

Discussion of 'Through the Maze of Land Right Laws'

Discussion by Klaus Deininger

The legal basis for land ownership and access in Tanzania is provided by the Land Act and the Village Land Act, both passed in 1999 as the result of a process involving a Presidential Commission in 1991 and formulation of a national land policy in 1995.⁴⁷

When they were passed, these laws were lauded as among the most advanced in Africa (Alden-Wily, 2003). Yet for several reasons, many laid out in this chapter, Tanzania failed to realise this potential and, with a ranking of 132 in the World Bank's 'Doing Business: registering property' indicator, is close to the bottom of this indicator globally.

Four elements illustrate the gaps in Tanzania's land registration system and the costs these impose on the broader economy. First, Tanzania has not computerised even the textual part of its land administration system and relies on a manual paper-based system that offers few advantages but provides ample opportunity for processes to get delayed and documents to be 'lost' or forged. Second, there is no integration between spatial and textual records, something that not only increases the costs of registering, but also reduces the security provided by land documents. Third, the system for formalising transfers is inefficient and cumbersome, with some of the associated requirements (such as official consent) unnecessary, so that even formal properties risk falling back into informality. Finally, coverage is extremely limited, with the number of new CROs created annually likely to be less than the number of new plots created so that in percentage terms coverage is decreasing rather than increasing.

At the time Tanzania was debating its land policy, Rwanda, one of its neighbours, experienced one of the most traumatic periods in its history. A desire to

⁴⁷ The views expressed in this note are those of the author and do not necessarily represent those of the World Bank, its Board of Executive Directors, or the member countries they represent.

never again let the state's failure to secure land rights for all trigger violence at this scale led that country to develop a set of land laws and policies and subsequently implement the most comprehensive land regularisation programme in Africa so far, which, by 2013, had registered all of the country's 11.5 million parcels (Ali et al., 2014) at a total cost of about USD 6 per parcel. With 86.6 per cent of land formally registered in the name of women (either jointly or individually) and rapid activation of mortgage-based credit (Ali et al., 2017), this allowed realisation of tangible social and economic benefits. It also provides the basis for land valuation to ensure fairness in case of expropriation, for raising revenue through land taxes, and for forward-looking land use planning including urban expansion.

Here, we suggest several concrete next steps that could allow Tanzania to improve land tenure security at a scale similar to that in Rwanda without giving up some of the distinctive characteristics of land tenure in Tanzania.

I IMPROVING LAND TENURE IN URBAN AREAS

Improve registry efficiency and integration: Despite efforts to modernise the system, most of Tanzania's land registry is still paper-based and not integrated with the cadaster or land-related databases maintained by local governments. To address this, action will be needed in four areas, as follows:

- Make digitisation of records mandatory to reduce petty corruption, generate audit trails, and allow workflow monitoring. Experience with digitisation projects globally suggests that the key to success is to get buy-in from the mid-level bureaucracy and experience in how to do so can be drawn on from several successful cases.
- Agree on time-bound targets and measurable outcome indicators for system improvement (including the level of digital coverage) that can be routinely generated from administrative data available to the MLHSD (possibly linked to other administrative datasets) and regularly report to the public and to high-level decision makers on progress.
- Provide banks with online access to an authoritative and fully electronic register to allow them to verify the absence of competing registered claims to the same land, a piece of information that will have far-reaching consequences for their ability to repossess the land in case of default. Similarly, establish online links to tax administration, courts, the national ID, and the civil registry to ensure that every change in a person's civil status automatically triggers a change in all parcels to which this person has a right.
- Empower local government by ensuring that parcel data from the land registry can be used by them for the processes they are responsible for, such as planning, permitting, and property taxation and that information already contained in databases maintained by local government is systematically taken into account in efforts to expand coverage with CROs.

Adjust regulations for low-cost first-time registration: First-time registration in Tanzania is unaffordable owing to three factors, namely:

- An emphasis on upfront payment of a premium that is unaffordable to poor credit-constrained households who, as clearly demonstrated in the literature (Ali, 2016; Manara and Regan, 2022), could benefit from secure land documentation and are interested in obtaining and willing to pay for it.
- A requirement for highly accurate boundary demarcation that transfers large rents to surveyors (who often operate using outdated technology rather than making use of advances that allow acquisition of highly accurate imagery via drones or satellites as survey regulations have not been updated). Global experience demonstrates that, while a spatial description that allows any parcel to be identified unambiguously on a map is essential for a public registry to function, high-precision surveys are a private good and should be treated as such.
- A complex paper-based and manual process that involves numerous formal and informal steps with opportunities for rent extraction and hold-up that led to emergence of intermediaries to help landowners navigate the process.

Regulatory action will be needed to collect revenue for titled properties on an ongoing basis rather than the current focus on prohibitive upfront fees that just increase informality; open the door for use of modern low-cost surveying methods as the norm and allow land owners to acquire high-precision surveys at their own cost; and streamline and digitise the workflow for first-time registration to reduce the amount of time and resources required, and define parameters for workflow management for any efforts to expand coverage with land title to make an impact.

Complete CRO issuance in urban areas: Pilot experience in Dar es Salaam (Ali et al., 2016) suggests that even poor slum-dwellers are interested in and willing to pay for documents to provide them with secure tenure. The potential benefits from doing so, in terms of investment and credit access as well as planning and effective service provision, are undisputed. Therefore, once the steps outlined already are completed (which, on the basis of initial steps having been accomplished, could be done in the context of pilots with the explicit goal of refining workflows together with software to implement them), efforts to expand coverage with CROs to all urban areas will be a high priority. Counts of all built structures in Tanzania that have recently been produced using machine learning together with high-resolution imagery can indicate the overall volume of work to be covered and should be used to set milestones in terms of monthly targets, and the cost of doing so must not exceed USD 10 per parcel.

II IMPROVING RURAL LAND TENURE

While the government spent considerable resources on issuance of CCROs to rural dwellers, the literature suggests that the impact of such documents

remains limited (Stein et al., 2016). This is not too surprising as village land cannot be transferred to outsiders. As long as this restriction remains in place, CCROs offer little increment in terms of tenure security. Demarcating village land, together with establishment of clear rules of how to manage land internally in the village, would, in such a situation, be a lower-cost option to guarantee tenure security. Introduction of CCROs has many parallels to unsuccessful attempts to introduce a lower level of tenure (in the form of residential licences) in urban areas. While these were promoted with great fanfare, they provided no tangible benefits and thus fell into disrepair (Ali et al., 2016). To move forward with rural land tenure, the following steps would be desirable:

Complete issuance of CVLs: The fact that, some twenty years after the coming into force of the Village Land Act, only a fraction of villages have received a CVL is puzzling. It not only undermines the basis for Tanzania's rural land tenure system, but also raises questions about the government's seriousness in implementing its stated policy. Complete issuance of CVLs based on boundaries surveyed using modern low-cost technology – with disputes that cannot be resolved in the process marked on the record – and publicly accessible through a web portal would be a fundamental step towards ensuring that external support to Tanzania's rural land sector will have the desired impact.

Clarify content and status of village land use plans: Conceptually, village land use plans should be the main instrument to address informational asymmetries between villages and potential investors, providing a basis for villages to attract investors with a profile that would most effectively contribute to local development. The de facto prohibition of direct deals between villagers and investors precludes this and undermines villages' incentives to systematically identify investment opportunities and put them on public notice using village land use plans. It is thus not surprising to find that, despite large amounts of resources invested in establishing such land use plans, a lack of clarity regarding their status and level of publicity prevails.

To address these issues and improve clarity in land management for investors and local government, a regulatory framework to clarify the status of village land use plans is urgently needed. It should contain provisions regarding responsibilities and standards for elaboration, approval, and public availability of relevant documents to prevent plans being changed at the whim of local officials; ensuring compliance with such land use plans or for aggrieved parties (including herders) to seek redress in case of violation; and resolving inconsistencies with higher-level plans and the modality and frequency with which such plans should be updated (as well as the resources available for doing so).

Allow local decisions on transferability of CCROs: Experience in other countries suggests that a one-size fits all approach to indiscriminately restricting transferability without considering local conditions or allowing ways for villages to adjust these by weighing local opportunities and risks may fail to contribute to greater equity and instead lead to widespread informality and

underuse of land. As Tanzania has decision-making structures at village level available, it would not be difficult to allow village assemblies transferability of land (with or without restrictions in terms of either the size of individual land transactions to prevent landlessness or the amount of land that can be acquired by any individual to prevent concentration) to outsiders, similar to what has been done in Mexico with great success (Deininger et al., 2002; Valsecchi, 2014; de Janvry et al., 2015), though at some political cost (de Janvry et al., 2015). This should be contingent on a parcel-level land information system being in place, and thus could also help to direct resources for CCRO demarcation in the right direction.

Mandatory conversion to general land: The conceptual basis for the mandatory conversion from village to general land in case of investment is typical of an enclave approach to agricultural investment that is not consistent with the need for such investment to benefit local farmers through market- or technology-related spillovers (Ali et al., 2018) or social services. Given that most successful agricultural investments started rather small and expanded subsequently, and that success is often contingent on collaboration between locals and investors to achieve shared benefits, the fact that land given to investors would permanently be removed from village control (including in case an investment fails) pitches each against the other. It thus creates strong incentives for stakeholders to use the many opportunities provided by the complex and duplicative process for land conversion to slow down transfers, in the process frustrating (or bankrupting) investors who attempt to acquire land in the legally prescribed way. If options are in place for villages to decide on transferability of land as suggested earlier, there is no need for such conversion to general land, as villages can make land available to investors directly in ways that ensure such investment is undertaken gradually and generates local benefits.

Use rural land taxation to discourage speculative landholding: Anecdotal evidence suggests that owners of holdings who managed to get their land converted to general land are very large, with many using only a small fraction of the land they own. Land taxes at a meaningful rate that would be levied on, say, all holdings above the 50-hectare limit those villagers are currently allowed to acquire would provide a strong incentive to either use such land more productively or transfer it to those who may be able to do so, thereby activating rental or sales markets.