



What do you need to know about land rights?

What are land rights?

While there are many ways of defining land rights as well as their scope, it is safe to define them as socially or legally recognized entitlements to access, use and control areas of land and related natural resources. Usually, multiple rights can be held by several different persons or groups. This has given rise to the concept of “a bundle of rights”. For example in one parcel of land it is possible for one person to have a right to sell the land, another one, the right to use the land through a lease, others the right of travelling across the same piece of land.

Background

The protection of land rights through law and practice matters now more than at any other time before. This recognition has to do with contemporary drivers of ‘land grabbing’ within the international and national contexts. Demands for alternative sources of energy in Europe in recent years fostered a rush for agricultural land in Tanzania. It is estimated that at one time, application for lands for biofuel investments reached some 4 million ha. Besides biofuel, increasing changing food prices triggered a high demand for lands to grow food. Agriculture generally in itself has been a cause to worry in terms of the amount of land required for investments. Renewed interest in investing in agriculture has potentially positive and negative impacts. While it could lead to transformation of agricultural practices in the best interest of investors and small land holders, it could also have adverse impacts in terms of land alienation to meet the growing demand for land. This is the reason why capacity to exercise land and resources rights is now so important. Villages manage about 70% of land in Tanzania. This means that villages are the most likely place to find land for investments. Villagers need to know the laws applicable to land based investments and the rights they can claim. Besides the framework land laws that will be discussed shortly, there are other laws that regulate the management of resources attached to the land. While land rights relate to the right to own, use and manage land they are closely intertwined with the right to own, use and manage land based resources such as forests, water, minerals, pasture and petroleum. This brief only deals with the land legislation but where relevant it also touches on other laws regulating other resources.

The Land Act, No 4 of 1999

The Land Act is the overall framework legislation for all land matters in the country. It sets the framework within which land administration should be conducted. It provides for the division of land into different categories (general, reserve and village) and their corresponding institutions and procedures for the management of these categories of land. The Land Act does not directly regulate land rights at the village level. But it sets the parameters through which all land is to be governed. It sets the fundamental principles of the land policy as can be seen in box 1 on the next page.



- To recognize that all land in Tanzania is public land and is vested in the President as a trustee on behalf of all
- To ensure that existing rights are recognized, clarified and secure in law
- To facilitate an equitable distribution of and access to land by all citizens
- To regulate the amount of land that any one person may occupy
- To ensure that land is used productively and that any such use complies with the principles of sustainable development
- To take into account the fact an interest in land has value and the value is taken into consideration in any transaction affecting land
- To pay full, fair and prompt compensation to any person whose right to land is revoked
- To provide for an efficient, effective, economical and transparent system of land administration
- To enable all citizens to participate in decision making on matters that connected with their occupation and use of land
- To facilitate the operation of a market in land
- To regulate the operation of market in land so that smallholders and pastoralists are not disadvantaged

The Village Land Act, No.5 of 1999

This law specifically deals with the management of village land, which as discussed accounts for some 70% of all land in Tanzania. The Village Land Act determines who has authority to allocate village land, describes what constitutes village land, how different land rights are protected, how they can be recorded and with what effects. The law also sets parameters for the adjudication of land and it establishes the dispute settlement mechanism for resolving land disputes.

Who can manage village land and how?

Tanzania's legislation establishes a progressive system to manage village land. While in many other African countries the central government holds the legal power to allocate land, in Tanzania this power is vested with the village councils, which are the lowest level of local government. The Village Land Act gives villagers the right to manage their own land through their own elected Village Council, an elected group of at least 25 people the majority of whom are democratically elected from the Village Assembly. By law, the Village Council has authority to manage village land on behalf of the villagers. To ensure that the Village Council is accountable to the villagers, its decisions in land management are not final, but have to be approved by another more inclusive organ at the village - the Village Assembly. The assembly gathers all adults in the village. Its powers are akin to those of a national parliament.

While the opportunity for villagers to manage their own land is laudable, the process is not without limitations. For example, the District Council and the Commissioner for Lands still have powers over management of village land. There are limits for example on the size of land that the village can allocate to outsiders without the approval of the District Council and the Commissioner for Lands. Equally the District Council and the Commissioner for Lands can 'advise' the Village Council and the latter is required to follow that advice.

Categories of Village Land

For management purposes, village land is subdivided into three categories: communal village land, land for individual use and land for future use.

Communal village land: This is land that is available for all villagers or other people who may not be villagers but who have been given permission by the Village Assembly to use and occupy village land. This category of land cannot be allocated to individual use and occupation. Therefore, this land cannot be given to investors.

Land for individual use: This is the land that has been set aside for individual, family or group use, and that is already used as such. A 'group' is not defined but it is taken to refer to a group of persons who have traditionally been using land together. Pastoralists are one such group that is recognised by the law. The Village Council can also decide to set aside or expand existing lands for this kind of use. Unlike land for communal use, land for individual use can be made available to outsiders by special arrangements.

Land for future use: Besides communal land and land for individual use the Village Land Act identifies a third category of village land: land that is 'reserved' for future use. This refers to lands that have not yet been allocated for use by villagers (individually or collectively) but are set aside for use in the future and when need arises. While this category of land cannot be made available to villagers for present time use, it can be allocated to outsiders, including investors. Investors are not given this land in absolute terms. The land is leased to them for a designated period of time. This is the category of village land that is most prone to alienation to outside interests.

The right to hold village land by customary titles

Tanzanian land law protects the customary rights held by farmers, herders and hunter-gatherers. Customary rights enjoy the same legal status and protection as rights granted by government. Further, land rights are protected even if not documented. In any case, it is always better to document land rights by some form of title because it is then easier to prove rights when they are contested. The Village Land Act has also provided a simple, less costly and less cumbersome procedure for getting titles to village land in what are usually known as Certificates of Customary Rights of Occupancy (CCRO). Customary tenure through CCROs can be definite or indefinite in terms of the time of occupancy, unlike the Granted Right of Occupancy which must always be accompanied by a clear term. Customary Rights of Occupancy are issued to villagers including individuals, family units and any groups recognised by customary law. Non-villagers (individuals and legal entities) can also get CCROs in village lands provided, in the case of legal entities, that their majority shareholders are Tanzanians.

Right to consultation and compensation in land transfers

Critical to land rights at the village level is the right of land holders to be consulted when important decisions touching on their land are taken by higher authorities. The Village Land Act gives the President, as the overall trustee of all land in Tanzania, the right to transfer village land (managed by the Village Council) to general land and reserve land (managed by the central government), provided there is a public purpose. The Village Land Act provides elaborate procedures on how village land can be transferred to general or reserve land. One important aspect in land transfers relates to the right of villagers to obtain compensation when village land is transferred. Also important is the extent to which villagers or village councils can resist any move by the president to transfer village land to another category of land. While villagers can object to refuse the transfer, president can still proceed if a public purpose is at stake. If the President decides to transfer village land to another category of land, and subject to proper procedure, the following sets of compensation are payable by the provisions of the Village Land Act requires payment of compensation to cover the following:

- **The market value of the land**, as determined by an assessment of a qualified valuer;
- **A disturbance allowance** calculated by multiplying the value of the land by an average percentage rate of interest offered by commercial banks on fixed deposits for twelve months at the time of loss of the interest in land;
- **A transport allowance** calculated by actual cost of transporting twelve tonnes of luggage by road or rail whichever is cheaper within twenty km from the point of displacement;
- **An accommodation allowance** calculated by multiplying the monthly market rent for the acquired property by thirty six months;
- **Loss of profit** in the case of business carried out on the acquired property assessed by calculating the net monthly profit evidenced by audited accounts where necessary and applicable, and multiplied by thirty six months.

The villagers have a right to challenge the amount of compensation in the courts of law. If the court confirms the amount, the President can acquire the land subject to the payment of compensation in the amount directed by the assessment of the court.

Loliondo Game Controlled Area (LGCA) covers an area of approximately 4000 square kilometres. The area was designated as a Game Controlled Area in 1974. Being a game controlled area means that wildlife consumption and utilization is regulated, but villagers have rights over the use of land and land is managed by village authorities.

LGCA was given as a hunting concession to a company owned by nationals of the United Arab Emirates (UAE). The allocation of the entire LGCA and in areas legally recognised as village lands was done without the adequate participation of local communities.

The company pays statutory fees directly to the central government. Ever since the company got the concession, villagers have opposed its presence but the government has stood firmly on the company's side. Recently the Minister for Natural Resources and Tourism stated publicly that the land in the Game Controlled Area belonged to the government, and that villagers were squatters on the government's land. The government announced the carving out of some 1,500 sq kms of prime grazing land for exclusive tourist hunting and conservation.

Villagers and civil society organisations sought legal advice. On the basis of this advice, they issued a press release contesting the interpretation of the law supported by the Minister. The villagers also sought to meet the Prime Minister to present their plight. When they finally managed to see the Prime Minister community leaders claimed that the government had exceeded its powers and violated applicable laws. They used provisions of Wildlife Conservation Act, 2009 and the Land and Village Act, 1999. The leaders convinced the Prime Minister to temporarily reverse the decision of the Minister for Tourism and Natural Resources (MNRT) until such time when he would have visited Loliondo to announce the government's official position on the matter.

When the Prime Minister visited Loliondo Game Controlled Area in September 2013, he revoked the decision to allocate land for hunting concessions. The Prime Minister openly declared that the land belongs to the villages and said that no attempts will be made to evict them.