

5. Land Rights in Urban Areas.

Land rights in urban areas face many of the same threats as those in rural areas: the higher commercial value of urban land makes it more tempting, and many of the same processes by which the strong take from the weak also occur. However, there are additional problems which are quite particular to urban land which this paper will focus on. Many land rights are being lost not through deliberate grabbing from deliberate greed, but by parties acting in good faith – though with improper processes, acting outside the law by mistake, not intent.

Who allocates land?

Before 'land belonged to the people', the Town Councils had the power to allocate any plots of land in urban areas, in accordance with their development planning. Since 1998, the District Land Board (DLB) can allocate plots in urban land – but only if they are vested in the State. Confusion has been caused in three different ways.

Town Council vs. DLB

There are cases of Town Councils continuing to allocate plots of land under their jurisdiction after 1998 – when their legal powers to do so ended. District Land Boards also allocated the same plots – but with the appropriate legal authority – to different people. Two people now claimed – in good faith – to have rights over the same plot. This problem has subsided now, because there is little unallocated land left in urban areas, though not all previous cases have been satisfactorily dealt with. The danger is that the same problem may arise again as new trading centres are designated as urban centres and as town council boundaries are expanded.

Planning vs. allocation

The problem is exacerbated because the Town Council remains responsible for planning, even though it can't allocate plots. Planners may decide a plot should be of a certain size – but in some cases the rights to

land is much smaller than the planning size and the DLB has approved applications for leaseholds to these plots. The Town Council refuses to allow separate development on the plots, but has no power to sort it out. They simply tell the two leaseholders to 'sort it out' or they will hand the land to a third party as the new owner and developer.

Where they have needed to construct a road, they have often simply taken the land without going through the proper procedures, which involve paying compensation of the full market value of the land, plus compensation for disturbance. (The most the local authorities have given has been a small amount for disturbance). In both these kinds of cases, people who have rights to land under customary tenure have simply had their land taken away.

Problems are made worse by the lack of registered surveyors in Uganda. There are so few properly qualified surveyors working outside the area around Kampala, that work is not always carried out properly. Marker stones in designating new plots should be sited by fixing the point from other existing references. In many cases, surveyors have simply put the first stone where someone has told them – 'the plot starts here'. Sometimes the stone is put inside land that is already registered. Leaseholders are then left to sort out the resulting chaos.

Land owners vs. authorities

There is a common perception that land in urban areas somehow 'belongs' to the town. Of course, this is not true. When an area becomes urban, nothing changes regarding land ownership. The same family that owned a field under customary tenure, still owns the same land, now in an urban area, and they still own it under customary tenure. These rights are not well accepted and such owners are most likely to suffer land being taken away from them without compensation. In some cases a DLB has

tried to help the landowners by giving them a leasehold title over their own land! This means that instead of having permanent ownership over the land, they now are given a fixed term contract, and may even have to pay rent. This is obviously incorrect – a DLB can no more rent out land that is owned by someone else than a private individual can rent out someone else's house. Nonetheless, it is common. (DLBs should be giving the landowners papers to apply for a Certificate of Customary Ownership (CCO), which, if the owners wish, can then be covered into a freehold title, i.e. a title of ownership. This has not been possible because the area land committees took long to be appointed and even after their appointment, there is no clarity from the district councils on their allowances rate and where the money is to come from. (Money received from land administration are not ploughed back to land administration costs). These problems are likely to intensify as and when urban areas increase in size.

Can a non citizen buy land under customary tenure?

Customary land is sold to a non citizen who then applies to the DLB for a lease. The question is – can a non citizen hold land under customary tenure when this tenure is described as land held in perpetuity? The Land Act is not clear

Policy implications

Town Councils are obliged to pay for land on which to construct roads or other urban infrastructure. But where is this money supposed to come from? Central Government transfers do not cover these expenses. Compulsory acquisition of land by Districts is almost impossible, for both financial and administrative reasons – the procedures must be handled by the Ministry of Lands, Housing and Urban Development, and have not been decentralised. Since the need for physical planning is only increasing, attention is needed for putting in place new regulations, and possibly for amending the Land Acquisition Act. Other option for

accessing land for development is needed. (See policy briefs on Accessing Land for development).

Proper land administration can help reduce conflicts, give everyone better security over their rights and so make a much better environment for encouraging investment – but land administration costs money. Fortunately, land administration is also a good way of bringing in revenue, especially in urban areas: in Soroti, fees are estimated at as much as 20 million shillings in a month. Unfortunately, none of this is ploughed back for land administration work. Agreement could be reached between central Government and District Governments on a fixed percentage that could be retained for improving land administration, which would in turn help bring in more revenue. Revenue base could also be expanded to include taxation from land transactions on customary tenure. Currently there is no regulation for this and the money paid ends up in the individual pockets of LC chairpersons.

Planning can be made more effective if everyone knows the development plan and the rules of the Town Council. The Council could have a public notice-board on display showing the physical town plan, giving a list of approved surveyors. There could be much more transparent procedures for informing and challenging planning applications and for ensuring that all development was according to approved plans.

District Land Boards could also display a map of their District showing all the land which is vested in them, including any 'unowned land' which they have the right to allocate. This could start with urban land, since that is of highest value. They could also let people know the official valuation rates used for compensation.

The Ministry of Lands advertises the names of registered surveyors every year. This list should be displayed by the DLB in the districts.