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# Improving Land Governance Through Transparent Land Administration

prepared for Urban Management Training Program  
June 2008, Juba, South Sudan

# Objectives

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- To sensitize training participants on some land governance concepts and principles that underpin activities that may be geared towards improving transparency in urban land administration
- To introduce tools that can be used to improve land corruption

# Content

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- Introduction: corruption IQ test (10 minutes)
- The big picture: concepts and principles (15 minutes)
  - Land governance as an overarching theme
  - Transparency as an entry point: definition of the concept and elements
  - Some indicators of urban land corruption
- Tools to improve transparency in land administration (30 minutes)
  - Presentation and guided discussions on two themes
- Group work on a case study (20 minutes)
- Conclusion (15 minutes)
  - Reflections
  - forthcoming activities of TCBB/GLTN

# Caveats

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- A three day training repackaged for 90 minutes session; lots of useful details are glossed over and hence the sensitization objectives
- Mentions of countries by way of illustration don't in any way imply they are worse or better off than others in terms of land corruption; mentions are made simply due to availability of more information on some countries than others

# Corruption IQ Test

When it comes to taking action about corruption in land administration, I'm of the opinion that:	1 Strongly Disagree	2 Disagree	3 Agree	4 Strongly Agree
1. Corruption is everywhere - it's endemic. So what's the big deal?				
2. Corruption is part of human nature. It's always existed. So, there is little we can do about it.				
3. Corruption is culturally determined. What's seen as corruption by some might not be seen that way by others. Better not to get involved.				
4. Getting rid of corruption in land administration would require a wholesale shift in attitudes and values. Nobody has the time and energy to face these challenges.				
5. Corruption isn't that harmful. It's just the way the political and economic systems operate.				
6. There's nothing that land administrators can do when corruption becomes so engrained that it is the accepted way of doing business.				
7. Worrying about corruption in land administration would be a waste of time—given everything else we need to do.				
8. Corruption in our land administration doesn't exist—at least to the extent that we should worry about it.				
9. The costs of curing and preventing corruption in land administration would far out-weigh the benefits.				
10. Any effort to cure and prevent corruption in our land administration system could hurt a lot of innocent people—so it's better to ignore it.				
 <b>GLOBAL LAND TOOL NETWORK</b>	<b>ADD YOUR TOTAL SCORES FOR EACH COLUMN</b>			 <b>UN HABITAT</b> FOR A BETTER URBAN FUTURE

# Interpretation of result

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- 10 or less .....you shouldn't be in this session; you have the right understanding about and attitude towards corruption
- 10 – 20 you are on the fence; the session would probably help you to land you on the right side!
- Above 20.....probably hopelessly corrupt (in your perception and attitude)

# Land governance – definition and key elements

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## Land governance

The process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled

## Some key elements embedded in the definition

- Focus on decision-making, implementation and conflict resolution
- Emphasis on both process and outcomes
- Need to understand both institutions (rules) and organisations (entities)
- Recognize statutory as well as customary informal/extra-legal institutions and organisations
- Analyzes stakeholders, interests, incentives, constraints, etc

**GLOBAL LAND TOOL NETWORK**

W W W . G L T N . N E T



# More definitions of governance concepts

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- Transparency is about acting
  - visibly,
  - predictably and
  - understandably;
- **Corruption** is the misuse of entrusted power for private gain. The concept of corruption's DNA:
  - mathematically expressed as  $C = (M+D-A)/E$ 
    - where C stands for corruption,
    - M equals monopoly power,
    - D discretion by officials,
    - A for accountability and
    - E for Ethical ambience.
- Funny, eh?... But, those are the key elements



## The face of unfair land access at community level



## The face of unfair land access at household (individual) level



# Elements of transparency (what should be made transparent)

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- **Policy, laws, regulations, charters, codes, rules, etc** should be publicly available; Statutory instruments that govern LA should be comprehensible including **LEGAL LITERACY**.
- **Structural transparency:** organizational set-ups, tiers of decision making;
- **Functional transparency:** info brochures and directories that help figure out who does what? Who is responsible for what? Who processes applications? Who makes decisions? are vitally important.
- **Processes and procedures:** provide info leaflets, checklists, guides, forms, etc that specify the steps, time required to complete processes, means of access including routes of appeal, etc;

# Elements of transparency (what should be made transparent?)

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- **Facilities and offices:** should be open to the public; periodic tours and open houses should be held periodically.
- **Data / information**
  - Avail understandable and accessible input data / operating information collected, processed, and acted upon (land rights allocated, converted, leased, titled; value of land; use of land; tax rates, etc );
  - Incomplete, outdated, or poorly organized data creates uncertainty and risk for both the institution and users.

# Principles for Good Land Governance

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1. Transparent and accountable decision making
2. Gender responsive (property rights of women)
3. Effectiveness and efficiency land administration
4. Rule of Law
5. Equitable access to land
6. Security of tenure to all
7. Sustainability (triple bottom lines; taking long term view)
8. Decentralized land management (subsidiarity)

# Urban land corruption (vulnerability) indicators: proxy or otherwise

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- Multiple title/ multiples land sales
- Excessive land grabbing
- Frequent land use changes / permits not based on technical merit
- Increasing incidences of fraudulent valuations (to evade tax, to tamper with compensations, etc)
- Spontaneous evictions (to make way for vested interest)
- Sale of public land for less than it is worth
- Increasing incidence of informal / unregistered land transfers (e.g., to evade transfer tax)
- Frequent land conflicts
- Urban courts congested with land cases (gate keeping extended to the judiciary)

# Urban land corruption (vulnerability) indicators: proxy or otherwise

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- Complex / lengthy systems (e.g., overspread functions, complicated structures, long procedures)
- Over-regulation (mutation 160 requirements and 41 permits in the Philippines): the more the no. of steps / actions needed to complete transactions, the higher the probability for corruption
- High service fees: encourage informality and semi-informality in doing business
- Tenure based on administrative allocations
- Ambiguity of definition and inadequacy of land rights
- Absence of publicly available information (in some countries land use plans are secret!)
- Poorly monitored and implemented land use plans and controls
  - authorizing illegal changes in land use (rezoning);
  - difficulty to detect and / or reluctance to penalize offenders
- Ambiguous land use plans: providing scope for variable “interpretation”

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# Improving transparency through assessment



# Opening questions

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

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

Time Magazine, 25 October 2007

Is corruption more difficult than rocket science? Is it difficult to assess, detect and address?

# Scope and approach: object of assessment

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- Not to determine whether or not corruption exists;
  - Corruption does have some common characteristics. E.g., it occurs in all countries regardless of the level of social and economic development.
- To determine the extent and level corruption including whether it is systemic or episodic; where it occurs and how; why; what forms it takes; *whether it is petty or grand; its cost implications;*
- To determine whether or not anti-corruption strategies, programs and institutions are in place and functioning

# Before assessment: know what to look for / generic indicators

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## Experience based indicators: actual levels of victimizations

- Corrupt practices: personal involvement gauged using questions measuring the incidence of transfers made to expedite service or break the law;

## Perception based indicators : perceptions about corruption in society.

- **Tolerance of corrupt practices:** questions that probe whether specific practices (bribe, conflict of interest, trading in influence, etc.) are acceptable for certain officials
- **Perceived spread of corruption:** questions about perceived levels of corruption and its “effectiveness” in getting things done.
- **Expectations relating to the ability and resolve of government to deal with corruption.**

## System (vulnerability) indicators

- Questions that probe whether or not anti-corruption strategies, programs, etc are in place and being practiced.

# Tools: formal surveys

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- **Formal Surveys:** general purpose surveys; routinely employed by Transparency International;
- **Citizens' report cards:** gauges citizens' satisfaction; its business equivalent is customer satisfaction survey; Users perceptions on the quality, efficiency and adequacy of LA services are gauged. CRCs are proxy indicator for competition
- **Vulnerability assessment:** Is the general management or governance environment permissive of corruption? To what extent does the activity carry the inherent risk of corruption? E.g., gate keeping position / discretionary power over land rights allocation; size of land transfer fees, etc
- **Rapid anti-corruption assessment:** premise-objective assessment of corruption is difficult; check if adequate anti-corruption laws and institutions are in place and these are working;

# Reporting and using findings

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- Various target groups
  - The general public
  - Technical audience
  - Officialdom
- Various outputs
  - Technical report (detailed findings, statistical details, etc)
  - Assessment briefs
- Various forms of communication
  - Debriefing
  - Stakeholders' workshop
  - Town hall public meetings
  - Media

# Assessment challenges

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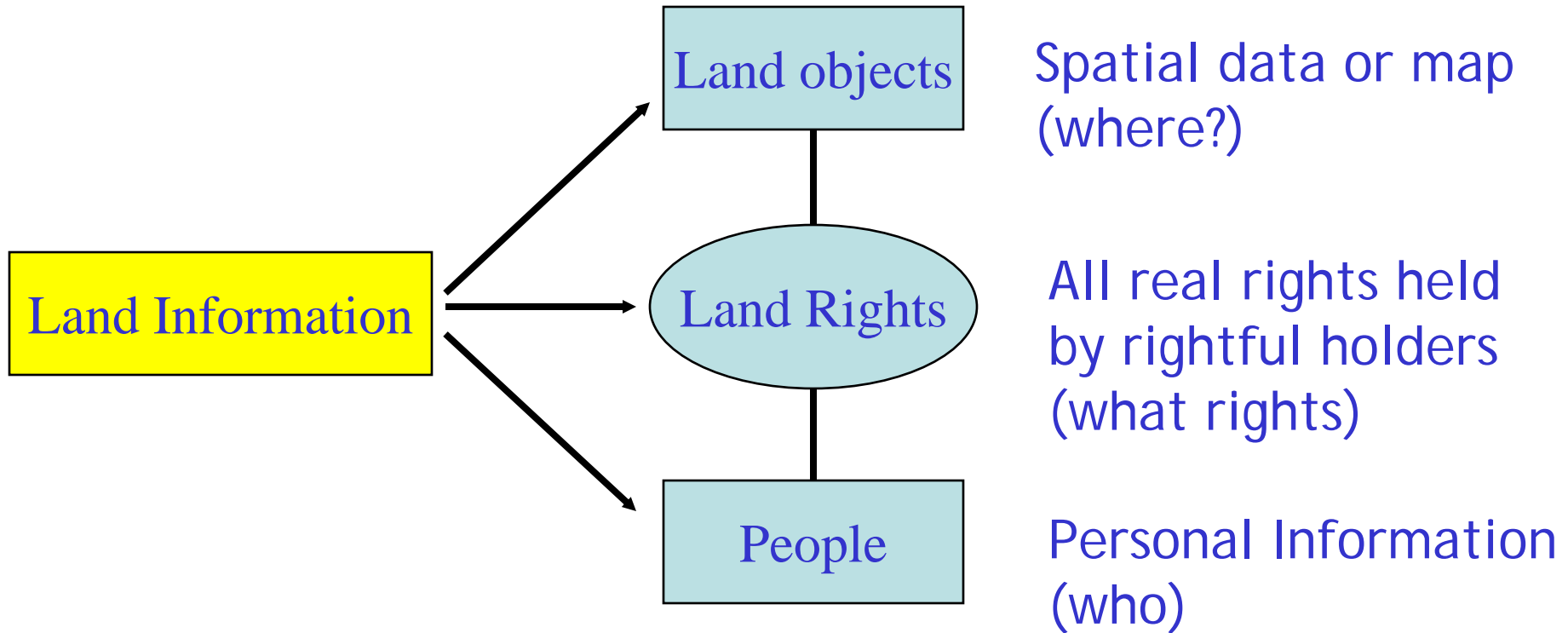
- The inefficiency factor: corruption can be disguised as inefficiency.
- The fear factor : reluctance to give info.
- The cover-up factor : corruption doesn't leave a paper trail; info hardly available in official records; hence, why we need to focus on victims' (actual and potential) experience and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

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# Improving transparency by enhancing access to information and public participation

# What is Land Information?

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# Some principles and tools

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- Maximum disclosure based on the principle of open land administration
  - prompt and effective access (providing information that is of public interest)
  - Obligation to publish: supported by legislation
  - Limited scope of exception: should be clearly defined in the legislation
  - Prohibitive costs: if possible at no cost (info generated using public resources); cost recovery should not hinder access.
- Examples
  - One-stop service
  - Help desk
- Refer what should be transparent

# Tools to improve information access

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Harness the power of technology

- ICT
  - Land information management systems (LIMS) to better manage records
  - GeoIT (simple and lost methods of information extraction...community enumeration, hand-held, GPS HRSI)
  - Web-based services (where possible)
  - Community level information kiosk
- Back-up: don't destroy paper records until migration to digital environment is stable and robust

# Public participation

- Public participation: should go beyond sharing info; must include active involvement in of decision making
  1. Periodic town hall meetings with customers and the general public
  2. Promotion of strong civil society (e.g., land alliance)
  3. Promotion of responsible, but empowered media



Public hearing/training



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# Improving transparency by enhancing professional ethics and integrity

## Opening question : Daniel Kaufmann's (of WB) test

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- You are approaching your car in the empty and unattended parking area late at night
- You see an envelope on the floor, and you pick it up. It contains 20 bills of US \$100 each.
- If there was no possibility that anyone would know: No cameras, no monitoring, no reporting, What would you do with such envelope full of cash?

# The basics

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## Defining terms...the basics

### Integrity

The quality of being honest and having strong moral principles

### Ethics

Principles that govern a person's or group's behaviour

## Answers

- 50% undecided
- 17% keep
- 33% report and return funds

# Unpacking the basics

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## Who demonstrates ethics and integrity?

Someone who, for example...

- demonstrate the values of the organization
- acts without consideration of personal gain
- resists undue pressure in decision-making
- does not abuse power and authority
- stands by decisions that are in the organization's interest even if unpopular
- takes prompt action in cases of unprofessional or unethical behavior

## Manifestations in the breakdown of ethics and integrity: examples

- land grabbing and/or illegal transfers of land by corrupt officials
- A decreased sense of obligation to pay property / land taxes, to apply for proper titles or building permits, to stick to zoning regulations.

# Interventions that can be used to address ethics breakdown

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1. Conflict of interest law
2. Codes of professional ethics/codes of conduct
3. Whistleblower protection
4. Ethics training



# 1. Conflict of interest laws

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**Conflict of interest** : clash b/n private interest and public decision making;

**Why conflict of interest laws?**

- To remove the temptation and opportunity to engage in corruption.
- To make decision-making transparent especially financial decisions.
- To promote disclosure of private, personal and political interests
- To protect officials from any undue suspicions, instill public trust and citizen confidence in LA.
- To construct parameters by which those seeking business from or access to LA offices are subject to certain ethical standards as well.
- To create mechanisms to sanction and/or reprimand violators of such laws

# Interventions

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## 2. Establishing codes of professional ethics and ethics

- Codes of professional ethics produced by professional organizations
- Originates in corporate governance in private sector but can be applied to land sector.
- Professionals owe a duty of care to their clients and should not exploit their relationship for their personal advantage to the detriments of their clients
- Personal duty. A land administrator should not be a silent witness, a willing partner or a facilitator of, for example, grand corruption where the state is captured by a powerful group.

## 3. Whistleblower protection

- Arrangements for anonymous complaints either through media anti-corruption commissions,
- Telephone hotlines?

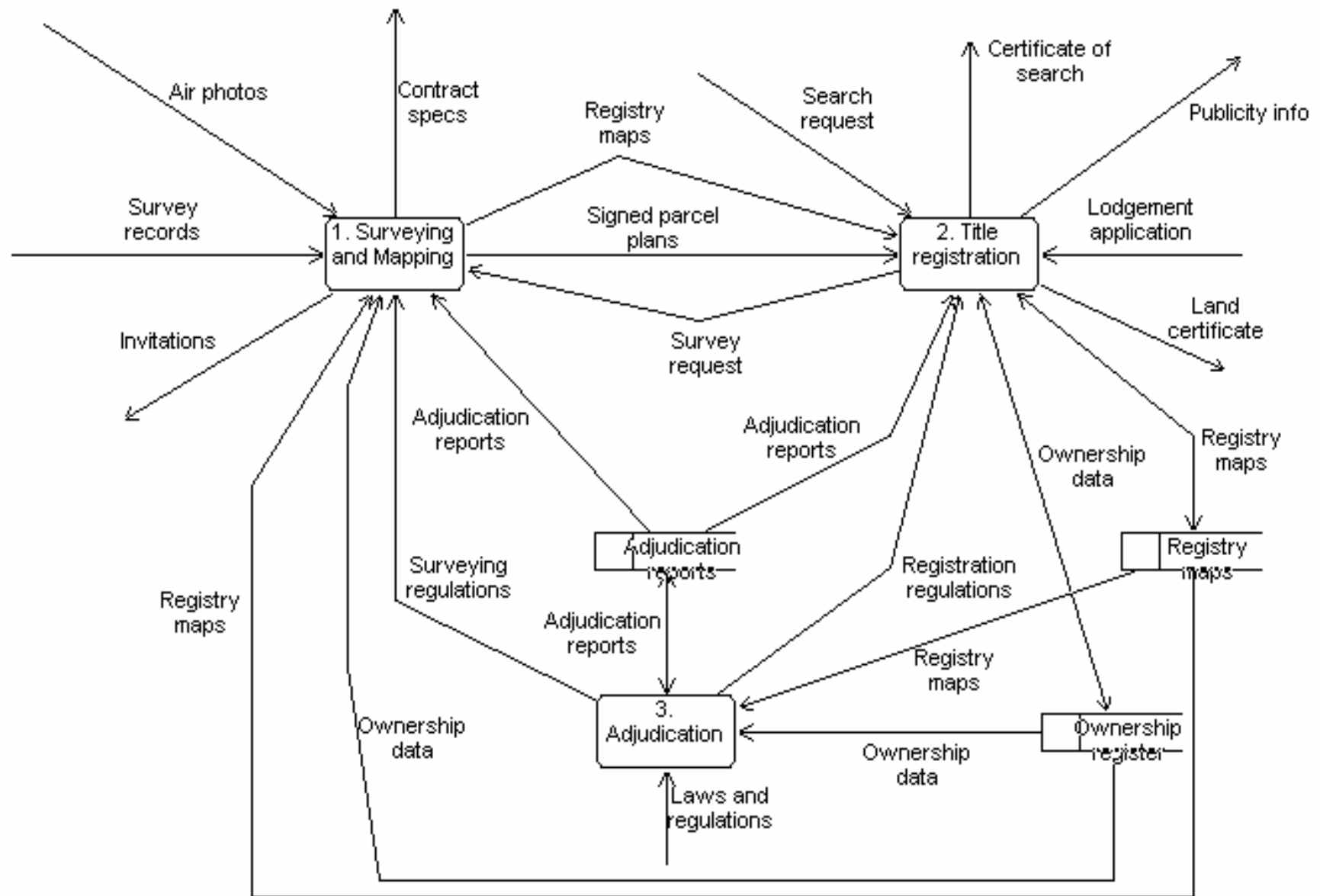
## 4. Ethics training

- To educate employees about ethics rules and regulations
- To establish capacity to maintain open processes
- To reinforce principles of transparency and accountability within organizations

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Improving transparency by reforming organizations and institutions (formal and informal rules of the game)

# Organizations and institutions in developing world are complex

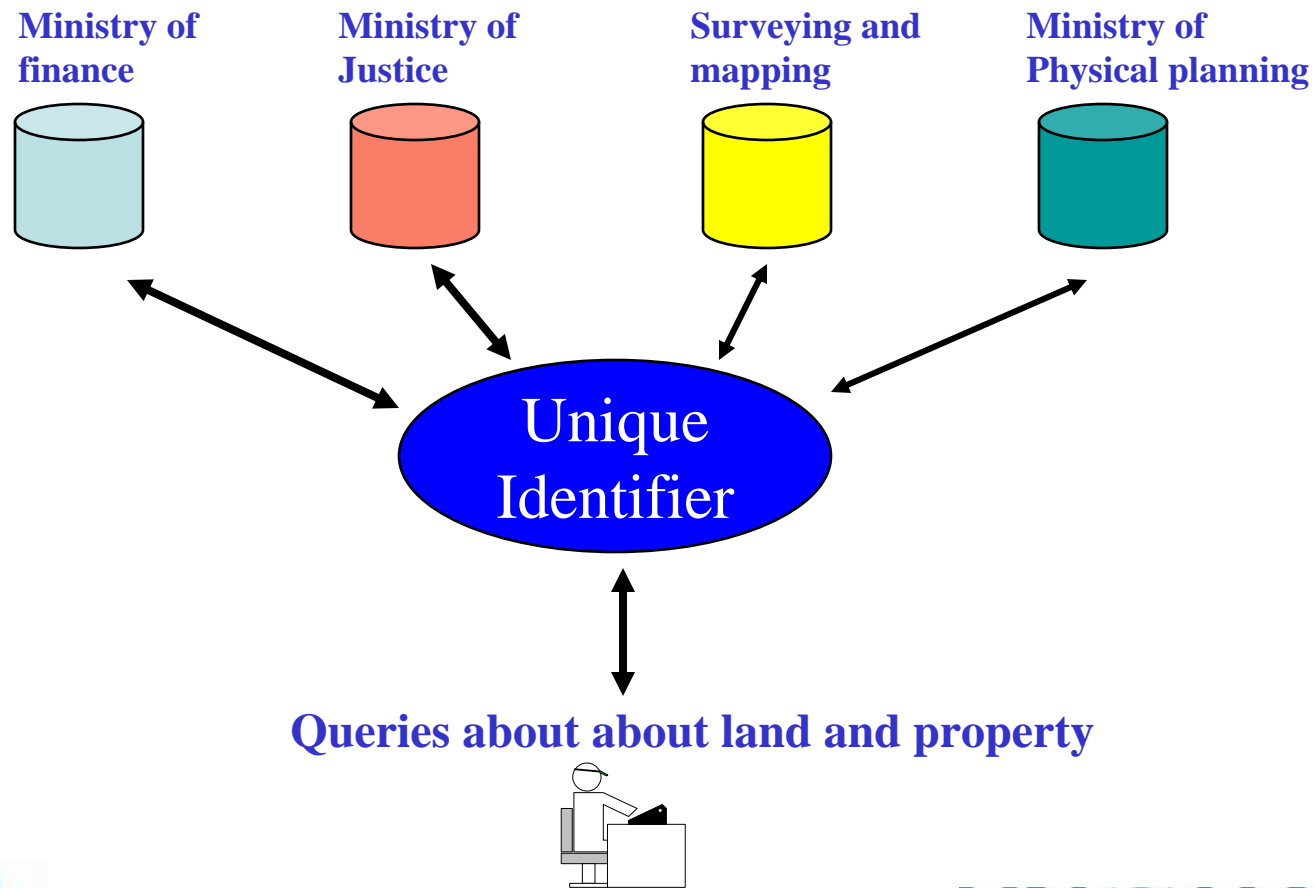


# Examples of organizational and institutional reform

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- Citizens charters: documents that publish service standards customers are entitled to expect across an organization or service area (Sohail and Cavil)
- Independent oversight mechanism within LA organization and / or independent public anti-corruption watch-dog
- e-Government
- Decentralized land administration (based on the principle of subsidiarity)
- Flat (less hierarchical) organizational arrangement
- Capacity building: the all encompassing cross cutting element of all reforms
  - Knowledge, skills, and attitude of individuals
  - quality of their organizations
  - enabling environment
  - Institutions (formal rules of the game and informal norms)

# One-stop shop: as a means to speed-up service delivery





# Conclusion

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- 47 – 75% of the total value of assets in most countries is found in land and attached buildings
- Land offices among the most corrupt in many countries
- The top most corrupt government institutions
  - In Kenya: police; local authority; immigration; judiciary; commissioner of lands.
  - Zambia has sacked its lands minister in 2003 saying she was the most corrupt of those in the administration and sent to prison in 2009;.
  - South Asia – India, Sri Lanka, Bangladesh, Nepal: police, judiciary, land administration
  - Pakistan (100% of respondents); Sri Lanka (98%), Bangladesh (73%); India (47%), and Nepal (17%)
  - Land corruption is expensive: average bribe paid (in TSH-service delivery survey): 13 919 Police; 28 769 Judiciary; 14 437 Revenue; 107 395 Lands Services.



# Conclusion

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- Land corruption is real and even worse in urban areas
  - High value land / fierce competitions for land
- Urban land administrators as gate keepers can be either instruments of evil or guardians of community asset!!
- TCBB / GLTN and partners are engaged and ready to extend a helping hand
  - Transparency in Land Administration Training Tool Kit and Trainers' guide