CCRO A TOOL STRENGTHENING AND RECOGNIZING COMMUNAL TENURE AND RESOURCE RIGHTS IN TANZANIA

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Summary

This abstract paper provides a detailed account of how Certificate of Customary Rights of Occupancy (CCRO) contributed to more secure rights in access, use, and common ownership of land in Tanzania. The process demands a participatory approach and has seen different actors working together including: governments at all levels, development partners, researchers, and community members to provide tenure secure land rights for the groups of community members through the CCRO. The stakeholders have diverse but complementary roles and contributions which include the role of local authorities in providing for the mechanisms and opportunities which its citizens may undergo for the purposes of poverty reduction in the country for sustainable livelihoods in compliance with the legal framework of the country. The CCRO therefore is a clear indication that governments can recognize through a hybrid/legal pluralism system that supports and secures tenure rights including; recognition, protection, and respect of the land tenure security for poverty reduction.

The significance of the processes of securing communal land tenure rights in Tanzania is based on a Legal Framework for Participatory Land Use Plans grounded on the national policy and legislative framework governing land tenure and Local Government Authorities (LGA’s). This is anchored on the Village Land Use Plans (VLUP) of local government legislation (mainly the Local Government Act of 1982), which enables village governments to pass local by-laws that recognize, protect, and respect the developed village land use plan to its subordinates.
Introduction

In the past several years, a partnership that has involved many actors communities, CSO, development partners and government departments such as the ministry of Agriculture, Livestock and Fisheries. The experience is a mix of actual engagement in and with the processes and learning led by RECONCILE and ILRI with support from IFAD through ILC to the project Sustainable Rangelands Management Programme currently in its phase three. This paper therefore presents experiences and lessons learnt in Tanzania working with communities and partners, leading learning experiences in the past 4\(^1\) years. The lessons are specifically contextualized within the exercise around the rangelands tenure system in the Maasai Steppe of Arusha region in Tanzania. The paper benefits from the policy and legal framework but also looks at the other factors which have a bearing to land use and production system such as Climate Change with the perspective of understanding how pastoralists appreciate diversification as option that has implications to land use systems thus security.

Country context

Tanzania is the largest of the five countries comprising the East African Community (EAC). It has a land area of 945,087 sq. km; and a population estimated at just over 45 million people. More than 75% of the population live in rural areas, and derive their livelihoods and incomes from agriculture, making the agricultural sector a central pillar of the national economy. Agriculture contributes up to a quarter of the national GDP and is responsible for 34% of foreign exchange earnings (URT, 2011).

The importance of agriculture to the national economy is recognized in Tanzania Development Vision 2025, which is the overall development framework for the country (URT, 1999). The Vision envisages transformation of the agricultural sector and the national economy into a “semi-industrialized economy with a modern rural sector and high productivity in agriculture which generates reasonably high incomes to ensure food security and food self-sufficiency”.

Agricultural development policies and the linkage with land use

The Agricultural Sector Development Strategy (ASDS) articulates the overall policy framework for the agricultural sector in Tanzania. It is implemented through the Agricultural Sector Development Programme (ASDP). Published in 2001, shortly after the enactment of the Land Act and the Village Land Act, the Strategy acknowledges that land policy has a bearing on agricultural productivity.

Tanzania development policies recognize the link between land policies and agricultural development. The country has in place a comprehensive policy framework on land administration and management comprising the National Land Policy and the two implementing laws, the Land Act (No. 4 of 1999) and the Village Land Act (No. 5 of 1999) The Policy was adopted in 1992 after a long consultative process that included the work of a Presidential Commission of Inquiry into Land Matters\(^2\) that traversed the country consulting citizens on land related challenges. The two pieces of legislation were enacted in 1999 and went into force in 2001.

Legal and policy regimes towards land use, management and planning

In 1889 under the Germans, the colonial masters declared all land in Tanzania whether occupied or not as crown land vested under the German Emperor (Lerise, 1996; citing James, 1971). This was subsequently enacted into a law in 1923 by the British and became the Land Ordinance which, with minor modifications and revisions, has guided land administration in Tanzania to date. Even with current process of constitutional review little if not none will review this section of the constitution. This means that, all land in Tanzania is public land vested in the President as trustee for and on behalf of all citizens. It translates into systematic way of not having the concept of private ownership of land and that individuals and/or groups can have rights to occupy and use land on leaseholds for short terms of 2 years or long terms of 33, 66 or 99 years. All citizens who wish to occupy and use land in Tanzania can apply for the same from the different

\(^{33}\) Popularly known as the Shivji Commission, as it was chaired by Prof Issa Shivji
The operationalizing Legal Environment Governing Land

Tanzania’s Land Act adopted from the Land Policy in 1999 classifies land as: (1) reserved land; (2) village land, which falls under the Village Land Act; and (3) general land. Reserved land includes land protected by law or designated land such as national parks, land for public utilities (i.e. highways and those under the Town and Country Planning Ordinance), wildlife reserves and land classified as hazardous, which designates land whose development would pose a hazard to the environment (e.g., river banks, mangrove swamps). Village land, on the other hand, includes registered village land (i.e. land that belongs to registered villages), land demarcated and agreed to as village land by relevant village councils, and land (other than reserved land) that villages have been occupying and using as village land for 12 or more years (including pastoral uses) under customary law. It is important to note that the village councils do not own the land, they only manage it.

A village is an administrative unit in the local government system and usually has a population between two and four thousand. All other land is classified as general land, that is to say all land that is not reserved land or Village Land. However, the act opens up for ambiguity: “general land’ means all public land which is not reserved land or village land and includes unoccupied or unused village land” (Sundet, 2005). The definition of General Land in the Village Land Act does not include the last part of the sentence.

Village land is divided into three sub categories which are: (i) land for communal and public use; (ii) land for individual or family use; and (iii) land reserved for future communal or individual use. Village land in Tanzania constitutes the biggest percentage (70%) compared to general land (2%) and reserve land (28%) (Kironde et al 2012).

There are serious concerns that the village land stock is diminishing due to an uncoordinated and inefficient land market that is currently fuelled by growing commercial interests. Traditionally, land uses in villages were mainly for farming, grazing and temporary settlement.
Securing Village Land Rights

Since Tanzania is a rural economy given the high population living in the rural areas means that, agricultural investment and production system exerts pressure on the tenure security at the village level thus, making resource dependent vulnerable. The policy makers were certainly aware of this the existing legal frameworks. The significance of the processes of securing communal land-tenure rights in Tanzania is based on a Legal Framework for Participatory Land Use Plans grounded on the national policy and legislative framework governing land tenure and Local Government Authorities (LGAs). This is anchored on the Village Land Use Plans (VLUPs) of local government legislation (mainly the Local Government Act of 1982), which enables village governments to pass local by-laws that recognize, protect and respect the developed village land use plan to its subordinates. The Village Land Act, No.5 of 1999 (R.E. 2002) requires villages to allocate land between individual and communal categories, as well as designating some land as areas set aside which will be allocated to the individual or communal areas at a later time. It therefore provides a relatively secure tenure framework for communal land uses such as grazing pastures and forests, as well as specific requirements for basic land use planning and zoning. The Village Land Act allows the Village Council to develop a PLUP at the village level and charges it with securing “the orderly and environmental sustainable development in the village.”

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**Figure 1: Existing Tenure Systems in Tanzania**

Existing tenure systems

- **Statutory**
  - Granted rights of
  - Occupancy under letter of offer
  - Derivative right

- **Customary**
  - Customary
  - Quasi customary
  - Informal

*Source: UNHABITAT 2010*
Climate change

Pastoralists depend on access to resources such as good pastures and water sources to maintain livestock. In arid areas where rainfall is unpredictable, freedom of mobility is key. However, their livelihoods are under threat, with less land available for their herds due to population growth resulting in more settlement areas, the effects of climate change leading to prolonged drought which have impacted on pasture quality. There is increase in conflicts due to absence of proper zoning and or clearly marking out grazing areas and access routes. The changing reduced land use patterns.

This paper however argues that there are a number of potential options of simplified investment in agriculture through rainfed farming by pastoral communities. This is in the shifting patterns of land use as a result of climate change and livelihood systems. Many pastoralists are becoming more and more sedenterized both by policy directives as well as circumstances such as climate change. This paper however acknowledges that it is most useful when communities themselves have the capacity and ability to coordinate and facilitate the direction of their investment and programmes. Understanding the local dynamics to ensure high quality engagement from a localized context including the process of developing and sustaining group initiatives, land policies and management of collective and individual property rights to enhance investments and innovations that don’t undermine pastoral livelihood systems but that which strengthens more small holder farmers for improved agricultural productivity.
The Case of Simanjiro district as the Case study

Tanzania administrative units are statutorily divided into villages, which are comprised of Village Assemblies (all the adult residents of the village) and elected Village Councils of 15-25 members headed by a Village Chairman. The majority of the Simanjiro plains dispersal area is contained within three villages: Emboreet, Sukuro, and Terrat. Village Councils are corporate entities capable of entering into legal contracts, owning property, and preparing by-laws which, if approved by the Village Assembly and the District Council, have full force of law. Village Councils are also the designated legal authority, under the 1999 Land Act and Village Land Act, for managing village lands held under customary rights of occupancy. That land legislation also permits villages to designate lands as individual lands, which are vested in individual village members for activities such as building homes or shops or practicing agricultural cultivation, and communal lands for collective uses, such as forests or rangelands.

Land use and production systems and the relevance of the CCRO

People have needs that must be satisfied. There are those needs that are basic, essential thus necessary. Such needs for instance are they need housing; jobs; education; opportunities for recreation; transport; and basic services like water, electricity, clean air and health care. Social planning and policies attempt to take care of the basic social needs of the country’s population. Economic planning and policies seek to ensure that the country has a sound economic base which provides revenue to finance government operations and pay for provision of services to the public while also ensuring that jobs are available to the country’s labour force. It is different though amongst the pastoral communities. Often the priority is large land mass for pasture and water for both domestic use and livestock and as such in recognizing these diverse needs, land-use planning

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3 By Dr. Deborah Thomas, Land Use Planning Consultant, Development Control Authority; Prepared for the USAID/OAS Post-Georges Disaster Mitigation Project, Workshop for Building Inspectors, January 15 - 26, 2001
seeks to accommodate these needs within a technical and spatial framework. The approach must also acknowledge the emerging trend of settlement amongst the pastoralists and migrant farmers, the later often looking at the reserve or dry season grazing areas. This might result in vicious conflicts as some of the reserve areas according to pastoralists are delicate ecosystems such as swamps, wetlands, wildlife areas, etc. According to farmers, these are futile lands for settlement. While houses must be built for the population, for example, they cannot be provided in a swamp; or an area that is unsuitable for housing development because of its terrain, vulnerability to natural or other disasters, or inability to physically support the building; or in an area that endangers the health and safety of the occupants or other members of the public.

Similarly, economic decisions to focus on tourism, manufacturing industry or agricultural development as the basis of the country’s economic development must be translated into land-use terms. First, each of these activities uses land. Also, use of land for one activity often prevents its use for another activity at the same time.

The CCRO is seen as a systematic way through which national social and economic needs are identified and articulated by people themselves, by politicians, community groups, and sometimes by the technical experts, like Land-Use Planners through a participatory manner. These needs are translated into a spatial form or a land-use activity and reflected in land-use plans, policies, and development actions. Tanzania has not only through policy and legal framework recognized this but has customized it to confirm with political structures have the Joint Village Land-use planning. The process therefore derives from the need to satisfy these needs on the ground, in a rational manner and within a technical framework that acknowledges that there are competing and overlapping rights over shared resources that traverse boundaries. It is a crucial part of the process of Integrated Development Planning which includes social and economic planning and reflects their land-use/spatial components.
The learning lessons were contextualized in five thematic areas which defined interventions around diversification of livelihood amongst the pastoralists and other rangelands users in Terrat village. The strategy consists of combining formal legal mechanisms with a pro-active attitude by the local communities, in order that they are able to claim their rights. It is also clear that through the process of defining livelihood options and securing their land rights, there is an increase in interactions with the local authorities at district and ward levels. In this section some of the most successful tools and experiences of UCRT’s work will be presented.

The CCRO process and the Policy and legal contexts
The CCRO has demonstrated its ability to secure common tenure and resource rights and facilitate natural resources management. The VLUP – Village Land Use Planning processes are aimed at assisting local communities in clarifying and enforcing local rules about how resources should be used. The VLUP is undertaken through a participatory process, which include also women, children, youth, elders and specific resource users; it gives the opportunity to the community to think about their land and resources and how to balance different needs and uses for different areas.

The process is a policy directive which is further defined in law. The process as anchored in Tanzania’s land legislation, mainly the Local Government Act of 1982, which enable village governments to pass local by-laws. These by-laws must be approved by the two main organs of the village government, which are the Village Assembly (including all the adults living in the community above 18 years old) and the Village Council (headed by a Village Chairman, it includes at least 7 women and works through numerous sub-committees).
Village by– laws are a central component of the VLUP, since after being promoted and approved by the Village Assembly and by the Village Council, they need to be approved also by the District Council in order to acquire legal force. Therefore they become equivalent to other laws in Tanzania, and violators can be prosecuted. The by-laws provisions build on traditional Maasai and other indigenous peoples’ rules, related to livestock and the uses of territory.

**Basic procedures as developed by UCRT to guide the development of VLUPs**

a) Introducing basic principles involved into VLUP to district and ward’s officials in order to ensure coordination with land use planning and district development planning at higher scale.

b) Introducing VLUP concept, objectives and procedures at village level in order to generate inputs and reactions from the community.

c) Developing the land and resource management/use plan through formal and informal meetings with the community aimed at drafting the plan in a participatory way.

d) Ratification and approval of the plan by the Village Council, the Village Assembly and finally by the District Council.

e) Once approved, the villagers start implementing the plan by demarcating land use zones and by ensuring compliance with provisions and rules.

**Lessons learned from the process by UCRT**

The process towards formalization of land use and practices can also bring some conflicts between the different users. It is noted particularly at the delimitation of the boundaries between villages. This must be managed carefully and with adequate consultation and participation by most parties to minimize potential conflicts with neighbouring communities. Other parties may be a category of interested users but not necessarily local village members and therefore rights conferred to them will certainly differ they may be interested in activities such as local tourism enterprises, private companies and migrants’ land seekers. Therefore the management of conflicts related to land and resource management is a further crucial key activity developed by UCRT in support of pastoralist communities, with the aim of securing their management of natural resources. The cross boarder land use plan is the tool used by UCRT to manage cross-border land use. It consists of making the communities use their bordering areas in the same way (grazing, conservation etc.) in order to avoid conflicts between villagers. Also important in the process is the local networking between and amongst the different villages since often they are practicing diverse livelihoods options.
Mobility and rain patterns are also seen mechanisms that then define how communities share resources.

Governments are seen as more concerned and or guided by the investment and often large scale investments taking lead in the planning priority. In the same context, urban areas take prominence and define clearer partnership frameworks, and joint planning often facilitated by government teams. This challenge can be however addressed by application and adherence with policies and laws wider stakeholder engagements especially; communities, governments and CSO.

- Strategic and targeted policies development to transform agriculture with sensitivity to smallholder farmers and pastoralists
- Realigning investment to appreciate the secure tenure for the smallholder farmers and pastoralists
- Collaborative planning and development the effective ways to use the village plans to be as acceptable and inclusive as possible to reduce conflict amongst users of common resources
- Political will is critical in rainfed agriculture this will also enhance proper investment hence local development
- Pastoralist can still keep livestock and farm at the same time. Case one presented a very successful scenario of ecotourism, mixed farming and livestock farming this ensures that the communities’ enhance their resilience to potential climate change challenges.
- Documentation is seen as the most appropriate pathway to protect community land and resources against the ever growing large scale investment against customary tenure rights.
- Even though registration and issuance of certificate, what is entailed in registration may vary (from individual, certificate of occupancy and or group titles), but the need for some form of registration as a means of affirming security of tenure has been expressed.
References

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The Constitution of Kenya 2010


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