Organization of the United Nations, *Gender and Land Rights Database: Zimbabwe – Land Tenure and Related Institutions*, 2009.
- 831** Transparency International Zimbabwe and the Zimbabwe Anti-Corruption Commission, *Urban & Peri-Urban Land Governance in Zimbabwe: Towards a Corruption-free, Transparent and Accountable System*, 2021, p. 4.
- 832** Interview with Dr Malinga, Academic, Lupane State University
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- 834** Interview with Dr Malinga, Academic, Lupane State University
- 835** Interview with Dr Malinga, Academic, Lupane State University
- 836** Interview with Marble Murambiwa, Programmes Officer, Combined Harare Residents Association
- 837** Interview with Marble Murambiwa, Programmes Officer, Combined Harare Residents Association
- 838** interview with Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association
- 839** Interview with Precious Shumba, Executive Director, Combined Harare Residents Association
- 840** Interview with Robin Murare, Provincial Youth Chair, Zimbabwe Red Cross
- 841** Interview with Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association
- 842** Written submission of Pennial Sibanda, Lands Officer, Umguzo Rural District Council; Interviews with Nhamo Mupamhanga, Community member, Resident- Harare, Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association and Ephraim Zavidza, ALAC client, Resident- Harare
- 843** Interview with Sharon Makaripe, Programmes Officer, Combined Harare Residents Association.
- 844** Interview with Rodney Jele, Councillor, Bulawayo City Council.
- 845** Interviews with Precious Shumba, Executive Director, Combined Harare Residents Association and Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association.
- 846** Interview with Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association.

- 847** Interview with Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association.
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- 871** interview with Claude Phuti, Programmes Officer, Bulawayo Progressive Residents Association.
- 872** Transparency International Zimbabwe and the Zimbabwe Anti-Corruption Commission, *Urban & Peri-Urban Land Governance in Zimbabwe: Towards a Corruption-free, Transparent and Accountable System*, 2021, p. 47.
- 873** Human Rights Watch, *'Clear the Filth' - Mass Evictions and Demolitions in Zimbabwe*, 2005, p. 1.
- 874** *Ibid.*, p. 14.
- 875** Mukudzei Madenyika, "Sweets for the people: Zimbabwe's voters lured by land barons' promises", *The Guardian*, 18 August 2023, available at: <https://www.theguardian.com/world/2023/aug/18/sweets-for-the-people-zimbabwe-elections-housing-voters-lured-promises-land-barons-zanu-pf>.
- 876** See illustratively, Interviews with Precious Shumba, Executive Director, Combined Harare Residents Association and Dr Malinga, Academic, Lupane State University.
- 877** For a topical example, see Rejoice Ncube, "Insuza Villagers Fight Over Land", *NewsDay*, 15 April 2021.

878 Four FGDs were conducted with 28 respondents. Each of the respondents were resident in Insuza district at the time of the interview. Two FGDs included women only and the rest were mixed. Follow up key informant interviews were conducted with youth representatives, civil society organisations, as well as council officials.

879 Communal Land Act, 1982, Sections 7-11.

880 For a more detailed discussion of this framework, see Emaculate Ingwani, "Struggles of Women to Access and Hold Land use and Other Land Property Rights under the Customary Tenure System in Peri-Urban Communal Areas of Zimbabwe", *Land*, 10 (6), 2021, 649.

881 See further, Transparency International Zimbabwe and the Zimbabwe Anti-Corruption Commission, *Urban & Peri-Urban Land Governance in Zimbabwe*, 2021, pp. 5-21.

882 Those interviewed requested not to be named in this study as they feared a possibility of reprisal.

883 In an interview with local press, a councillor discussed the land allocations, claiming that he had been told to "stay away from the issue" by a political party official. See Vusindlu Maphosa, *Insuza Home-Seekers Cry Foul*, *The Independent*, 8 August 2021, originally published in the Citizen Bulletin.

884 Emaculate Ingwani, "Struggles of Women to Access and Hold Land use and Other Land Property Rights under the Customary Tenure System in Peri-Urban Communal Areas of Zimbabwe", *Land*, 10 (6), 2021, 649.

885 Submission received at a Focus Group Discussion, held in Insuza in 2023.

886 For broader examples of discriminatory corruption affecting LGBTQI+ persons, see Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, pp. 32-39.

887 Consultation with Transparency International Cameroon, centred on their recent work combatting land corruption, revealed a potentially interesting link to language-based discrimination. French and English are the official languages of Cameroon, and under the law it should be possible to submit land registration documents in either language. In practice, officials frequently request for documents to be translated, and it was noted that special 'translation fees' may be required. A lack of accessibility can deter individuals from registering their land, which risks being captured when competing claims are expedited by corrupt administrators.

888 As noted elsewhere, the term "favours" in this context can be misleading: "It is important to point out that sextortion is not a 'sexual favour' given to attain an advantage; it occurs under duress as a result of coercion with a clear threat that access to needed goods or services will be denied if the demand for sex is not complied with." See Transparency International and the Equal Rights Trust, *Defying Exclusion: Stories and Insights on the Links Between Discrimination and Corruption*, 2021, p. 24.

889 *Ibid.*, p. 24.

890 UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023.

891 As noted in Chapter 4, the requirement of free, prior and informed consent is central to the definition of segregation – a recognised form of discrimination under international law. Any decisions that would lead to the compelled separation of protected groups from their land and rights, that does not ensure effective community consent, is *de facto* discriminatory and contrary to international human rights standards.

892 The Land Act of Ghana, which places the management of customary land in the hands of community members, is a potential example of good practice in this area. Under Section 11, any decisions or practices that result in discrimination are voided. See the Land Act, Ghana, Section 11 and the discussion in Section 5.1.

893 Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/49/49, 2021, para. 117(l).

894 See, for example, Section 5 of the Ugandan Anti-Corruption Act of 2009, which prohibits the 'direct' or 'indirect' inducement of a public officer, with the aim of facilitating the performance, non-performance or hastening of their official duties. Those found guilty of an offence may be fined or imprisoned for up to ten years.

895 A survey conducted by Transparency International in Sierra Leone, for example, found that "56 per cent of rural women paid bribes to avoid eviction." See Transparency International, *Women, Land and Corruption*, 2018, p. 38.

896 See further, Equal Rights Trust and the ILAW Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, forthcoming 2023.

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