

Land Management at Crossroad in Africa: : Impact of the Tanzania Village Land Act No. 5 of 1999 on the Fate of Customary Land Tenure

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Presentation Outline

- Background to the Study
- Evolution of land tenure forms in Africa
- Sustenance of Customary Land Tenure
- Impacts of Customary land tenure on Urban Development
- Alternatives to Customary Tenure
- Conclusions

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Background to the Study

- Motivation for this paper
 - i. Outcome of direct involvement in Land Acquisition projects in Tanzania of different scales
 - ii. Concerns of peri-urban landowners on their future as towns boundaries expand
 - iii. Open Conflicts between state and its people ,amongst people and even family members and, today between investors over a customary-held land lot.
- Methodology
 - i. Reflections from consultancy services
 - ii. Interviews with disowned customary titles owners

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Basic Facts on Land Requirements

- African countries are increasingly urbanizing
 - By 2025, 50% of the population will have moved to towns
 - Urbanization rates hover between 6-10% per annum
 - Urban land comprises ~ 2% of the national lands
- Large investment and Projects
 - Infrastructure Projects e.g the MCA-Projects, Electricity Projects
 - Airport and harbors expansion projects
 - Agricultural projects e.g irrigation schemes,
- Emerging Policy and Legal Issues

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Evolution of Land Tenure Forms in Africa

- Main Characteristics of Land Tenure:
- Co-existence of Formal and Informal Land holding systems both in Urban and Rural Areas
- Consistent Recognition of Customary Land holding systems throughout:
 - i. During Colonial era (late 1880s-early 1960s) – main categories: Crown Land and Native Land.
 Individualization, Titling and Registration' (ITR) system of land tenure introduced by departing colonial government
 - ii. At time of Independence- no major change , customary titles likened to a landholding system in rural/farm areas
 - iii. After Independence- Major changes during 1990s

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Evolution cont'd

- The three eras that shaped the land tenure in most African Countries exhibit:
 - State assumed the Radical Title to Land
 - No national land policy until after the land reforms of late 1980s and early 1990s
 - Non-transparent dealings in land
- Rapid urbanization brought new challenges in land holding- **the SQUATTING and SLUMS Problem**
- However, unlike the 1st and 2nd Epochs – Communal Land Ownership was emphasized, in the post independence era- a 'Western concept of individual property ownership' reigned

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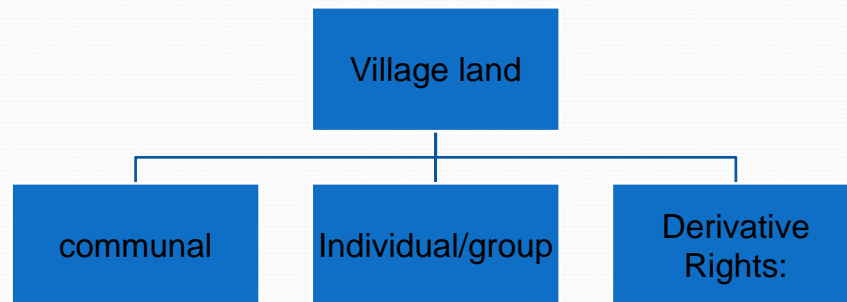
Sustenance of Customary Tenure

- Do we have Customary Tenure System?
 - Yes, we do! the Laws recognize it! UN organizations, Governments and even NGOs recognize it!
 - No, we don't! The Market does not recognize it!
 - Not certain! The so-called customary landowner is not even aware of what it is!
- What is Customary Tenure System?
 - Customary land tenure *Was* communal
 - Was administered by Traditional Leaders/Rulers
 - Based on local customs and traditions

Sustenance of Customary tenure

- The Tanzania Village Land Act No. 5 of 1999 provides *village land management shall be the responsibility of Village Council, and in compliance with the customary law of the respective area. **But are there such customary laws?***
 - customary law is either **non-existent** or continuously being diluted and polarized by the infiltration of intermarriages, migrations, appointments of village leaders on merits of their qualifications and urbanization.
 - all laws do recognize customary tenure but not all accord it protection

Village Land Act No. 5 of 1999



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Sustenance of Customary Tenure

- Contrasts of the Customary Land Tenure
 - Even the Main Land Law in Tanzania outlaws the CLT: Section 56 of Act No. 4 of 1999 provides for regularization of land and the criteria is

”...un-built land, to a ‘not-well established’ settlement, to land occupied by a homogenous group of people with same customs and traditions, to rural land, to area where land occupiers have not appeared to be investing in their houses and businesses nor attempting to improve their areas through their own initiatives...”

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Impacts of Customary land tenure on Urban Development

- CLT does not encourage urban development!
 - If existent- strong sentiments against selling land- some African traditions – taboo to sell land
 - CLT landowners likely to be indigenous and without necessary financial capabilities required for urban development
 - CLT has low credit rating and therefore mortgage finance may not be forthcoming
 - CLT as correctly observed by Augustinos(2010) motivate informal settlement

Alternatives to Customary Tenure

- Customary Tenure is a convenience term coined to apparently recognize land occupation by people outside the urban areas (if you want TRIBAL LAND)
- No Government efforts to enable the CLT transform itself to a modern system that takes cognizance of its socio-economic dimension
- Individuals occupying land under CLT not even aware of the laws and rules/traditions that govern it.
- CLT occupiers on peri-urban areas have different cultural backgrounds and not organising themselves to establish collective assembly points (~indigenous structures like the autochthonous of the latin America)

Alternatives to Customary Tenure

- What then of these CLT especially on peri-urban areas?
 - They cannot co-exist anymore with the registered land title holding system
 - Lack of defined land management structures governing the CLT needs to be addressed
 - Strong need for a transparent administrative system to foster governance, marketability and thereby reduce conflicts
- Strong need to unify land holding systems in our countries
 - Given CLTs are rural and unregistered land holdings
 - Given urbanization is inevitable
 - Given rising conflicts from intermingling of people and culture

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Conclusions

- Need for intermediary easure as a bridge between the rural and urban land uses rights
- Main concern is non-recognition of rural land uses in urban areas (not simply as green belt area, but explicit agricultural land)
- Need for uniform land tenure system, which entails converting all village land to a title-based land system. Is it possible?
 - Yes, if geomaticians can be urged to relax measurement precision
 - With Improvement in capturing, keeping and retrieving land information transactions through STDM tools

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Conclusion

- The STDM facilitates
 - generation and dissemination of land information that helps towards understanding and common construction of solutions to problems and instill high level of good land governance.
- The biggest challenge is to change the attitude of mind towards existing customary land holding systems which indeed leaves the land management in Africa at crossroads.

Thank You