Rural Property Formalization Component

Reform Proposals

MKURABITA
## Legal – Problem Addressed

<table>
<thead>
<tr>
<th>Problem</th>
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<tbody>
<tr>
<td>Weakness in the legal frame for village land dispute resolution. Legal provisions do not guarantee rapid resolution of land ownership disputes</td>
<td>Adjudication</td>
<td>SPILL Handeni Mbozi</td>
<td>Empower district land tribunals to give quick remedies</td>
<td>Land Disputes (Courts) Act no 2 of 2002</td>
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4-March-2008 Dr. Mtalo E. G. LOCAL REFORM DESIGN TEAM
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<td>Getting Certificate of Customary Right of Occupancy takes too long because of complex adjudication procedures</td>
<td>Adjudication</td>
<td>SPILL Handeni Mbozi</td>
<td>Reform the Village Land Act No 5 Part C section 49 and 51 to give preference to village wide adjudication over spot adjudication</td>
<td>Village Land Act No 5 sections 49, 50 and 51</td>
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<td>Getting Certificate of Customary Right of Occupancy takes too long because of complex survey, land use planning procedures</td>
<td>Adjudication</td>
<td>SPILL Handeni Mbozi</td>
<td>Reform the survey act 1968 &amp; land use planning act 2006 to allow use of lower precision technologies for village land survey &amp; planing</td>
<td>Land Survey Act, Landuse Planning Act, Village Land Act No 5</td>
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<td>Poor Documentation and inadequate standardization of property registration documents (CCRO, transfer agreements)</td>
<td>Documentatio n – informal documents are simple</td>
<td>Handeni &amp; Mbozi show need for simplification and reduction of number of forms filled</td>
<td>Simplify application forms and replace them with three forms of one page each for: i) individual application, ii) group application, iii) non-villager applicants</td>
<td>Village land Act No 5, Land Act no 4 of 1999; Land Registration Act no 6, land disputes act no 2 of 2002</td>
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<tr>
<td>Land registries not decentralised to village level. Registries not integrated. Village Registries are expensive to build and operate</td>
<td>Registration; local property registries are simple consisting of a simple a property registration book, shelf and folders for storing and archiving documents</td>
<td>SPILL proposes decentralisation of registries; Handeni &amp; Mbozi show need for simplification and reduction of number of forms filled and capacity to implement registries</td>
<td>Reform the Village Land Act no 5 to provide for a Decentralised the land registry. Reform Land Registration Act and Village Land Act to allow CCRO’s to be prepared directly from the survey plan and adjudication report Empower VEOs and simplify application process</td>
<td>Land Registration Act Cap 334, Land Act no 4 and Village Land Act no 5 of 1999, Registration of Documents Act</td>
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<td>Getting Certificate of Customary Right of Occupancy takes too long since it requires village boundary survey, village land use plans</td>
<td><strong>Registration.</strong> Customary practice is simple – requires only general boundaries and the signature of village level functionaries</td>
<td>SPILL; The Land Use Commission has been empowered to create national &amp; district land use plans. The Land Survey Act is under review; The Survey and mapping division is committed to surveying all village boundaries. Handeni and Mbozi projects show lower precision methods are viable</td>
<td>Reform the survey act 1968 to allow use of lower precision technologies for village land survey. Reform the Landuse Planning Act 2006 to allow use of village level technicians and simple techniques and resources to make landuse plans. Introduce Executive agencies responsible for landuse planning and surveying</td>
<td>Land Registration Act Sections 8, 27, 29, 30, 33; Local Government (Authorities) Act No 7 of 1982; Village Land Act No 5; The Notaries public and commissioner of oaths Act, Section 10 (2) (e) – include VEO &amp; WEO as “administrative officers” to allow them to sign titles &amp; registration documents</td>
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<td>The Village land Act no 5 of 1999 introduces some constraints that are not in line with customary practice. These constraints may result in unnecessary land disputes.</td>
<td>Registration: customary land tenure practice is simple. A villager may enjoy tilling rights in neighbouring villages.</td>
<td>Experience from the Handeni project shows that it is common for villagers to have plots or farms in neighbouring villages. In its present form the law requires that the villager declare intention to build permanent residence in those villages to get CCRO issued in respect of those plots/farms.</td>
<td>Reform Village Land Act no 5 of 1999 Part IV Section 22 (2) and (3)(f) to allow non village residents (Rural Tanzanians) to enjoy rights over land held in neighbouring villages. In Part VI Section 30 Remove the need for non-resident village applicants to declare intent to reside in the village or Reform Section 30 (2) to insert a condition that provides a longer duration.</td>
<td>Village land act no 5 of 1999, Land Act no 4 of 1999; Rural Lands (Planning &amp; Utilisation) Act 1973; Regulations of Land Tenure (Established Villages) Cap 267</td>
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<td>Weak village land admin institution coupled with lack of harmonisation of the Land Acts, Mining Act, TIC Act etc. makes rural real property transfer difficult and open to exploitation</td>
<td>Fungibility: Customary practice facilitates easy property transfer</td>
<td>NIL</td>
<td>Reform Village Land Act no 5 of 1999 Part IV Section 22 (2) and (3)(f) to allow non village residents (Rural Tanzanians) to enjoy rights over land held in neighbouring villages. In Part VI Section 30 Make it easy for non-village Tanzanians to acquire property</td>
<td>Village Land Act No 5, TIC Act, Mining Act</td>
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<td>Legal transfer of property requires complex and lengthy procedures and is therefore a disincentive for formalisation</td>
<td>Fungibility: Customary practice facilitates simple and efficient transfer of property. It requires only the signature of a village chairman, VEO and witnesses</td>
<td>NIL</td>
<td>Reform the village land Act no 5 of 1999 and the Act establishing TIC to enhance transfer while protecting village land from being acquired by foreigners. Introduce simpler standardised forms and contracts</td>
<td>Village Land Act No 5, TIC Act, Mining Act Registration of Documents Act, Regulation of Land Tenure (Established Village) Act 1992, Land Act no 4 of 1999, Land Disputes Settlement Act no 2 of 2002; Customary Leaseholds (Enfranchisement) Act 1968, Land Acquisition Act 1967</td>
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RURAL LAND FORMALISATION

DETAILED REFORM OUTLINES

Policies and Strategies to Facilitate Rural Real Property Formalization in Tanzania
Sub-objective 1.1: Facilitating Efficient Rural Property Regularization

• Output 1.1.1: ADJUDICATION - Simplified Dispute Resolution Mechanism

• Activities:
  – Activity 1.1.1.2: Make provisions that empower the district land tribunal to facilitate easy and expedient execution of land tribunal verdicts to speed up the dispensation of justice to litigants.
  – Activity 1.1.1.3: Make regulations that require district land courts to move to the district/ward where the litigants reside.
  – Activity 1.1.1.4: Make regulations that require registration of conciliation agreements at village, ward and district level so that these may be used as evidence by litigants in the higher courts.
Efficient Rural Property Regularization …

• Output 1.1.2: ADJUDICATION - Efficient adjudication of village real property.

• Activities:
  – Activity 1.1.2.1: Amend the Village Land Act No 5 Part C section 49 and 51 to give preference to village wide adjudication. Use Spot adjudication only for exceptional individual requests, non-village residents and institutional requests.
  – Activity 1.1.2.2: Make adjudication regulations that require systematic registration of all lands including the areas where absenteeism renders the adjudication process incomplete.
  – Activity 1.1.2.3: Introduce regulations that require village boundaries to be established before adjudication.
Efficient Rural Property Regularization …

- Activity 1.1.2.4: Introduce provisions that allow adjudication to proceed even in villages with boundary disputes.
- Activity 1.1.2.5: Introduce provisions that require all village boundary disputes to be documented and registered.
- Activity 1.1.2.6: Make regulations that provide guidelines for the problem of property/farms falling across village boundaries. Involve the farmers.
- Activity 1.1.2.7: Provide for a village boundary committee and empower the committee to resolve boundary problems.
Facilitating Efficient Rural Property Regularization

• **Output 1.1.3: REGISTRATION - Simplified mechanisms to x rural property boundaries with due accuracy**

• **Activities:**
  
  – Activity 1.1.3.1: Add a provision in the Survey Act for special regulations to allow use of lower precision technologies for rural and periurban property formalization.
  
  – Activity 1.1.3.2: Introduce Regulations that govern the proper use of GPS for village boundary survey. The technology (GPS) to survey accepted (Adjudicated) village boundaries and not to determine where the village boundary should be.
  
  – Activity 1.1.3.3: Reform the Land Use Planning Act (2006) to accommodate land use plans created by trained village functionaries
Facilitating Efficient Rural Property Regularization

• Output 1.1.4: REGISTRATION - Procedures to speed issuing of Village Land Certificate
  • Activities:
    – Activity 1.1.4.1: Reform the Village Land Act Section 7(6) to decentralize the powers of the Commissioner for Lands (for Village land Certificate issuing) to the Authorized District Land Officer
Facilitating Efficient Rural Property Regularization

- **Output 1.1.5: REGISTRATION - A unified decentralized land registry system with geographical database**
- **Activities:**
  - Activity 1.1.5.1: Introduce regulations in the Land Survey act to empower relevant agencies to create first registration of informal property with legal effect.
  - Activity 1.1.5.2: Reform the Land Registration Act (R.E. 2002) to introduce a section on first registration or systematic registration of informal property to kick start the formalisation campaigns
  - Activity 1.1.5.3: Introduce provisions to create a decentralized distributed ICT enabled land registry down to the village level.
  - Activity 1.1.5.4: Make assessment of the information infrastructure (WAN) requirements for decentralization of land registration to village level.
  - Activity 1.1.5.5: Develop a national land information system (cadastre) and information infrastructure down to the district and village level.
Facilitating Efficient Rural Property Regularization

• **Output 1.1.6: REGISTRATION - Legal empowerment of the VEO & Clarification of Competences at Local Level**

• **Activities:**
  
  – Activity 1.1.6.1: Make provisions in the Village Land Act no 5, 1999 and the Registration of Documents Act that empower VEO to act as commissioner of oaths and public notary at the village level.

  – Activity 1.1.6.2: Make regulations in the Land Registration Act and Village Land Act no 5, 1999 governing procedures to be followed by the VEO for first registration

  – Activity 1.1.6.3: Make regulations in the Land Registration Act and Village Land Act no. 5, 1999 for procedures for submitting village transactions to the district land registry
Facilitating Efficient Rural Property Regularization

• **Output 1.1.7: REGISTRATION - Procedures to speed issuing of Certificate of Customary Right of Occupancy**

• **Activities:**
  
  – Activity 1.1.7.1: Reform Land Registration Act and Village Land Act No 5 to allow CCRO's to be prepared directly from the survey plan and or adjudication report.
  
  – Activity 1.1.7.2: Reform the land use planning act to accommodate land use plans created by village level technicians for use in the preparation of CCRO and registration of rural property.
  
  – Activity 1.1.7.3: Amend the Village Land Act No 5 Regulations of 2001 and Registration of documents Act to admit simple forms and templates for property and transaction registration.
Facilitating Efficient Rural Property Regularization

- Activity 1.1.7.4: Make regulations to replace the current CCRO application forms with three forms of one page each for: i) individual application, ii) group application, iii) non-villager applicants, iv) Village boundary agreement form, v) Standardise formats

- Activity 1.1.7.5: Remove regulations requiring the letter of offer.

- Activity 1.1.7.6: Regulations for the public display of CCRO applicants

- Activity 1.1.7.7: Standard formats that can be used directly for data entry into the land registry.
Facilitating Efficient Rural Property Regularization

• Output 1.1.8: The enforcement of the equivalence between the CCRO and granted title assured

• Activities:
  – Activity 1.1.8.1: Review the Land Act no 5 Section 4 and regulations to constrain the transfer of village land to general land
  – Activity 1.1.8.2: Review and reform the Land Policy statements 4.2.2 to introduce a new institutional arrangement for village land administration that will provide national level coordination.
  – Activity 1.1.8.3: Introduce provisions for a new national hierarchy for village land administration procedures
Sub-Objective 1.2: Safeguarding Security of Rural Land Tenure

• **Output 1.2.1: Institutional mechanisms that enhances the legal security of registered property owners**

• **Activities:**
  - Activity 1.2.1.1: Make provisions in the Land registration Act for first registration of informal property.
  - Activity 1.2.1.2: Clarify the relationships and obligations of district and village registry.
  - Activity 1.2.1.3: Make provisions for transition arrangements for keeping the village land registries at the district level until villages are physically and technologically empowered.
Sub-Objective 1.2: Safeguarding Security of Rural Land Tenure

- Activity 1.2.1.4: Establish the village registry as the legally recognized first registry - where registration first takes place.
- Activity 1.2.1.5: Make regulations that assign responsibility to VEO for the registration of land transactions.
- Activity 1.2.1.6: Make provisions in the Births and Deaths registration Act for unique personal codes. These codes should be assigned to rural property owners.
- Activity 1.2.1.7: Make provisions for unique geographic code so that each plot is assigned a unique code.
Sub-Objective 1.2: Safeguarding Security of Rural Land Tenure

- **Output 1.2.2: Reduced Danger of Alienation of Village Lands, Maintenance and enforcement of the equivalence between granted title and CCRO in rural areas**

- **Activities:**
  - Activity 1.2.2.1: Amend section 4 of the Village Land Act no 5 1999 and restrict transfer of village land to general land by people who wish to acquire granted title subsequent to the cadastral survey of their land to avoid alienation of village land Except for public interest
  - Activity 1.2.2.2: Introduce provisions that create titles (equivalent to those issued by the Commissioner of Lands) signed by VEO in village land under the authority of the village council. This will ensure the equivalence principle.
Sub-Objective 1.2: Safeguarding Security of Rural Land Tenure

- Activity 1.2.2.3: Amend the provisions regarding transfer of land for "investment purposes" under "public interest" and require the investor to partner with a rural owner or entity instead and enforce the mechanisms that require foreign investors to involve local partners.

- Activity 1.2.2.4: Review the land Acquisition Act to clearly define what public interest is or insert a land acquisition clause to the effect in the Land Acts.

- Activity 1.2.2.5: Review and align the Investment Act with a reviewed Land Acquisition Act of 1967 so as to protect natural resources and the interest of the citizens. The law should provide for foreign investment applications such as mining to be channelled through the Parliament.
Sub-objective 1.3: Simplified and low-cost mechanisms for property registration, and documentation

- **Output 1.3.1: DOCUMENTATION - Simplified documentation and Empowerment of Village Functionaries**
- **Activities:**
  - Activity 1.3.1.1: Make amendments to Registration of Documents Act to introduce simple standard formats for documenting wills, property transaction and other local agreements
  - Activity 1.3.1.2: Introduce regulations that require all transactions on land to be registered in the land registry rather than the Documents Registry.
  - Activity 1.3.1.3: Make reforms to the Notaries, Public and Commissioners of Oaths Act to allow the VEO to attest documents for registration purposes
  - Activity 1.3.1.4: Introduce procedures for recording and authenticating public documents at the VEO level
Sub-objective 1.3: Simplified and low-cost mechanisms for property registration, and documentation

- **Output 1.3.2: DOCUMENTATION: Simplification and Standardization of real estate documents (contracts/agreements)**
- **Activities:**
  - Activity 1.3.2.1: Amend the Village Land Regulations of 2001 and Registration of Documents Act to admit simple forms and templates for property registration and registering property transactions.
  - Activity 1.3.2.2: Replace the bulky application form with three forms of one page each for: i) individual application, ii) group application, iii) non-villager applicants.
  - Activity 1.3.2.3: Design a pilot project to test simplified forms at the village level.
Sub-Objective 1.4: Reforms to Facilitate Economic Use of Rural Property as Collateral

• **Output 1.4.1: COLLATERAL - Simplified Access to Credit by Rural Property Owners**

• **Activities:**
  - Activity 1.4.1.1: Reform Village Land Act no 5 Part IV Section 30 and Section 45 (1)(a) to make it more friendly to banking institutions.
  - Activity 1.4.1.2: Reform the document registration laws to allow legal recognition of the simple documents used to in the rural areas as proof of ownership.
  - Activity 1.4.1.3: Reform the Banking and Financial Institutions Act to remove any limiting provisions to encourage lending to the majority poor.
Sub-Objective 1.4: Reforms to Facilitate Economic Use of Rural Property as Collateral

– Activity 1.4.1.4: Make use of other interventions such as sensitization of banks and financial institutions to encourage lending based on rural real property collateral.

– Activity 1.4.1.5: Adopt non legal reforms such as restoration of the THB and TIB to give the government a more direct handle on development of the rural areas and thus economically empower the poor majority

– Activity 1.4.1.6: Setup rural credit societies and encourage them to provide public education on strategies for access to credit facilities in rural Tanzania
Sub-Objective 1.4: Reforms to Facilitate Economic Use of Rural Property as Collateral

• **Output 1.4.2: FUNGIBILITY - Support for Smooth Transfer of Property With Adequate Safeguards**

• **Activities:**
  – Activity 1.4.2.1: Reform Village Land Act no 5, 1999 Part IV Section 22 (2) and (3)(f) to allow non-village residents (Rural Tanzanians) to enjoy their rights over land held in neighbouring villages.
  – Activity 1.4.2.2: In Part VI Section 30 Remove the need for non-resident village applicants to declare intent to reside in the village
  – Activity 1.4.2.3: Reform Section 30 (2) to insert a condition that provides a longer duration (greater than six months) for compliance.
Sub-Objective 1.4: Reforms to Facilitate Economic Use of Rural Property as Collateral

- Activity 1.4.2.4: Make provisions in the Land Act no 5 for the pre-approval by the village council for residents to mortgage real property.
- Activity 1.4.2.5: Clarify that the current clause on village council approval should be applied at the time when a villager wishes to use his/her CCRO as collateral.
- Activity 1.4.2.6: Make regulations that allow Banks to attach the property upon default by the villager.
- Activity 1.4.2.7: Make provisions that require the letter of approval issued by the village council to be registered
Sub-Objective 1.4: Reforms to Facilitate Economic Use of Rural Property as Collateral

• Output 1.4.3 : FUNGIBILITY : Simplified Legal Transfer of Property

• Activities:
  – Activity 1.4.3.1: Reform property transfer regulations to introduce simpler standardized forms and contract templates that can easily be processed by village functionaries
  – Activity 1.4.3.2: Reform legal provisions to allow recognition of simple property transaction documents authenticated by village functionaries
  – Activity 1.4.3.3: Reform the village land Act no 5 of 1999 and the Act establishing TIC to enhance transfer while providing adequate protection of village land from being unscrupulously acquired by non-citizens.
Sub-Objective 1.4: Reforms to Facilitate Economic Use of Rural Property as Collateral

- **Output 1.4.4: FUNGIBILITY**: Strengthening the Economic Development of Real Property with prevention of hoarding and speculation
- **Activities:**
  - Activity 1.4.4.1: Review the Land Policy to introduce policy statements that discourage hoarding and encourage land development
  - Activity 1.4.4.2: Introduce new provisions and regulations in the Land Acts No. 4 and 5 of 1999 that encourage and facilitate land development and discourage hoarding and speculation by use of exponential tax regimes that rewards investment on land and punishes hoarding and speculation in land
Sub-Objective 1.5: Providing for Institutional Mechanism for Managing Property Reforms

- **Output 1.5.1**: A specialized public entity to manage formalization of extralegal periurban and rural real estate assets

- **Activities:**
  - Activity 1.5.1.1: Establish a new law to create an agency responsible for surveys associated with regularization and land registration of extralegal property and empower district level functionaries to facilitate land registration.
  - Activity 1.5.1.2: Introduce District Adjudication Committees and empower these to deal expediently with conflicts over land ownership
  - Activity 1.5.1.3: Institute Financial procedure reforms at the district level to ensure that the department of lands at the district level is financially empowered.
Sub-objective 1.6: Institutional Arrangements for Safeguarding the Citizens Security of Land Tenure

• Output 1.6.1: Legal and institutional safeguards put in place to protect the poor majority from being dispossessed of their property and business interests

• Activities:
  – Activity 1.6.1.1: Amend the Land Act No 4 Section 20 (i) and (ii) which allocates the so-called "investment lands" to the TIC. References giving TIC rights to land should not appear inside the Land Act which is supposed to be superior to the TIC Act
  – Activity 1.6.1.2: Make provisions in the Village Land Act no 5 and Land Act no 4 that remove references to "investment land". Remove any provisions that allow TIC to be ceded so-called "unoccupied lands“ under the transfer of general village land clause in the Land Acts.
Sub-objective 1.6: Institutional Arrangements for Safeguarding the Citizens Security of Land Tenure

- Activity 1.6.1.3: Amend the Land Acts to redefine citizens rights or interests in land as including those on the surface, subsurface and above surface.
- Activity 1.6.1.4: Make provisions that require the government to empower and support village councils in negotiating favorable land use rights directly with prospective investors.
- Activity 1.6.1.5: Amend the TIC Act and remove provisions that allow TIC to acquire land and act as a land lord. Redefine the TIC's role so that it acts only as an investment services agent for the purposes of providing efficient information to prospective investors.
Sub-objective 1.6: Institutional Arrangements for Safeguarding the Citizens Security of Land Tenure

• Output 1.6.1: Legal and institutional safeguards put in place to protect the poor majority from being dispossessed of their property and business interests

• Activities:
  – Activity 1.6.1.6: Reform the mining law to empower the Village Councils to enter into negotiations and or be considered in any negotiation over mineral prospecting and mining rights
  – Activity 1.6.1.7: Amend the mining law to assign certain mineral rights to rural citizens and local governments in areas where mining or prospecting takes place.
Sub-objective 1.6: Institutional Arrangements for Safeguarding the Citizens Security of Land Tenure

- Activity 1.6.1.8: Introduce general clauses that ensure direct economic benefits (not aid or donations!) for village councils for any resources exploited in their vicinity or their land by investors

- Activity 1.6.1.9: Amend the Land Act no 5, 1999 and the Land Registration Act to make clear provisions for adjudication and registration of communal lands for better protection of especially nomadic pastoral tribes, hunters and gatherers. Reform the laws to remove any ambiguity as to what customary land tenure means in the case of such nomadic pastoralists, hunters and gatherers
END

- THANK YOU FOR LISTENING

- PLEASE BE FORTHCOMING WITH YOUR RESPONSES / VIEWS / IMPROVEMENTS