

LAND CORRUPTION IN AFRICA PROJECT



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LAND CORRUPTION IN SOUTH AFRICA



1. WHAT IS LAND CORRUPTION?

Land corruption is the abuse of entrusted power for personal gain in the management and administration of land affairs. When someone has responsibility over the use or ownership of land, and they misuse that responsibility for personal benefit, that is corruption.

2. HOW DOES LAND CORRUPTION OCCUR?

There are a few ways in which land corruption happens, but some of the common ones are land transactions between governments, companies, traditional leaders, and/or communities, land reforms (when laws are created or changed), and when there are plans to develop land.

3. WHAT ARE THE MOST GENERAL FORMS OF LAND CORRUPTION?

- A. **Bribery:** This is when a person is asked or offers to pay an amount of money to fast-track service delivery or obtain favours that he/she would otherwise would not be entitled to. Bribes are usually paid to register a piece of land in a person's name, receive official documents, or get approval for building permits.
- B. **Sextortion:** When a person, often women, is asked to give sexual favours to officials so that they can be granted rights to a piece of land or be awarded a house. This is an act of corruption perpetuated by someone with authority.
- C. **Procurement irregularities:** This occurs when a government department, agency, or any other state institution awards a tender to a company to develop a piece of land without following proper

procurement processes. The flouting of procurement processes may involve no advertising, random and inexplicable dismissal of competitive bidders, preferential treatment, etc. In some cases, the officials awarding the tenders are connected to the companies awarded the contract and may benefit financially.

- D. **Misappropriation of resources:** Improper use of resources (including land, machinery, and equipment) that someone or people have been entrusted with. In some instances, the resources are stolen.
- E. **Political corruption:** This usually involves public servants, elected officials, and corporations who collude to make laws and agreements that benefit business at the expense of ordinary citizens. At times, community members are not consulted and/or community members' views are completely ignored.

4. WHAT ARE THE CONSEQUENCES OF LAND CORRUPTION?

- A. People being displaced and dispossessed;
- B. People's inheritance and heritage is under threat;
- C. An increased risk to food insecurity;
- D. It may lead to conflict and loss of life;
- E. A decrease in a country's economic growth which leads to poverty;
- F. Greater disparities between men and women, the rich and poor, and other social groups
- G. Environmental damage such as water and air pollution, which affects agriculture and wildlife. This may also cause health hazards for affected communities.



5. HOW CAN YOU FIGHT LAND CORRUPTION?

A. You can approach the courts if you feel that your rights have been violated, according to these laws. Here are some resources that you can refer to:

I. The Constitution of South Africa: There are a few sections that speak about land and property rights, but the most crucial sections are written in Section 25 and Section 27 that talk about how land redress should happen following the country's apartheid past and the assurance of socio-economic rights such as health, education, security, etc., respectively.

II. Precca (Prevention and Combating of Corrupt Activities Act): This is a law that makes corruption a criminal act in the public and private sectors. It allows courts to hold a person responsible for trying and following through on committing bribery, fraud, and other related corrupt activities.

III. PFMA (Public Finance Management Act): This is a law that looks at improper or unauthorised government expenditures.

IV. Promotion of Investment Act: This is a law that allows government to purchase land at a price lower than market rates.

B. There are government departments and programmes that attempt to deal with many issues relating to land distribution, registration, allocation, demarcation, development, corruption, and several other matters. A few of these are:

I. RDP (Reconstruction and Development Programme) – This is a national government programme that is meant to restore dignity and alleviate South Africans from extreme poverty by

awarding land and houses to affected people and communities.

II. Department of Agriculture, Rural Development and Land Reform.

III. Department of Human Settlements, Water and Sanitation.

C. How can you prevent land corruption?

I. Voting for accountable leaders.

II. Attending and participating in community meetings about land matters. Remember, participation can also be in the form of petitions, letters, e-mails, etc.

III. Reporting to a reputable organisation if you suspect land corruption has taken place.

6. YOU CAN REPORT CORRUPTION BY:

A. Contacting the Department of Mineral Resources if it is about an issue related to mining.

B. Contacting the Department of Agriculture, Rural Development and Land Reform's anti-corruption division **(NB the government department handling land issues has provincial offices in every region and may sometimes be referred to by another name).**

C. Lodging a complaint with the Office of the Public Protector of South Africa.

D. Filing a case at your local South African Police Station.



LAND CLAIMS & LAND TENURE RIGHTS IN SOUTH AFRICA

WHAT DO LAND CLAIMS AND LAND TENURE RIGHTS ENTAIL IN SOUTH AFRICAN LAW?

Since 1994 the South African government has placed a large emphasis on land reform by granting individuals who were dispossessed of a right to land after June 1913, as a direct result of past racially discriminatory laws, the right to restoration of such land or monetary compensation.

The Land Claims Court in South Africa was established in 1996 and specialises in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative. These include the Restitution of Land Rights Act (1994), the Land Reform (Labour Tenants) Act (1996), and the Extension of Security of Tenure Act (1997). The Land Claims Court has the same status as any High Court.

WHAT LEGISLATION GOVERNS LAND REFORM CLAIMS IN SOUTH AFRICA?

The legislation governing land claims and land reform in South Africa and the successful interpretation of these laws have made it a specialised field of South African law. Claimants are urged to deal with experienced, specialist land claims law firms when considering claims against the State.

THE RESTITUTION OF LAND RIGHTS ACT 22 OF 1994 INTENDS:

- To provide for the restitution of rights in land in respect of persons or communities which were dispossessed under or for the

purpose of furthering the objects of any racially-based discriminatory law;

- To establish a Commission on Restitution of Land Rights and a Land Claims Court; and
- To provide for matters connected therewith.

THE LAND REFORM (LABOUR TENANTS) ACT 3 OF 1996 INTENDS:

- To provide for the security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants;
- To provide for the acquisition of land and rights in land by labour tenants; and
- To provide for matters connected therewith.

THE EXTENSION OF SECURITY OF TENURE ACT 62 OF 1997 INTENDS:

- To provide for measures with State assistance to facilitate long-term security of land tenure;
- To regulate the conditions of residence on certain land;
- To regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated;
- To regulate the conditions and circumstances under which persons whose right of residence has been terminated may be evicted from the land; and
- To provide for matters connected therewith.

HOUSING RIGHTS IN SOUTH AFRICA



WHAT DOES THE CONSTITUTION SAY?

The right to housing is enshrined in section 26 of the Constitution, which states that:

- A. Everyone has a right to have access to adequate housing.
- B. The state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.
- C. No one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The right to adequate housing is recognised as a socio-economic right. What constitutes adequate housing is outlined in the Housing Act (1997), the Breaking New Ground (BNG) (2004) policy, and the National Housing Code (NHC) (2009), which provide for the facilitation of a sustainable housing development process.

The National Housing Code specifies the minimum size of houses as 40 square meters of floor area with:

- A. Two bedrooms.
- B. A separate bathroom with a toilet, a shower, and a hand basin (not applicable for rural housing).
- C. A combined living area and kitchen space with a wash basin.
- D. A ready board electrical installation, where electricity supply is available.

The state has committed to reversing and eradicating the apartheid spatial geography legacy. To this end, the National Department of Human Settlements has developed a Master Spatial Plan (MSP) aimed at achieving a creative balance between spatial equity, economic competitiveness, and environmental sustainability to overcome the legacy of apartheid.

The Master Spatial Plan states that all spatial development programmes should incorporate the following aspects:

- A. Spatial justice (e.g. integration).
- B. Spatial sustainability (e.g. location, access to employment opportunities).
- C. Spatial resilience (e.g. mixed use, incremental development).
- D. Spatial quality (e.g. diversity and choice).
- E. Spatial efficiency (e.g. optimal use of limited resources) and good administration under the guidance of Spatial Planning and Land Use Management Act (SPLUMA Act).

THE RIGHT TO ADEQUATE HOUSING IS RECOGNISED AS A SOCIO-ECONOMIC RIGHT.

A stylized illustration of a yellow excavator on a construction site. The excavator is positioned on the right side of the frame, with its arm extended towards the left. In the foreground, a red sign with white text reads "Shopping Centre COMING SOON". The background is a solid red color, and the ground is a dark blue-grey. The excavator's cab has a blue window.

Shopping Centre COMING SOON

WHO CAN APPLY FOR AN RDP/BNG HOUSE?

Applicants must meet the following criteria:

- Be a South African citizen.
- Be contractually capable.
- Be married or habitually cohabit with a partner.
- Be single and have financial dependants.
- Be a first-time government subsidy recipient.
- Be a first-time home owner.
- Single military veterans without financial dependant.
- Single aged persons without financial dependant.



WHAT ARE MY RESPONSIBILITIES AS A BENEFICIARY?

- Once you get your house, you should inspect it for flaws like cracks or leaks. If there are any defects, you should report these in writing to your municipality within six months of occupying the house.
- Before you may renovate or extend the house allocated to you, written permission must be obtained from your local housing authority at the same office where you applied for your house.
- You may not rent out or sell your house

within the first eight years of receiving it from the state. Should you wish to do so, you must offer it to the MEC first.

WHAT ARE MY RIGHTS AS A BENEFICIARY?

- Once you have applied for an RDP house, you have the right of access to information on the process of allocation.
- The Promotion of Access to Information Act allows you to obtain information from your local housing authority regarding the status of your application. You may ask to view your details on the waiting list at your

BRIBERY:

Karl wants to extend his house to include a tuckshop room, but his neighbour Lindiwe is not happy about the idea of having a shop next door. It would bring more traffic, noise, and rubbish to the street. She has laid a complaint over his plans, saying that she would rather the neighbourhood remained residential. Karl visits the local municipalities planning department and speaks to the official who will make a decision on the plans. Karl pays the official R5 000, his plans get approved, and he begins digging the foundations for his new bedroom the next day.

SEXTORTION:

Refiloe has two small children. When their shack was washed away by the Jukskei River, she was told by the Department of Human Settlements, Water and Sanitation that she would receive a new house. In the meantime, she built a shack to live in, in Diepsloot. One day, an official from the Department arrives at her informal home, while she is outside playing with her children. He shows her his clipboard, which has her name at the top of the list, next in line to receive a RDP house. He then tells her she will not receive a house unless she sleeps with him, then enters her house and waits in the bedroom for her. She has no choice. She has two small children

PROCUREMENT IRREGULARITIES:

Misappropriation of resources: There is a tender out for developing a piece of land that is currently lying empty. The Department of Agriculture, Rural Development and Land Reform would ideally like a developer to transform the land into a place that the community can use, somewhere for families to spend time together. A consulting company called XYZ Consulting realises that they could make a lot of money building a private golf course on this land. It's not necessarily in line with the Department's wants, so they promise an official a 10% kickback if she helps them get the tender. The Department official tampers with the other bids, so that On Par wins the tender, and the money. The golf course is built, and the local community loses out on what could have been a lovely park.

A company is interested in buying a piece of communal land belonging to a well-known tribe. The traditional leader agrees to the sale, saying that he has consulted with the community. He keeps all the money for himself. This is embezzlement.

Mining companies in the Northwest Province have been contributing to the Social and Development Plans fund, intended to uplift the communities they have been working nearby. The Premier has been taking funds from the account and keeping the money for himself.

POLITICAL CORRUPTION:

A property developer meets the Western Cape premier, and in their conversation, they realise that the small neighbourhood of Bontheuvelburg is in a prime location for a shopping mall. The Western Cape premier makes sure that the neighbourhood is rezoned, to allow building of commercial property. The residents from Bontheuvelburg are evicted, without receiving fair compensation. One of the residents, Simphiwe, finds himself living in an informal settlement, unable to afford a house with the measly payout he received. A few weeks later, he visits Bontheuvelburg. A tractor rolls past him, and he sees that all the houses have been demolished. A sign shows that a shopping mall will soon be built in their place.



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