

Land governance arrangements in Tanzania: Actors, processes and instruments

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Abstract

Land governance in most developing countries remains a big challenge because of many factors particularly those related to tenure systems and institutional frameworks. This paper presents land governance arrangements in Tanzania whereby two dominant tenure systems, granted and customary, prevail. An exploratory research design was used in the study. As such, a critical review of documents embracing land governance arrangements and practices as well as training workshops on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs) of 2012 conducted in four regions were useful in capturing primary data that exhibit real life cases that impact on land governance arrangements. The key respondents were professionals in the land, forestry and fisheries sectors who were the main targets in the VGGT programme. Findings revealed that Tanzania is rich in policies and laws which govern land; but still there are many challenges on land governance which have given rise to land use conflicts over time. We conclude that although a number of steps to improve land governance, poor land governance in the land sector is pivotal. Aspects of inclusive transactions, land use planning and implementation processes, local land administration capacity, transparency around valuable natural resources, women's de facto land rights, and negotiate community driven solutions are crucial in the land governance spectrum.

Keywords: VGGT, land governance, actors, processes, instruments, Tanzania

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1. Introduction

Increasingly, land related issues are becoming a common phenomenon in most developing countries. Some of these issues relate to how land users perceive access to land as well as tenure security and others relate to land administration, management and governance aspects (Cotula et al., 2004; French Development Cooperation, 2009; Adam, 2023;). Scholars provide that land remains a fundamental resource for the survival of the people, especially in rural areas, and because of the competition over uses, land conflicts inevitably arise and such rising land use conflicts call for a systematic land governance mechanism (Peltonen & Sairinen, 2010; Dumrongrojwattana et al., 2011; Sholanke et al., 2019; Kirschke et al., 2021; Fienitz & Siebert, 2022).

Land governance is a set of rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed (FAO/UN-Habitat, 2009). Therefore, the concept of governance includes formal as well as informal actors while the term “good governance” includes a number of characteristics. These are important for government to be sustainable and locally responsive, legitimate and equitable, efficient, effective and competent, transparent, accountable and predictable, participatory and providing security and stability, and dedicated to integrity (FAO, 2007; FAO, 2012). In addition, Boone (2007) emphasizes that land governance ties in with the way the state is ordered, how political authority is negotiated, and with the nature of citizenship and the relations between communities and the state. Consequently, scholars in land administration and governance such as van der Haar (2001), Berry (2002), and Sikor and Lund (2009) point out that struggles over authority on land are directly linked with processes of everyday state formation. Van der Leeuwen and van der Haar (2014) conclude that if conducted strategically, interventions in land governance may potentially contribute to the (re)establishment of public authority and state building. Also, as suggested by Unruh (2003), addressing land conflicts and land tenure security can play an important role in peace-building and the recreation of order after violent conflicts.

Concerning access to land, the United Nations (2015), UN-Habitat (2017) and Tchatchoua-Djomo (2017) observe that the way users perceive access to land and tenure rights usually end up with violent conflicts, which significantly affect land tenure and land governance. Dalrymple and Burns (2008) argue that mobilizing the land sector is considered a

principal focus for poverty reduction and a key development strategy for many countries. In this regard, land administration and management systems in particular, are responsible for providing tenure security and access to land for all members of society. In addition, these can provide accessible and equitable systems to mobilize land resources that ultimately assist in the alleviation of poverty. Good governance within land administration and land management institutions is essential for sustainable development both in terms of operational longevity, equitable stakeholder participation and benefits, and consistency in law and policy implementation.

In any society, land governance, to a large extent, is shaped by the tenure systems and instruments formulated to facilitate land management. For instance, land in Tanzania mainland is held under statutory and customary tenure systems (URT, 1999). The customary tenure system further embraces traditions of different tribes in assigning land rights to members of society. Hence, land governance issues in Tanzania have become prevalent particularly because of the rapid population increase and the social diversification (more than 120 tribes) with varying traditional land tenure systems. The country is one of the Eastern African countries occupying a total area of about 945,087 km², out of which 61,500 km² is covered by water. Politically, Tanzania consists of two formerly independent states namely Tanganyika (now, Tanzania Mainland) and Zanzibar. The two united in 1964 to form the United Republic of Tanzania.

According to the Land Act No. 4 of 1999, land in Tanzania is categorized into general land; village land and reserved land. The President as the custodian of all land empowered to transfer or exchange land from one category to another (URT, 1999). Deininger (2003) opines that land use and administration in the country is governed by legal pluralist frameworks involving statutory and customary tenure systems. Although the majority of the land areas fall within the village land, only in recent years has the state law recognized the customary tenure system through enacting the Land Act No. 5 of 1999 as an instrument for managing the village land (URT, 1999). In line with the fundamental principles of the National Land Policy, all land in Tanzania is public land vested in the President as trustee on behalf of all citizens (URT, 1977; URT, 1995) and individuals have only usufruct tenure rights. Thus, individuals can hold land under statutory (or granted) right of occupancy or customary rights of occupancy (URT, 1999). Besides, informal rights in land are in existence especially in urban areas but they may be formalized. Under the statutory tenure system, the rights to occupy and use land are granted

by the government for specified terms of 33, 66 and 99 years. The state therefore retains ownership of land and entitlement to take it back at the end of the lease period, or where the title holders fail to abide by the conditions of the grant as well as acquire for public interest.

Despite the explicit land tenure systems and clear legal framework for governing land, Tanzania is experiencing various land conflicts due to the rapid increase of population over time and space. The rapid increase in population always exerts pressure on land as well as on other land related resources. The 2012 Tanzania Population and Housing Census report indicates that there were around 44.9 million people out of which 43,625,354 lived in Tanzania Mainland and the remaining, about 1.3 million lived in Zanzibar (NBS, 2012). In 2019, the country estimated to have 60.4 million people and it will reach around 62.8 million in 2020. This number is closer to the actual population in the country as per the 2022 National Population and Housing Census as records show that there were 61.7 million people in the country (URT, 2022).

Resulting from rapid population increase, land use conflicts in rural areas have been frequently reported in Tanzania particularly in Kilosa and Mvomero districts in Morogoro regions as well as in Rudewa in Njombe region. Evidence has shown that land use conflicts between farmers and pastoralists caused deaths of thirty-eight farmers in Mbuyuni village in Rudewa district in December 2000 (Benjaminsen et al., 2009). This conflict is frequently presented as a clear-cut resource use conflict between the farming interests of Mbuyuni village and the pastoralists in the neighbouring Twatwatwa village with their need to access water and grazing during the dry season. In Kilosa district, Mtwale (2002) notes that between 1945 and 1960 there were several skirmishes between Kaguru farmers and Parakuyo pastoralists but the first serious encounter between the two groups took place in 1967 when swords, spears and machetes were used, and many people were killed. In the late 1990s, over 40 people were killed, others seriously injured, livestock injured or killed while properties and crops were destroyed (Msuya, 2013; Mwasha, 2016). Furthermore, in 2000 clashes 38 people, including women and children, were killed and irreparable losses and damages to properties were part of the outcomes (Brehony et al., 2003; Saruni et al., 2018). In 2008, the television stations and newspapers reported the erupted fights in Mabwegere village in Msowero ward involving Mambegwa sub-village that inhabits pastoralists and farmers of Kikenge village (Mwasha, 2016). Furthermore, reports show that six people were killed and properties burnt to ashes and dozens of cattle were stolen. Above all, a total of 832 peasants took refuge in neighbouring

villages for fear of being slaughtered by pastoralists on revenge (Baha et al., 2008; Mwashu, 2016). Other, clashes occurred in January 2014 in Kiteto which led to the death of 10 people leaving 20 others injured, 60 houses burnt down and a number of properties including six motorcycles and 53 bicycles destroyed (Benjaminsen et al., 2014). Since then, more than 30 people were killed and about 200 injured in the clashes which were fueled by the eviction of invaders from Emboley Murtangos which is a community based natural resource management (Ubwani, 2014; Saruni et al., 2018). Emanating from the facts above, this paper covers land governance system in Tanzania mainland, how the system can minimize or mitigate conflicts among land-based resource users and the governance challenges.

2. Conceptualizing land governance

Land is increasingly recognized as an important governance issue. On the one hand, governance is the exercise of political, economic and administrative authority in the management of a country's affairs at all levels (Palmer et al., 2009). Moreover, it is a neutral concept comprising the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and obligations, and mediate their differences (FAO/UN-Habitat, 2009; GIZ, 2017). At large, land governance is about the policies, processes and institutions by which land, property and natural resources are managed (Enemark, 2015). In addition, land governance concerns the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed (Wehrmann et al., 2008). Further, it includes state structures such as land agencies, courts and departments responsible for land, as well as non-statutory actors such as traditional bodies and informal agents. Broadly, land governance embraces statutory, customary and religious institutions converse

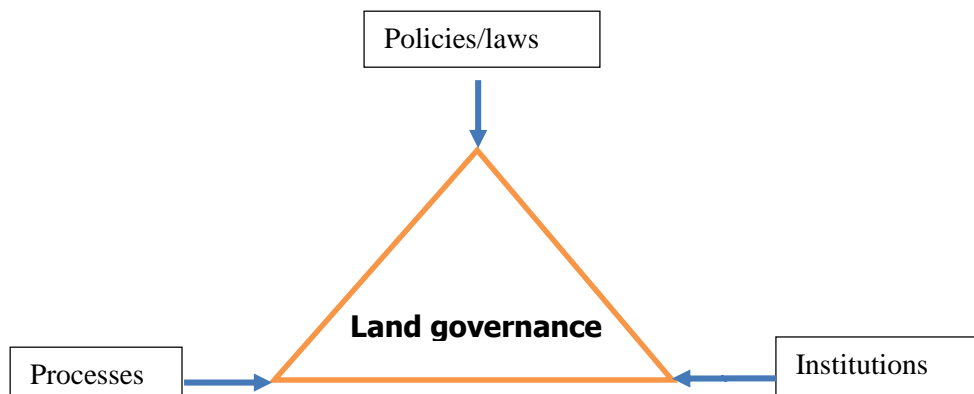
Fundamentally, land governance is about power and the political economy of land. The power structure of society is reflected in the rules of land tenure; while the quality of governance can affect the distribution of power in society. Tenure is the relationship among people with respect to land and its resources (Dalrymple & Burns, 2008; Palmer et al., 2009). These rules define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restrictions. These develop in a manner that entrenches power relations among individuals and social groups. It is no surprise, therefore, that the elites and

even the middle classes have stronger forms of land tenure while the poor and vulnerable groups have weaker, more insecure forms of tenure.

Weak land governance is a cause of many tenure-related problems, and attempts to address tenure problems are affected by the quality of land governance. Consequently, improving land tenure arrangements often means improving land governance (Palmer et al., 2009). On the contrary, sound land governance requires a legal regulatory framework and operational processes to implement policies consistently within a jurisdiction or country, in sustainable ways (Enemark, 2015). Land administration systems provide a country with infrastructure for the implementing of land policies and land management strategies in support of sustainable development (Dalrymple & Burns, 2008). Such a global perspective for land management and governance forms the conceptual framework for this study as presented in figure 1.

Figure 1

Conceptual framework for land management and governance



Source: Modified from Enemark (2005), Dalrymple and Burns (2008), Williamson et al. (2010)

The operational component of the land management concept is a range of land administration functions that include the areas of land tenure (securing and transferring rights in land and natural resources), land value (valuation and taxation of land and properties), land use (planning and control of the use of land and natural resources), and land development (implementing utilities, infrastructure, and construction planning). These four functions interact to deliver overall policy objectives, and they are facilitated by appropriate land information infrastructures that include cadastral and topographic datasets linking the built and natural environment. Ultimately, the design of adequate systems of land tenure and land value

should support efficient land markets, and adequate systems of land use and land development control should lead to effective land use management. The combination of efficient land markets and effective land use management are seen as a key component in delivering economic, social and environmental sustainability.

3. Methodology

The study was purely qualitative and used an exploratory research design to understand the extent of land use conflicts and land governance processes, structures and instruments. Therefore, an extensive desk review of documented materials which embrace land governance arrangements was conducted to establish secondary data. Hence, since the land governance processes are guided by laws and regulations it was necessary to review the existing policy and legal documents in order to understand the land governance processes. Published research materials and reports also formed another source of secondary data particularly on land use conflicts and their effects in selected areas in Tanzania mainland.

On the other hand, workshops involving more than 400 participants conducted by Ardhi University in 2017 in Dar es Salaam, Coast, Morogoro and Dodoma regions on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs) were the sole primary data platform whereby real-life cases on land use conflicts and land governance challenges were drawn. Workshop participants included representatives from land administration agencies, professionals in the land sector, policy makers, local authorities and leaders, and selected community members. During the workshop sessions, ideas and views from each group of participants were recorded to get the general framework on land use conflicts and governance. After the workshops, Focused Group Discussions (FGDs) and interviews with key informants and community members were held to provide in-depth insights on land governance issues. The actors handling land governance process in the central and local government institutions were interviewed to establish the roles they play and also the challenges and conflicts experienced in the course of discharging their responsibilities. Four local leaders, two actors in private and informal settings were also interviewed to find out how they handle and deal with land use conflicts in their areas of jurisdiction. Moreover, urban professionals and land occupiers both in planned (formal) and unplanned (informal) settlements in the urban setting of Dar es Salaam city were involved. After collecting data, the

analysis was run by employing a thematic categorization approach whereby qualitative data, in this case, opinions, facts and attitudes of respondents, involved reading through a set of data looking for patterns in the meaning of the data based on the main themes of land governance: actors, processes and instruments.

On issues of consents and confidentiality, the workshops complied with the laid down procedures. On the conduct of workshops, letters of request were sent to District/Town/Municipal Council Directors and upon approval, the facilitating team conducted the workshops. On the aspect of research ethics and confidentiality, research ethics were considered in order to maintain harmony and stability in the communities since land governance involves many actors from local to central government levels with different interests. One of the considerations was to separate local leaders from urban professionals, and women from men groups during FGDs in order to provide freedom of speech in accordance with their hierarchies. This was important since a mixture of heterogeneous groups hinders the powerless to give out their voices. For instance, in many traditional societies, women do not speak the truth before men. Also, for the sake of confidentiality, names of respondents were recorded during interviews/discussions but they were not mentioned in this paper.

4. Results and Discussion

Results of this study are presented and discussed based on the main themes of the study as identified in the methodology. As noted, both literature and field observations were used to provide more details on each theme as the sections 4.1 to 4.3 present.

4.1 Actors and their roles in land governance

McCarthy et al. (1995) consider land governance a concept that entails the relationship between local communities including their civil societies and the state, between rulers and the ruled, between the government and the governed. Conversely, land governance involves procedures, policies, processes and institutions which guide the management of land and other natural resources in a society. Land governance, therefore, involves various actors ranging from individuals, groups to institutions. With regard to the laws which are applicable to land mainland Tanzania, the resulting nexus involves public actors (i.e., the central and local government), local community leaders (at Ward, Sub-ward/Mtaa and Village levels),

individual land occupiers and private sector. Previous studies on land governance identified actors in Tanzania to include central government, local governments, communities, private sector, development partners and civil society (Nuhu, 2018).

Informal Actors and their roles. The [Village] Land Act No.5 (1999) recognizes application of traditional customs and practices in land dealings as long as they are not in contradiction with the land laws in place. As such, elders in urban areas and villages get involved in arbitration between parties in land conflicts. While there are no functional chiefs in Tanzania's political system, some elders practice traditions and practice in relation to land matters as long as they do not contravene the State laws. This happens in many parts of the country where some elements dictated by tribal customs in allocating land rights are practiced. During VGGT workshops in the four regions, invited elders provided their contribution on arbitration of land use disputes and conflicts as one said:

"...the role of the elders cannot be quenched in land dispute resolution because of our deep knowledge and experience on land ownership issues. Nowadays, our leaders are too young to understand land ownership issues and histories and malicious people take this as an advantage is elders are not involved. When elders get involved, disputes and conflicts end in most cases but if not, they take another shape and stage (to Ward level and beyond)" (Interview with Elder Mk of Village H, aged 70 years, Coast region, 2017).

Real estate agents, commonly known as Madalali in Kiswahili, are mostly involved in informal land transactions by bringing together land buyers and sellers. Brokers happen to hold property market information about properties up on sale while on the other hand they would know property seekers hence bring them together. Through in-depth interviews it was revealed that very few land transaction deals are handled by land owners and land seekers implying that brokers or real estate agents have the biggest role to play in urban land transaction processes as the quotation below witnesses:

"...currently, very few almost non-existent land owners especially in urban areas, sell land on their own. All information about land transactions is brought to brokers or agents (registered or unregistered). Land seekers are therefore served by agents on behalf of the owners..." (Interview with Mr. Agent Dx, 28 years, Dar es Salaam region, 2017).

Individual members of the community also come into play when required to witness land transactions or identification of boundaries of neighbour's land during adjudication exercises. Local community members also participate in protecting their rights in land against investors who would want to take land (e.g., village land) without following the laid down procedures. In such circumstances villagers would stop development of the acquired land until the conflict is resolved. Nuhu (2018) adds that Civil Society Organisations are involved in providing support to the poor in terms of conducting land rights awareness campaigns or publicizing land conflicts they uncover through research.

Formal Actors and their roles. The legal framework places land governance responsibility on formal institutions whereby the Land Act No.4 1999 assigns the land administration obligation for the statutory tenure system to the central government through the MLHHS D.

The Ministry of Land, Housing and Human Settlements Development (MLHHS D. The primary functions that central government are to formulate land related laws and policies, provide guidelines on land governance and management and enforce the laws and policies. Moreover, the central and local government authorities (LGAs) are obliged to provide basic services and service infrastructure such as roads, drainage and water as well as to regulate land development and management. Representatives of the MLHHS D from Dar es Salaam and Coast regions stressed the role of the ministry that:

“...MLHHS D's responsibility is to prepare bills, regulations, guidelines, draft policy documents and other operational instruments on land and urban planning and management. The implementation is vested in the LGAs and other stakeholders on land. However, if land conflicts become severe, the Minister or a representative can be involved...” (Interview with Mrs. MB -representative from Dar es Salaam office and Mr. HM – presentative from Coast region, 2017).

Local Government Authorities (LGAs. According to the Land Use Planning Act No. 6 and the Urban Planning Act No. 8 all of 2007 and the Local Government (Urban Authorities) Act, No.7 of 1982, LGAs serve as planning authorities in their areas of jurisdictions (URT 2007a&b, 1982). For instance, the Local Government (Urban Authorities) Act No.7 of 1982 Section 59 (e) gives LGAs powers to prepare land use plans for streets, buildings and other areas. Local governments are also responsible for the identification of land required for urban

development projects (planning areas), preparation of planning schemes (general and detailed), allocation of building land, and enforcement of development control measures. In some specific areas, they are also the initiators especially in cases where land is being acquired for city, municipality and township expansion or other public requirements (URT, 1982).

Local authorities are also required to work with the Ministry of Lands, Housing and Human Settlements Development (MLHHS) in all the stages of acquiring land including the assessment of compensation (i.e., valuation), processing of complaints, and paying the dispossessed prompt and fair compensation. They may also identify and designate land for the resettlement of the dispossessed. The MLHHS on its part is the actor responsible for many key processes such as assessing and determining whether or not the land in question can be acquired and for gazetting the decision to expropriate land. Often it also mobilizes funds for paying compensation. The function of the MLHHS expands to providing land required for resettling the displaced households although in practice are compensated with money for acquisition of alternative land of the size that has been acquired. The formal actors, therefore, include the Commissioner for Lands departments responsible for the land administration functions (physical planning, surveying and mapping, land allocation and registration, valuation and taxation), Land Use Planning Commission, Physical Planning Department, Physical Planning and Housing, Lands department and valuation department. Officials from LGAs who took part in the workshops commented that:

“...we are obliged to implement the laws, policies, regulations and guidelines formulated by the MLHHS. We do so by preparing land use plans, surveying, adjudication, implement the plans and undertake development control. When land conflicts arise e.g., double plot allocation or allocation of plots in hostile areas such as swamp areas, land officers who are responsible for land management in collaboration with Town Planners who prepared land use plans and Land Surveyors who prepared survey plans...” (Interview with Urban Land Professionals from Dar es Salaam City, Dodoma City, Morogoro and Coast regions, 2017).

Recent years have witnessed the private sector involvement in formal land governance processes, capitalizing on the inefficiency of the public sector. Private companies formed by professionals have evolved, partnering with local authorities in land delivery services in respective jurisdictions under Public Private Partnership (PPP) arrangements. The private

company partners in collaboration with local government authorities engage in identification of planning areas, acquiring land for development from individual holders, preparation of Town Planning drawings, land surveying (subdivision of acquired land) and provision of access roads in the planned area (Kassala & Burra, 2016). The Urban Planning Act No 8, 2007 was behind accommodating the private sector in land development. While the local authorities perform some roles with the Ministry of Lands in Land acquisition processes for example, the Land Act No. 4 (14) prohibits any officer of a local government to make or sign a right of occupancy.

Grassroot institutions (Village, Mtaa and Ward levels. According to the Land Use Planning Act No. 6 of 2007, every village is a planning authority whereby villagers, through their Village Councils, are mandated to prepare village land use plans with collaboration with District Land Use Planning Teams (URT, 2007). The urban grassroots institutions i.e., Mtaa (Sub-wards and Wards) are not planning authorities but they are involved in the planning process in all stages (URT, 2007a&b). Another legal role of these institutions is to support and facilitate the execution of the land acquisition processes. They mobilize residents including informing land occupiers about the various government decisions pertaining to land development such as land use planning, change of use, or plans to expropriate land for public use. While the local leaders perform these activities, they are not formerly mandated by responsible authorities but it has become a practice to engage them because they live and interact with the community members. A critical observation worth mentioning is that a number of functions and decision-making powers pertaining to land acquisition and management are centralized in the MLHHS. However, with respect to land conflicts, the Mtaa units in urban areas are equipped with Land Conflicts Arbitration Committees and at Ward levels there are Ward Tribunals. Cases which cannot be resolved by the latter are referred to the Court of Law. At village levels, Village Land Councils are formed but sometimes their roles and working instruments e.g., leaflets, translated laws and procedures are not provided. This means that members of the Councils use traditions and practices to mediate and resolve land disputes and conflicts. The very significant role assumed by the local leaders at grass root level is witnessing land transactions between land buyers and sellers in both urban and rural areas. They are also useful in sensitization meetings in land acquisition processes for the acquiring authorities, mostly government institutions. Commenting on these, leaders have these to complement:

“...we have Land Councils at village levels but they were just formed in accordance with the law and majority of the members have not been enabled to perform their duties effectively. There are few or no seminars to build their capacities, working instruments such as guidelines, translated laws and regulations including leaflets and budget to undertake their daily activities as disputes or conflicts arise. As a result of these, members of the Land Council just become witnesses in land transaction processes which is not their primary role. Indeed, the government has not seen the importance of investing a lot in Village Land Councils. One thing to note which the government also knows it that if the grassroots organs are equipped the possibility of reducing land use conflicts or cases to be forwarded to higher organs will go down because land dispute or conflicts stem from users who live in villages or sub-wards...” (Interview with invited Village Leaders from Dar es Salaam, Coast, Morogoro and Dodoma, 2017).

These roles are contrary to the primary official role of such grassroots leaders i.e., to oversee day-to-day land management issues in their areas. However, despite the fact that they are in-charge of land management, their capacity is still low to handle land issues. For instance, in each village in Tanzania mainland, there should be a Village Land Council with a composition of various resource use groups whose role is to mediate land disputes and conflicts. In reality, very few villages, i.e., only those which have prepared Village Land Use Plans (VLUPs) which make about 27% of all villages in Tanzania mainland, have such land councils. Because of the low capacity of members of Village Land Councils due to lack knowledge of the legal provisions on land conflict resolution matters, ineffective dispute resolution has even worsened the land disputes and conflicts especially in villages. Those who are dissatisfied usually climb to higher levels usually transferred to Ward Tribunals up to the Court of Law to seek solutions to their challenges.

4.2 Main land governance processes

The land governance processes identified in this study are those executed under formal and informal settings. The main *formal processes* of land governance include policy and legal frameworks, and other land management activities. This process is guided by the laws and policies in place and it largely involves five main aspects namely policy/law formulation and

approval; land use planning, surveying; allocation of land rights; land management and disputes resolution.

Draft policies and law bills are generated from central government ministries or their agencies, accepted and approved by respective decision-making bodies, such as boards, before they are submitted in the parliament as draft policy documents or bills for final approval to officially make them policies, laws or regulations for official use.

Land use planning is implemented in a participatory manner from national to village level whereby the laws (e.g., Land Use Planning Act (Cap 116) of 2007 and the Urban Planning Act, (Cap 355) of the same year provide for community participation in making decisions in various stages of land use planning conducted in their respective areas. Land use planning facilitates subdivision of land into individual holdings with clear parcel boundaries. Land use plans become functional after being approved by the Director of the Urban Planning Department in the Ministry of Lands, Housing and Human Settlements Development. Land rights over land are then manifested by the preparation of survey plans, getting them approved by the Director of Surveys and Mapping Division of the MLHSD. The determined rights and boundaries further enable registration. Local governments (City, Town and District Councils) are mandated Planning Authorities to oversee the implementation of the land use plans and development control. Where land use planning did not take place and informal settlements developed, regularization processes are common for recognition and registration of rights, as well as provision of various missing services.

Allocation of rights after the preparation of land use and survey plans. The National Land Policy provides for procedures of allocating land that ensure equal rights for all citizens. Rights to land are allocated by use of land allocation committees established at National, City, Town, District Councils and village councils. Moreover, land seekers acquire land through acquisition from councils partnering with registered companies in providing land for development. Land seekers are obliged to fill in land/plot application forms and submitting them to the responsible local planning authorities in which such land parcels are found. In urban areas where land seekers are provided with Certificates of Right of Occupancy (CROs), local planning authorities allocate plots to applicants, depending on the number of plots available, and they provide applicants with information on paying modalities and other necessary conditions. The fulfillment of such conditions by applicants suffices the allocation and acquisition of plots. In rural areas where land occupiers and seekers are provided

Certificates of Customary Right of Occupancy (CCROs) the village governments are obliged to prepare village land use plans and adjudicate land to right owners.

Land allocation is not a standalone process but it is linked with management of land to ensure the rights are protected. The land management systems are set at different levels including zonal offices representing the Commissioner for Lands, planning authorities to oversee the functioning of the land markets, guiding procedures for land valuation and taxation as well as assessment of compensation and payment. Land management particularly development control is thence governed by all relevant urban planning and land use planning laws and guidelines as provided in the national policy and legal framework. In as much, resolving land conflicts and disputes in urban and rural areas is guided by formal institutions and laws particularly the Land Disputes Courts Act No. 2 of 2002 (URT, 2002). Settlement of land disputes is implemented at different levels within the mechanism prescribed in the relevant laws starting from the grassroots to national level. The machinery for settlement of land disputes involves Village Land Council, Ward Tribunal, the District Land and Housing Tribunals, the High Court and the Court of Appeal in order to cater for cases of varying levels.

The *Informal process* is dominated by individuals and households. The processes of buying and selling land and other landed properties between individuals are conducted before witnesses who may be friends or relatives to the parties involved in the transaction, local leaders or advocates. The local government offices facilitate the transactions by ensuring that buyers and sellers sign forms which include details such as names of the parties, location of the property, neighbours on four sides surrounding the transacted property and price. The form is signed by transacting parties and witnesses. Copy of the signed form is kept at the local (*Mtaa*) office as proof of transfer of rights and ownership to the buyer. The buyer may use the form to prove ownership of rights over the land at the time of re-selling or formalizing the rights into statutory right of occupancy. Real estate agents and brokers also participate in informal transactions by connecting the land/property seekers and sellers. They engage in the processes of identifying properties that are on sale as well as identifying the buyers. Settlement of disputes is also practiced but at very low scale and mostly arbitration presided by local leaders.

4.3 Instruments in land governance

Land governance in Tanzania Mainland is regulated by a number of laws and policies. The following sub-sections offer an overview of the legislative documents that hold relevance to urban land management in Tanzania.

The policy framework

The National Land Policy (1995). The policy is a mother law that rests power over land in the President as trustee on behalf of all Tanzanians. The policy lays out the government policies to guide land management; describes the existing land tenure system, bestows the land administration responsibility to the Commissioner for Lands on behalf of the President. Also, the policy guarantees equitable access to land for all segments of the society for rapid and sustainable socio-economic development as well as public rights in land use. Moreover, it aims to ensure that land value corresponds to the market economy. It also addresses the shortfalls pertaining to land tenure, management and administration. Other objectives include recognizing, clarifying and securing in law existing rights in land; promoting equity in land holding; ensuring correct values of land and full and fair compensation when acquiring lands; setting of ceilings on land ownership; streamlining the institutional arrangements in land management and dispute settlements for transparency purposes; and protecting land from degradation. The Ministry of Lands assumes responsibility of land matters in the country. The city, Municipal or Town Councils are responsible for urban land governance. Currently, the policy is under review and it promises a thorough update to the legal framework guiding land governance with enhanced focus on good governance and guaranteed accessibility for all citizens to tenure security (URT, 2016). In the policy, the difficulties pertaining to the rising demand for planned land and the lack of capacity in land administration are acknowledged as impediments to economic growth and residents' tenure security. In addition, the recognition of the rights of marginalized people and the challenges in access to land for women are positive developments.

The National Human Settlements Development Policy (2000). This policy is the key instrument as far as housing delivery in Tanzania is concerned. It promotes the development of sustainable human settlements with a remit to make serviced land available for shelter and human settlements development to all sections of the communities through the improvement and provision of infrastructure and social services. It is also the desire of the policy to facilitate the provision of adequate and affordable shelter to all income groups in the country.

The legal framework

The Constitution of the United Republic of Tanzania (1977). The Constitution of the United Republic of Tanzania is the principal law in the country. In regard to land (governance) matters, Article 24(1) and (2) of the constitution explicitly provides for the right to own property and to enjoy state protection and fair and adequate compensation in the event of compulsory purchase:

Subject to the provision of the relevant laws of the land, every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.

Subject to the provision of sub article (1) it shall be unlawful for any person to be deprived of property for the purposes of nationalization or any other purposes without the authority of the law which enables provision for fair and adequate compensation.

The Land Acquisition Act (1967). The Land Acquisition Act of 1967 is the principal legislation as far as land acquisition is concerned. The provisions of Section (1) draw attention to the requirements of the constitution:

Subject to the provision of this Act, where any land is acquired by the President under Section 3, the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by the Parliament; such compensation as may be argued upon or determined in accordance with the provision of this Act.

The law mainly addresses two major things: (a) Land (Assessment of the Value of Land for compensation) Regulations, 2001; and (b) The Land (Compensation Claims) Regulations. Principally, it provides the legal framework for compulsory land acquisition while individual ownership can be mulled subject to the President's decision, with compensation provided as governed by the Act. The Act provides for compensation payment-based market value of the land and unexhausted improvements. The valuation for compensation must be done by a qualified valuer.

The Land Acts No.4&5 (1999). In this category, the Land Act No. 4 deals with urban land while the Land Act No. 5 treats the village land. However, both laws stipulate the management of all land classified as general land and reserved land (Village land, the third category, is dealt with in a separate legislation, the Village Land Act, 1999). Also, they centralize all executive powers within the Ministry of Lands through the roles of the Minister,

and the Commissioner of Land. As noted, the Land Act No. 4 is the principal legislation on all land administration matters in the country. Also, the Act specifies that an interest in land has a value and that value is taken into consideration in any transaction affecting that interest. Moreover, it recognizes the granted rights of occupancy, customary rights and informal rights as the three major land tenure systems in the country. Specifically, the Land Act No.4 provides legal specificities on statutory land tenure (Rights of Occupancy), including length of lease, conditions of renewal and land rent; it provides the legal specificities on granting and acquisition of derivative rights (Residential licenses) in urban and peri-urban areas. Moreover, the law presents the criteria for declaring regularization schemes in already inhabited informal and peri-urban areas. On the other hand, the Village Land Act No.5 provides legal specificities on customary land tenure (Customary Right of Occupancy).

The Land Use Planning Act No. 6 (2007). The Act provides for the procedures for preparation, administration and enforcement of land use plans. It stipulates the distinctive authorities of land use planning, their powers and functions. The power vested in authorities gives them authority to enforce approved land use plans, including taking defaulters to court of law.

The Urban Planning Act No. 8 (2007). The Urban Planning Act No.8 of 2007 replaced the Town and Country Planning Ordinance, Cap 378 of 1956 as amended in 1961. This legal instrument provides guidelines for land use planning in urban areas, gives weight to public consultation in land use planning and allows land holders to prepare land use plans in their areas and submit them to authorities for approval. The Act, among other things, provides for the orderly and sustainable urban development, empowers planning authorities to prior prepare urban development plans and to enforce a comprehensive system of development control. It also provides for the declaration of planning urban areas by the Minister responsible for Urban Planning, in consultation with Local Authorities and Urban Planning Committees (UPC), and issuing procedures for the preparation of general and detailed schemes by local authorities and the approval by the Minister. The Act also provides guidelines for the preparation of general planning, detailed schemes and specific project plans such as housing or satellite cities as planning and management tools to guide urban development.

The Land Disputes Courts Act No. 2 (2002). This is a very important legislation that sets out the procedures for the formation and operation of the land dispute settlement mechanisms. The land dispute settlement machinery embraces the Village Land Council at the

lowest level of the hierarchy, the Ward Tribunal, the District Land and Housing Tribunal, the High Court of Tanzania (Land Division) and the Court of Appeal of Tanzania. According to this law, the functions of the Village Land Council include receiving complaints from parties with respect to land; convening meetings for hearing of disputes from parties; and mediating between and assist parties to arrive at a mutually acceptable settlement of the disputes on any matter concerning land within its area of jurisdiction without instituting judgments. Where the parties to the dispute before the Village Land Council are not satisfied with the decision of the Council, the dispute in question is referred to the Ward Tribunal in accordance with section 62 of the Village Land Act, 1999.

The Ward Tribunal is established under the Ward Tribunals Act of 1985 and it is regarded a Court and has jurisdiction and powers in relation to the area of a District Council in which it is established. The primary function of the ward tribunal is to secure peace and harmony, in the area for which it is established by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction. Without prejudice, the Tribunal has jurisdiction to enquire into and determine disputes arising, mediate with regard to any customary principles of mediation; natural justice in so far as any customary principles of mediation do not apply; any principles and practices of mediation in which members have received any training.

In proceedings of civil nature relating to land, the Tribunal may order the recovery of possession of land; order the specific performance of any contract; make orders in the nature of an injunction both mandatory and prohibitive; award any amount claimed; award compensation; order the payment of any costs and expenses incurred by a successful party or his witnesses; or make any other order, which the justice of the case may require. If a person is aggrieved by an order or decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal. The Tribunal, upon hearing an appeal, may confirm, reverse or vary in any manner the decision, quash any proceedings, or order the matter to be dealt with again by the Ward Tribunal. If it is deemed appropriate, the tribunal may give an order or direction as to how any defect in the earlier decision may be rectified. The decisions of the District Land and Housing Tribunal should not contravene any Act of Parliament, subsidiary or legislation, not conflict with the rules of natural justice, and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, may revise any such proceedings.

Any party, who is aggrieved by a decision or order of the Appeals of District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division). The high court exercises general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all tribunals should comply with such direction without undue delay. Also, the high court can, therefore, revise the proceedings and make such decision or order therein as it may think fit. Furthermore, any person who is aggrieved by the decision of the High Court (Land Division) may, with the leave from the High Court (Land Division), appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act, 1979. The primary function of the Court of Appeal is to hear and determine appeals from the High Court (Land Division).

The Local Government (District Authorities) Act No.6 (1982). This law was enacted to enable the village governments to govern and make by-laws in relation to land ownership. In other words, the law establishes village authorities which are vested with powers to administer and or manage the village land in Mainland Tanzania. It provides for the composition of the village authorities and the meetings of the village government as well the abidingness of the issued decisions thereof. The legal framework extends also to provisions of the other laws designating reserved land. These include the Forests Act (Cap 323), National Parks Act (Cap 282), Ngorongoro Conservation Area Act (Cap 284), Wildlife Conservation Act (Cap 283), Marine Parks and Reserves Act (Cap 146), Highway Act (Cap 167) and Public Recreation Grounds Act (Cap 320).

5. Key Land Management Issues in Tanzania

5.1 Low local land administration capacity and neglected instruments for land administration

Kayuya and Magina (2020) point out low capacity of local institutions, particularly the grassroots institutions in which the vast land is managed, is a significant hindrance and a major weakness to providing more secure to land rights. In this regard, there are a number of reasons including, but not limited to availability of financial and material resources, capacity of human resources, complex procedures and multiple reporting lines, and overlapping decision making processes. Support for improvements in land administration cannot be expected in the absence

of a functioning system of local governments. Lugoe (2007) points out systemic challenges as a component of key land administration challenges. In this case, poor enforcement of land regulations and control of planned land developments are included. Also, land administration systems are duty bound to create registrable land parcels and appropriately deliver such parcels in accordance with existing rules and regulations. These systemic challenges have led to firstly, the lackluster attitude to land administration has led to land scarcity in urban areas and hence has caused people to build in open spaces, hazardous areas, blocking infrastructure (Magina et al., 2020a). Secondly, indifference to procedures causes people to build on or till marginal lands without regulation, settlements have sprung up as slums, sprawling, unplanned, poorly serviced and hurriedly constructed, as a result of such marginal performances of lands sector institutions (Magina et al., 2020b; Magina et al., 2024).

5.2 Limited supply of planned and surveyed land

Land availability and supply, especially in urban areas is, in part, contingent upon the efficient functioning of several processes including: (1) declaration and regulation of planning areas; (2) physical planning of land use through master planning or its alternatives; (3) detailed planning of residential, commercial and recreational layouts; (4) land development controls in urban and peri-urban areas; and (5) cadastral surveying. Improving these processes can help create more sustainable and inclusive cities. In rural areas, special attention should be paid to building the capacity of village governments to assist in land use planning and land management efforts to promote participatory planning and decision making. Reinforcement of the appropriateness of general boundary demarcation and mapping principles, as a suitable alternative to expensive and time-consuming cadastral surveys, is also seen as critical to supporting any significant scaling of land registration and regularization in Tanzania. Closely related to this is the fact that land rights in Tanzania have been the subject of vigorous debate and remain a contested and divisive issue. Typically, marginalized people and populations, including women and young people, have had difficulties in claiming and retaining land rights.

5.3 Disregard of pastoralist, hunters and gatherers societies' rights on land

Livelihoods for pastoralists, hunters and gatherers are at risk with the loss of grazing and forest land often attributed to increasing pressure from other users and lack of secure rights within the communal and reserved lands upon which they depend. Similarly, hunter-gatherers

traditional communities make a living predominantly through collecting wild fruits and hunting wild animals. These communities totally depend on land and natural resources for their physical and cultural survival as distinct groups. (FAO, 2012). In developing countries, these groups lack clear property rights because they occupy customary or tribal rangelands that are legally owned by the State, are controlled/owned by the pastoral community itself, or are claimed by other interest groups (Behnke & Freudenberger, 2013). Pastoralists' need for secure land tenure is a priority and requires some form of legal recognition from states. Likewise, hunters and gatherers lack robust legal protection of their ancestral lands, partly because most governments regard hunting and gathering to be at variance with the dominant development paradigms. In this regard, legal recognition is a key component of the robustness of property rights, which refers to the extent to which those rights are enforceable when under threat (Doss & Meinzen-Dick 2020; Robinson & Flintan, 2022). The result has been an increase in land use conflicts between these groups and other land users (c.f. Ubwani, 2014; Benjaminsen et al., 2014; Mwashu, 2016; Saruni et al., 2018). However, if these groups particularly pastoralists lack title deeds over their lands and if villages do not have enforceable land-use plans that define the kind of activities permitted in certain zones, then pastoralist groups may be at risk of losing control of the lands and the resources they need for their survival. The issuance of CCROs for grazing lands is increasing following the development and piloting of procedures for joint village land use planning (Kalenzi, 2016; Sulle, 2021). However, formal recognition does not necessarily equate with tenure security. Effective formalisation requires sufficient state capacity for implementation and enforcement, which in developing countries is sometimes lacking (Robinson & Flintan, 2022).

6. Conclusion and Recommendations

In Tanzania, efforts to formally recognise land rights for pastoral communities are fast-tracking. Despite the fact that the government has taken a number of steps to improve land governance, the country still travails from problems related to poor land governance in the land sector. Great improvements have been done and realized in the recognition of rights (with the exception of communal rights in rural and urban areas), recognition of the rights for women and stakeholder involvement in developing land policies and laws. However, more needs to be done in areas related to registering land and improving land information systems, urban and public land management, as well as expropriation and dispute resolution. With the increasing

population, the demand for and pressure over land resources in both the rural and urban areas is also increasing. This calls for a need to improve governance in the land sector in order to attain economic sustainability, poverty alleviation, peace and security and ultimately a stable society.

Main recommendations to improve land management and governance relate to review of legal/regulatory framework for land to support transparent and inclusive transactions, improve land use planning processes and implementation, improve local land administration capacity, improve management of, and transparency around, valuable natural resources, improve women's de facto land rights, and negotiate community driven solution to accommodate pastoralists.

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Institutional Review Board Statement

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