



TANZANIA LAND POLICY **ACTION NODE**
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INSTITUTIONAL CONSTRAINTS TO VILLAGE LAND MANAGEMENT IN TANZANIA

By Shadrack Stephene: National Land Use Planning Commission

INTRODUCTION

The current system of land control and management in Tanzania has little variation with the centralized colonial land management and administration system. The slight difference from the previous system is vesting of village land management powers to the Village Council (Village Government). The law vests the oversight role to the Village Assembly that has mandate to approve or disapprove the Village Council recommendations on land management issues. Nevertheless, the village government is required to comply with the advice provided to it by the Commissioner for Lands. In this brief, we highlight key institutional constraints to village land management in the land settlement organs in the context of the Village Land Act which are the Village Land Council (VLC), Ward Tribunal (WT), District Land and Housing Tribunal (DLHT), the High Court of Tanzania and the Court of Appeal in Tanzania.

Methods and Scope of the Study

The study was carried out to analyze customary land holding and the security of tenure in the case of village land use, management, and control in the context of the Village Land Act in Tanzania. Furthermore, the analysis identifies gaps in the village land legal framework and recommends for legislative reforms that will help to improve the village land administration, security of tenure of small producers and reduction of land use conflicts. The study was carried out by the TLPAN under the support of the Alliance for a Green Revolution in Africa (AGRA).

Village land governance, use, and rights of the land holders

Village land is divided into three sub categories which are: (i) land for communal and public use; (ii) land for individual or family use; and (iii) land reserved for future communal or individual use. Village land in Tanzania constitutes the biggest percentage (70%) compared to general land (2%) and reserve land (28%) (Kironde et al 2012).

There are serious concerns that the village land stock is diminishing due to an uncoordinated and inefficient land market that is currently fueled by growing commercial interests. Traditionally, land uses in villages were mainly for farming and



grazing. The country has recently witnessed some commercial interests on land for: biofuel crops; commercial farming of food for export; forest plantations and forest for carbon credits business; oil, gas and mineral exploration; and wildlife and nature conservation. All these alternative land uses plus higher population growth have intensified the pressure on village land.

Village land administration has focused on the powers vested in the Village Council and Village Assembly in determining allocations of land. Essentially, the power of the Village Councils upon the Village Assemblies' approval on village land allocation is limited to allocating 20 hectares. Transfer of more than 20 hectares and less than 250 hectares, approval is made by the District Council after consideration of the Village Council and Village Assembly recommendations. Where it is more than 250 hectares, approval is made by the Minister responsible for lands after consideration of recommendations made by the village council, village assembly, and district council. Village Councils and Assemblies have limited control over village land because they are subject to the advice and directives of the District Councils and the Commissioner for Lands. In other words, it is much easier for the village land administration authorities to deal with access, use and customary ownership, but the controlling power is vested in the central government organs.

Land conflict management mechanism

The Land Disputes Settlement Courts Act established tribunals from the village, ward and district levels and conferred the High Court with original and appellate powers, while the Court of Appeal is the final appellate court. The land settlement organs are thus: Village Land Council (VLC), Ward Tribunal (WT), District Land and Housing Tribunal (DLHT), the High Court of Tanzania and the Court of Appeal.

Challenges faced by land conflicts tribunals in Tanzania

Although land tribunals were established as the response to implement one of the underlying principles of the Village Land Act, which is to ensure

the establishment of an independent, expeditious, and just system for adjudication of land disputes. There are policy and practical challenges facing the land conflicts tribunals in Tanzania some of which are highlighted hereunder.

1. Challenges of the Village Land Council (VLC)

It is hard for VLC to take legal actions to Village Council Members. Furthermore, members of the VLC and villagers do not understand the mediation concept and the reason behind it. The experience and practices on the ground has shown that instead of mediating, many VLCs are charging fines and imposing compensation orders.

VLCs are legally mandated to undertake mediation between the aggrieved parties. The Village Land Act introduced another organ called the Village Land Adjudication Committee with more or less similar functions as the VLC, even though one can appeal to the VLC on a decision rendered by the Village Land Adjudication Committee. This confusion undermines the power of the VLC. This also results in shopping by community members of arenas that will be more sympathetic to their problems.

VLCs lack funds to finance their operations. The law requires the Registrar of Villages to facilitate their operations including budgeting for their recurrent expenditure. However, experience shows that District Councils do not include any budgetary allocation for financing of neither the VLCs nor Ward Tribunal (WT). Lack of funding exposes and tempts VLC and WT members to corruption and bending of rules in favor of the clients who have money. In some villages, there is no VLC or any other body responsible to settle land disputes, and even the existing VLC members are grossly uninformed on the proper procedures on dispute resolutions as provided for in the laws.

2. Challenges of the Ward Tribunal (WT)

The WTs are accountable to the District Councils which are supposed to finance their operations. Yet appeals on land disputes are sent to the District Land and Housing Tribunal (DLHT), which

is under the Ministry of Lands. At the same time appeals on other civil cases or disputes determined by the WTs are sent to normal courts like primary courts or Resident Magistrates and District Courts. The multiple accountability and jurisdictions confuse members of the tribunals and promotes corruption.

Further, the three Ministries: Regional Administration and Local Government (RALG), Ministry of Lands and Human Settlements Development (MLHSD), and Ministry of Justice and Constitutional Affairs (MJCA), that are directly linked to the work of the tribunal, do not have any shared forum where they can reflect on the performance of the dispute settlement organs and collectively.

3. Challenges of the District Land and Housing Tribunal (DLHT)

The biggest challenge facing the DLHT is in the use of English language in delivering verdicts and yet it is not understood by many community members in the rural areas. Whereas all the proceedings may take place in Kiswahili language, the verdict is given in English language which is a barrier for the majority of rural residents whose command of English language is largely poor or completely lacking. Access to justice is likely to be hampered by this language barrier.

Further, concerns have been raised with regard to the role of the assessors. In a situation where the DLHT is managed by professionals, and in view of the fact that the chairperson is not bound by the advice of the assessors, then it is a serious matter of concern why the elders waste their time in court rooms.

There is an equally important concern regarding the jurisdictional mandate of the district land tribunals. Essentially, these are organs to be established in every district. However, experience shows that up to the year 2012, only 47 tribunals were established country wide some of which have been serving at regional level and or zonal levels to more than one district (LRC, 2013). Whereas the intention might have been to bring

the service closer to the people, the fact that there are regional and zonal land councils has brought confusion to members of the public. The truth is, even where the tribunals are established at the regional or zonal level, their jurisdictions still fall under the subject district.

Land disputes are further channeled to the High Court and thereafter court of Appeal in case one of the parties is not satisfied with the ruling. At the two levels of judiciary, all the issues and charges are framed in accordance to the judicial requirement. The citizens are advised to hire the service of professional legal practitioners to avoid falling into the traps of legal technicalities. The most pressing challenges at this level is the lack of legal services for the rural communities as most of the legal profession are based in major towns and cities. Lack of land legal literacy for the majority rural based citizens compounds the access to justice problem.

Lack of coordination among institutions dealing with land matters

The classification of land into general, reserve and village land establishes different institutions for land administration. Village Councils, Ward Tribunals and Land Officers in District Councils are not directly accountable to the Ministry of Land, but to the Prime Minister's Office-Ministry of Regional Administration and Local Government (PMO-RALG). Some forest reserves and wildlife conservation lands, even if they are in villages, fall under the Ministry of Natural Resources and Tourism. Conflicts of interest in the exploitation and benefit sharing from these resources have quite often caused serious conflicts that end up claiming people's lives. There is a need for harmonization and coordination of the land sector more appropriately.

Policy Implications and Recommendations

1. Setting up a pecuniary jurisdiction for the VLCs.

This is because VLCs have jurisdiction to settle land disputes in villages and yet some community members own huge chunks of land whose value are far beyond the pecuniary jurisdiction that the Ward Tribunal can settle. It is recommended that

the pecuniary jurisdiction be set in such a manner that reflects the fast growing land market in villages. An innovative approach may include pegging pecuniary jurisdiction to the number of hectares. Thus, instead of its jurisdiction being based on the monetary value, the law may set the number of acres/hectares to determine the pecuniary jurisdiction of the VLC or both.

2. Remuneration of Village Land Councils.

VLC members should no longer work on voluntary basis. With proper salaries from defined sources and proper accountability mechanisms members of the VLCs will be able to effectively discharge their functions.

3. Training VLCs members.

Members of the VLCs must receive trainings on general concepts of land laws, land rights of villagers in accordance with the Village Land Act, the mandates and responsibilities of village governments on village lands, the functions of the VLCs, and the customary law and emerging customs of the communities in their villages.

4. Eradicating corruption in the land councils and tribunals.

Some members of the VLCs, WTs, DLHTs and even magistrates and judges of normal courts are accused of receiving bribes. This has undermined the confidence of the people in the land disputes settlement organs and people are resorting into self-help methods to vindicate their rights.

5. Prohibiting sale of land to foreigners.

The government needs to enforce section 20 of the Land Act that explicitly prohibits

foreigners and foreign owned and or controlled companies to own land. There is ample evidence that foreigners are increasingly buying land from the local communities and individuals (References). Given the fact that there is a growing need of land for investment, it is important to stiffen the law enforcement in order to protect the rights to land of ordinary citizens in villages

Conclusion

In light of the analysis, the rights to access, own, use, and control land for the citizens and especially for villagers, are not fully enjoyed due to a number of policies, institutional and practical constraints in the Tanzania land tenure system. Where villagers' land rights are violated and result in legal disputes, the land disputes settlement organs have failed to redress them in a timely manner. Land disputes settlement organs are poorly constituted, some have conflicting mandates and accountability mechanisms, and they are woefully funded. These shortcomings make it difficult for ordinary citizens to get appropriate redress.

Reference

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