

Upholding Customary Land Rights through Formalization?
Evidence from Tanzania's Program of Land Reform

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Dedication

This dissertation is dedicated to my husband, Alphonse Nicholas, without whose love, support, humor, optimism, faith in my abilities, and care for our growing family, I could never have finished.

Abstract

Many nations in the “global south” have overhauled their land policies and laws in recent decades, often attempting to simultaneously uphold customary land tenure, and to bring informal land relationships into a formal, standardized land administration system. Both are now seen as pivotal for strengthening security of tenure for land users. The program to advance formal land administration systems and to secure customary land tenure in Tanzania stands out as a case where implementation of this “hybrid” approach to land reform is well under way. Through the analysis of empirical research collected at the sites of implementation, this paper considers the impact of land administration reform currently taking place in village lands, and explores the interplay between formal systems and customary land tenure. Is customary tenure being incorporated into the statutory system, and are diverse forms of customary tenure being accommodated? How are customary land users being impacted?

Keywords: customary land rights, land administration reform, rural security of land tenure, village tenure, Tanzania

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Glossary of Acronyms

BEST: Business Environment Strengthening for Tanzania
BRU: Better Regulation Unit
CCRO: Certificate of Customary Right of Occupancy
CILSS: Comité Inter-Etats de Lutte contre la Sécheresse au Sahel
CVL: Certificate of Village Land
DANIDA: Danish International Development Agency
DED: District Executive Director
DESA: United Nations Department of Economic and Social Affairs
DfID: United Kingdom's Department for International Development
DLHT: District Land and Housing Tribunal
DLO: District Land Officer
EU: European Union
FAO: United Nations Food and Agriculture Organization
GDP: Gross Domestic Product
GIS: Geographic Information Systems
GPS: Global Positioning System
HSDD: Human Settlements Development Division
IBRD: International Bank for Reconstruction and Development
ILD: Institute for Liberty and Democracy
IMF: International Monetary Fund
LDSB: Land Development Services Division
LGA: Local Government Authority
MDG: Millennium Development Goals
MKURABITA: Swahili acronym for Business and Property Formalization Office
MoL: Ministry of Lands
NAFCO: National Agricultural and Food Corporation
NGO: Non-governmental organization
NLP: National Land Policy
NLUPC: National Land Use Planning Commission
NPA: Norwegian People's Aid
PILL: Plan for the Implementation of the Land Laws
PLUM: Participatory village land-use management
PMO-RALG: Prime Minister's Office – Regional Administration and Local Government
PRA: Participatory Rural Appraisal
PSCP: Private Sector Competiveness Project
SIDA: Swedish International Development Cooperation Agency
SMD: Surveys and Mapping Division
SPILL: Strategic Plan for the Implementation of the Land Laws
TAZARA: Tanzania-Zambia Railway
TSH: Tanzanian shillings

UN: United Nations
URT: United Republic of Tanzania
USD: United States dollars
VC: Village Council
VEO: Village Executive Officer
VLA: Village Land Act 1999
VLUM: Village Land Use Management Committee
WB: World Bank
WEO: Ward Executive Officer

Chapter 1

INTRODUCTION

Since land is a primary means of both subsistence and income generation in rural economies, access to land, and security of land rights, are of primary concern to the eradication of poverty. In rural areas, land is a basic livelihood asset, the principal form of natural capital from which people produce food and earn a living. Access to land enables family labour to be put to productive use in farming, generates a source of food, and provides a supplementary source of livelihoods for rural workers and the urban poor. The grazing of livestock on extensive rangelands is a basic livelihood activity for pastoralists and access to pasture land is also important to supplement the livelihoods of arable farmers. Gathering fruits, leaves and wood from common lands is an important regular source of income for women and poorer households, as well as constituting a vital coping strategy for the wider population in times of drought and famine. Land can be loaned, rented or sold in times of hardship, and thereby provides some financial security. At the same time, as a heritable asset, land is the basis for the wealth and livelihood security of future rural generations (Quan 2000, p.31).

Jimmy C. is almost 70 years old (though you would never guess it; he has the energy of a much younger man), and was born in Halungu Village shortly after his parents migrated to the area.¹ He travelled a little in his youth, picking up some English that he is proud to practice with me, but has spent the majority of his life farming the land given to him by his parents; it's a comparatively large farm of about 15 acres that has been in the family since the 1930s. Back then, land was plentiful and so anyone could start farming any unclaimed land they wished, after receiving permission from the elders. Jimmy was raised on the farm, but in 1974 was forced by the government militia to move to the central village when President Nyerere enforced "Operation Sogea", a socialist villagization project that transformed the entire nation. For a few years, Jimmy farmed a

¹ All names are pseudonyms. Interview October 28, 2009.

small plot near the central village which was allocated to him, but as soon as the farming restrictions were lifted (around 1978 or 1979), he went back to farming the family plot, a good two-to-three hour walk (which is why he purchased a bicycle) from his new house. He never moved back to live on the farm, though. He, like just about everyone else in the village, farms maize and beans, both to eat and to sell, and grows coffee as his main cash crop.

When title deeds (CCROs) were introduced to Halungu, Jimmy was among the first people to apply for and receive his title; the whole process was very easy and there weren't any disputes with any neighbors over the boundaries of his property.² He was excited at the prospect of being able to get a loan from the bank, but the banks refused his application for a loan. So getting this piece of paper didn't really change anything for Jimmy. However, he does feel it was a good move to get his CCRO, because he knows that if someone uses his land without his permission, for example, if they graze their cattle on his land, he will be able to take his case to court and receive compensation more easily. Also, Jimmy has a grievance from the 1980s. The army took a large swath of land, partly in Halungu Village, and partly in neighboring Itaka village; Jimmy lost five acres and never received any recompense. He didn't contest this in court because, after all, it was the army and the army could do whatever it wanted. But, now that Jimmy has a CCRO, he hopes that such a thing couldn't happen again.

² Certificate of Customary Right of Occupancy (CCRO) is the type of land registration document being issued in rural areas in Tanzania. See the list of abbreviations.

Research Questions

Jimmy's story is illustrative of land tenure relations and administration issues over time in Tanzania. He is a little better off than the average Halungu villager, perhaps, but his life story is quite similar to many people I interviewed in his village. The 1930s and 1940s saw a large migration into the area, largely due to drought conditions in the Ileje area.³ The current village structure was first formed in the 1970s during villagization. The 1970s and 1980s saw appropriations of land throughout the country both for large scale agricultural projects as well as for national priorities. And, after new legislation in the 1990s, Halungu Village was the first pilot area where certificates of customary rights of occupancy (CCROs) were issued; whether the implementation of the new legislation changes anything for customary land users is the central theme of this dissertation. Jimmy feels getting his CCRO might give him some added security, but is disappointed that he is still unable to access bank loans. In his mind, the CCRO is mostly useless, and it takes him quite a while to sort through an old box of papers to find it to show to me. I will come back to Jimmy's story in Chapter 7, and will include other stories and vignettes to introduce the range of complexity in land tenure and administration in nearly every chapter.

Jimmy's village, Halungu, is the first pilot area in Tanzania where land administration reform was systematically implemented starting in 2004, and Mbozi District (where Halungu is located) has served as a model for land administration reform

³ According to numerous interviews with Halungu residents in October and November 2009. The existence of drought in the 1940s was not independently verified.

in the rest of Tanzania. This research explores the process and issues for land administration reform, and what impact this reform is having on rural peoples.

This dissertation engages the questions: **What are the challenges to bringing informal, customary land arrangements into a universal formalized land administration that is sensitive to traditional land tenure? How does the current wave of land administration reform in Tanzania, including policy formulation and implementation, change land tenure for rural populations? Does the new framework offer higher security of land tenure, and if so, for whom?**

Developing answers to these questions is accomplished through exploring the programs and activities to advance formal land administration systems and secure customary land tenure in Tanzania. This dissertation highlights the lessons and experiences that can shed light for future success and challenges in other countries where attempts are underway to uphold informal, customary land tenure through formalized land administration systems.

Tanzania is very much attempting to both uphold customary land rights and to develop a formalized universal land administration system that encompasses village (customary) lands while being sensitive to the existing informal land tenure regime. This dual focus upon *customary* and *statutory* rights to land can seem contradictory, because “customary” is generally connoted with informal land arrangements, while “statutory” is often synonymous with the formal, written law. I examine the interplay of the tension between these differing agendas, and posit that Tanzania is creating a *hybrid approaches* to land administration that are at once formal and centralized, and informal and localized.

Analysis of these hybrids is crucial for assessing the promise of forging land tenure systems that are both simple to administer (locally and nationally), and that are sensitive to local conditions and norms.



Figure 1: Fieldsite districts in Tanzania. Map prepared by author showing location of Tanzania, regions within Tanzania, and the location of fieldsite districts where research was conducted. Source of spatial data: ESRI.

Tanzania passed new land legislation in 1999, including the Village Land Act, superseding 1923 British Crown law. Between 1923 and 1999, while there was no overhaul of the written laws governing land, many structural changes took place, making much of the 1923 law obsolete; in the absence of adequate legislation, legal battles over land were decided arbitrarily and often in contradictory ways. Furthermore, land disputes were increasing dramatically in the 1980s, and discontent with land allocations was growing. This prompted the government to draft and enact new policies and laws concerning land – policies and laws that promise to have profound impacts upon land allocations. The Village Land Act of 1999, the cornerstone of the new direction for land administration, promises to uphold customary land rights equally with statutory land rights, and includes many clauses whose chief aim is to protect security of land tenure in villages. Yet during operationalization of the Village Land Act, some portions of the law are prioritized in the planning documents (for example, issuing individual title deeds), while some are seemingly ignored entirely (such as the protection of communal rights to grazing land). And, when implementation is carried out on the ground, again, priorities shift so that what is accomplished might bear little resemblance to the original intent. Does this wave of land reform protect and strengthen security of land tenure for rural people?

Contribution to Scholarship, Policymaking, and Implementation

The formal registration of land has been posited as a means to poverty reduction, in the vein of de Soto, while strengthening customary land tenure rights is seen as an important measure for ensuring security of tenure in rural areas. Hernando De Soto is a

Peruvian economist, whose *The Mystery of Capitalism* (2000) has profoundly influenced land reform initiatives in several countries, and has underscored much of the recent World Bank work in this field. His theories about the importance of formalizing land registration will be explained in detail in Chapter 2.

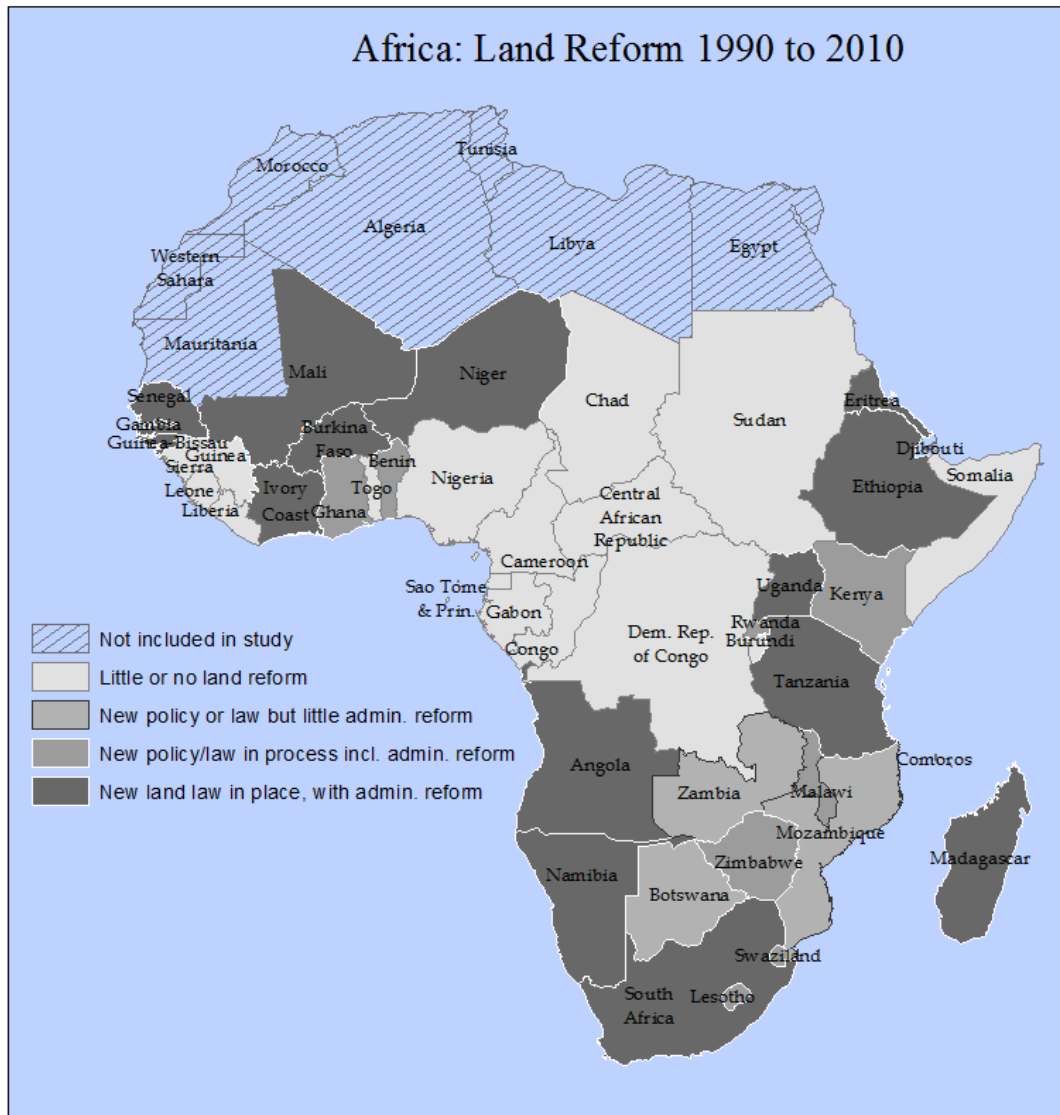


Figure 2: Africa: Land Reform 1990 to 2012. Map created by author showing sub-Saharan African countries engaged in land reform. Source: Based on Alden Wily 2003b p.6, Oudradogo et al. 2006, and Adams and Palmer 2007. Data on Northern Africa was not compiled.

Many national governments in the global south (including over twenty countries in Africa alone – Alden Wily 2003; see figure 2 above) have enacted new land legislation or broad land administration reform within the past ten to fifteen years; several countries are attempting to balance customary land tenure with individual titling, pursuing measures to strengthen both forms of administration (Boone 2007). Tanzania is one of these.⁴ Some countries are recognizing customary tenure patterns as equally valid to cadastre systems imported from Europe – and this raises a whole new set of questions about how best to structure a national land program where multiple forms of land tenure are recognized and encouraged.

My research considers whether formal systems are harbingers of greater security of tenure for people residing in registered villages throughout Tanzania. I focus upon those with an agricultural livelihood, and examine the administrative channels of authority for decision-making about land issues. This dissertation contributes to our understanding of the challenges of upholding customary land tenure while concurrently moving towards universal formal land registration through land administration systems.

The dissertation provides empirical evidence for assessing strategies for upholding customary land rights and for improving security of tenure. I explore the nature of the relationship between customary land rights and individual property rights, which were once thought to be mutually exclusive but are both being incorporated into one legal system in Tanzania. Can they be merged into a cohesive whole? Evidence from

⁴ A recent re-evaluation of land reform initiatives in sub-Saharan Africa finds that by mid-2011, only eight nations have both new land laws that are actually in the process of being implemented. These are Benin, Ethiopia, Madagascar, Mozambique, Namibia, Rwanda, South Africa and Tanzania (Wily 2011, p.10).

Tanzania will enhance our understanding of the challenges for current land administration reform that is underway in a host of countries around the world.

Overview of the Dissertation Chapters

The central themes of this dissertation, then, are the interactions between customary land rights, the drafting of new legislation, and the implementation of a new land framework. The impact of these interactions upon security of tenure and the livelihoods of small-holder, rural farmers is of great concern. The formulation of a policy that concurrently upholds customary rights and prioritizes a formalized land registry is at the heart of each chapter. Parts of this central theme are addressed in each subsequent chapter, as described below.

Chapter 1: Introduction. In the introductory chapter, I lay out the research questions central to the body of the dissertation, explain the relevance of the research questions to global scholarship on land administration reform, and provide an overview of each chapter of the dissertation.

Chapter 2: Land Administration for Upholding Customary Land Rights -- Improving Security of Tenure for Customary Land Users: Why is land administration reform important? A central theme of much scholarly work is on the importance of customary land rights for equitable land reform. Thus, I begin the chapter with a definition of *customary land rights*, since this concept is of primary importance for understanding how land rights are being constructed through legislation and implementation in Tanzania. After describing the link between customary land rights, security of land tenure, and poverty eradication, I trace the history of intervention

(particularly land reform initiatives of global bodies) and the changing consensus on the methods that are effective for enhancing security of tenure. This consensus has shifted from one of an insistence upon individual titling of land to one of upholding customary land rights (yet moving towards land markets).

The next two sections of this chapter discuss two current approaches to upholding customary land rights; the first, popularized by Peruvian economist Hernando De Soto, seeks to bring the customary way of doing things into the existing formal legal order (in other words, bringing the customary into the statutory); the second approach, most common in the Pacific islands but also found in a few countries in sub-Saharan Africa, is to foster and encourage legal pluralism and flexibility in land tenure.

I conclude that while these two approaches seem to be incompatible with each other, parts of each have been incorporated by Tanzania into a hybrid approach that retains elements of both the existing legal pluralistic system as well as a standardization of land administration techniques that seeks to bring existing customary tenure into the statutory system.

Chapter 3: In the Field – Research Design, Methodology, and Context: This chapter includes a discussion of methodology for analyzing the impact of land administration reform in Tanzania, and an introduction to the fieldsite districts and villages where research was conducted. I end with a discussion on the challenge of “the binary”, and the tendency to over-simplify land issues.

Chapter 4: Land Reform in Tanzania – History and Context: After providing an historical context for the Tanzanian case study, I trace the historical underpinnings of the

current reform initiatives, and discuss the special case of *ujamaa* villages and villages on alienated land;⁵ the formation of these types of villages has resulted in a plethora of land conflicts and the policy documents make repeated reference to how new laws will ameliorate such conflicts. I provide an overview of four key documents in the reform process, namely the 1992 report of the Presidential Commission that was tasked with investigating the land problem, the 1995 land policy, the 1999 Village Land Act, and the 2005 strategic implementation plan. I then summarize critiques of the Tanzanian reform legislation and process, noting the chief concerns posed by scholars and civil society groups, and describing the differences between the four policy documents related to three key themes that have a great impact on the security of village lands: (1) the extent of village lands; (2) land transfers and the vesting of all land in the Presidency; and (3) the management structure for village lands.

Finally, I describe the “key players” in the implementation of land reform. I sketch out, in particular, the interventions planned by the two national agencies spearheading the implementation of the 1999 land laws (the Ministry of Lands and the Business and Property Formalization Office (MKURABITA)), focusing upon which aspects of the land policy have been emphasized in their respective plans, and discussing what this means for the treatment of customary land rights, for security of land tenure, and for inbuilt flexibility in land administration.

Chapter 5: Looking at the Ideal – The Mbozi Model: In this chapter, I present Mbozi district as a prototype model, where an implementation process has been developed that is now being replicated in other districts around Tanzania. The

⁵ Villages created or formed during forced villagization in the 1970s.

implementation process is described in terms of organizational structure and linkages between national, district, and local level governmental land agencies. Challenges to standardization of land records at the national and district levels are discussed.

Chapter 6: Land Administration Reform and Village Tenure – Security and Hybridization: In order to analyze the impact of land administration reform in Tanzania upon village land security, I pull out key themes in the reform process that are related to the administration of village lands. In this chapter, I am interested in the village as a whole, rather than individual land rights, and how security for the village is impacted by the land reform initiative, particularly the process of implementation. Specific implementation efforts that have been, or are being, undertaken are analyzed in this chapter. Five specific interventions are discussed at length: (1) the demarcation of village lands and the issuance of Certificates of Village Lands (CVL); (2) the creation of land use plans; (3) the issuance of Certificates of Customary Right of Occupancy (CCRO); (4) the creation and administration of a land registry; and (5) the establishment of channels for dispute resolution. How each of these results in a hybridization of formal and informal systems is discussed.

Chapter 7: The Impact of Land Administration Reform on Rural Peoples: Changing the Customary?: I then turn to an exploration of land reform that impacts how individuals use (or “own”) land. I look at (1) adjudication of land interest (with notes on how land of traditional users has been exploited through land reform in Handeni District); (2) the issuance of Certificates of Customary Right of Occupancy (CCRO), with a discussion on the perceived benefits of the CCRO and implications for the future of the

land reform project; (3) the rights and responsibilities of land users, both informally (traditionally) and under the new land laws; (4) land allocations, and how people have traditionally obtained land; and, finally (5) dispute resolution mechanisms.

I conclude this chapter with thoughts on individual land tenure, and the interplay of formal land tenure systems with informal arrangements. I particularly highlight efforts being made to protect customary land rights, to improve security of land tenure for the rural poor, and discuss what measures are being taken to ensure flexibility in land tenure patterns.

Chapter 8: Conclusion – Theoretical and Policy Implications: Changing land tenure has profound implications on how people access land, on how they use land, and in perceptions of land security. Certain key themes came to the forefront during my field work as being of pressing concern to rural peoples. These include the methods of acquiring land, the major and predominant causes of land disputes, the obvious benefits (or lack thereof) of obtaining land titles, and the vague fear of imminent domain and whether Village Land Certificates truly protect village lands. I discuss these key themes in this chapter, discussing the De Soto influence and probable outcomes of the current wave of land administration reform. While government land reform policy documents were drafted well before adopting the De Soto emphasis on property formalization, property formalization has become the prime component of land reform plans. Is this consistent with the national land policy? In theory, who are the beneficiaries of land administration reform?

After discussing future avenues for research, I conclude with thoughts about the process of “upholding customary land rights” in Tanzania and how my findings are relevant to understanding what is happening in other countries. It is clear that, while land administration is being decentralized and that villages have more say over how their own lands are administered and used, the overall thrust of land reform in Tanzania is to take land out of the customary domain and put it squarely into the statutory domain through a formalization process. I discuss both whether this is a true change or whether the informal already-existing processes will simply continue, making the land registry obsolete, and what this change means to security of tenure for small-holder farmers.

Chapter 2

LAND ADMINISTRATION FOR UPHOLDING CUSTOMARY LAND RIGHTS: IMPROVING SECURITY OF TENURE FOR CUSTOMARY LAND USERS

Chapter Overview: This chapter explores the nuances of upholding customary tenure and customary land rights related to land administration. It begins by defining customary tenure. It then surveys recent scholarship and policy literature concerning tenure security and its potential contribution to economic benefits for societies and individuals, highlighting Hernando de Soto's advocacy of "bringing the informal into the formal", criticism of his ideas, and alternative policies that support legal pluralism and decentralized, flexible land administration. The land administration reform program underway in Tanzania ostensibly creates hybrids of formal and customary approaches, each at once promoting both a formal, standardized land administration and the multiplicity and flexibility that come with informality in response to local situations; thus, a sound understanding of both is fundamental to assessing the impact of land reform implementation.

There are many alternative roads of access to land, some totally informal and others rigidly formalized, some spontaneous and others relying on extensive government intervention (De Janvry et al. 2001, 22).

Defining Customary Land Tenure

Access to land remains a fundamental necessity for much of the world's population, even with rapid urbanization.⁶ Beyond day-to-day survival, secure access to land provides a means for economic progress for families and communities. Following

⁶ The proportion of sub-Saharan Africa's population living in rural areas fell from approximately 80% in 1970 to just over 60% in 2010. Small-holder farmers still make up the majority of the region's residents, in contrast to other parts of the world that are now over 50% urban. Furthermore, while the percentage rural has declined, because of population growth, the absolute numbers of rural people in Africa continue to increase, albeit at a slower rate than urban centers (United Nations DESA 2010).

arguments in support of formal land administration, when tenure is not secure, users are reluctant to invest capital or labor in land for future benefit. Instead, insecurity promotes a “hand-to-mouth” mentality. Communal security of tenure is important for developing stable community relationships where rights and responsibilities of different actors are understood and trusted. Because most land in sub-Saharan Africa is held under informal, customary tenure regimes, many observers consider the upholding of customary rights central to efforts to improve tenure security. It has become a linchpin of several countries’ land policies.

Local systems of property rights have profoundly changed as a result of cultural interactions, population pressures, socio-economic change and political processes. “Custom” is being reinterpreted and “reinvented,” with different actors using different interpretations to support their competing claims. Customary systems have also been manipulated by decades of colonial and post-independence government interventions (Cotula 2009, 159).

What is “customary” tenure?⁷ This question is pivotal to understanding how laws are created and implemented in countries ostensibly committed to recognizing customary rights to land. Tenure patterns are not static, and any monolithic “traditional way” of holding and occupying land is a deliberately crafted or subconsciously embraced myth. Specific ethnic groups or local communities had their own ways of managing land, so a more accurate depiction comprises thousands of tenure systems operating simultaneously, in some cases with little interaction and in others with mutually beneficial, conflicting, or mixed relationships among overlapping systems. Particular regimes of land holding as well as land use and relations among multiple regimes were influenced by shifting environmental factors, interaction with outsiders, and changing livelihoods that affected

⁷ See appendix 1 for a glossary of terms related to land.

perceptions and skills as well as material conditions. Hence each system was and is continually adapting to external and internal circumstances.

Land tenure in much of Africa is usually portrayed as either customary/traditional, or state/statutory. Customary land tenure is characterised by its largely unwritten nature, is based on local practices and norms, and is flexible, negotiable and location specific. Its principles stem from rights established through first clearance of land, or conquest. Customary systems are usually managed by a land or village chief, traditional ruler or council of elders. These systems are not static, but continually evolving as a result of diverse factors like cultural interactions, socio-economic change and political processes. In this context, “traditions” are continuously reinvented to back conflicting claims of different social groups (Cotula et al. 2004, 2, citing Ranger 1983 and Chanock 1985).

Livelihoods in agrarian societies are characteristically limited. In East Africa, most groups defined by kinship, ethnicity, or location have usually raised crops or livestock or both. Only a few have relied primarily on hunting and gathering in recent centuries. Customary tenure regimes before colonial times typically included family lineage farm plots, communal areas for both crop cultivation and grazing, and extensive fallow lands used only in times of severe drought or set aside for lengthy regeneration of soil and vegetation after intensive farming. Village elders made decisions about land use (though not always allocation), usually making provisions to insure minimal well-being for all residents. For example, they might assign a plot to a widow for subsistence even if it “belonged” to a different lineage. They often allocated land temporarily to outsiders who came to a village. Additionally, villages had ties to others nearby, and neighbors might be given temporary use of land, with the expectation of reciprocity later. Such links

could prove crucial for survival during times of hardship such as long droughts (Musembi 2007).⁸

Customary rights considered “traditional” were often the product of colonization and administration of African regions by European powers. Colonial rulers treated traditional leaders as the holders of land rights. What is now seen as customary tenure is in large part

a feat of social engineering that allowed western legal concepts to slip in through the backdoor of so-called “native courts.” European concepts of legal tenure, assumed to be universal, became central to the land laws of every colony.... Where colonial regimes accepted to rule indirectly through traditional authorities, their officers ended up recognizing chiefs and rulers where none had existed before.... What also changed in the process was that social groups came to be regarded as essentially territorial units” (Pottier 2005, 57-60).

Thus, as Pottier and later Amanor argue, what we think of as customary tenure is mostly untraditional tenure created and codified through colonialism.

Contrary to many current assumptions customary land law is essentially formulated from above. Its origins lie in colonial domination and the desire of the colonial authority to create “appropriate” systems of land administration for people who had not evolved capitalist relations of production. Customary land law was formulated to facilitate the integration of rural African producers into the markets of empire. It aimed to prevent the emergence of speculative indigenous land markets which

⁸Musembi (2007) illustrates the complexity of customary property relations with the example of the Akamba ethnic group in Kenya. which recognized five distinct categories of land: 1) unsettled land that could be used for communal grazing and hunting; 2) grazing land that was not communal and could be fenced by individual families or groups of families, especially during drought, and then abandoned to be reclaimed by someone else; 3) uncultivated land close to home, where boundaries were clearly known to the families involved; 4) cultivated land that belonged to distinct families; and 5) land considered the property of a family that had farmed it for three or more generations. Each category had a distinct name, and the five types formed a hierarchy. Unsettled land might eventually become cultivated land belonging to a family, but land farmed by several generations of the same family could never revert to being unsettled; in the absence of an heir it would revert to the clan for reallocation. According to Musembi, this system worked well until population growth and encroachment by outsiders on seemingly unused and vacant lands (vital to Akamba survival during droughts) exerted unprecedented pressure on resources.

could rapidly alienate land to Africans and thus prevent its future utilization by colonial government and its allies (Amanor 2007, 56).

In practice, in many countries including Tanzania, upholding customary tenure has come to mean simply upholding *current* land use patterns by legally recognizing the rights of current land users, so long as they have been using it for a specified period of time. Tanzanian law stipulates twelve years of continual land use as the prerequisite for recognition of land rights. In Uganda and Mozambique, the requirement is ten years (Cotula 2009, 6)

In general, current patterns of land use bear little resemblance to supposedly traditional ways of using land (though with important exceptions, particularly among pastoralists and hunter-gatherer societies). The people or legal bodies that make decisions about land allocation today are often far removed from a “traditional” colonial system in which clan elders typically distributed land. For example, in Tanzania the elected village government (the Village Council)—clearly not a traditional decision-making body—has authority over rural land allocation decisions. “Customary” land rights are also upheld by non-customary bodies in Burkina Faso, Mali, and Senegal, while decision making in Malawi, Botswana, Niger, and Namibia is shared by traditional heads and elected representatives. The trend “is for authority to move from traditional to elected hands at [the] community level. The result may be described as ‘communitisation,’ a move from customarily based to **community-based** rights and administration” (Alden Wily 2003a, 46, emphasis in original).

Thus, for the purposes of this dissertation, *customary land tenure* in Tanzania can be understood simply as *current patterns of use of village lands*. This definition is

problematic.⁹ For example, some “current land use” is neither legitimate nor just in the eyes of villagers.¹⁰ Furthermore, the administrators of land rights bear little resemblance to customary decision makers.¹¹ Nevertheless, this definition has been explicitly adopted for land reform in Tanzania, thereby enabling the government to neatly sidestep potential (and existing) conflicts between land users and those with traditional land rights, particularly in the case of forced villagization.¹²

The Global Initiative to Formalize Land Tenure

Since independence, African governments have adopted policies and programmes aimed at increasing land tenure security for farmers, so as to foster agricultural investment and productivity. These policies have often ignored existing customary and local institutions, and disregarded the distributive issues underlying tenure security Over the last decade, new approaches to improving tenure security have been devised, usually paying more attention to local/customary norms and practices and to protecting all rights and interests in land (Cotula et al 2004, 2).

A global initiative to formalize land tenure can be traced to the 1950s. While it was initially devoid of local knowledge and designed to replace customary regimes with a foreign one, the agenda has been redefined in recent years to incorporate existing practices and to recognize that formalization interacts with existing societal norms,

⁹ See Appendix One for a more robust definition of customary land tenure.

¹⁰ However, the VLA stipulates repeatedly that a deemed right of occupancy must be in consonance with customary law; indeed, “deemed right of occupancy” is defined in the preliminary section of the VLA as “the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law” (URT 1999b).

¹¹ Customary decision makers (for instance, chiefs) are still highly respected but are seen as figureheads rather than holding separate authority.

¹² Land users who were using the land immediately prior to enactment of VLA, and had been using that land for at least twelve continuous years, unless such use was not condoned by customary law, were automatically granted a deemed right of occupancy under the VLA, unless such use was not condoned by customary law (URT 1999b, 14.I.(a)).

however “informal” these might be. Indeed, ignoring customary, existing land tenure regimes is now seen as undermining formalization efforts. A major stated goal of formalizing land tenure is to improve tenure security.¹³

Over the past two decades, customary land tenure, once seen as primitive, has gained stature among scholars, international advocates of land reform, and national governments throughout sub-Saharan Africa. While privatization of land and individual titling have often been viewed as superior to customary land regimes, many now view upholding customary land rights as an important element of formalizing land tenure. The following section examines these perspectives.

Two major schools of thought

Seemingly all scholars who have published research on land tenure in recent years agree that tenure *security* is crucial for poverty reduction (see for instance Van Gelder 2010; Cotula and Toulmin 2007, 107; Odhiambo 2006; Cousins et al. 2005; Augustinos 2003; Benjaminson and Lund 2003; Deininger 2003; Lavigne Deville 2003; Tzikata 2003; Quan 2000). Some of these authors are proponents of formalization and titling, while others are not), and they point to many reasons. Tenure security encourages land users to invest labor and capital in their land, secure that they and their families will benefit; land improvements in turn enhance quality of life and economic power. Farmers who know the fields they are using will continue to be theirs in the future can plan

¹³The Food and Agriculture Organization (FAO), a United Nations (UN) agency, links land tenure security to specific UN Millennium Development Goals (MDG). “Secure rights to land and greater equity in land access are important for poverty reduction and of great relevance to the attainment of MDG-1 for eradicating poverty and hunger. . . . Land policies and agrarian reforms are of direct relevance to attainment of MDG-3 for gender equality and the empowerment of women, MDG-7 for environmental sustainability, and MDG-8 for establishment of effective development partnerships” (FAO 2008).

beyond the current harvest. Other possible benefits of formal tenure security include “more democratic and participatory local development” (Deininger 2003, xxi).

Where scholars are not in accord is how tenure should (or can) be made more secure and what form of land tenure might lead to more secure tenure for small-holder farmers (a term I find preferable to “the rural poor”).¹⁴ Two major schools of thought dominate the discussion. One, epitomized in World Bank policy reports, advocates privatized, individually titled tenure. The other, often in horrified response to apparently unintended consequences of individual titling, holds that customary regimes offer far more secure tenure for the rural poor and especially for the poorest and are better adapted to local contingencies. Both positions have evolved in recent decades, often beginning to incorporate elements of the other:

Whereas customary tenure was once caricatured as collective, it is now clear that it mainly provides for strong individual cultivation rights. Whilst customary tenure has been criticized for insecure arbitrariness, in practice state titling is at least as arbitrary. Customary land was supposed to impede credit because it is not mortgageable, yet titled land [often] does not provide adequate security for the lender. The difference between customary and statutory tenure may therefore be not so much the nature of the tenure offered by the two regimes, but rather the nature of the regimes that offer the tenure—their functions, power bases and constituencies (Smith 2003, p.220).

Formalization through individual titling: Early failings in Africa

The 1975 Land Reform Policy Paper unconditionally recommended that the communal tenure system should be abandoned and individual property rights established through subdivision of the commons (Kaarhus 2005, 511, referencing the World Bank paper of 1974).

¹⁴“Small-holder farmers” encompasses most of the rural population of Tanzania. While the majority of these people are poor by many standards, homogenization of “the rural poor” masks differentiation within this group of people. The poorest rural residents are typically landless or near landless.

Much of the literature of the past four decades has depicted customary tenure as static, backward, resulting in environmental degradation, and conducive to neither efficient agricultural practices nor economic development.¹⁵ Customary tenure has often been characterized as common property and, as such, conflated with open access to land.¹⁶ This portrayal is false on two counts: customary tenure does not necessarily recognize common property, and common property need not allow open access. Yet this semantic confusion, popularized by biologist Garrett Hardin's 1968 *Science* article "The Tragedy of the Commons," added fuel to the fire during the 1980s push for individual titling. Conventional property theory assumes that common property inevitably results in the tragedy of the commons, with individuals overusing the common resource without regard for sustainability. It assumes there is neither monitoring nor accountability.

Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all (Hardin 1968).

In practice, the tragedy of the commons occurs with open-access regimes with little oversight of land use. In contrast, most common-property regimes are based on social customs and rules that are often strictly enforced, with access only by members of the group and only with permission from local elders (Ostrom 2001, 129; Cousins 2000).¹⁷ Furthermore, as discussed above, customary land rights range from open access to

¹⁵Examples include Simpson 1954, Elkan 1959, La-Anyane 1967, Hardin 1968, Dorner 1972, Adegboye 1973, Myrdal 1974, World Bank 1974, Mountjoy 1978, Feder and Noronha 1987, Harrison 1987, Wells and Brandon 1992, and Cleaver and Schreiber 1994.

¹⁶ Hardin (1967) is the most famous example of this conflation. The most notable early debunking of this myth can be found in Colson (1971).

¹⁷ Elinor Ostrom (1933-2012) was, together with Oliver E. Williamson, awarded the 2009 Nobel Prize in Economic Sciences for "her analysis of economic governance, especially the commons" (Sveriges 2009).

individually controlled land parcels. The demonization of customary tenure as inherently detrimental to the environment was nevertheless the impetus for attempting to squash customary tenure regimes as well as communally based pursuits of livelihood.

In the 1960s and '70s, international development agencies shared a consensus that title deeds were necessary to formalize property rights (van den Brink et al. 2006, 12) and that formal property rights would provide farmers with greater tenure security, thus providing “the incentives they required to improve and invest in land” (Manji 2006b, 121). Investment of capital and labor in land improvement was predicated on the promotion of land markets and, especially, on accessibility to credit through the use of title deeds as collateral. Especially during the 1980s, structural adjustment programs attempted to operationalize these theories (Logan and Mengisteab 1993, 4).

Because customary tenure was considered backward, the policy emphasis in a number of countries, backed by the World Bank, was first, to initiate land titling programs to replace communal rights with individual rights, and second, to consolidate land into large-scale farms and ranches. Both of these strategies largely failed. Kenya’s titling program, begun in the 1950s, has become the poster child for opponents of individual titling because of its clear detrimental impact on the poor.¹⁸ Land

¹⁸Kenya has a long history of individual titling of land. Starting in the 1950s, land previously held by white farmers was gradually offered to Africans for purchase. The goal of this agrarian reform was to create medium-sized family farms, thus creating a class of African capitalist farmers; only 3% of farming families received land under this redistribution framework (Sobhan 1993, 72). While this reform did little to disturb relations of production, it certainly contributed to the “growing class of landless rural households” and exacerbated rural-urban migration (*ibid*, 73). Kenya’s pursuit of land privatization transformed most of the former tribal reserves to freehold (Bassett and Crummey 1993; Jacobs and Bassett 1996, 5). Contrary to the commonly held belief that increased titling would result in greater investment in land and ultimately in increased participation in land markets and the global economy, evidence from Kenya shows no discernible impact of land titling on land improvements or mortgaging land to increase productivity (Platteau 2000, 57). In some areas, customary patterns of land allocation have persisted despite land registration.

consolidation promoted by foreign experts (e.g., IBRD World Bank 1961, Fallon 1963) resulted in the eviction of thousands of indigenous peoples from their lands, relegating them to less desirable land and perpetuating vicious cycles of poverty within their communities. The resulting large-scale farms and ranches generally did not produce as much as expected and are now seen as tremendously wasteful of resources.¹⁹

Thus, neither individual titling nor large-scale farming and ranching proved successful, so both were eventually abandoned. Both types of scheme removed land tenure from the domain of customary law and assimilated it in the statutory system of general right of occupancy. Furthermore, local settlers participated in neither, and tenure was tenuous because people could be expelled for breaching the provisions of a particular settlement. The perceptions of the customary land users on land tenure, land use patterns and rights to use, as embedded in their customary systems, were disregarded.

Empirical studies found that privatization and individual land titling led to increased economic well-being due to land improvement in some countries (particularly in southeast Asia, with Thailand a shining example of pronounced economic growth

Furthermore, individual titling has contributed to such social ills as growing inequalities in land ownership, increased landlessness, rising rural unemployment, reduced opportunities for share-cropping, and diminished food security (Shipton 1988, Haugerud 1989). In addition, titling has been costly and has not enhanced small-holder production significantly (Quan 2000, 37).

¹⁹ Aid organizations promoted large farms and ranches vigorously during the 1960s and 1970s. One such experiment was the infamous Canadian wheat project in northern Tanzania, under the auspices of the parastatal NAFCO (National Agricultural and Food Corporation), including the Ar dai and Upper Kitete Wheat Schemes. This project alienated over 100,000 acres of land traditionally used by the Barabaig (a pastoral ethnic group) to cultivate wheat. Countless publications have documented the negative social and economic impact on the Barabaig (Lane 1990, 1991, 1996; Lalonde 1993; Mwaikusa 1993, 154; Fratkin 1997; Igoe 2005). Equally ill-fated projects were the Kongwa and Nachingwea Groundnut Schemes, which also attempted to develop large-scale farms (Hogendorn 1981, Rizzo 2006, Lovett 2006). The creation of ranching associations in Maasailand alienated large tracts of traditionally pastoralist lands and tried to create large-scale cooperative ranchland. These too did not prosper; indeed, they were a “debacle” that “destabilized and extinguished all pastoral customary land rights and traditions” (Gastorn 2008, 37).

following successful land reform (Feder 1987). However, no evidence linked agrarian reform to economic growth in sub-Saharan Africa. On the contrary, the seminal work of Migot-Adhalla et al. (1991, 155), perhaps the first empirical study of the effects of land titling in sub-Saharan Africa, found that individualization of land rights was “at best” only weakly linked to higher agricultural yields.²⁰

Supporting customary land tenure

The term ‘formalisation’ is, ironically, an unclear concept, although the adjective ‘formal’ comes from the Latin ‘formalis’, which means ‘precise’, ‘explicit’, ‘clear’. In keeping with the original meaning, to ‘formalise’ would mean to make something clear or explicit. (Kaarhus et al. 2005, 446)

After failures such as these, governments and aid organizations have rethought individual titling and large-scale farming and ranching. Some, including the World Bank, have shifted their policies to accommodate customary tenure, recognizing that uprooting people from their land and attempting to force social change through top-down initiatives have not reduced poverty. Many now characterize their approach as evolutionary, with individual rights to land the ultimate goal but propitious conditions necessary to implement them effectively (Platteau 1996). Individual titling “was only workable in countries where market economies were fully developed” (Manji 2006, 121). In addition, they no longer view customary (both individual and community) tenure as necessarily inhibiting agricultural productivity and, in contrast to earlier views, potentially offering sufficient tenure security for economic development. Formal title “is not always necessary, and often is not a sufficient condition for optimum use of the land resource”

²⁰ See Firmin-Sellers and Sellers (1999) for a more mixed review on African titling projects.

(Deininger 2003, xxvii). Attempting to implement an ambitious land policy from the top down disrupts social customs, including checks and balances that assure mutual well-being, without providing new mechanisms that ensure equality.

The present wave of land policy reforms follows a general failure of earlier approaches . . . in which free market models, emphasizing the conversion of customary tenure to individualized freehold rights, or alternatively, egalitarian socialist models were dominant. Individual land registration and titling, in particular, came to dominate the land policy prescriptions of international finance institutions in the era of structural adjustment. During the 1990s, mounting evidence of the pitfalls of this approach, in particular its high economic and social costs, and negative consequences for the poor, led donors and African governments alike to re-examine accepted approaches (Toulmin and Quan 2000, 2).

Today land policies are being reformulated to allow flexibility and diversity in tenure forms. Tenure security cannot be strengthened in a vacuum; it must develop out of existing tenure regimes. Communal and other customary forms of tenure can provide adequate security for economic development while concurrently protecting villagers from exploitation—something that systems based on individual titling often cannot do, especially in a climate of low levels of democratic governance. Projects to formalize land relations ought to neither ignore the existing informal framework nor replace it. Increasingly land reform projects aim to merge customary tenure and modern land registration.

The World Bank and other proponents of universal individual titling have moved away from campaigns to achieve it immediately.²¹ They now argue that, while tenure systems based on individual titles are the ultimate goal everywhere, forcing them on populations where circumstances are not propitious is counterproductive. Instead, they

²¹See, for instance, AusAID 2006, Sokoloff and Engerman 2000, Acemoglu et al. 2001.

believe that allowing customary forms of tenure, where they are working well and offering security, to evolve gradually will eventually result in individually titled parcels.

It is now widely realized that the almost exclusive focus on formal title in the 1975 [World Bank] paper was inappropriate, and that much greater attention to the legality and legitimacy of existing institutional arrangements will be required. Indeed, issues of governance, conflict resolution, and corruption, which were hardly recognized in the 1975 paper, are among the key reasons why land is coming to the forefront of the discussion in many countries (Deininger 2003, xlv).

With the emphasis on ensuring security through upholding customary tenure, the question becomes how customary tenure can be upheld effectively. Two major approaches attempt to answer it. One, pursued by the World Bank through its financing of projects, is to “bring the informal into the formal,” an idea popularized by de Soto. This is expected to result in a standardized, statutory land administration system that prioritizes individualization of land ownership. The other approach is to create administrative structures that allow legal pluralism and/or flexible, localized tenure.

Individual Titling for All

De Soto’s ideas have had a profound impact on the World Bank and current land policy in scores of low-income countries. In practice, the World Bank continues to fund projects aimed at universal titling as a key element in poverty reduction strategies, as advocated by de Soto.

Because land comprises a large share of the asset portfolio of the poor in many developing countries, giving secure property rights to land they already possess can greatly increase the net wealth of poor people. By allowing them to make productive use of their labor, land ownership makes them less reliant on wage labor, thereby reducing their vulnerability to shocks (Deininger 2003, xx).

Global debate over the efficacy of individual titling and whether customary land rights can ensuring tenure security and create opportunities for economic progress is clearly evident in Tanzanian land legislation. The Village Land Act 1999 and Land Act 1999 recognize customary tenure; yet their implementation has largely centered on individual titling and replication of Western cadastral systems. A driving force behind implementation of the Land Act 1999 is de Soto's theory regarding property rights, expounded in several books, including *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (De Soto 2000).

Over the last five years, the approach to formalisation of property rights advocated by the Peruvian economist Hernando de Soto and his Institute for Liberty and Democracy (ILD) has become increasingly influential, particularly among top politicians and officials in the international development industry. This popularity among policy-makers has culminated in donor-funded, ILD-led formalisation programmes in several countries and has also led to the recent establishment of a 'High Level Commission on Legal Empowerment of the Poor' (Benjaminson et al. 2006, 3)

In 2004, a team of experts from ILD visited Tanzania to plan national land reform (ILD 2005, 1). A major result was the creation of a new government agency, MKURABITA, which is explicitly tasked with operationalizing de Soto's vision of "bringing the informal in to the formal" in Tanzania. MKURABITA's work will be discussed in Chapter 4.

De Soto's economic theories

De Soto argues that universal individual titling is the only route for the world's poor to escape the cycle of poverty. He believes that failure to formalize property rights explains the nearly universal lack of success of development projects intended to improve

national economies. He advocates bringing *de facto* informal systems of managing and administering land into the formal system as the means of enabling the majority of low-income countries' populations to access credit through financial institutions.

De Soto argues that economic development that does not result in fungible capital cannot be sustained and that access to credit is the key mechanism enabling widespread participation in market economies. In everyday use, the term "fungible capital" refers to capital that has the same value (for example, bills of the same denomination or shares of stock in a particular corporation at a specific moment). Real estate is not ordinarily considered fungible because one parcel does not have the same value as another. However, de Soto uses the term "fungible capital" to refer to anything for which economic value can be calculated and which can be transferred legally from one entity to another. The market value of a parcel of registered land can be determined, and the parcel can be transferred. Thus, a bank or other lender can accept a title as collateral and lend money based on the assessed value of the property, enabling title holders to obtain capital for such investments as land improvement or new businesses.

De Soto notes that the entire capitalist structure in the West is built on property titling and legal protection of property rights. All land is accounted for and is part of the cadastre. Property taxation and transfers are legal transactions, and there is general trust and confidence in the system.²² Therefore, property can be used as collateral for mortgages, providing capital to generate or engage in countless economic endeavors.

²²While this is de Soto's description of the West, no cadastre system is complete, and informality exists alongside the formal everywhere, regardless of how "advanced" a land system is (see, for example, Harvey 2006, Home 2004).

In low-income countries, official channels for access to credit are under-utilized, typically available only to those “in the bell jar.”²³ The majority of the population has no means of accessing formal credit. For example, it might take twelve years to register a property in Egypt or seven years to register a small business in Lima. Therefore the poor negotiate extralegal arrangements. For example, they may obtain credit from local lenders, but typically on usurious terms. Borrowers often cannot expand their economic activities beyond the local community, where their access to credit and the sale and purchase of goods and services are limited to the trust based on personal relationships. According to de Soto, broader economic participation and taking advantage of economies of scale depend on trust and guarantees built into a legal system accessible to everyone, as in the West. In other words, formalization enables people to access the true value of their property, while informality keeps people within a limited local market.

One of the most important things a formal property system does is transform assets from a less accessible condition to a more accessible condition, so that they can do additional work. Unlike physical assets, representations are easily combined, divided, mobilized, and used to stimulate business deals. By uncoupling the economic features of an asset from their rigid, physical state, a representation makes the asset “fungible”—able to be fashioned to suit practically any transaction (de Soto 2000, 56).

Once assets are in a formal property system, they endow their owners with an enormous advantage in that they can be split up and combined in more ways than an Erector set. Westerners can adapt their assets to any economic circumstance to produce continually higher valued mixtures, whereas their Third World counterparts remain trapped in the physical world of rigid, non-fungible forms (de Soto 2000, 58).

²³De Soto uses the term “bell jar” to refer to the economic environment in which the elites, who are protected by existing laws and regulations, operate. “Inside the bell jar are elites who hold property and run businesses using codified law borrowed from the west. Outside the bell jar, where most people live, property is used and protected by all sorts of extralegal arrangements rooted in informal consensus disbursed through large areas” (de Soto 2000, 156).

How does de Soto envision the transformation of a society largely based on extralegal relationships into one anchored in a secure, universal land system? He observes that land relations in early U.S. history were akin to those in low-income countries today. “The land problem” was not resolved through imposition of new regulations. Instead, almost always, the law caught up with *de facto* informal methods of administering land tenure and resolving conflicts. Thus, passage of the first Homestead Act in 1862 reflected the government’s recognition that thousands of “pioneers” (squatters?) were already taking federal land west of the Mississippi River for themselves. Congress and President Lincoln in effect changed the law to fit societal norms. De Soto uses this history to bolster his argument that, rather than imposing completely new legal requirements, existing extralegal norms should be incorporated into the codified land regime.²⁴

De Soto delineates several steps required for effective land reform, the first of which is to discover “the people’s law.” A government must know what local conventions are to integrate all forms of property into a unified legal structure. De Soto argues that enabling everyone to access the legal system necessitates political intervention by activist lawyers who rewrite law (as opposed to “normal” lawyers, who work hard against changing law). In his view, only skillful, high-level political intervention can “wipe out the willful inertia of the status quo” and “prevent bureaucratic infighting and political conflicts from paralyzing the progress of reform” (De Soto 2000, 188). Finally, technicians who develop the systems for land administration must

²⁴“Law is the instrument that fixes and realizes capital” (De Soto 2000, 157).

understand that technology by itself cannot achieve meaningful change. Photographing, surveying, measuring, and computerizing inventories of properties do not capture “who really owns those assets or how people have organized the rights that govern them” (ibid., 5).

In summary, de Soto promotes universal individual titling to achieve economic growth. However, he also advocates retaining as much of the informal (yet broadly accepted) forms of land administration as possible by bringing them into the formal structure. This enormously complicated legal (and political) transformation is the crux of land reform. De Soto’s ideas are deceptively simple. In practice, where governments have attempted to implement his vision, “activist lawyers” and high-level political commitment to restructuring society have been largely absent. Projects ostensibly based on de Soto principles typically try to force the informal to fit into an existing formal structure rather than transform the formal system to incorporate the informal. Implementation of de Soto’s ideas would require major restructuring of power relations, yet he offers little advice about how to achieve this.

Note that de Soto embraces capitalism (with its attendant focus on “free” land markets) as the only viable economic system and equates progress with economic progress. A full critique of capitalism is well beyond the scope of this paper. Suffice it to say here that “free” markets and capitalist regimes seldom result in a more equitable distribution of wealth, including land (cf., El-Ghonemy 1990).

Critiques of de Soto's work

Critics have attacked both de Soto's theoretical position and applied projects designed to implement his recommendations. Many accuse him of oversimplification.

Gaining "title" to land has never been a "simple" recognition of unused capital but has always involved severe social struggles with distinct winners and losers, from the enclosures in England ... to contemporary processes across Africa (Peters 2009, 1322).

Other criticisms address specific aspects of de Soto's argument and efforts to apply it in "development" projects.

Evolutionary development. A frequent criticism of de Soto's work, as well as land reform projects in general, calls into question evolutionary interpretations of development (e.g., Smith 2003, Musembi 2007, Manji 2006a, Porter 2001). Strongly reminiscent of the neo-classical modernization mindset, an evolutionary approach to land tenure holds that over time traditional property regimes evolve into individual freehold regimes.

Customary land tenure is seen as inefficient and in need of reform, while individual property rights are viewed as the most efficient means to stimulate economic development, with democratization an attendant benefit (see Smith 2003, 211).

According to the evolutionary premise, economies inevitably develop along this continuum, moving from traditional forms to the modern one. The suitability or universality of the "modern form" is not questioned.

De Soto believes that the poor will follow the natural progression of moving out of pre-capitalism into modernity. Accordingly, the World Bank asserts that the "market economy...will eventually produce a land tenure system that, while not identical, will bear strong resemblance to the western concept of ownership" (quoted in Manji 2006b,

121) and, further, that “less than ideal tenure arrangements—that is, those that do not confer formal individual title—will evolve” (quoted in Manji 2006b, 123).

Critics posit that customary land tenure systems might be just as conducive to economic development as—or even more than—individual freehold. Furthermore, they may be as environmentally sustainable or more so and as likely or more so to achieve social justice.

Official discourse understands the present in terms of a teleological transition, from a past (tradition) to a future (modern), in people’s relations to land. In this conception of land access, tradition is seen as the past, whereas the modern is taken for granted as the future, and is automatically considered what “ought” to be. The transit from one state to another is inexorable, because all rich societies have modern systems of tenure, whereas poor societies have, by definition, traditional relations between people and land. This teleology reinforces a tendency to overplay, to overdetermine, the role of “structural imperatives” (such as regulatory regimes introduced by the state) in determining land access, at the expense of local agency to hybridize tradition and modernity for local advantage. (Porter 2001, 206).

In short, customary land tenure regimes are not inherently inferior (or superior) to Western legal structures, and the former are not “natural” predecessors of the latter. Changes in regimes of land administration need not follow a predetermined linear trajectory. As discussed earlier, what is now viewed as “customary” more often than not reflects colonial histories.

The impact of individual titling. De Soto’s critics assert that empirical evidence, especially in sub-Saharan Africa, does not support the claim that individual titling results in fungible capital, more secure tenure, or economic participation and growth. Neither does it indicate that individual titling benefits the poor (e.g., van den Brink et al. 2006, 12; Augustinus 2003; Hutchinson 2008). Most low-income countries lack the

infrastructure and institutional capacity to make a comprehensive system of formal loans feasible nationwide. Those who have title deeds often cannot put their properties up as collateral, even should they choose to do so. Empirical studies point to a number of reasons for this. First, due to weak or ineffective national government, long-term recognition of a title deed is not guaranteed; this is particularly true in countries where all land remains formally vested in the state, such as Tanzania, since the government can render title deeds null and void if that serves its purposes. In the absence of confidence in title deeds, lenders are understandably reluctant to accept them as collateral. Second, where land registration occurs without a sound cadastre and title insurance, a deed may not be worth the paper on which it is printed and is thus useless as collateral. Multiple claims to the same property and overlapping claims are common. In Kenya, where titling has been pursued through numerous programs since the 1950s, a title deed is perceived as having so little value that issued title deeds are rarely collected from the central office in Nairobi. Third, without special incentives, financial institutions have little reason to issue relatively small loans. In some countries, banks accept only large landholdings (for example, over twenty acres) as collateral, making most poor farmers ineligible for loans.

Even if lenders accept title deeds to even small properties as collateral, small-holder farmers often do not partake of this supposed economic benefit. Using land as collateral can easily make tenure less secure, with foreclosure the price of not repaying loans on time (Smith 2003, 210; Platteau 2000, 68; Adams, Sibanda, and Turner 1999, 12; Okoth-Ogendo 2000, 12). Land is the chief source of subsistence and income for

most of the rural poor, who are (or should be) extremely wary of taking any steps that might result in losing it.

A policy that hopes to increase aggregate output through the mass use of land as collateral is counting on making a population of “ideally informed risk calculators” or, one could say, gamblers, out of a population of risk-averse poor people (Smith 2003, 217).

Van den Brink et al. (2006) observe that improving tenure security depends far more on political, legal, and broader social reforms than on the issuing of title deeds. They also point out that tenure security (including individual property rights) can exist even in the absence of title deeds.

In addition to foreclosure when a title deed has been used as collateral for a loan, individual land titling can worsen tenure security *for the poor* in other ways. Where titling disregards customary tenure, land grabbing is common. Wealthier and politically more influential individuals and entities such as corporations and foreign governments can obtain titles to or long-term leases for additional land, including fallow or legally unclaimed land. When conflicts over ownership arise, they are able to leverage the administrative and legal systems to their advantage, displacing the poor. In addition, the poor may sell their land to predatory buyers, often at prices that are a small fraction of fair market value. Thus, title deeds can create room for opportunistic behavior against which customary rights previously provided protection. “Free” land sales markets predicated on formal titling are generally hostile to the poor.

Simplistic approaches to land reform have not supported localized agricultural development and have undermined security of tenure (Quan 2000, p. 49).

Other issues. In addition to arguing that individualization of property rights is not the pinnacle of an evolutionary climb and that individual titling does not necessarily result in fungible capital and access to credit by the poor, more secure tenure, or more widespread economic participation and benefits, de Soto's critics have raised other issues. These concern his characterization of the poor and legality, treatment of formal and informal economies as dichotomous, failure to recognize non-economic values of land, and focus on individual property rights.

Some detractors claim that de Soto treats "the poor" as a single category, failing to acknowledge salient differences among them. He neglects to consider the landless, let alone social differentiation among the landed poor. The landless poor include squatters, renters, tenant farmers (such as sharecroppers), and family members ineligible for inheritance who can be forced off land if the recognized holder dies. In circumstances where land markets work as de Soto describes and title deeds are issued and protected by an effective legal system and government, the situation for the landless poor is likely to worsen. As property values appreciate, rents rise, yet poor renters are unlikely to have more money; they are further marginalized, displaced by renters with greater means, and are thus likely to be pushed into worse living conditions, with access to only more marginal land in rural areas, fewer amenities in cities, and worse employment opportunities and working conditions in both. De Soto's economic model assumes something of a trickle-down theory, with individual titling contributing to economic growth expected to result in more equitable wealth distribution over time. Little evidence supports this assumption, for either the landed or the landless poor.

For de Soto, anything falling outside formal law is extralegal. For others (such as Manji 2006b, McAuslan 2006, Maganga 2003, and Bruce and Knox 2009), “legal pluralism” refers to situations in which different legal systems are at play. This is discussed in greater detail below. De Soto views land tenure and economic relations as either informal or formal instead of taking a more nuanced approach that recognizes the fluidity between the formal and the informal and the impossibility of separating the two completely in meaningful descriptions of real-world structures and activities.

Some critics accuse de Soto of turning land into nothing more than an economic asset. Griffith-Charles (2004) and Odgaard (2003, 78) describe additional valuations of land, such as reluctance to part with land that a family has held for generations. Individual owners may not be allowed to sell land if they wish to remain a part of their families, communities, or clans. Land is embedded within various social relations, not only economic ones.

De Soto focuses on *individual* land rights. Issuing title deeds for land to which individuals have informal claims recognized by others is a more obvious process than incorporating customary communal or kin-based tenure in national land reform. De Soto is silent concerning the economic and political implications of formalizing communal tenure.

De Janvry et al. (2001) summarize criticism of de Soto and projects based on his ideas as simplistic, universal approaches unlikely to produce economic progress, especially for poor people. De Soto’s critics advocate land administration systems tailored to the circumstances and customs of specific places and groups of people.

In practice, countries that have attempted land reform based on de Soto's ideas have focused on bringing informal land arrangements into pre-existing formal legal structures. This approach has not been observed to improve tenure security for those with customary rights; instead, it changes land tenure regimes, undermining customary flexibility and fluidity. Individual titling destroys customary communal rights. Furthermore, the value of land is reduced to its monetary worth.

Legal Pluralism, Decentralized Land Administration, and Flexible Tenure

Individual titling for all is not the only approach to formalizing land tenure. Legal pluralism and decentralized land administration allow the coexistence of different forms of tenure. Richard Leakey has described for Kenya the complex reality that characterizes Tanzania and other sub-Saharan countries as well.

Forty-nine different languages [are] spoken in Kenya, and many of these would consider themselves remnants of nations. But we solve no problem if we go back to being a forty-nine-state federation. It is my view that the only way to support the nation state is to support a system of governance that reflects the complexity of Kenya's make-up and historical past while nonetheless retaining the sovereignty of that state (Leakey 2009, 162).

National policies designed to incorporate all land in a one-size-fits-all cadastre are unlikely to recognize the variability of environmental conditions or differences in regional and local histories, politics, and economic circumstances. They are thus almost bound to fail to make tenure more secure or to gain the trust of citizens who recognize the lack of congruence between their needs and everyday lives, on the one hand, and government intervention, on the other.

In contrast to de Soto's advocacy of "bringing the informal into the formal," proponents of legal pluralism view diversity in land tenure regimes and decentralization of land administration as strengths that enable land reform that is environmentally sustainable and conducive of social justice in a particular place.²⁵ Customary tenure systems are encouraged to flourish, and are arguably just as likely as, or even more likely than, universal individual titling to result in economic growth and poverty reduction (Yngstrom 2002, Manji 2006b, Fitzpatrick 2005).²⁶ Possibilities for variation in forms of land tenure are unconstrained by pre-established options.

"Customary" systems have been much changed by a century or more of contact and interference by governments, both colonial and since independence. An extreme example is South Africa, where what is referred to as customary law is a mixture of "tradition" and colonial and apartheid legislation, under which tribal authorities were salaried government officials, subject to the State President. Equally, statutory systems for land management usually operate with considerable possibilities for negotiation. Therefore, African farmers gain access to land through a blend of "customary" and "statutory," "formal" and "informal" institutions. A range of customary, statutory and hybrid institutions and regulations having de jure or de facto authority over land rights co-exist in the same territory, a phenomenon referred to as "legal pluralism" (Cotula et al. 2004, 2).

[A] legal-pluralist outlook . . . entails accepting that informal land tenure plays an important part in everyday life, in some cases beneath a thin veneer of state law (Manji 2006b, 128).

Customary tenure is—and always has been—one of the foundational elements of the land laws of all states in Africa. It is not an add-on to received law; indeed, received or imposed law is the add-on. Received law

²⁵Ghana provides an example of coexistence of numerous means of resolving land conflicts (Crook 2008).

²⁶Niger made customary land rights legally equal to other statutory tenure in 1993, and land administration is highly decentralized (though implementation has still not extended to the entire country). The procedures for registering customary land are simple, and local buy-in to the process is widespread, with many (most?) registering their land voluntarily. The CILSS "presents the institutional framework established by the 1993 Rural Code as a model for the region to address integrated rural development issues" (Ouedraogo, Gnisci, and Hitimana 2006, 35).

thus needs to be adapted and adjusted to indigenous law, not vice versa, and proponents of received law should be advancing the case for legal pluralism (McAuslan 2006, 9).

In any case, national legislation has limited capacity to change behavior if it is not congruent with customary practice (Bruce et al. 1994, 259).

In countries with a history of recognizing customary tenure (or where customary tenure is being recognized after a period of attempting to abolish it), the national government's role in land administration is being redefined. Rather than a centralized, largely inaccessible bureaucracy, the state becomes the guarantor of tenure rights and facilitator of decentralized administration. The local informal order is generally deemed sufficient; yet, if customary structures are absent, unable to regulate access to land and resolve disputes, or demonstrated to promote injustice, the state will intervene. In many cases though "indigenous tenure systems will gradually evolve institutional innovation that are less costly than registration and titling and serve the same purpose" (Platteau 2000, 58). Titling may be called for when indigenous tenure systems are absent or weak (such as in new settlement areas), or when traditional lines of authority have been severed and loyalties to lineage and communal groups eroded (ibid., p.73).

Fitzpatrick (2005) offers a framework for thinking about relations between communities and national governments that recognize customary tenure. He categorizes governments' positions as minimalist, transformative, and cooperative approaches based on legislation and its implementation. All three approaches can result in economic benefits and may lead eventually to strong individual land rights.²⁷

²⁷ Notice, once again, the emphasis on an evolutionary model.

A minimalist approach is one in which the government recognizes customary tenure groups and demarcates and monitors boundaries between communities but leaves internal land administration to each community. Thus, in a national land registry, large tracts might simply be designated as “customary land,” possibly with no attempt to define which groups hold which land, and with no interference in customary tenure arrangements (Fitzpatrick 2005, 458). A minimalist approach allows customary rights to evolve over time “in response to population changes and economic needs, without undue restriction or imposition by a formal legal regime” (ibid., 458). However, it may exacerbate existing internal conflict and tenure insecurity.

Most examples of minimalist approaches come from Latin America, particularly from forest user groups (Hvalkof and Plant 2000). An African case is Mozambique, where current land legislation provides for demarcation of customary areas that are to be unregulated (Tanner 2002); because this approach is quite new, there is not much evidence yet to assess its impact (Alden Wily 2003a). The approach is flexible, providing a national legal framework to protect local norms without “freezing” their content. In many cases, a community as a whole is the collective holder of land rights, with internal management (Cotula 2009, 6).

A transformative (or agency) approach, as described by Fitzpatrick (2005, 459), also recognizes customary tenure but identifies individuals to serve as government agents to represent the group with land rights. This approach characterized colonial rule in much of Africa. It made administration relatively simple but resulted in abuse of power by agents who put their own interests above those of the groups they ostensibly represented.

Although colonial rule has ended in Africa, similar approaches, in which designated individuals represent territories and groups with customary land rights recognized by the national government, are employed in South Africa, for example. National law requires internal procedures to be democratic, equitable, and non-discriminatory. However, law as prescription seldom changes social norms, and evidence in South Africa indicates customary, sometimes abusive, practices that skirt legal mandates.

Approaches that Fitzpatrick (2005, 463) identifies as cooperative typically rely on land boards, with authority in areas with customary land tenure transferred from tribal chiefs to groups charged with national policy implementation, land allocation, dispute resolution, and collection of leasehold rents for administrative districts (or, as in the case of Tanzania, villages) This approach enables implementation of national initiatives that is attuned to customary practices and local conditions. Its vesting of authority in a group of individuals who may not represent all holders of customary rights can impede social justice. Furthermore, institutional capacity is often inadequate at the local level. For example, existing tenure arrangements and changes may not be systematically registered and monitored.

In areas where customary tenure is unable to provide for growing populations, resolve disputes regarding external and/or internal boundaries and other matters (such as land use and water allocation), and respond effectively to external pressure to sell land, a minimalist approach is not appropriate. Fitzpatrick (2005, 471-2) suggests that in all other circumstances it may prove to be the most cost effective, flexible, and “evolutionary” of

all approaches, preserving desirable social norms and adapting them to ever-changing circumstances.

Platteau (2000, 72) advocates cooperation rather than confrontation between the national government and local communities, with the former strengthening local capacities for management of land and information and for dispute resolution. He writes, “[Customary] institutions are cheap and flexible and tend to provide social security to all their members (despite social differentiation); and also generally bring a remarkable degree of consensus in land conflict situations” (Platteau 2000, 72).

Not all customary practice is congruent with international ideals of equity, of course. Women, migrants, and children orphaned by AIDs may not have land rights. Furthermore, population growth can render customary regimes environmentally unsustainable. A “minimalist approach” often becomes untenable and national intervention necessary as land becomes scarce (Platteau and Baland 2001, 54). The classic case is relations between pastoral groups and farmers that deteriorate from mutually beneficial customary arrangements to intense conflict as land becomes scarce. Livestock is increasingly likely to damage crops, so farmers may erect fences around land previously open to grazing. Nevertheless, apparently necessary intervention by the national government may ignore community dynamics and customary protections and means of conciliation. Formal legal procedures usually result in “winners” and “losers” and disadvantage the poor and powerless. A customary regime that denies women property rights may nevertheless guarantee them subsistence. Most “modern” cadastre-based regimes in Africa allow only one name on a title deed, nearly always that of the

household's dominant male. Women are therefore often better served by customary practices. In other words, the appropriate approach is the one that is best attuned to the needs and circumstances of particular places and groups of people.

While legal pluralism exists everywhere, it must be understood and negotiated well to achieve effective land reform. National governments must become partners of local communities, including those where customary tenure holds sway. Rather than obstruct social change through unresponsive bureaucracies, they must advocate and enable constructive social change. This transformation of government's role is likely to require decentralization of power and resources and flexible forms of land tenure.

Tanzania's Hybrid Approach

If flexibility that encompasses legal pluralism is purposefully pursued as a strategy to enhance tenure security and generate economic benefits, a variety of land administration systems are needed, each tailored to local needs, circumstances, and customs (Fitzpatrick 2005). Customary land tenure regimes are ever-changing in response to environmental and social factors. Some meet challenges effectively, while others may not. Colonial law formalized land administration, but in most rural areas, customary practices (though modified and in some cases created by colonial rule) informally allocated land, shaped its use, and resolved disputes. The Tanzanian government is seeking to find a balance between flexibility in land and tenure management, on the one hand, and promotion of national goals such as poverty reduction and human rights, on the other (Kironde 2006). It is relying on village authorities to manage land flexibly with respect for customary practice, yet maintaining centralized

oversight of local implementation of national land policy. The remaining chapters of this dissertation explore the development of this hybrid approach (or *these hybrid approaches*, since multiple frameworks are encouraged when flexibility is purposefully pursued as a strategy).

Tanzania is attempting to “bring the informal into the formal” by moving towards universal individual titling while decentralizing authority and allowing flexibility in local land management. This hybrid approach has inherent tensions. After the following chapter, which contextualizes my research project and describes its methodology, subsequent chapters provide a history of national land policies and explore their implementation at the local level.

Avoiding the Reduction of Complex Land Relationships to “Binaries”

Cleaver (2003:13) questions the ‘dichotomous classifications of institutions as either formal or informal, traditional or modern’, while admitting that ‘it is difficult to find alternative labels without reproducing false polarisations’ (As quoted in Kaarhus et al. 2005, 446-7).

Land tenure is often described as either formal or informal and administered either locally or nationally. Property rights are described as either customary or statutory (and, by extension, based in either illegality or legality). Land administration systems are either top-down or bottom-up and concurrently either centralized or decentralized. Land tenure regimes are either flexible and fluid, or standardized and regulated. Yet, no land tenure system, anywhere in the world, is wholly one or the other for any of these binaries. All fall somewhere in between along a continuum.

Keeping complex reality in mind, observers can find binary terms helpful in understanding and describing changes over time. I often use an “informal-vs.-formal” lens to highlight subtle and not-so-subtle shifts in land administration while recognizing informality in the formal system and formal elements in informal systems. A local system that has no national involvement or oversight could be called “informal” yet may follow formal rules of its own. Likewise, a highly-regulated, top-down bureaucratic system considered “formal” may allow informal land arrangements between individuals. “Formal” and “informal” often coexist; for instance, “resource users gain access to natural resources through a blend of ‘customary’ and ‘statutory’ arrangements” (Cotula 2007, 14).

Tanzania has a highly visible, formal national land administration system (at least in principle on paper). Yet the ways in which land is administered often circumvent it and instead follow customary tenure regimes that bear little resemblance to the official system.

The danger of using a binary lens such as this is oversimplification. Viewing “the formal” and “the informal” as a dichotomy is precisely what led to defining informal land tenure as negative, resulting in land policies that simply did not work. Thus, be forewarned that these describe contrasting sets of characteristics at opposite ends of a continuum.

Chapter 3

THE RESEARCH STRATEGY

Chapter Overview: This chapter is a bridge from the positions and debates reviewed in the preceding one to the Tanzanian cases examined in subsequent chapters. It describes my research methods and the districts and villages where I collected data. While existing scholarship and land reform efforts elsewhere have informed my research,²⁸ in turn I expect my case study of Tanzania to contribute to that scholarship and to shed light on likely problems and avenues for success in other countries where informal, customary land tenure is being brought into formal administration systems.

Methodology

I began my research planning to investigate the design of spatial data infrastructure in Tanzania, particularly how parcel registration could be efficiently conducted to produce an accurate and complete cadastre. An up-to-date, functioning digital national land registry would be a data analyst's dream for national planning and statistical and spatial analysis but extremely costly to create. Furthermore, without bringing informal tenure into the formal structure, it would bear little resemblance to how land is really used.

This realization turned my thinking to what land administration reform is needed to better the situation for everyday land users. Tanzania is already in the midst of a huge

²⁸ There is a substantial amount of scholarship on similar land policy and land administration reform initiatives in several sub-Saharan countries, including Ethiopia, Uganda, Namibia, Ghana and South Africa. A complementary comparative study is an important future direction for this dissertation work.

land reform project, spending millions of borrowed dollars. I reformulated my research questions to examine the effect of reform on tenure security and whether implementing new land laws will really bring about the promised benefits to rural peoples.

Implementation efforts are still ongoing, and it is too soon to ascertain their impact, but I believe that talking with both the people developing implementation schemes and those whose land has been included in early efforts has illuminated the process sufficiently for a preliminary assessment.

My methodology for primary research combined my own detailed analysis of official documents concerning themes related to tenure security, on the one hand, and semi-structured interviews with government personnel engaged in land policy implementation in national, district, and local offices (as well as the World Bank and two non-governmental organizations at the national level), on the other. Chapter 4 uses a top-down approach to review the national land reform under way in Tanzania.

Chapters 5 and 6 address ongoing national land reform using a bottom-up approach, focusing on the village as a whole in Chapter 5 and on individuals within villages in Chapter 6. My methodology for these chapters entailed interviews with land users about their perceptions of the importance and impact of village land administration reform.

These top-down and bottom-up approaches contribute to a fuller understanding of land reform in Tanzania than would be possible without both. The analysis of documents illuminates the problems were apparent prior to passage of land laws, what solutions were conceived to ameliorate them, and how authority over land officially changed. Interviews

of key players in implementation of the land laws sheds light on the challenges they have encountered, their perspectives on customary land rights, and whether customary rights are being upheld. Interviews with land users afford a look at people whose land rights are being formalized and their perceptions of the impact of formalization on their tenure security.

Selection of Field Sites

In Dar-es-Salaam in July 2007, I began investigating implementation of the Village Land Act. In December 2008, I visited Mbozi district to begin to understand the process at the village level. From May 2009 through February 2010 I conducted interviews in Dar-es-Salaam and three rural districts: Mbozi, Kisarawe, and Bariadi.²⁹ For interviews I chose districts where implementation was already occurring.³⁰

In Mbozi, I conducted research in two distinct areas: 1) Halungu—the original pilot village within Mbozi and the place where the entire country’s first certificate of customary right of occupancy (CCRO) was issued—and its neighboring villages and 2) Ipunga (chosen from a list of villages that I designated “late-starters” in implementation) and its surrounding villages.

After the initial startup of the Ministry of Land’s implementation scheme in Mbozi district in 2004, the project was expanded to three more districts: first, in 2005 to Iringa Rural, where about five hundred CCROs had been issued by 2009 (Mdemu 2009), then in 2006 to Kisarawe (where only about 20 CCROs have been issued), and to Handeni (where over 600 CCROs had been issued by 2009).

²⁹ Secondary sources were collected about a fourth district, Handeni, and findings from these sources are presented in footnotes when appropriate.

³⁰ Refer to Chapter 1 for a map showing the location of the field site districts.

From discussions with Ministry of Lands personnel and reading documents discussing implementation in the three districts other than Mbozi, I learned that Iringa Rural had very closely replicated the Mbozi model, with similar results. Implementation was stymied in Kisarawe. Implementation had proceeded successfully in Handeni but with very different results than Mbozi, and had now stalled. This led me to choose Kisarawe—where I conducted interviews at the district land office and in the village of Mitengwe—as a research site. Due to time constraints and the availability of rich secondary sources, I did not visit Handeni, and have included secondary sources on Handeni only in footnotes.

Finally, I wanted to choose a field site in a district where implementation was just beginning, to observe both the first steps in implementation in action and the involvement of the World Bank, which since 2008 has funded projects in two pilot districts—Bariadi and Babati (with thirteen more to be added soon). During my 2009 fieldwork, both districts were at a similar stage, having completed surveys of all properties within a handful of villages. I chose to visit Bariadi (where, through good fortune rather than any planning on my part, a national team was present at the same time to plan subsequent phases, giving me an opportunity to both observe specific activities related to project implementation as they happened, including training of team members and activities in the field, and to interview team members). In Bariadi, I focused on two villages: Sanungu, which had already been surveyed completely, with hundreds of individual certificates already issued, and Bulolambeshi, chosen from the five villages just beginning the process.

A handful of other districts have had some experience in implementation of the new land laws and issuing of CCROs. Namtumbo (Ruvuma region) and Manyoni (Singida region) had ongoing projects that reached my awareness only after I had selected my research sites and made preparations for travel. Both are following the Mbozi model and are funded by the European Union via the budget of the Ministry of Lands. I was unable to visit either. Namtumbo and Manyoni differ from the districts included in my research in at least one respect. The surveying of plots in these districts relies solely on the use of handheld GPS units, while in all other areas aerial photographs (and, in the new World Bank phase, high-resolution satellite imagery) has been used.

All three districts included in my research have predominantly rural populations, with only 5-10% urban (usually living in the only town in the district). (See table 1.)

Table 1: Demographic information for the three fieldsite districts.

District	Main Town (District Capital)	Land Area (sq. km.)	Population ^a	Population Density (per sq. km.)	% Rural ^b
Mbozi	Vwawa	9,387 (1997)	515,270	43.0 (1996)	100% (1988)
Bariadi	Bariadi	9,777	605,509	61.9	94.62%
Kisarawe	Kisarawe	4,464 (2007)	95,614	21.4	NA

^a As of the 2002 Census (URT National Bureau of the Census, 2002).

^b I could not locate recent district figures for percentage rural for Mbozi and Kisarawe. Both regions in which they are located are 20% urban, but this percentage includes cities larger than those found within these districts; I estimate the population of both districts as 90% to 95% rural.

While these districts were distinct in numerous ways, the main livelihood in each was subsistence farming. Livestock is less important than cultivation of crops in all three. While people in Mbozi keep a moderate amount of livestock, animals have been

secondary to crop production there since at least the colonial period. Bariadi had large herds of cattle until quite recently, but ongoing campaigns to reduce herd sizes have diminished the number of animals in the villages where I conducted interviews.

Kisarawe, including the village where I conducted interviews, has very little livestock.

Table 2: Agricultural overview of the three fieldsite districts.

District	Main Subsistence Crops ^a	Main Cash Crops	No. of Cattle	GDP per capita ^b
Mbozi	Maize	Coffee	188,184 (1995)	\$373.42
Bariadi	Maize, sorghum, rice, sweet potatoes, millet, groundnuts	Cotton, tobacco	559,025 (2006)	\$224.83
Kisarawe	Maize	Cotton	2,284 (2005)	\$251.05

^a Several of the main subsistence food crops are also grown as cash crops, particularly maize and rice.

^b This was available only for regions, so it should be viewed as an estimation for the district. Figures are for 2006, and have been converted to USD at the rate of 1,200 Tanzanian Shillings (TSH) to one USD.

I interviewed between ten and twenty residents in each of the four villages I visited.³¹ I used a table of random numbers to select interviewees from lists of all farmers whose plots had been registered. In three villages (Halungu and Ipunga in Mbozi district and Sanungu in Bariadi),³² the lists included nearly every household with land, since plots had been systematically adjudicated; excluded were any landless households.³³ I used the district land registry to locate interviewees. In the fourth village, Mitengwe in

³¹ In Mbozi district, I also visited some villages contiguous to the “main” villages of Halungu (Lwati, Itaka, and Halambo villages) and Ipunga (Sakamwela and Ipapa villages).

³² I conducted interviews in approximately 2% of the households in each village.

³³ Future research on tenure security in Tanzania should include the landless, which will be methodologically challenging.

Kisarawe district,³⁴ no land registry existed yet; I interviewed only three farmers there and obtained most detailed information through group interviews with five members of the Village Council. In all the villages, I interviewed whichever family members were present when I visited each farmstead. Interviews were semi-structured, covering pre-planned topics, but flexible to the interests and concerns of the subject(s).³⁵



Figure 3: Author with interview respondent in Halungu. Photo by Alphonse Nicholaus, 2009.

I analyzed the data in two phases. In the first, I prepared detailed summaries of the four key policy documents, rearranged the information in my summaries according to

³⁴ These were less than 1% of all households.

³⁵ See Appendix Two for a summary of interviews conducted nationally and in three districts.

broad themes, and selected for my local-level interviews the topics most relevant to village land administration. The themes are those used as headings in Chapters 5 and 6. The second phase entailed translating and transcribing recorded interviews, then coding and arranging information from the interviews and my notes written during them according to the themes identified in the first phase.

The Three Districts

Similarities among the three districts where I conducted interviews are briefly described above. Recall that 90% or more of households in all of them are rural, with crops much more important than livestock. After a description of each district, this section compares the three, highlighting differences.

Table 3: Highlights of Implementation of Village Land Act

DISTRICT	Wards	Est. villages 2010	Villages Surveyed	Village Land Cert. issued	Village Land Use Plan
Mbozi	26	202	172	152 (171?)	???
Bariadi	26	124 (2006)	124	124	35
Kisarawe	15	77 (2005)		74	~10

^a Sources: Mbozi – progress report shared by District Land Officer, and interview with Chief Surveyor in 2009.

^b Sources: Mbozi -- ; Bariadi – Ministry of Finance 2011; Kisarawe – interview with District Land Officer 2009.

Mbozi:

Mbozi is one of eight districts in Mbeya Region in Tanzania’s breadbasket, the Southern Highlands, with mild temperatures; adequate, reliable rainfall; and fertile volcanic soils. The western two-thirds of the district lie in the East African Rift Valley,

while the eastern third (where the villages where I conducted interviews are located) is a plateau with elevations ranging from 1,400-2,750 meters. Mbeya Region had a population of just over two million in 2002, with roughly a quarter (500,000) living in Mbozi (URT Census 2002). The district's administrative headquarters are in Vwawa Town, which is on both the train line to Zambia (TAZARA) and the main trunk road linking Tanzania and Zambia, which borders the southern portion of Mbozi. With the exception of the main trunk road that runs from Mbeya to Tunduma and a handful of other paved roads, the district's dirt roads can become impassable during the December-April rainy season, hampering food distribution and transportation of crops to market.

Coffee is the leading cash crop, and beans, maize, and cassava are produced for both consumption and sale. Other crops include sunflowers, tobacco, cotton, finger millet, and sweet potatoes. The secondary economic activity is keeping livestock (cattle, sheep, and goats). The district had an estimated 200,000 head of cattle in 1997.³⁶

Mbozi is divided into 26 wards, with about 200 villages, an increase of 25 since 2005 due to splitting of larger villages. In 1997, the district had only 152 villages (URT 1997a). The increasing numbers of villages reflect the high rate of population growth. Most of the villages established since 1997 had not yet been officially registered or were in the process of being registering during my fieldwork in 2009. Village populations vary but are not supposed to exceed 4,000 unless a village officially becomes a town.

³⁶ 1997 Socio-economic profile of Mbozi. However, it should be noted that the Mbeya Regional Secretariat report of 2008 lists the number of cattle in Mbozi as 111,460. Economic reports for the area all mention increasing herds; why the 2008 figure is only half that of 1997 is unclear and points to the difficulties in maintaining accurate statistics.

Otherwise, if a village population grows beyond 4,000, the village is split into two. Most villages have a population between 1,500 and 4,000.

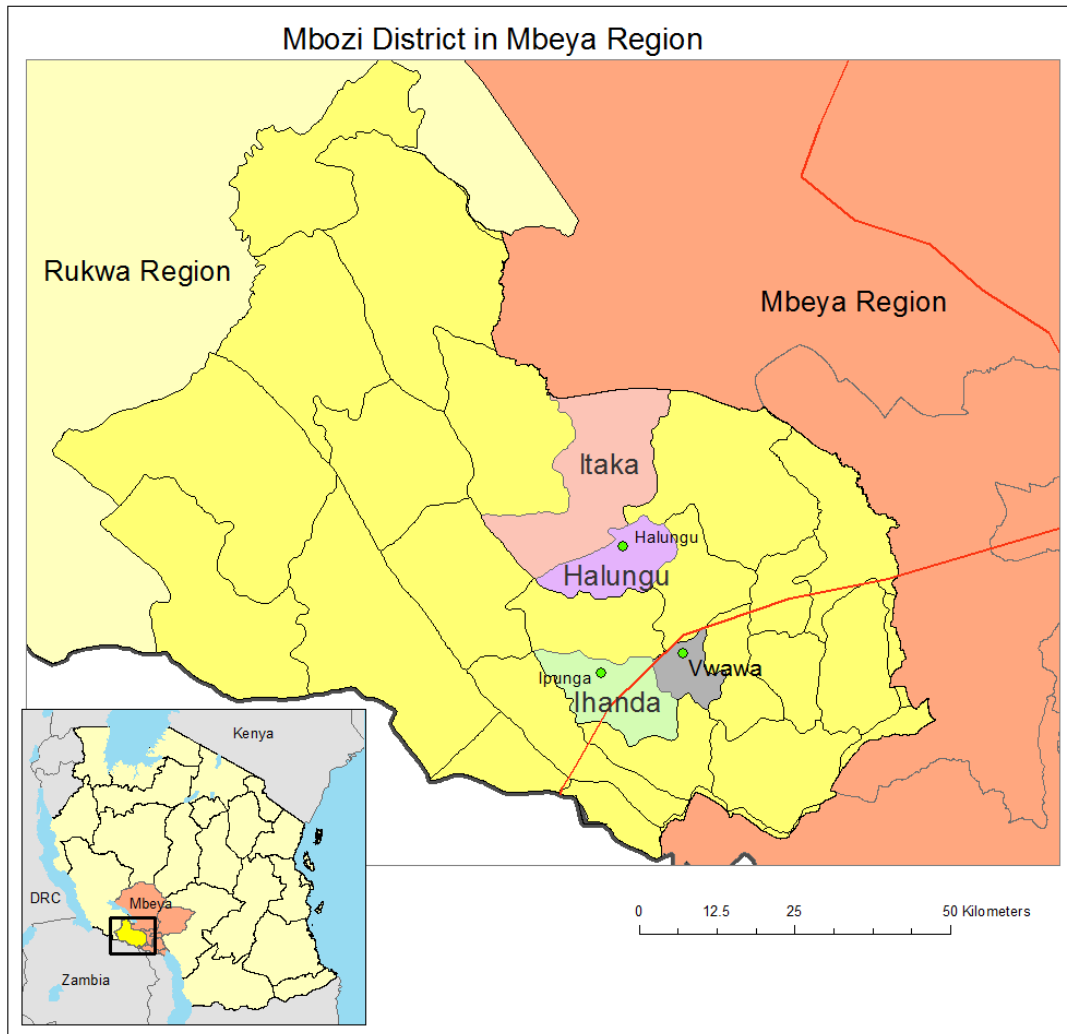


Figure 4: Map of Mbozi District. The wards I worked in and the district headquarters (Vwawa) are shown.

Development plans in 1980s called for all 152 villages in the district to be surveyed by 1992; by that time, only eleven had been surveyed, and none had received a certificate of land (URT 1994). In contrast, of the 1,280 individuals or corporations that

requested certificates between 1982 and 1992, the land of 1,218 was surveyed and issued, thus becoming “general land,” not controlled by villages.

Kisarawe:

Kisarawe is one of the six districts of Pwani Region (also known as the “Coast Region”). Although Dar-es-Salaam Region lies between this district and the Indian Ocean, Kisarawe has a tropical coastal climate (hot and humid). The district headquarters (Kisarawe Town) is easily accessible from Dar-es-Salaam, and many of the government officials who work there commute daily from the capital. However, the entire district has only six kilometers of paved road. The quality of roads beyond Kisarawe Town is poor, so travelers to the western part of the district generally travel on the paved road to the north in Kibaha District and then cut south from Mlandizi Town.³⁷

In 2002 Kisarawe District had a population of about 95,000, with approximately 10,000 living in Kisarawe Town (URT Census 2002). The population has grown with increasing accessibility from Dar-es-Salaam, perhaps doubling since 2002.³⁸ Kisarawe has 77 villages in fourteen wards.³⁹ Major crops are maize, sweet potatoes, bananas, oranges and mangoes, and to a lesser extent cassava and legumes. In addition, cash crops include cashew nuts, coconuts, and oil palms. There is little livestock in Kisarawe (under 3,000 cows in the whole district).

³⁷ Only 6 km of paved road existed in 2006 in the entire Kisarawe District!

³⁸ Neighboring Kibaha District has experienced even faster growth, with its population nearly doubling in just three years.

³⁹ According to the 2006 District Commissioner’s report. The District Land Officer whom I interviewed mentioned there are 74 villages in Kisarawe.

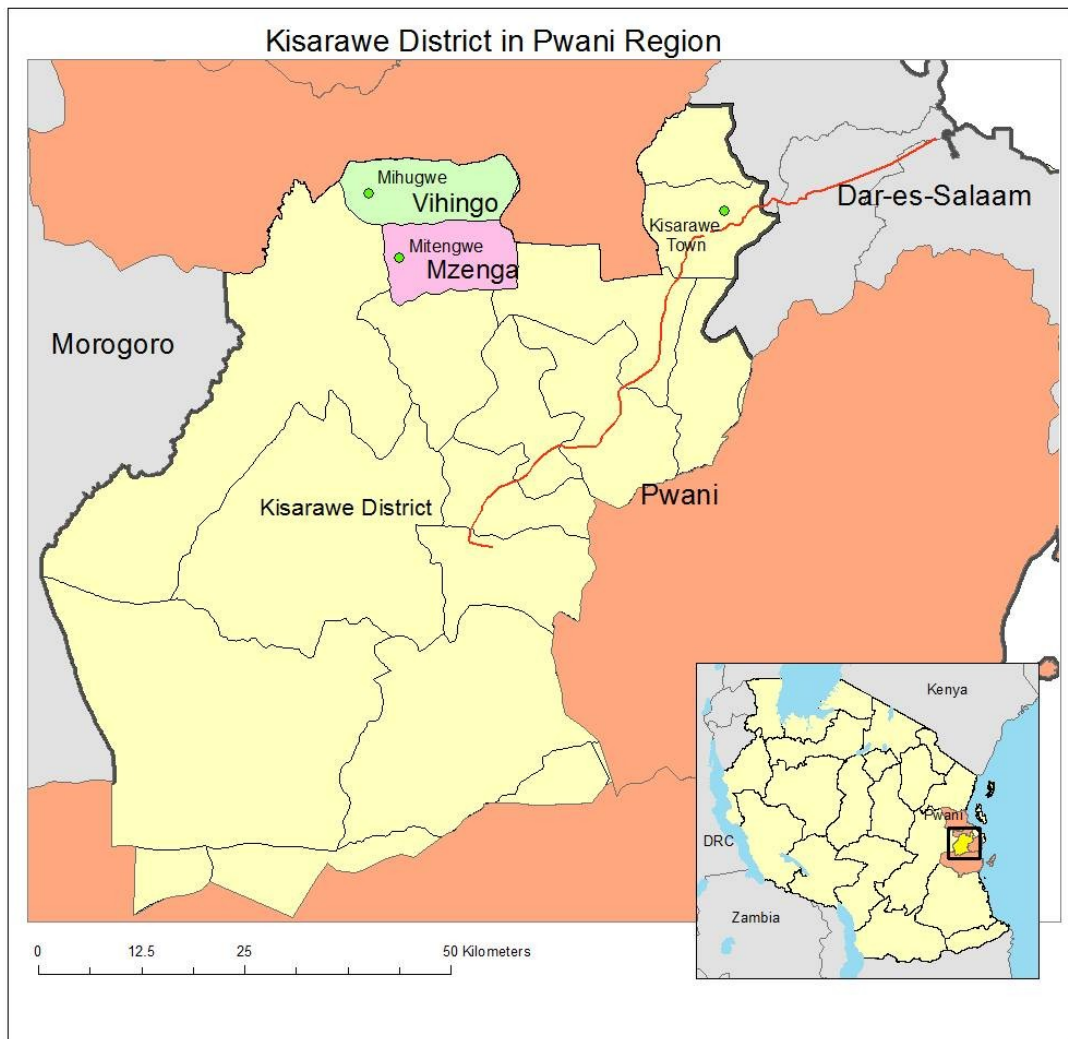


Figure 5: Map of Kisarawe District. The location of fieldsite villages and the district headquarters (Kisarawe Town) are shown.

Bariadi:

Bariadi is in Shinyanga Region in northwestern Tanzania. It lies on a plateau with a more arid climate than the mountainous portion of Mbozi. Most of the district's population belongs to Tanzania's largest ethnic group, the Sukuma. While Bariadi's cattle are famous, as a source of livelihood they are secondary to crops. In 2002 Bariadi's

population was just over 600,000. In 2006 it had 124 villages in 26 wards.⁴⁰ Cotton and tobacco are the leading cash crops, while maize, sorghum, rice, sweet potatoes, millet, and groundnuts are cultivated for both consumption and sale. As of 2006, Bariadi had about 560,000 head of cattle and large numbers of goats and sheep. Overgrazing in the district has caused erosion and diminished vegetation, so large numbers of livestock have been moved to other regions (particularly northward into neighboring Mara).⁴¹

In Bariadi, all parcels from the original nine villages in the land administration reform project have been registered in the district land registry, according to official progress reports sent to the Ministry of Lands; the process took about six months.⁴² The nine villages are adjacent; quite easily accessible from the main road that links Bariadi Town to Mwanza (Tanzania's second largest city, about four hours away by bus); and easy to reach from Bariadi Town, where the adjudication team was lodging. Work was moving full steam ahead to cover the next batch of villages. Training had begun for district personnel divided into five teams of eight individuals. The work was to progress five villages at a time because five vehicles were available. Each team included a surveyor or cartographer, a person with a laptop, someone with GIS experience, a district government official, and a PLUM member (usually someone working on land use

⁴⁰ As in other districts, villages are more numerous now due to splitting of those with large populations. Many of the new villages have not yet been registered.

⁴¹ During my visit in January 2010, the new project leader who arrived in Bariadi from the Ministry of Lands was upset to find that although the progress report showed that 118,141 farms had been surveyed and CCROS for all of these prepared, in truth this work was still unfinished for six of the nine villages were still not finished.

⁴² However, during my visit in January 2010, the new project leader who arrived from the Ministry of Lands was very upset to find that although the progress report showed 118,141 farms were surveyed, and that the CCROS for all of these were prepared, in actuality 6 of the 9 villages were still not finished.

planning). A GIS team with five members remained in town to process data reported from each village.

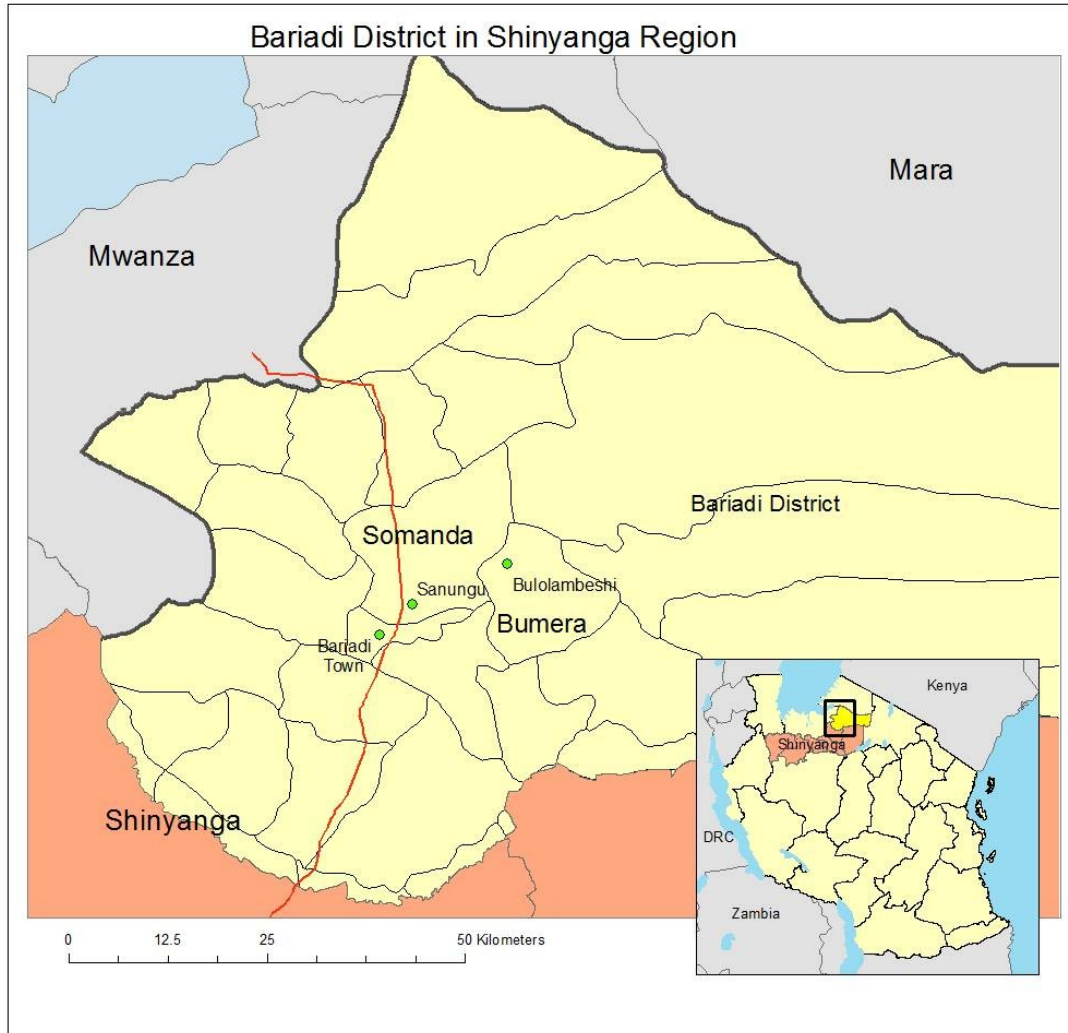


Figure 6: Map of Bariadi District. The locations of fieldsite villages and the district headquarters (Bariadi Town) are shown.

The Villages

This section describes the four villages where I conducted interviews: Halungu and Ipunga in Mbozi District, Mitengwe from Kisarawe District, and Sanungu from Bariadi District. Four are too few to represent the entire country's villages, nor even only

the villages in the process of implementation. However, I believe that my interviews with individual farmers and members of village governmental bodies shed light on issues of primary concern to rural people and changes in land allocation and tenure security over time.

Halungu

Halungu Village is the headquarters of the ward of the same name in Mbozi district. In 2002, the ward had six villages and 23,000 inhabitants (URT Census 2002). Both numbers are considerably higher now. I visited Halungu Village in December 2008 and October 2009. Between these dates, Halungu had been split into two villages, with the southeastern portion retaining the name Halungu and the northwestern portion called Sasenga. Because this change was so recent, all the data and stories shared with me described Halungu before the split, when the village had 3,375 residents and an area of 3,912 hectares (just under 10,000 acres). Five other villages (Shasya, Halambo, Hampangala, Lwati, and Itaka) bordered it (figure 7).⁴³

The village is ethnically mixed. Before the 1940s, it was entirely Nyiha, but widespread famine in nearby areas brought a large influx of Ndali and Nyakyusa. Inter-marriage among the three ethnic groups has left almost no difference among them.

When the Ndali arrived as outsiders in the area, they had to rely on the generosity of the indigenous Nyiha, whose elders readily gave them substandard land not wanted by the Nyiha. In recent years the Ndali have been able to move onto better land. The Ndali have as much right as the Nyiha to purchase land.

⁴³Before the split, eight villages actually bordered Halungu, but residents call everything in Itaka Ward “Itaka” rather than referring specifically to each village.

ITAKA AND HALUNGU WARDS: VILLAGES

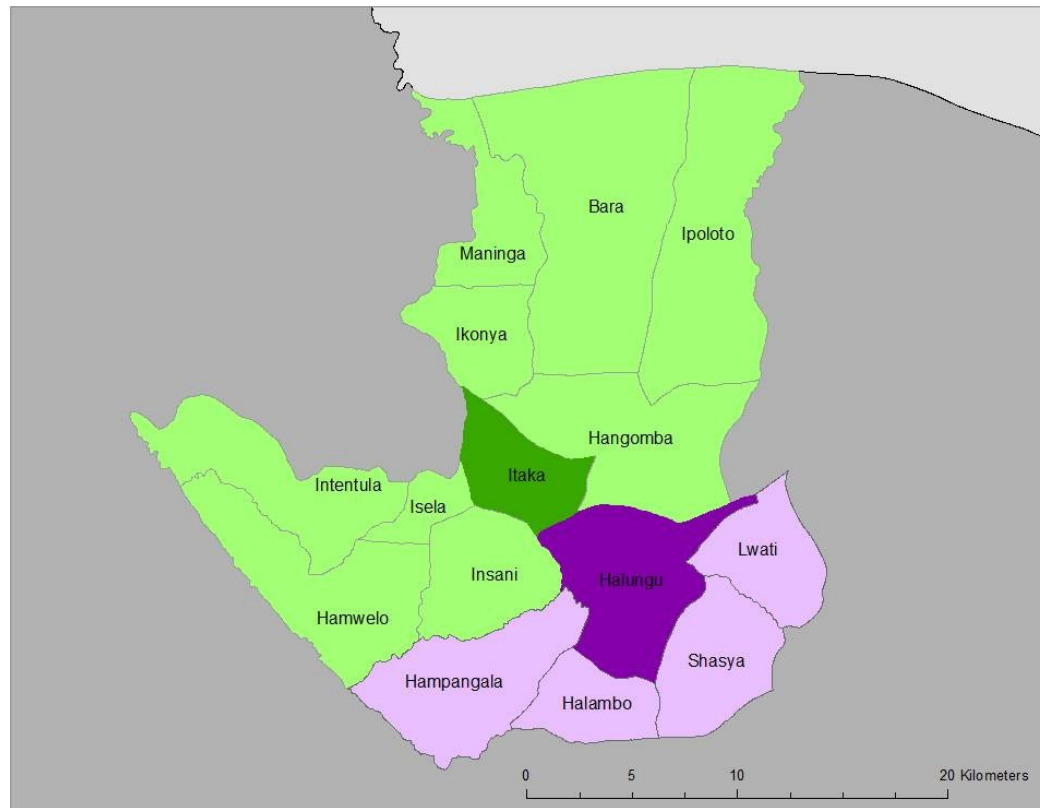


Figure 7: Villages surrounding Halungu Village. Halungu ward is shown in purple, while Itaka ward is green.

“Halungu” did not exist as a village in the 1940s. Farmsteads were dispersed. Halungu Village was established in 1974 during Operesheni Songea (forced villagization that moved rural people to nucleated settlements, near which they were supposed to farm). Many people had moved back to their original farmsteads by 1979, when they were allowed to. Others continued to live in the village but traveled each day to their farmland. Some people kept two residences, one in the village and one on the farm.⁴⁴

Today all households in Halungu, without exception, farm. A few have side businesses as well, for example, selling fertilizer in a small shop or running a generator to

⁴⁴ One of these was “Jimmy,” introduced in Chapter 1.

charge cell phones, since the village has no electricity supply. Along the main street in the center of the village, several shops sell products brought from town: soap, toothpaste, razor blades, cookies and candies, bottled soda, and phone cards to add minutes to cell phones. A few people sell produce from their farms: rice, grilled pork, or woven baskets. A dispensary sells medicines.

About 1,750 farms in Halungu Village had been surveyed at the time of my fieldwork, and approximately a thousand CCROs had been issued or were in process. A farmer informs the Village Executive Officer (VEO) when he wants a CCRO for his land. A committee meets with the chairman of the neighborhood. If the farm was one of the 1,750 already surveyed, the landholder could obtain a CCRO in just two weeks. If it was not, then the VEO, the Chairman, and the neighborhood chairman together go to verify that the land in question really belongs to the individual making the request. They must consult all the neighbors of the farm, draw boundaries, and make sure everyone agrees. After the individual farmer and all neighbors have signed off, the VEO, Chairman, and neighborhood chairman send the request to the district office, which promptly issues a CCRO (Halungu Village Land Council interview 2009).⁴⁵

Ipunga

Ipunga Village is also in Mbozi District. In 2009 it had 2,723 residents in 983 households.⁴⁶ The Nyiha, the Ndali, and the Nyamwanga are the dominant ethnic groups. Five other villages—Sakamwela, Mpela, Ipanzya, Ipapa, and Sumbaruwela (some of which are newly formed)—surround Ipungu, which is on a dirt road, impassable during

⁴⁵ Summarized from interview with Village Land Council, October 27, 2009.

⁴⁶ These figures are according to the Village Executive Officer of Ipunga, who showed me a large poster with this information.

the rainy season—fifteen kilometers from the paved trunk road. There is little traffic on the dirt road in any case; most villagers walk to the main road when necessary.

Like Halungu, Ipunga was created in 1974, when everyone in the area was briefly given land in the center during Operesheni Sogea. The village boundaries set then have not changed. Before 1974, a chief “owned” all the land in the area. His assistants were responsible for allocating land to users and collecting taxes.

By 1976 people started going back to their original farms. Some people tried to go back earlier, even in 1974 they resisted being moved, but they were forced. The army was very strict. In 1977 it was officially announced people could return to their previous farms. Almost everyone did. The villagers were given freedom to live where they wanted. Citizens of Tanzania had the right to choose where to live, and this was made the law. That was 1977 (Interview with Village Council, 2009).

Ipunga comprises seven neighborhoods (*vitongoji* in Swahili). The main crops are corn, beans, coffee, peanuts, millet, sorghum and soybeans. Most land is used by families, but some other entities, such as the Moravian Church, also hold land.

I arrived in Ipunga on a Tuesday, the weekly market day. Vendors from neighboring villages and Ipunga itself had set up stalls or laid their items for sale on the ground along the main road for a distance roughly equivalent to two city blocks. The scene was lively, and people were dressed up for the occasion. Lots of clothes and shoes were for sale, as well as produce and prepared food. This gave the impression that Ipunga was a large and thriving village, though by the next day it was quiet once again.

Recording of parcel boundaries here began immediately upon receipt of the Village Land Certificate in 2005. The boundaries of 663 farms had been systematically recorded, 45 CCROs had been issued, and an additional 52 villagers had requested them

at the time of my visit in October, 2009. Most villagers had not pursued the administrative procedures for receiving CCROs, deterred by the cost of approximately US \$10 for doing so and an annual land tax of about US 90 cents per hectare after a CCRO is issued.

Sanungu

Sanungu is one of the nine villages in Bariadi District chosen to have their land adjudicated during 2009. It had 3,756 inhabitants, over 90% of whom are Sukuma, in 415 families (*kaya* in Swahili).⁴⁷ Everyone farms, and many have a few livestock on the side, but no family raises livestock and no crops.

Because Sanungu is not far from the major district town (Bariadi Town), its residents can obtain supplies relatively easily. A few shops in the village sell a small number of items.

Mitengwe

Mitengwe, in Kisarawe District, is about a two-hour taxi ride from Tanzania's largest trunk road. Despite this relative proximity and the recent proliferation of motorcycles (a project recently helped people obtain loans to purchase them, so the district has thousands),⁴⁸ Mitengwe feels like a remote village.⁴⁹ Its 2,750 residents⁵⁰ in approximately 600 families are predominantly Zaramu in ethnicity. The few who are not

⁴⁷ According to Village Executive Officer statistics.

⁴⁸ According to the taxi driver I rode with in December 2009. I was unable to independently verify how all these motorcycles came to be in Kisarawe.

⁴⁹ Of the other villages I visited, Mitengwe and Halungu are farthest from a paved road. Villages selected for pilot projects are close to main roads. Many Tanzanian villages are a full day's walk from a road.

⁵⁰ This figure is according to the Village Executive Officer.

are members of the only family of each other ethnicity, having moved to the village from elsewhere in Tanzania. Cassava is the dietary staple, with some rice and maize also cultivated for consumption and sale. Cash crops are cashews, peanuts, and millet. Cattle and other livestock are few in number, but many people raise chickens for meat and eggs.

Mitengwe is a *kijiji cha asiri*, Swahili for an “original” village that existed before forced villagization. However, its population grew in the 1970s, when nearby farmer families were forced to move to the village. Nevertheless, the village still has “plenty of land,” according to the Village Executive Officer (personal interview, Dec.2009). People from neighboring villages and even outsiders from other regions can at no cost obtain land allocated by the Village Council.

But, we don't have space for livestock. We are starting to see strangers coming here, looking for grazing land for their cows. Especially the Maasai. They put their cows on a train, I don't know from where, and they disembark near here and want to come and have grazing land. We have allowed a few to stay here. But then, one Maasai came with 200 cows. He only stayed for a short time but there wasn't enough grazing land for him, so he left (Mitengwe VEO 2009).

Chapter 4

LAND REFORM IN TANZANIA

Chapter Overview: This chapter begins with a description of an interview I held in July 2009 with a senior Ministry of Lands official who was intimately involved in the land reform process; what he had to say calls attention to tensions within the Tanzanian government and between it and international donors and lenders. The chapter then describes the history of land administration in Tanzania, the forging of national land policy and legislation, and the key players in implementation and ongoing reform of village lands administration, laying a background for understanding the importance of land administration reform in Tanzania.

The overall aim of a National Land Policy is to promote and ensure a secure land tenure system, to encourage the optimal use of land resources, and to facilitate broad-based social and economic development without upsetting or endangering the ecological balance of the environment (URT 1997b, section 2).

Vignette: A Pessimistic View

Seated in the midst of stacks of papers nearly chin high, the government official asked about my research, and when I gave him a brief synopsis he questioned me before he would entertain any of my questions. “You talk about customary land rights. What is customary?” “Do you know anything about land tenure before colonialism?” “What is a ‘fluid’ boundary? You can’t define that!”

Then he moved on to describe the history of land legislation in Tanzania and the current phase of implementation of the 1999 Village Land Act, including the complex relationships among various government agencies and programs and different funding

agencies. External donors became interested in land reform in 2003, he told me, because of their concern about development of the agricultural sector. The two major donors have been the European Union (EU) and the World Bank (WB); each has funded separate projects in fifteen districts, with no overlap in the districts where the two were working. The EU donated € 1 million for a project to resolve village boundaries, issue CCROs in a few villages, create village and district land registries, and disseminate GPS units for surveying, starting in 2003, while the WB became increasingly involved after 2005.

Beginning in 2005, the WB identified and designed a project, developed a budget, and negotiated a credit agreement with the Tanzanian government for what became PSCP (the Private Sector Competiveness Project). According to the official who described this to me, up to the appraisal (budgeting) stage, Ministry of Lands personnel understood the purpose of the WB project to be developing agriculture through promotion of tenure security via titling. “Suddenly, it was changed to business promotion and . . . tied to BEST [Business Environment Strengthening for Tanzania] unceremoniously.”⁵¹ ⁵²

The rhetoric is: if people have CCROs, the banks will give loans. Will they? Why? And this business of turning dead assets into live capital. Why are these assets dead? They are not! De Soto is very eloquent, a demagogue. Is he an economist or a politician? (Interview July 2009).

⁵¹The original PSCP agreement from 2005 states nothing about land reform. “The main objective of this project is to help generate sustainable conditions for enterprise creation and growth by reducing the cost of doing business and increasing the capacity of the local private sector to participate in domestic and international markets with access to appropriate financial services. The project will also focus on enhancing skills and entrepreneurship development, as well as increasing access to financial services” (World Bank 2005).

⁵²BEST has provided grants for projects in the private (i.e., non-governmental) sector since 2004. Originally funded by DFID (the UK’s Department for International Development), SIDA (Swedish International Development Cooperation Agency), DANIDA (Danish International Development Agency), and the Netherlands Embassy, since 2008 it has been funded primarily by the World Bank, which has added a land reform component described at length later in this chapter.

Land Administration before 1990

The Colonial Period

The 1886 Anglo-German Agreement divided East Africa between Britain and Germany, with what is now mainland Tanzania becoming part of colonial German East Africa. After World War I, most of this territory was transferred to the British. Both the Germans and the British employed indirect rule, identifying local “chiefs” responsible for maintaining order and collecting taxes from the indigenous population.

Historically, all land in Britain and its colonies was Crown Land, vested in the king or queen, with royal subjects having usufruct over their customary land.⁵³ The League of Nations’ Permanent Mandates Commission criticized Tanganyika’s Land Ordinance of 1923 for its failure to recognize customary rights (Benschop 2002, 44). In 1928, the ordinance was amended to rectify this, but customary rights were not defined, and the colonial administration continued to confiscate natives’ land and lease it to white settlers (ibid., 44-45).

The First Two Decades of Independence

At independence in 1961, Tanganyika, which joined with the island Zanzibar in 1964 to become Tanzania, drew on this tradition to vest all land in the state, continuing to recognize customary rights through the amended Land Ordinance. White Europeans still held individual leases for most of the prime agricultural land, including much of the Southern Highlands and the rich soils around Mt. Kilimanjaro in the north.

⁵³*Usufruct* refers to the rights of the land users (in this case, the customary land users) to benefit from the use of land, without having ownership over that land. All customary land rights in Tanzania, during the colonial period, and at present, are usufruct land rights. No one owns land outright, since all land is vested in the Presidency.

Julius Nyerere was president of independent Tanganyika and then Tanzania from 1961 to 1985. In 1967, he issued the Arusha Declaration outlining his national plan for African socialism, *ujamaa*, under one-party rule.⁵⁴ As a key component of this policy, rural peoples were forced to move to centralized villages during the early 1970s (Coldham 1995, 229). Enforcement of *ujamaa* waned in the early 1980s during economic crises (Ergas 1980; Ibhawoh and Dibua 1986; Collier et al. 1986). Starting in 1986, the IMF and the World Bank imposed structural adjustment on the economy of Tanzania, as it did in other low-income countries, as a condition for renegotiating loans (Campbell and Stein 1992). Tanzania moved from a single to a multi-party system in 1992 (Hyden 1999, 147).

Problems Due to Villagization and Informal Settlement

The villagization project of the 1970s created great insecurity and is perhaps the main catalyst for later recognition that land law should be reformed. Operation Vijiji (the creation of *ujamaa* villages) began as a voluntary process, mainly in areas of flooding and famine, around 1969. However, the ruling party viewed the process as too slow, so compulsory villagization commenced in 1974, with an eye to having the entire rural population in villages by the end of 1976. Operesheni Sogea (literally translated from Swahili as “the Move Operation”) utilized militias to ensure that people moved. According to many rural residents, their houses and farms were burned to force their compliance. Three different approaches to villagization were employed.

In some areas traditional villages, with their traditional boundaries, more or less survived the villagization movement and were registered as such. In other areas, villagization involved re-location of villages (including re-

⁵⁴ See Feldman (1974) for a seminal case study about Ismani, Tanzania.

drawing of village boundaries) or re-location of families within villages or both. In the third type of situation, villagization was interpreted and effected as a program of land re-distribution. In these areas . . . the exercise had been arbitrary and many abuses were committed by officials entrusted with re-distribution (URT 1994, 51).

Ujamaa villages were intended to enable people to farm collectively, allowing for the possibility of large-scale farming and preventing inequalities and exploitation in rural areas (Coldham 1995, 228). Villagization was also expected to make provision of services via health stations and schools more efficient. However, little proper planning was done, so many new villages were located badly. Disregard for customary tenure was total, with villages registered without the consent of those who already farmed there. Rights to land in the newly created villages were not secured in law. Thus, the 8,000 villages created through *ujamaa* (now over 11,000) were grounded in neither customary tenure nor law. During villagization, each household was assigned a farm plot and an acre of land for building a dwelling. Village council approval was required for reassignment of land.

Most of the villages from the 1970s still exist. Nyerere created a new social order, but by the 1980s it was becoming clear villagization had failed to contribute to economic development. Forced displacement of large segments of the rural population together with the ensuing economic hardship “left in its wake a legacy of bitterness and distrust” (Coldham 1995, 229).⁵⁵

With the breakdown of socialism and a return to market economies, countless land disputes erupted between customary holders of land (i.e., pre-*ujamaa*) and those

⁵⁵ As shall be seen in Chapters 6 and 7, which analyze my findings from interviews with villagers, this forced displacement is still remembered vividly by anyone old enough to have experienced it.

assigned land under villagization (URT 1994; Coldham 1995; Odgaard 2003) . Until passage of the Land Act and the Village Land Act 1999, no legal framework existed for resolving them. Administrative procedures were in place, but policy or law to establish principles and regulations was absent. Land councils had been created in 1975 to see to day-to-day administrative tasks, but chains of command, recourse to appeal, and so forth were murky. Courts ruled in favor of “traditional” land holders in some cases and *ujamaa* settlers in others, with no consistency. In Mbulu District, for example, hundreds of cases resulted from former landholders suing to regain land assigned to someone else during villagization. Most of the “respondents” were small farmers who had been allocated plots of less than four acres.

Other disputes arose from villages established on previously large holdings (for example, land leased to foreigners during the colonial period) or in peri-urban areas. Large holdings had often been allocated to former plantation workers during villagization or to neighboring farmers. In many instances, villagers were forcibly evicted in the 1980s and ‘90s, when former lessees returned to their land, the bank foreclosed land and sold it to another entity, or an area was declared a planning area for creation of an urban center or expansion of an existing one. Even during Nyerere’s administration, leases for large holdings were often revoked and the land then re-allocated to well-connected individuals or foreign investors (URT 1994). This is particularly true for Arumeru and Kilimanjaro, where the dominant prime agricultural land was much in demand.

The Forging of Reform

In the 1980s, as the number of land disputes skyrocketed, many poor rural households were forced from their land and livelihood to make way for “development” projects, national agencies often worked at cross purposes, and increasing corruption resulted in lack of trust in documents produced by the national Ministry of Lands.⁵⁶ Recognizing that Tanzania needed new policies and laws to govern its lands, in 1991, Ali Hassan Mwinyi (Nyerere’s successor) appointed a Presidential Commission of Inquiry into Land Matters (henceforth referred to as the Lands Commission), which submitted its final report in November 1992. In 1995, the Tanzanian Parliament passed a National Land Policy that incorporated some of the Presidential Commission’s recommendations.⁵⁷ This new policy became the foundation of the Land Act and the Village Land Act of 1999, which in turn led to the Strategic Plan for the Implementation of the Land Laws, produced in 2005. A description of these four documents follows.

Four Key Documents

The Lands Commission Report (1991-1992). The chair of Mwinyi’s Presidential Commission of Inquiry into Land Matters, established in January 1991, was Professor Issa G. Shivji.⁵⁸ Eleven other members signed the final report submitted in November 1992. This report comprised two volumes. The first, dealing with land policy and tenure

⁵⁶ Throughout this dissertation, for consistency as well as brevity, I refer to the government ministry responsible for land as the Ministry of Lands. However, the Ministry has had several names over the years; currently, the proper name is “Ministry of Lands and Human Settlements Development.”

⁵⁷ A different land policy was passed in 1994 but was subsequently found unconstitutional and scrapped. Members of the Lands Commission suggested that their report had not even been read before passage of the failed policy.

⁵⁸ Shivji is currently the Mwalimu Julius Nyerere Research Chair in Pan-African Studies at the University of Dar es Salaam. He has had a distinguished career of scholarship on land, democracy, and political economy in Tanzania and emerged as a leading critic of government land policies.

structure, was later published in Sweden and is easily available; the second, addressing specific land disputes, was never published and is unavailable because of privacy concerns. During its inquiry, the Commissioners held 277 public meetings in 145 villages and 132 urban centers in all twenty regions of mainland Tanzania and all but two of the 100+ districts.⁵⁹ They also interviewed over 150 government officers, as well as district and regional leaders and expert witnesses. Furthermore, they traveled to Kenya, Zimbabwe, Botswana, and South Korea to learn about land reform experiences in those countries (URT 1994, 2-3).

Volume 1 has five parts: (1) historical context and existing legal position, (2) recommendations for a new land tenure structure, (3) broad suggestions regarding amendment and repeal of existing law and enactment of new statutes, (4) gender inequality for inheritance,⁶⁰ and (5) conservation of environment and habitat that should be built into the tenure structure. The first part is by far the lengthiest, with chapters reporting detailed findings on current land allocation, demarcation, villagization, settlements on alienated land, urbanization, compensation, land values and dispositions, participation, land administrators, disputes, capital development authority, and individual titling and registration. From this point, I address these issues in relation to village lands with little reference to urban and reserved lands. I focus primarily on the Commission's description of the situation on the ground and for a new land policy. The final report

⁵⁹ The number of districts has changed over time, with some districts being split; also, some counts of districts have included urban districts, while others have not. In 2010, there were 117 districts in mainland Tanzania (excluding Zanzibar and Pemba), including urban councils.

⁶⁰The report notes that gender (in)equality for inheritance was added late during the inquiry and therefore was not exhaustively researched.

states that the proposed land reform would ensure “democratization of land control and land tenure systems on the one hand, and protection of rural lands from outside interests . . . on the other” (ibid., 158). The Land Commission recommended that the new national land policy uphold multiple land tenure systems, with none superior to another. The policy should develop from the basic tenet that land belongs to the community and that tenure security be based on use (thus curbing land speculation). Land administration should be participatory, with adjudication of disputes including a *Baraza la Wazee la Ardhi* (Land Council of Elders).

The Lands Commission advocated “security and safety of land rights first” (ibid., 122). It called for modification of customary tenure in light of modern institutions already accepted by or acceptable to the people (modernization of tradition and democratization of land tenure control and administration at the level of village assemblies, elected local committees, and national parliament) rather than imposition of modernization.

Thus, the Lands Commission’s recommendations aimed to strengthen tenure security for village residents and to increase village autonomy. One of its chief recommendations, which was ignored, was to vest all land in Village Assemblies rather than the President.

National Land Policy (1995). The National Land Policy passed by the Tanzanian Parliament in 1995 was based on “the position of the Government on the report of the Presidential Commission of Inquiry into Land Matters,” several studies by consultants, recommendations and observations from a national workshop on land policy, and comments and suggestions from the public and mass media. Notably, clauses on gender

dynamics were added in response to critical assessments by high-profile NGOs.⁶¹ The National Land Policy paved the way for the Land Act and Village Land Act of 1999.

The 42-page document comprises nine chapters. After providing a historical perspective on land tenure and laying out the objectives of a new land policy (chiefly, to promote a secure tenure system equitable to all Tanzanians), this document addresses five main topics : 1) land tenure and administration, 2) surveys and mapping, 3) urban and rural land use planning, 4) land use management, and 5) the institutional framework. It also lays out the rationale for creating a national land policy. Of the thirteen reasons given for the necessity of new policy, seven concern increased pressures and competition for land (including three specific points about pastoralism). The remaining six pertain to confusion over land rights after Operation Vijiji, the evolution towards individualized ownership, and the development of land markets.⁶²

Through nationalization and villagization, areas previously leased (often to foreigners during the colonial period) were frequently resettled by villagers; yet legal rights to the land remained with the entities that held leases before independence. The National Land Policy does not comment on what should be done with the many court cases already due to such occurrences, but it seeks to avoid such legal quagmire in the future by extinguishing any existing land rights (through revocation or acquisition) prior

⁶¹“Both the Land Act and the Village Land Act have been hailed as a triumph for the women’s rights movement in Tanzania. Gender activists were among the most active lobbyists in national debates concerning the land acts. They successfully lobbied for inclusion of provisions to ensure equality before the law for women in both statutory and customary tenure” (Sundet 2005, 5).

⁶² One of the articles of the National Land Policy deals specifically with land values. It states that previously, especially under Nyereye, land was generally perceived as having no monetary value, gaining value only through improvement. More recently, land markets had developed, particularly in densely populated urban areas. The policy held that new laws should reflect the intrinsic economic value of land, so that it could be used as collateral in development projects and it could be assessed for property taxes.

to resettlement of unused areas. However, this portion of National Land Policy appears to be unenforceable, since settlements spring up informally and spontaneously.

The National Land Policy, while abrogating much previous land legislation, upheld four central tenets from the past that have been fiercely debated by scholars, politicians, and others: (1) all land in Tanzania is publicly owned, and is vested in the President on behalf of the citizens,⁶³ (2) speculation in land will continue to be controlled,⁶⁴ (3) rights of occupancy constitute the only recognized type of land tenure,⁶⁵ and (4) rights to land under new land laws must continue to be based primarily on use and occupation.

The overall rationale for the new land policy is that “land as an investment resource can make the maximum contribution to the country’s development process”; therefore land should be used effectively and efficiently, “not hoarded for speculative

⁶³ This tenet directly contradicts the Land Commission’s recommendation to vest land in the village assemblies. The existing institutional arrangement charges village councils (elected village government) with land administration on behalf of the President (with the Commissioner for Lands as the intermediary). Shivji is particularly vehement in his disapproval of this tenet. The ultimate owner of all land is the President of Tanzania, who is the “repository of the radical title” (Shivji 1999, 3). Each village council is in effect working “as an agent of the Commissioner” (ibid., 3). Land administration remains a centralized bureaucracy that is susceptible to corruption and fraught with uncertainty (ibid., 5). It further means that the land users are removed from land administration in any meaningful way; the principle stated in the National Land Policy to involve people in the administration of land remains “a declaration without substance” (ibid., 5). However, not all scholars view this situation as starkly as Shivji does. Liz Alden Wily, the other prolific scholar on Tanzanian land laws, though mindful that radical title is vested in the President, sees the new laws as devolving authority over land administration, management, and dispute resolution to the community level; indeed, she calls the new paradigm a “community based land tenure management system” in which villages play a major role in decisions pertaining to their own land (Alden Wily 2003b, 1).

⁶⁴ Control of land speculation is rooted in socialist tradition. Making customary rights dependent on use and improvement of land is supposed to discourage land grabbing and foreign acquisition of land. Shivji supports this tenet but argues the VLA does not do enough to protect it (Shivji 1999). Instead, he claims, the VLA introduces various measures that erode this tenet (for example, the introduction of valuation of unused land). The Lands Commission, of which Shivji was a part, also argues that individual titling on a large scale poses (or would pose) a threat to small-holders, who value land for its productive capacity. If they come to use land as collateral for loans, they are likely to lose it (URT 1994, 47).

⁶⁵ In other words, people do not own their land but instead have usage rights, either for a fixed period or in perpetuity.

motives” (URT 1997b, article 9). The procedures for obtaining title to land should be simplified, and land administration should be transparent. Finally, land tenure plays a large role in promoting peace and national unity, since equitable access to land by all citizens ensures that the small farmers and pastoralists who constitute the majority of the country’s population are not landless. How these objectives play out in implementation projects is discussed later in this chapter and in the following one.

The Village Land Act (1999). Parliament hired legal historian Patrick McAuslan to draft the Land Act. He was instructed not to deviate from the National Land Policy.⁶⁶ As the act became increasingly bulky, it was split into two pieces of legislation, the Land Act and the Village Land Act (hereafter referred to as VLA), both of which Parliament finally (after failed attempts) passed in 1999. After defining some terms, the 300-page VLA highlights the guiding principles of the National Land Policy. It then provides details regarding institutions and procedures for administration of village lands. The parts of this act most relevant to this dissertation are: 1) Part III: Transfers and Hazard Land; 2) Part IV: Village Lands, including a) Management and Administration, b) Grant and Management of Customary Rights of Occupancy, and c) Adjudications of interest in land; and 3) Part V: Dispute Settlements. Part IV, “Village Lands”, by far the lengthiest, is the most pertinent to tenure security for village lands.

Article 7 in Part IV defines and lays out procedures for village land certificates. It identifies three categories of land: village land (administered according to the VLA), general land (administered according to the Land Act 1999), and reserve land, which

⁶⁶Professor Patrick McAuslan, a faculty member in the Development Planning Unit, University of London, specializes in land law and policy. In the 1960s, he taught law at the University of Dar-es-Salaam (DPU-Associates n.d.).

includes national parks and reserves (also covered in the Land Act 1999 and other, previous legislation).⁶⁷ The VLA makes the Village Council responsible for making all decisions about land. It requires the Village Council to consult the Village Assembly (all adult residents) before making major decisions, including any change in a village's land use plan.

The Village Land Act concurs with the Land Commission's recommendation to validate land allocated during Operation Vijiji and to void any rights to and obligations concerning that land that were recognized prior to villagization. It provided for compensation to farmers whose customary rights had been thus extinguished.

The VLA became enforceable in May 2001, after its translation from English to Swahili. In 2004, Parliament enacted amendments to the VLA for which international and domestic financial institutions had lobbied. These effected major changes denounced by some scholars, donors, and NGOs.⁶⁸

In February 2004, however, in what can be described as a hasty and undemocratic process that caught activists off guard, the government introduced two major changes to the Land Act- 1. the sale of undeveloped land, and 2. the possibility to mortgage land thereby threatening the property interests of the poor. The circumstances in which the changes are introduced highlight the external factors motivating the privatization of land in Tanzania. Remarkably, the changes are introduced when the principal legislation had just come into force, raising questions as to what justified the reforms absent precedent to support legislative intervention (Maoulidi 2004, 2).

⁶⁷Reserve lands, constituting about 17% of all land in Tanzania, are administered by Natural Resources Conservation Authorities (Ministry of Lands 2012). National park boundaries and community involvement in conservation are important topics in land administration not addressed in this dissertation, despite ongoing conflicts in some cases between parks and villages.

⁶⁸ Banks argued that only with these amendments would they be willing to provide loans for CCROs. However, to date very few loans have been obtained by small-holder farmers, despite the VLA amendments.

Land, under the 2004 amendment, is a market commodity with a market value. The Object and Reasons sections purports that the amendment is made to serve the commercial interest of people. Hence land is commodified with an emphasis being put on its productive use. Prof. Shivji argues that the amendment, contrary to past legislations and prevailing ideology, introduces the concept of freehold giving the individual ultimate and unrestricted rights to ownership and tenure defeating the notion of land being “public property.” Such a system, in effect, invites social inequalities something the founding fathers tried to discourage (ibid., 16).

Strategic Plan for the Implementation of the Land Laws (2005). The Strategic Plan for the Implementation of the Land Laws (published in 2005 and hereafter referred to as SPILL) outlines the critical tasks for the subsequent decade (i.e., 2005-2015).⁶⁹ The Ministry of Lands generated it through extensive consultation with stakeholders in sixty villages in 13 of the 21 mainland regions and personnel from various non-governmental organizations and government entities. The main outcome is a list of action items ranked by priority in the plan. SPILL led to PILL, which in 2006 led to the creation of a land reform unit within the Ministry of Lands. By 2010 the tasks of the land reform unit had become the mainstream tasks of various departments of the Ministry of Lands rather than a separate project. The overarching goals of SPILL were to promote greater tenure security and to strengthen confidence in the Ministry of Land. It was designed to streamline titling, encourage optimal land use, and facilitate broad-based socioeconomic progress without overburdening and threatening the environment (URT 2005, v). SPILL aimed to facilitate poverty alleviation through rising incomes accruing from investments of labor and capital in land by operationalizing the 1999 land laws. It purportedly formed the basis for the land administration reform projects that ensued.

⁶⁹ HakiKazi Catalyst (2006) produced a simplified “plain language guide” version of the SPILL document that underscores key policy issues.

Policy Debates

Hernando De Soto's mysterious discovery of "dead capital" in non-Western countries worth trillions of dollars is a fantasy! Capital is not a thing. It is a relation. That is elementary political economy (Shivji 2006, 17).

When Parliament passed the VLA in 1999, two scholars in particular contemplated its potential impact: Issa Shivji and Liz Alden Wily. In this section, I summarize their ideas, and describe the current policies about two hotly contested sections of the VLA – the vesting of all land in the Presidency, and the extent of village lands. In theory, the issuance of a village land certificate offers a high degree of land tenure security for the village as a whole. However, the VLA has been strongly criticized for the ease with which the President is able to alienate village lands "in the public interest" which "shall include investments of national interest" (URT 1999b, 26). I also describe the genesis of policy about access to village lands by non-village residents.

Views of Two Scholars

Professor Issa Shivji (1999, 1) argued that Parliament had rejected the Land Commission's most fundamental and crucial recommendations, resulting in legislation that would do little to improve tenure security for small-holders and indeed perhaps would jeopardize village lands and livelihoods by giving too much power to higher-level administration:

The best managers of land are those who own it and use it. Let people be given back their land. Let land be vested in their own organs such as village assemblies. . . . Public administration should do what it is meant to do: advise and give technical assistance to the people as "obedient servants", not control, manage and lord over people's lands (Shivji 1999, 5).

In contrast to Shivji's predominantly pessimistic view, Liz Alden Wily's was modestly optimistic. She countered,

It is true that the Commissioner of Lands has a lot of power, but it not true that "the village councils are agents" of the Commissioner, or that administration of village land will be a "top-down process which can not be managed at the village level." The whole point of The Village Land Act is for devolved land administration, by the village, at the village, for the village. The village in Tanzania has existed for a quarter of a century as the social, spatial and legal institutional foundation of Tanzanian society. The outstanding difference of the Tanzanian Bills with other new land laws [in Africa] is the vesting of (most) control over land tenure administration at the grassroots in the hands of the "governments" (village councils) elected by the members of each registered village community (Alden Wily 1998, as cited in Palmer 1999, 3).

Further, she noted,

The law visibly protects existing rights in land. It does this through removing inequalities between statutory and customary rights. They are made fully equal in the eyes of the law. The bills allow for traditional ways of holding land to be recognised and supported fully in the law and for the fundamental operational base of customary land law and tenure to continue—community assent and direction—through embedding local level authority and management of village land in the hands of villagers (the elected village council) (ibid, 3).

Radical Title and the Vesting of Land in the Presidency

While local authorities retain administrative and management rights over village lands under VLA, even when used by outsiders, there is the ever-present threat of imminent domain. Village lands are and will always be inherently insecure under VLA because all land remains vested in the President. This section explores the ramifications of this insecurity, and the ways that control over village lands can be removed from local authorities and transferred to national-level authorities.

“Land transfer” refers to changing the classification of land, or rather, transferring land of one class to another class. As previously mentioned, there are three classes of land: village lands (all land within village boundaries, whether used by individuals or by the community, or unused village reserves, forest, or idle land), reserve lands (land under the national parks system, not within village boundaries, and set aside as protected), and general lands (everything else – rural land not within village boundaries, and all urban land). This section, then, deals with the circumstances in which land can be taken from a village, and which are beyond the control of the village. In other words, these are the ways in which village lands are explicitly *insecure*.

Under the Land Ordinance of 1923, all lands in Tanzania were public lands, vested in the British monarchy. Upon independence, all lands were vested in the President, and the structure of legal relationships to land did not change substantially, except that any existing freeholds were converted to leasehold, usually for a 99-year term. All occupiers of the land were “tenants” of the state. The Land Commission, as it conducted its research in 1991-1992, was wary of the continuation of vesting radical title in the state, in part because of the potential for abuse of power in land transactions, and in part for the undermining of land tenure security it implies. It writes “the monopoly of the executive arm of the state over the control and management over land should be done away with” (URT 1994, 135), and recommends that village lands be vested in village assemblies who hold the land for the benefit of the villages; the village assembly, being composed of all adult residents of the village, would also ensure there are checks and balances in all land transactions.

The National Land Policy of 1995 did not incorporate the recommendation of the Land Commission regarding radical title. It upholds the previously existing land tenure system, with rights of occupancy the means of access to land, and the President remaining as the trustee for land. All three types of land (general, reserved, and village land) are by definition “public land” and therefore vested in the President. This fundamental principle of the land tenure system was upheld in the resultant Village Land Act, as well. However, a major change is that land in villages remains administered by the village even if it is granted to an individual through a certificate (a CCRO is issued in this case). Previous to the VLA being enacted, if a villager got a certificate for their land, it was a “certificate of granted right of occupancy”, and the land was no longer administered by the village – indeed, the land automatically transferred to being “general land” and was taken out of the village domain.

Since independence, the President of Tanzania, who holds radical title over all land in the nation, is empowered through the Land Ordinance of 1923 to grant land for use through a *right of occupancy*, for periods of up to ninety-nine years. Hence, occupiers of the land have usufruct rights,⁷⁰ not legal land ownership. This granting of land through a right of occupancy (i.e. the power of land allocation) was, in practice, delegated to the Ministry of Lands, who manages, administers, and allocated land on behalf of the President (URT 1994, 25).

The Lands Commission found that, in practice, the land allocation system was not functioning well. The ministerial committee was not functioning at all, so those

⁷⁰ *Usufruct rights* to land refer to the right to use (and benefit from that use) land, but not to own land outright.

allocations were being done by the Ministry of Lands directly. It was noted that the entire system was “top-heavy bureaucratic” (ibid, 26) with little participation from land users and little transparency. Considerable evidence was collected to show that the system was not being adhered to; committee members often allocated land without consulting the entire committee. Furthermore, political leaders, through abuse of authority, were involved in the allocation of land, including the alienation of large tracts of farmland in rural areas (ibid., 27). Instances such as these were able to happen because the system was closed from public scrutiny. Land allocating organs alleged pressures from leaders, including written notes that instructed allocation of land to named people in breach of laid down procedure, causing great bitterness and discontent of the general public. The Commission was unable to find any documentary evidence of the official procedure for Government allocation; clearly, the procedure had fallen into disuse. Instead, land allocations were being conducted in a purely arbitrary fashion.

Peri-urban areas were found to be particularly vulnerable to being allocated without due regard for third party interests. This is a process whereby village lands close to urban centers become amalgamated to the urban area, and are alienated from the villagers. Villagers’ rights were easily extinguished when an area was declared an urban planning area (ibid., 28). In addition, certain government institutions (e.g. the military) were allocated lands often without following procedure, particularly in rural areas.⁷¹ While such allocations were “compulsory” because they were in the “public interest”, rural peoples were often not properly compensated; also, in many instances, the land was

⁷¹ Indeed, villagers that I interviewed in a village in Mbozi were still bitter about land that had been alienated to the military in the 1980s.

put to private, commercial use following acquisition (ibid., 28). Villagers complained bitterly in many regions that their farmlands were taken arbitrarily by government institutions.

Government allocations of land were often done without any consultation of the customary/smallholder peasant occupiers, who were often denied access to their traditional resources such as water, grazing land, farmland, and so forth which become enclosed in alienated lands; they could then find themselves in courts on charges of criminal trespass for the use of their traditional lands (ibid., 37).

The Land Commission recommends that villages be self-governing units, and that the village land needs would therefore prevail over the land needs of others. Such a policy would protect village lands from large-scale alienation – village lands could not be excised into general or reserved lands except in some few express exceptions as provided in law.

The National Land Policy states that, when in the public interest, the President is able to revoke rights of occupancy in order to reallocate land. Any kind of land can in this way be reallocated to any other kind of land (i.e. village lands can be reallocated as general lands, or general lands can become reserved lands). This thus upholds previous land allocation policies. However, previously “public interest” was not clearly defined, which led to the abuse of this injunction. The National Land Policy therefore states that the new land law must establish a clear legal definition of “public interest”.

The Village Land Act does not establish a complete definition of “public interest”; instead, it mentions only one stipulation: that “public interest shall include

investments of national interest.” This clearly remains open to interpretation. The Village Land Act also lays out guiding principles and laws concerning the transfer of village lands by the President to general or reserved land in the public interest. A proposed transfer of village land must be announced to the village council at least ninety days before the proposed transfer shall take place, and any villagers who have been allocated land in the transfer area, whether through a customary right of occupancy or a derivative right, must be informed by the Village Council about the pending transfer. These people can contest the transfer through the village council and/or through the Commissioner, and their concerns must be taken into account in subsequent recommendations. For a transfer of less than 250 hectares, the Village Assembly must meet and either approve or refuse the transfer. The Commissioner has the duty of attending this meeting. If the land in question is over 250 hectares in area, the final decision of approving or refusing the proposed transfer falls to the Minister, who must consider recommendations made by the Village Assembly, the Village Council and the District Council. No transfer can take place until all matters pertaining to payment of compensation have been agreed upon between the Village Council and/or the land users and the Commissioner.⁷²

This is one of the most contentious articles in the land policy and in the land acts, for it seems to undermine all security of tenure, especially because the legal definition of “public interest” eventually incorporates economic interests:

Of greatest concern, however, is that Tanzania's Village Land Act ultimately fails to provide true land tenure security to villages. Because the land is held by the state, and because villagers have very weak rights under the act to oppose a state decision to allocate some of their land to

⁷² The transfer of general or reserved land to village land is covered in the Land Act, 1999; this also is directed by the President.

investors, in the final analysis the Village Land Act's multiple protections for the land rights of communities are secure and good only until the state decides otherwise land, and therefore remove it from village jurisdiction entirely (Knight 2010, 210).

The Extent of Village Lands

The Village Land Act provides the laws and framework for governing village lands, and stipulates that these lands are to be administered and managed by local authorities. Land in Tanzania is classified into three types: general, reserve, and village lands. Determining the extent of the land in each of these classifications is important so that the boundaries of authority are clearly delineated and land in each class is safeguarded from expropriation into other classes.

Since villagization, there has been a lot of ambiguity over the administration (control and regulation) of village lands. The Village Land Act provides a lengthy (and quite liberal) definition of which lands fall into the category of “village lands”; included are any lands that have previously been treated as village lands, whether through demarcation of boundaries or not (with caveats for who must agree on the boundaries, such as adjacent villages), and any lands that the villagers have been using for the prior twelve years (including fallow land and land for cattle grazing and cattle passage), whether recognized officially as a village or not. Thus, the definition of “village land” is based upon customary usage patterns, which have generally been informally regulated by village governments (and, previously, chiefs and elders). Village lands make up over 70% of all land in Tanzania (URT 2005, xii); SPILL notes that because village lands have

not been adequately demarcated, fallow lands especially have been easily amalgamated into reserve lands, and lost to villages (URT 2005, 46).

Not everyone sees this definition as liberal however. Shivji (1999) sees limiting village land to “used land” as a way to alienate village lands that appear to be unused, impoverishing village access to resources. When village boundaries are drawn by outsiders, without adequate participation of the village residents, unused village land can be (intentionally) reclassified as general land. In effect, the process of demarcating village boundaries can be used by national government planners “to expropriate village land under the guise that it is unused or unoccupied” (Shivji 1999, 7).^{73, 74}

Access of Non-Villagers to Village Land

The VLA provides safeguards from land-grabbing by non-village residents by limiting access to village lands. The Village Council, with approval of the Village Assembly, can grant land to non-villager use, but not in perpetuity, and with development clauses that pertain to beneficial activities that assist the village. Village land is thus protected and remains in the village domain under such arrangements.

⁷³ However, my observations in the villages that I visited, where Certificates of Village Land had been issued, village boundary drawing was not being used as a method for expropriating village land – indeed, without exception, in the areas I visited, all land belonged within a village and there was no general land whatsoever. The border of one village was contiguous to all surrounding villages, and this was true for each of the twelve villages examined. I found no evidence in any scholarly works, either, that village lands were being reclassified on the sly. Rather, I argue, the defining of village lands to include all used land has instead brought more land into the official record of village lands, and has enhanced the security of each village.

⁷⁴ However, while the new policy defining village lands has augmented village lands, and enhanced village security, the process of delineating borders between villages has often resulted in conflict. This is explored in the theme on village boundary demarcation.

All major policy documents analyzed dwell at some length on the question of non-villagers getting access to village lands. Protecting village lands from alienation is seen as a very important part of new land policy. This is especially true for protecting lands from “foreigners”, who are viewed paradoxically in both a positive light (investors) and a negative light (wealthy outsiders who displace the indigenous rightful owners).

The Land Commission found that according to previous policy, a non-villager who wanted to use land in a village had to receive approval from the Village Council (the elected village government), and then the District Commissioner could grant them land of up to 100 acres. (100 to 5000 acres had to be decided by the Regional Land Development Committee; larger tracts than 5000 acres had to receive the President’s consent). While in theory the Village Council was supposed to get approval from the Village Assembly, in practice overwhelming evidence was obtained that applications for land from outsiders were rarely discussed by Village Assemblies; indeed, often the applications were not even discussed by the Village Council; the chairman or secretary might forge village council minutes showing their approval. There was also evidence of pressure from higher authorities to decide favorably on land applications. To get around land allocation regulations, outsiders also often become “nominal villagers” through cash contributions; these land grantees were often political or government leaders (URT 1994).

The Land Commission proposed that in the new land administration framework being created, land should only be allocated to members of the village (except in the case of villagers who move away and then inherit the land, for this a part of many

traditional laws). Outsiders could receive customary leases and licenses if they have business in the village, but these would be for a fixed duration.

The National Land Policy (1995) makes access to land more restricted, with the objective being to reduce speculative acquisitions as well as to curb land grabbing. Non-citizens cannot access land, except under the Investment Promotion Act, and even then cannot acquire customary (village) land. To curb allocation of lands for speculation, particularly land that is of prime use for villagers and squatters in peripheral areas of urban centers, special areas will be set aside for investment allocation, and allocations will be made only on the basis of feasibility studies; development conditions will be strictly enforced to ensure that prime investment land is not sitting idle.

In the Village Land Act, non-village residents may only get CCROs if the Village Council approves it, and if they agree to make the village their principal place of residence or work (within six months of the CCRO issuance), or are constructing something likely to benefit the village. The land remains within the village – it is not transferred to general land.

Thus, while it is possible for non-villagers to be granted usage rights to village land, the land remains in the village domain. This should be a protection from land-grabbing by outsiders; in at least one case, however, village authorities have used this as a means to repossess land that had been used by a minority ethnic group for several decades, despite the stipulation that use of twelve years or more constitutes customary rights to that land.⁷⁵

⁷⁵ This happened in the pilot district Handeni, where land used by the Maasai for several generations was reallocated to well-off indigenous people (Kosyando 2007).

Policies about non-village access to land have enormous implications for foreign investment in land, as well. This is beyond the scope of the current investigation.

The Official Framework for Land Administration

At present, all land in Tanzania is vested in the President. The Ministry of Lands is the national institution that oversees all land administration, including land policy and allocation. The president appoints his Cabinet, including the Minister of Lands. The president and members of parliament (who are mostly representatives from constituencies that correspond to the districts) are elected to five-year terms.

Two other arms of the national government are involved in land matters: the Regional Administration and Local Government (henceforth referred to as PMO-RALG), which is under the Prime Minister's Office, and the Ministry of Justice. The PMO-RALG, primarily concerned with "decentralization through devolution," includes all local government authorities, meaning governing bodies at the district, ward, and village levels. The Ministry of Justice is concerned with land disputes and the development of a just and efficient court system among other matters. The VLA charges district and village bodies, under the PMO-RALG, with the direct administration of village lands but holds the Ministry of Lands responsible for training members of those bodies and ensuring that they comply with national land laws.

While the Ministry of Justice provides an independent route for resolution of land disputes, the Village Land Councils and the Ward Tribunals, which operate under the aegis of PMO-RALG, are other channels. Most disputes, however, are settled by the

Neighborhood Chair, who is a member of the Village Council and the representative of the particular neighborhood in which the land user lives (figure 8).

Organizational Structure for Land Management

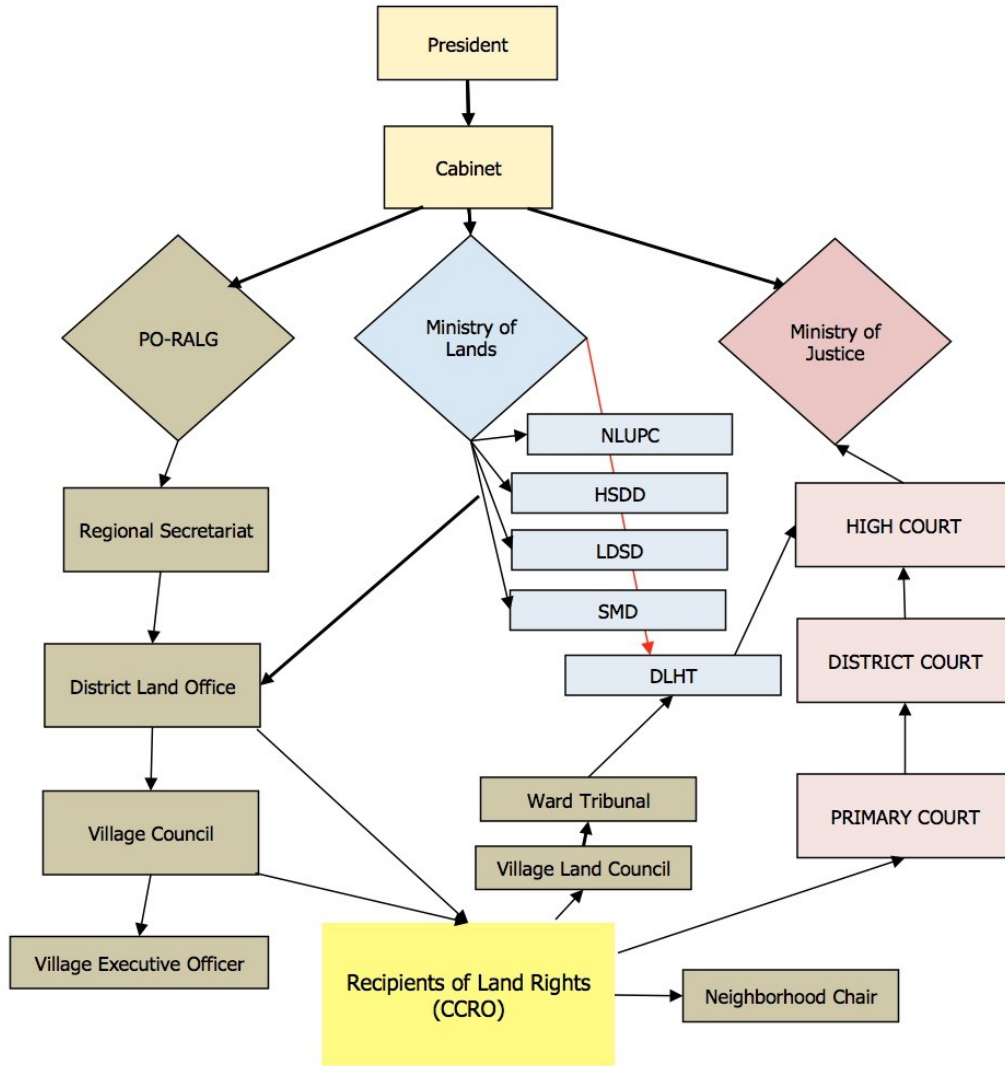


Figure 8: Simplified land management model. This is based on VLA (1999), SPILL (2005, 34), and personal observations.

Ministry of Lands

The primary entity concerned with implementing the land reform laws is the Ministry of Lands. As noted above, the ministry developed the SPILL document that delineates implementation plans and created a special unit to oversee land reform. While several departments within the Ministry of Lands are very much concerned with and participating in implementation of the VLA, the Rural Land Administration section within the Land Administration Division plays the leading role. It coordinates the efforts of the other relevant bodies, which include the following.

- The National Land Use Planning Commission (NLUPC), an independent agency of the Ministry of Lands, is responsible for ensuring that sustainable land-use plans are adopted throughout the country. NLUPC representatives have been included in teams that work in villages to assist in the creation of land-use plans.
- The Surveys and Mapping Division (SMD), particularly the Rural Cadastral Surveys Section, is charged with overseeing rural cadastral surveys and surveying and demarcating village boundaries.
- The Physical Planning Division and its Rural Physical Section prepared detailed plans for village centers and land use within them.
- The Registrar to Titles Unit supports the establishment and management of District Land Registries and Village Registries.

The Ministry of Lands is developing five zonal land administration offices. Local land administration is carried out by locally elected bodies (village councils, and local land boards), appointed bodies (Village Executive Office, village land councils) and the

District Land Offices. While these entities are not part of the Ministry of Lands, the ministry developed the policies and procedures they follow and monitors their work and registries.

While preparing SPILL and PILL in 2005 and 2007, respectively, in 2004 the Ministry of Lands began the first of five early pilot projects to experiment with implementing the VLA in the country's 125 districts (figure 9).

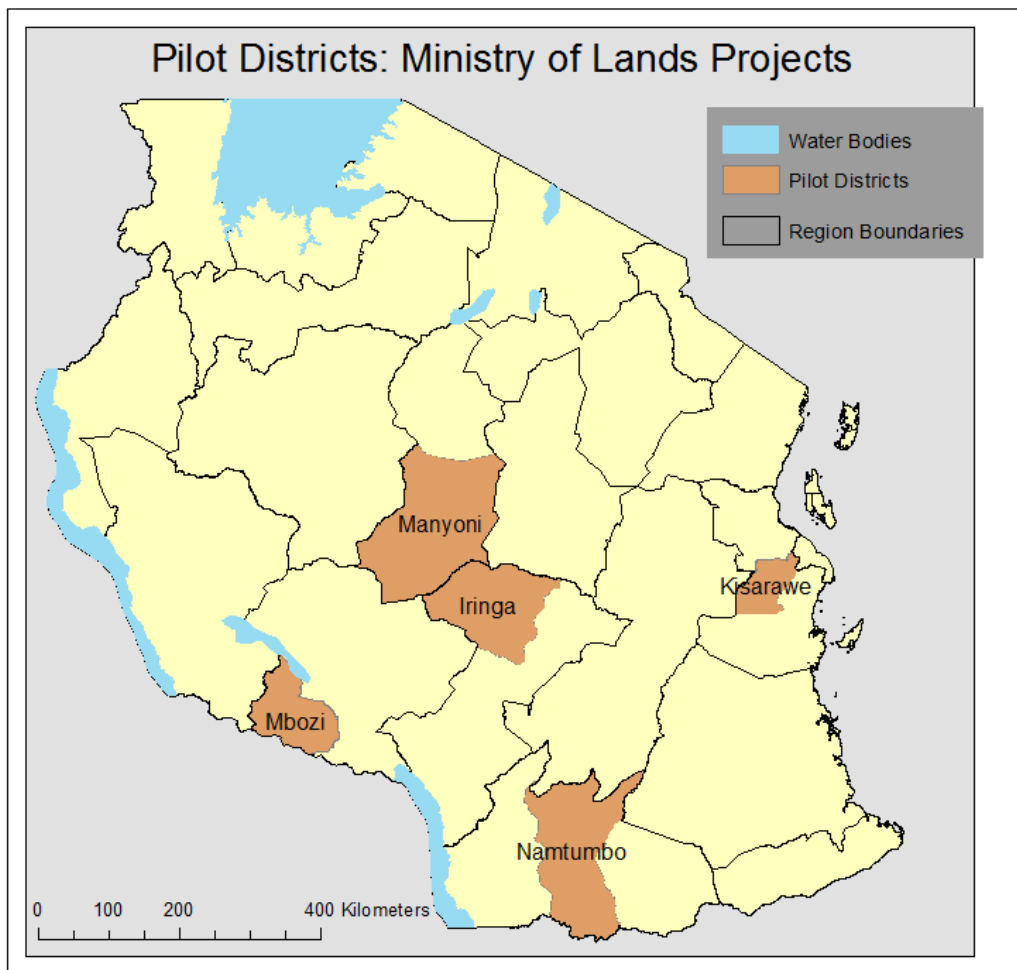


Figure 9: Five early pilot projects conducted by the Ministry of Lands

The main thrust of all implementation has been to streamline and accelerate the process of issuing CCROs to village residents. The pilot projects in Mbozi and Iringa successfully used aerial photographs for parcel boundary delineation, and the Mbozi project also developed a simple and fast procedure for the entire process. More recently, the Ministry of Lands has conducted pilot projects in Manyoni and Namtumbo. No satellite imagery

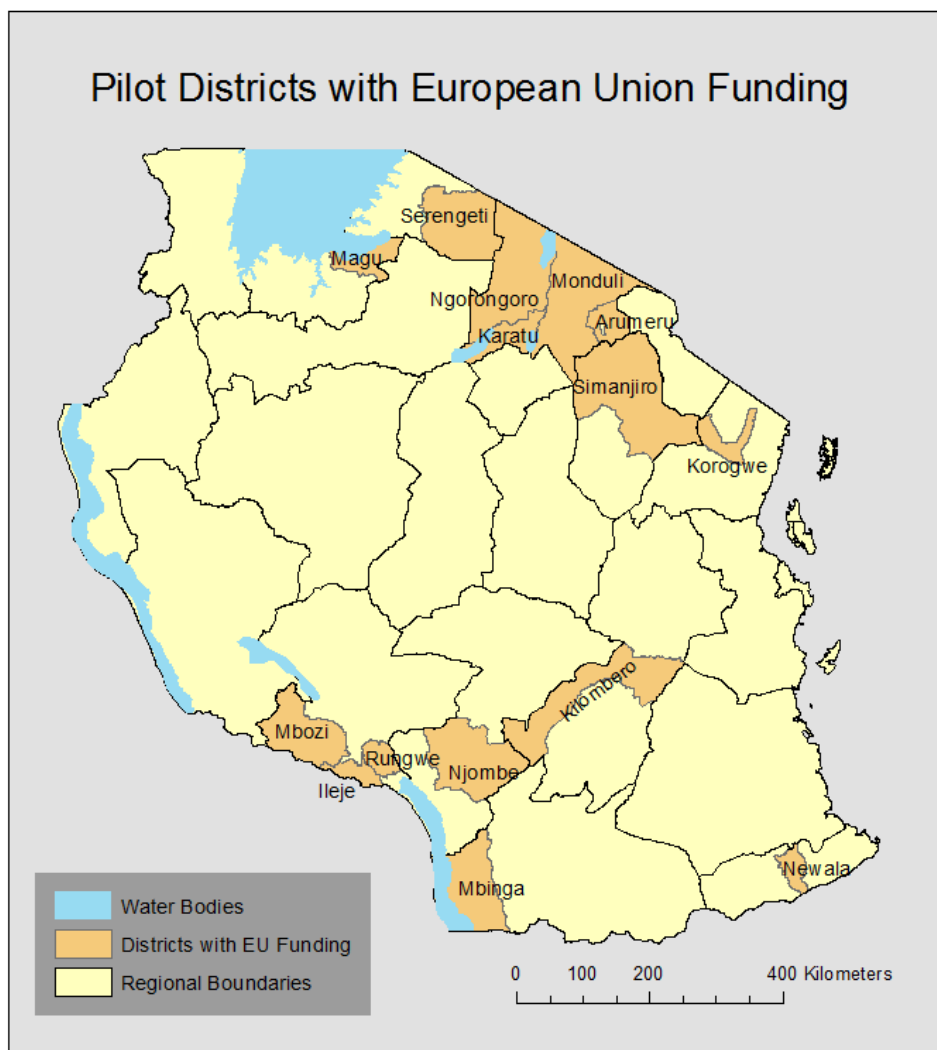


Figure 10: Land reform projects with European Union funding

was available for these districts, and hand-held GPS units were used to record parcel coordinates.

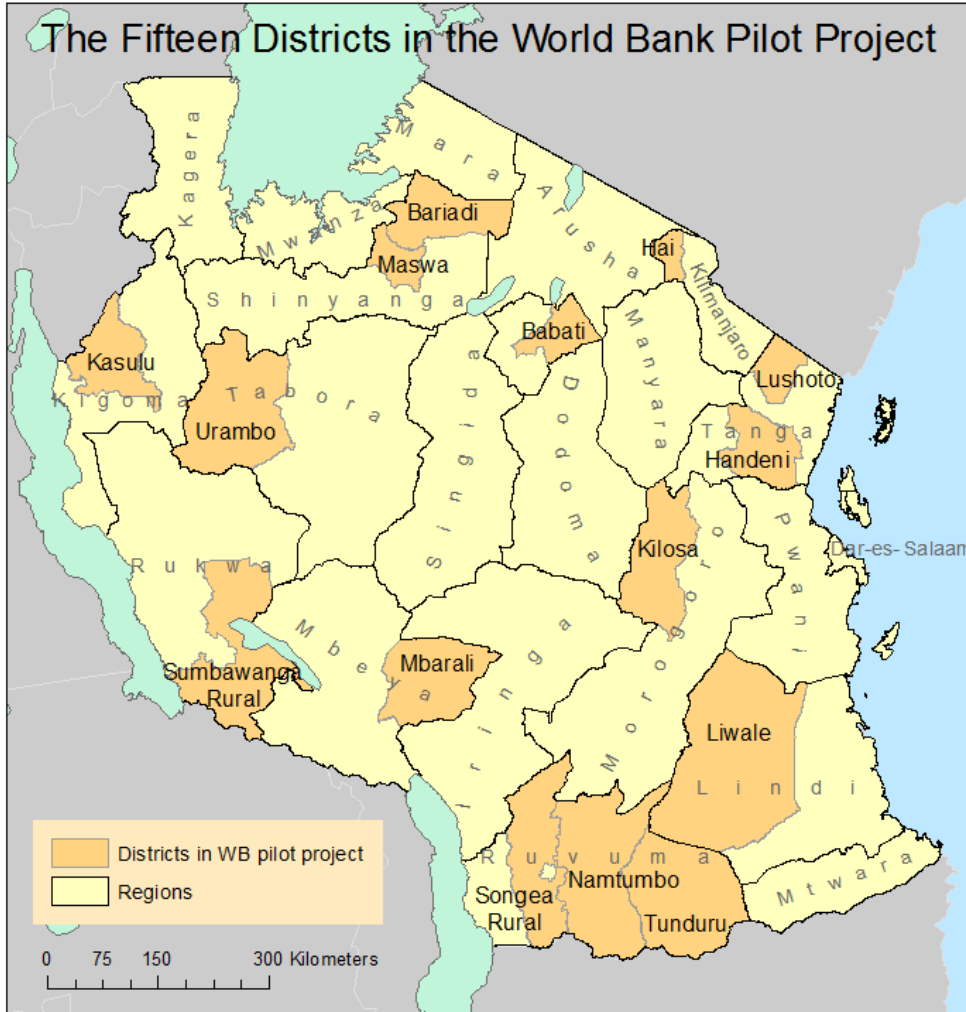


Figure 11: Districts with current or proposed future pilot projects.

The EU and the World Bank are now funding the land reform process in Tanzania, with US \$310 million guaranteed between 2007 and 2015, of which approximately half had been disbursed by 2010 (figures 10 and 11). Land reform has become a component of the much larger BEST-BRU initiative. (BEST stands for

Business Environment Strengthening for Tanzania and BRU for Better Regulation Unit.) The main objective of BEST, a collaborative effort by the national government and international lenders and donors, is to reduce the costs of doing business by streamlining procedures and removing barriers (for example, by abolishing unnecessary regulations and increasing the speed and quality of government services for businesses). Land reform has become a major focus of BEST,⁷⁶ with the goal of reducing the time and cost of having land registered so it can be used as collateral for obtaining credit (Government of Tanzania and DANIDA 2008, vi).

District Land Offices

District Land Offices play a central role in land reform. District Land Officers formulate goals and plans for their respective districts and prepare local human resources, such as GIS Officers, to carry out these plans. The VLA requires each district land office to maintain a district land registry.

Every district is supposed to have a land office, but most still have none. In addition to the District Land Officer, staff include surveyors (who demarcate village boundaries), valuers, and land and town planners. As mentioned above, the District Land Offices are administratively under the auspices of PMO-RALG. Nevertheless, they collaborate closely with the Ministry of Lands and District Councils as well.⁷⁷

⁷⁶As mentioned at the beginning of this chapter, the Ministry of Lands official whose comments I reported at some length stated that land reform was originally conceived primarily in terms of tenure security and economic advances for poor farmers. The focus suddenly and “unceremoniously” changed to business promotion so the Ministry of Lands could tap into the BEST funding mechanism. BRU began as part of a separate initiative, the Private Sector Competitiveness Project (PSCP), which primarily enabled Tanzanians to obtain higher education in management. This effort was subsumed under BEST in 2007. BEST comprises twelve components, only one of which is land reform.

⁷⁷The District Council is the elected government for the district. It is administered by the District Executive Director. It appoints various district committees, of which one is the District Land Office.

CCROs are processed at the district land office. Ministry of Lands employees at the national level who have been involved in pilot projects have worked with district land offices, which serve as the link between national policies and programs, on the one hand, and village-level land administration, on the other.

Village Government

Three village entities play key roles in land administration: the Village Council, the Village Executive Officer, and the Village Assembly. These were established in 1975 by the Villages and Ujamaa Villages Act (URT 1975), which provided for registration and administration of villages, incorporation of village councils, and designation of Ujamaa villages. The Village Assembly and Village Council⁷⁸ are still the basic building blocks of local governance in rural areas. The Village Assembly comprises all adult residents. The Local Government Laws (Amendment) Act 1992 (no.8) required election of a Village Chairman and specified that the Village Council must have no fewer than fifteen and no more than twenty five elected members, of whom at least one quarter must be women (URT 1992).

The Village Council is charged with administering village land.⁷⁹ It receives directions from national ministries and the regional and district commissioners.⁸⁰ One of

⁷⁸ See also the Local Government (District) Authorities Act of 1982, which establishes authority and responsibilities within districts and villages.

⁷⁹ The Land Commission found that, at the time of its research in 1992, the Village Assembly had little role in land administration, and their non-participation was the cause of a considerable number of land problems and disputes: "Villagers expect to participate in the making of decisions on land allocation.... These matters are considered to be of a public, not a private, nature by rural folks.... [T]he Commission concluded that no land policy and tenurial system at the village level can ignore the structures of participation in the village" (URT 1994, 94). Therefore, the Land Commission recommended that power over all land matters was to rest upon the Village Assembly, which would have the power to compulsorily acquire land in the public interest, for example, to build a school, but must give compensation and offer alternative land. However, the National Land Policy did not incorporate this central recommendation made

its committees deals with land issues (particularly dispute resolution).⁸¹ The Village Council is charged with overseeing land allocation and is the body to which an individual or group wishing to purchase village land applies. The Village Assembly has the right to approve or veto land allocation and other decisions made by the Village Council. However, in practice it is seldom consulted (and apparently seldom meets). The District Executive Director (DED) appoints the Village Executive Officer (VEO), who is often an “outsider” who resides in the village after being appointed. The VEO is responsible for carrying out decisions of the Village Council and is a non-voting member of that council (Venugopal and Yilmaz 2010, 217); she or he is also charged with maintaining the village land registry, and assists individuals in preparing documentation for CCRO applications. Increasingly, Village Executive Officers are taking on the role of demarcating parcel boundaries as well and are being trained in procedures for doing this.⁸² In order to accommodate shared land use, which is common, there is a provision that some land can be jointly managed by two or more villages.¹

While the National Land Policy and the Village Land Act concentrate on the powers of the Village Council, and the methods and channels for the Village Council to

by the Land Commission. The NLP states that village lands will continue to be administered by Village Councils, whose consent must be sought before any village land can be alienated; the Village Council, in turn, must report any land allocations to their Village Assemblies. Standardized procedures for village land administration are to be defined by the Minister of Lands.

⁸⁰ VLA states that the Village Council manages village land. However, it provides for “veto powers” by the Village Assembly, who must give prior approval for land allocations by the Village Council. The Village Assembly can complain to the District Council if the Village Council is not exercising its duties correctly.

⁸¹ A certificate of village land is issued in the name of the President by the Commissioner to “confer upon the village council the functions of management of the village land” (VLA IV.A.7(7)(b)). “The village council shall exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the villages were beneficiaries under a trust of the village land” (VLA IV.A.8(1)(2)).

⁸² “A village council shall maintain a register of village land in accordance with any rules which may be prescribed by the Minister and the village executive officer shall be responsible for keeping that register” (VLA Part IV.A.21.(1)).

manage village lands, the SPILL document does not focus upon the training of Village Councils, nor on the local management of land; instead, SPILL implementation plans are largely top-down restructuring of land administrative bodies. SPILL is extremely top-down in its approach and says little about customary rights. Indeed, its main agenda appears to be modernization of backwards peoples, especially those following traditional farming or pastoralist livelihoods (Odgaard 2006, 21-22).

In implementation practice, there is a dual focus on strengthening village land administration, through training local authorities at both the district and village level. This training focuses on the Village Executive Officer (VEO), and on fully staffing the district land office. Administrative functions at levels higher than this (regional, zonal, and national) have not been the concentration.

Thus, power over management decisions is largely devolved to village authorities. This is a key feature of the hybrid approach in Tanzania. In principle, the VLA gives free reign to the village authorities to govern land according to customary norms, so long as these do not contravene national principles. Each village should be creating its own hybridization of top-down standards and regulations and local custom, within the governing framework laid out by the VLA.

In practice, though, my observations showed that top-down systems are being imposed. Village authorities are closely following the letter of the received law without consideration of local norms; a hybridization will still happen in such a context but will be one of subversive or passive resistance, where informal norms continue to exist parallel to, instead of within, the regulated, national system.

Other Key Players

In addition to the government entities that the VLA designates as responsible for particular tasks related to land administration, the European Union, and the World Bank, other key players in the implementation of land reform include MKURABITA and two NGOs.

MKURABITA

Founded in 2004, the Property and Business Formalisation Programme, popularly known by its Swahili acronym, MKURABITA, is an agency of the President's Office. It acts independently to alleviate poverty through participatory formalization of land tenure and promotion of microenterprises. Its emphasis on land tenure for the poor is based on de Soto's ideas (Sundet 2008).

MKURABITA began with a "Diagnosis Phase" to learn about both the existing formal legal and administrative framework⁸³ and the informal framework with its unwritten norms for how land administration is actually carried out on the ground. During the "Design Phase," which delineated how the two systems could be merged and how formal structures and protocols could be simplified, two pilot projects tested some innovations in the titling process, in Handeni District in 2006 and Bagamoyo District in 2008.⁸⁴ MKURABITA has since moved into the "Reform Phase," initiating small

⁸³Of all properties, "89% . . . are held extralegally (1,447,000 urban properties and 60,200,000 rural hectares, of which only 10% is under clan control—mainly Maasai pastoral land), and the rest is privately held. The crucial question then is: Why don't Tanzanians want to benefit from all the security, organization, information, finance, capital, and the expanded national market that Tanzanian law can provide?" [assessment made by Institute of Liberty and Democracy in 2005, the organization founded by de Soto].

⁸⁴Numerous independent reviews of MKURABITA projects have been done, including Nordic Consulting Group 2005, 2007; Norwegian Agency for Development Cooperation 2008; Mkulila 2007; Kosyando 2007, 2008.

projects in some 13 to 15 districts and planning to move into an additional eight districts in 2012 (figure 12). It envisions working with key personnel in a handful of villages in each district, teaching them how to adjudicate parcel boundaries by doing this work together for a few parcels, and then leaving district and village personnel to carry out the bulk of the work on their own. Thus, its activities are much more modest than those in the World Bank-funded project.

MKURABITA shares its documents with the Ministry of Lands. While it is not clear to me whether the Ministry of Lands implements suggestions from MKURABITA or comes to similar conclusions independently, the titling process currently used by the Ministry of Lands in its large projects bears much resemblance to some of the innovations proposed by MKURABITA.

While Tanzania's Village Land Act indeed need to be simplified and the administrative procedures it mandates need to be reduced (along with the 50 necessary forms that accompany the Village Land Act) the MKURABITA plan to overhaul the land acts appears to be a perpendicular, rather than parallel path to SPILL. It is of some concern that Tanzania is currently undertaking two separate large-scale interventions, one of which is designed to implement the acts, and the other to overhaul them (Knight 2010, 201).

Despite international support for MKURABITA, it recently lost much of its funding due to the Norwegian government's disillusionment with de Soto's theories causing it to withdraw support from tenure formalization projects throughout the world. Its reasoning is that no evidence indicates the poor are benefitting from these programs (personal

interview with NPA director, July 2009). MKURABITA is scrambling to redefine itself, but its future is shaky despite its continued funding by the Tanzanian government.⁸⁵

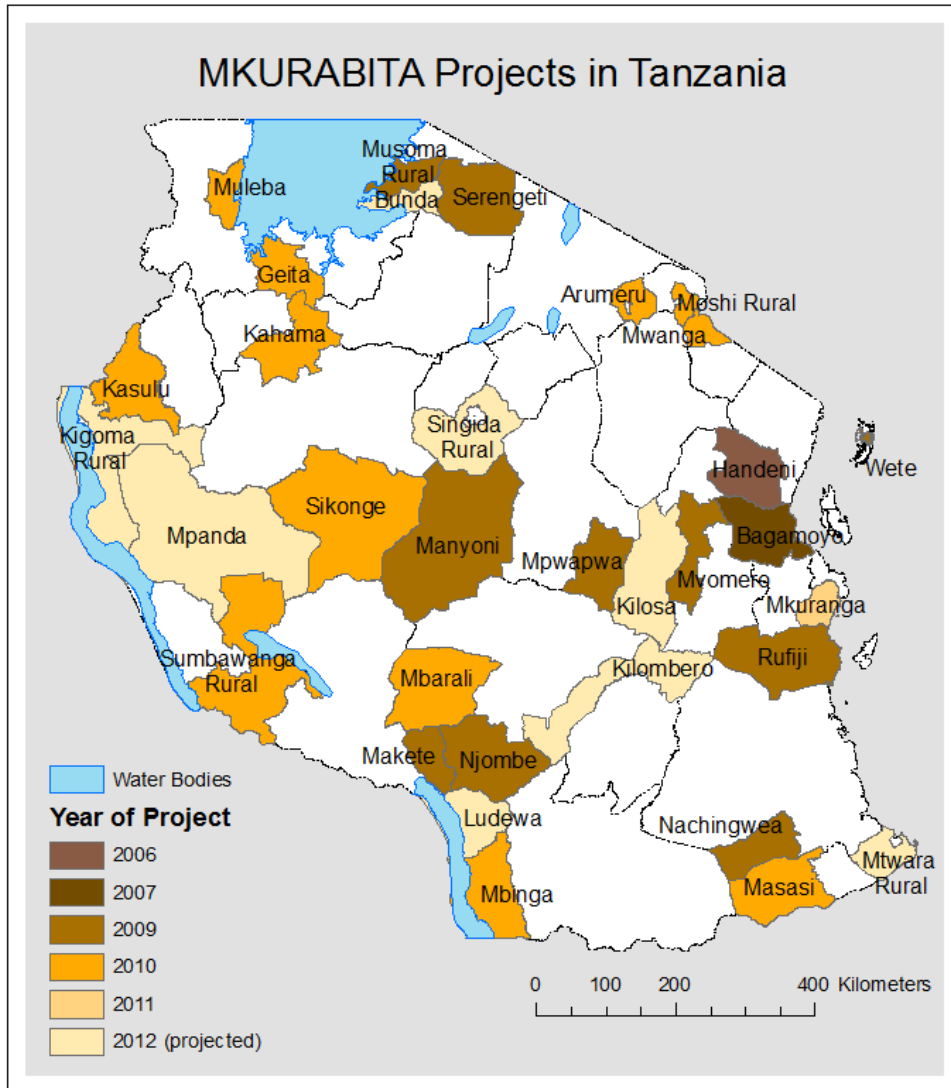


Figure 12: Districts with MKURABITA projects. These pilot projects include those already initiated and those that are planned for the future.

⁸⁵A senior director told me MKURABITA had worked in, or was working in, the following districts: 2006/2007 (Handeni and Bagamoyo); 2008/2009 (Serengeti, Musoma, Rufiji, Nachingwea, Mvomero, Mpwapwa, Manyoni, Makete, Njombe and Wete-Pemba Island); 2009/2010 (Meru, Moshi, Mwanga, Masasi, Mbinga, Mbarali, Sumbawanga, Sikonge, Kahama, Muleba, Geita, Kasulu); 2010/2011 (Mkuranga); 2011/2012 (Mtwara, Ludewa, Kigoma, Singida, Kilombero, Kilosa, Bunda and Mpanda).

Non-Governmental Organizations (NGOs)

Non-governmental organizations (NGOs) are key players in land reform. Two of these are described here. Many others work at smaller scales.

Norwegian People's Aid. This NGO has been working on land rights in Tanzania since 2003 (NPA n.d.). The organization's Program Officer for Land and Resource Rights explained that the role of Norwegian People's Aid (NPA) is two-fold: 1) to raise awareness of the VLA and the rights it enshrines, particularly for such marginalized groups as women and pastoralists, and 2) to support the Tanzanian NGOs that are its local partners by providing funding and educational experiences such as seminars (interview with Victor July 2009). NPA also works to ensure that formalization of the informal economy does not disadvantage marginalized groups.

NPA conducts meetings and seminars not only for staff of Tanzanian NGOs, but also for Village Council members and other influential people in rural communities. It trains them to help demarcate village boundaries and prepare village land use plans. NPA also works to develop and strengthen networking among villages and groups of people. For example, after three villages in Arusha were able to obtain village certificates on their own (not through a government project), NPA shared their experience with villages in Dodoma that had not been successful in obtaining certificates. It also ensures that staff of Tanzanian NGOs representing such groups as women and pastoralists are included as participants at high-level national meetings about land rights.

NPA has supported Tanzanian NGOs' assessment of projects run by MKURABITA and the Ministry of Lands. At first, NPA collaborated closely with

MKURABITA by providing feedback and hosting meetings. However, when the Norwegian government pulled out of formalization programs, it ceased providing funds to NPA for its work with MKURABITA. NPA has not been involved in MKURABITA's Implementation Phase. An NPA staff member told me that Norway is now "embarrassed by all the money they have dumped on de Soto programs" and is trying to distance itself from such initiatives. For Norway "formalization a la de Soto is dead . . . De Soto was an expert salesman who fooled Mkapa [Tanzania's president from 1995 to 2005] and the Norwegian government" (NPA Tanzania Director 2009).

HakiArdhi. A second NGO playing a key role in land reform is HakiArdhi, whose name is Swahili for "Land Rights." It is the brainchild of Professor Issa Shivji. HakiArdhi initially positioned itself as an opponent of VLA, contesting both the law's content and later its implementation. Now, much like NPA, HakiArdhi primarily educates the public about land rights.

This period [1995-1999] was much more important for debating, for engaging with the policy makers, the parliamentarians, government, trying to shape the outcomes of the Land Act . . . [After 1999] the direction was to raise awareness with the people, trying to show the problems with the law, what are the weaknesses, what should be the fair land act, how it should be. But, we discovered that [of] even the few basic issues people are not aware . . . You see, so then you say O.K., although we understand about these weaknesses it's much . . . better to address the positive parts of the law, especially those that empower ordinary villagers, so addressing questions of governance, like village governance, the village assembly, the village council, village land councils, and the committees and their role in land administration. . . So it seems it's better to empower now the organs of village governance so at least they can understand. . . When a district commissioner orders you to do one, two, three, . . . please ensure that this person gets land, you see, such kind of questions. That's now the focus. . . We are now implementing land rights and governance program which is addressing those questions, trying to improve the ways of democratic

governance in the village level so that at least even if there is any kind of pressure they use whatever kinds of powers to ensure that they retain their rights [Interview with Baha, June 2009].

HakiArdhi personnel told me they feel NGOs have been particularly instrumental in pressing for gender-sensitive legislation. For other groups' land rights (for example, pastoralists), NGOs have not been allowed much opportunity for input.

The key players described here have different roles and spheres of influence in the implementation of VLA. The Ministry of Lands works closely with district and local governments in implementation. MKURABITA focuses on making implementation processes more efficient and appropriate for local circumstance, offering recommendations to the Ministry of Lands. Hoping to ensure just and equitable laws for all segments of society, NGOs worked early on to modify legislation by lobbying members of parliament. Now they focus primarily on educating the public about land rights of marginalized groups, facilitating inclusion of representatives of these groups in national-level events, and preparing local leaders to participate in implementation of the VLA.

Chapter 5

IMPLEMENTATION: THE MBOZI MODEL

Chapter Overview: Chapter 4 laid the policy background for land administration reform in Tanzania. This chapter describes the history of Village Land Act (VLA) implementation in Mbozi, the district where implementation began. Procedures were tested and then either strengthened or abandoned there, producing the “Mbozi model,” a hybrid of national policy and its adaptation to local circumstances. The chapter reviews employment of this model as the basis for VLA implementation in several districts elsewhere in Tanzania and its adaptation to different local circumstances. Finally, it discusses challenges the Mbozi model presents for national oversight and technological sustainability. The subsequent two chapters examine the impact of this implementation.

Vignette: The GIS Pioneer

Stella, a young woman who has been working at the Mbozi District Land Office in the town of Vwawa for nearly two years, is one of nineteen youth volunteers working on the land reform project in Mbozi. Like the other GIS Pioneers,⁸⁶ Stella was selected by her Village Council because she had recently finished secondary school and was not employed.^{87,88} She knew that her current position would be unpaid but, if funding

⁸⁶All names are pseudonyms. In October 2009, I interviewed fourteen GIS Pioneers, including Stella, at the Mbozi District Land Office. These individuals were referred to as either GIS Recording Officers or GIS Pioneers, and these terms were used interchangeably.

⁸⁷ The GIS pioneers were all Form IV graduates, which is roughly equivalent to 11th grade in the U.S. Tanzania’s education system is modeled on the old British system. Form IV corresponds to “O” levels and is called secondary school. Students who receive high scores on national exams are selected to go on to

became available in the future, it might become salaried. She enjoys her work and appreciates the training in land policy and computer and GIS technology that she is receiving.

At first, Stella's job involved extensive travel with Mbozi district. She, with one or two other GIS Pioneers, would travel to a village to adjudicate customary tenure claims and register the names of plot holders. After returning to the district land office, the same team members prepared Certificates of Customary Right of Occupancy (CCROs). Stella was trained to read aerial photographs, which were the basis for drawing plot boundaries. Before a team traveled to a village, a notice was sent informing all inhabitants about the project. When the team arrived, a village meeting was held to explain the project and answer questions. After this, team members walked the boundaries of each land parcel with some members of the Village Council and the Village Executive Officer (VEO). Landholders were told which day the drawing of boundaries for their parcels would take place and were asked to assist in verifying boundaries.

While teams were never able to draw the boundaries of every plot during a single stay in a village, nor did they ever complete any village in its entirety, they worked systematically, drawing boundaries on their printouts of aerial photos. As an example, drawing the boundaries for 58 plots in one village with a total of 648 plots took nearly a

“high school” (Forms V and VI). Those who pass the Form VI exams are eligible to attend university. No doubt, most of the GIS Officers being trained did not earn high enough scores to attend high school.

⁸⁸ The original GIS pioneers were all selected by their Village Councils. The current practice is to recruit individuals already living in Vwawa who have some computer experience.

month. Delays were often due to the absence of plot owners, for instance because they were attending a funeral.

Stella told me about a number of disputes she had witnessed. Most were minor and easily negotiated by landholders, neighbors, and village government representatives. It was especially important for village residents, particularly the neighborhood chairman, to be present during adjudication because otherwise individuals would try to claim a plot to which they did not have customary rights. Disputes that were harder to resolve were due to claims to the same land by multiple family members. Sometimes members of a family were given a day to reach agreement; if they were unsuccessful, the disputed plot was skipped over. Most families were able to resolve disputes within the allotted time.

Stella remembered one incident in her own village vividly. She knew the people involved and issued the CCRO in the name of a widow she personally knew as the plot holder. The woman's father-in-law demanded that the CCRO be invalidated, insisting that it should be issued in his name. According to the 1999 Village Land Act (VLA), the land rightfully belongs to the widow, so the CCRO that Stella issued has remained on file. Such disputes between family members are common.

Stella participated in team efforts in four villages. At the time of my interviews in the Mbozi District Land Office, systematic adjudication had been abandoned for a full year because a computer virus had caused the loss of all digitized, rectified aerial photos and parcel boundaries. At first, Stella had continued spot adjudication, traveling to villages to delineate parcel boundaries for individual plots when called upon by the VEO. She remained responsible for her own village and a few others nearby. However, by

October 2009, the VEOs were delineating parcel boundaries. Stella stayed at the district office, preparing CCROs requested by VEOs. The GIS Pioneers take pride in being able to produce a completed CCRO in just a couple of days. Their work is limited, however, until the titling project expands to more villages in the district.

Implementation of the Village Land Act in Mbozi

While Mbozi was chosen to be the first pilot district for the implementation of the Village Land Act (VLA) as early as 1999 (Sanga 2009, 20), implementation did not begin until 2004 (although aerial photography was completed in 2002). One interview respondent who worked in the District Land Office intimated that Mbozi was chosen because a senior official in the Ministry of Lands was from the district; most government personnel I interviewed reported that they did not know how Mbozi was chosen. Mbozi residents were generally proud that their district was the first and attributed its having been chosen to “good luck.”⁸⁹ In any case, Mbozi has by far the longest history with implementation of the 1999 VLA and issued over 12,000 CCROs between 2004 and 2009.^{90, 91}

⁸⁹ Ph.D. candidate Rasmus Hundsbæk (2012) maintains a blog on land affairs in Tanzania. One of his posts raises the possibility of corruption in choosing sites for pilot projects for the purpose of legalizing previous land grabs by the elite.

⁹⁰ See a discussion about this number in the last section of this chapter. It is a gross exaggeration.

⁹¹ The first CCRO was issued to a woman (who has since died) in a well-attended village celebration on April 30, 2004 (figure 15).



Figure 13: Ceremony for issuance of the first CCRO in Halungu. This took place on 30 April 2004 (photo credit unknown, reproduced from Sinda n.d.).

The first step when the Mbozi pilot project began in 2004 was surveying of village boundaries. Initially, a handful of parcels in seven villages were systematically adjudicated and registered (Sanga 2009, 20; Mdemu 2009).⁹² Then Deus Munasa Nyerembe was appointed as the district land officer. He championed digital technology (what Craig 2005 would call “a white knight of spatial data infrastructure”) in implementation of the VLA. The Ministry of Lands provided some donor funds to obtain rectified orthophotos for all of Mbozi District. With the goal of registering all parcels in the district, Nyerembe developed a process for implementation that included training a locally based cadre of recent secondary school graduates he called “GIS Recording

⁹² The seven villages in the initial pilot project were Halungu, Halambo, Malolo, Shasya, Ibembwa, Msia and Iganduka (Sanga 2009, 20).

Officers” or “GIS Pioneers” in the necessary digital technologies and surveying.⁹³ This team of young, moderately educated, local volunteers did most of the work of surveying plots and issuing CCROs. District Land Officer Nyerembe hoped that training local experts would ensure the long-term sustainability of the project. Most had attended secondary school in the town of Vwawa, the district seat, and were living in their villages again because they could not continue their education.⁹⁴ As noted above, the first GIS Pioneers were selected as representatives of the villages selected for full systematic adjudication in the first phase of implementation. However, by the time of my interviews in Mbozi in 2009, recent secondary graduates who lived in Vwawa and already had some computer experience were being appointed as GIS Pioneers. Adjudication of claims within villages was being done by VEOs. In 2008, District Land Officer Nyerembe held a workshop for sixty VEOs, of whom two-thirds completed the training in village land adjudication and GIS technology (MKURABITA 2008, 25).

In the first phase of implementation, seven villages were selected for systematic adjudication by GIS Pioneers in close collaboration with the VEOs. The GIS Pioneers gave each parcel a registration number and drew its boundaries on printouts of georectified orthophotos created in 2004 from aerial photos taken in 2002. These boundaries were later digitized by other GIS Pioneers who remained at district headquarters while others worked in the field.

⁹³ By 2006, when the project lost its outside financing, Sanga (2009, 28) mentions that 47 villages were implementing CCROs in Mbozi.

⁹⁴ While in the past five years numerous new secondary schools have been established in villages, secondary students have traditionally attended boarding schools to which they are assigned by the government; assignments are not based on proximity and thus students often attend school in a far-distant region of the country.



Figure 14. GIS Pioneers at the Mbozi District Land Office. They are at the shared office computer.

While all parcels were registered, CCROs were issued only to landholders who requested them. They were required to submit three passport-sized photos along with the necessary paperwork. Three official copies of each CCRO were prepared in the district land office, including a small digital map showing the coordinates of the parcel and the names of all neighbors. The CCROs were then returned to the village for signatures by all neighbors, the owner, the VEO, and the Village Chairman. Finally, they were sent back to the district office, where the District Land Officer signed them before they were officially stamped and laminated. One copy remained in the District Land Registry, while the other two were returned to the village, one for the village land registry and the other (the “original”) for the parcel owner.



Figure 15. Files in the Mbozi District Land Office. These files contain the official paper copies of CCROs used to prepare digital records.

Around 2005, District Land Officer Nyerembe established the initial goal of completing 20,000 parcel registrations. Official reports show that this goal had been reached by January 2009, with CCROs having been issued for 12,098 parcels, predominantly in the seven pilot villages.^{95,96} Fourteen GIS Pioneers had been trained, as well as Village Executive Officers from fifteen villages in Mbozi District.

⁹⁵As of July 2008, only 2,003 CCROs had been issued, so well over 80% of the January 2009 cumulative total had been issued during the latter half of 2008.

⁹⁶District Land Office reports to the Ministry of Lands.

Elements of the Mbozi Model

The implementation of the VLA in Mbozi District has been deemed a success. President Kikwete refers to the project in national addresses, and in “land circles,” the process is commonly referred to as “the Mbozi model.”

Mbozi is now acting as a training centre; all other districts come to Mbozi to learn and imitate. All 175 villages have been surveyed and a total of 152 certificates of Village land have been issued. 12994 land parcels have been adjudicated and 10804 villagers have registered their land. One hundred thirty seven (137) farmers have used their CCROs to access bank loans for their development projects. Land disputes courts have been established in all operating villages by the name of the village land council (Sanga 2009, 28),

Table 4: Components of the Mbozi Model

	ACTIVITY	ENTITIES INVOLVED	TIME FRAME
1.	Obtaining aerial photography or satellite imagery	Ministry of Lands (national level)	
2.	Surveying village boundaries	District surveyors, village residents, residents of neighboring villages	A few days per village
3.	Issuing Village Land Certificates	District Land Office	
4.	Creating a land use plan	National Land Use Plan Commission, Village Council, VEO, district government personnel such as the agricultural officer	A few days.
5.	Systematically adjudicating individual plots	District personnel, village government, plot holder, and holders of adjoining land	Several weeks to cover whole village
6.	Issuing CCROs	District and village government	A few weeks

Source: Compilation of information from interviews and official documents.

Certainly, many procedures initiated in Mbozi are being replicated in Bariadi and Babati Districts, as they already were in Iringa Rural District. The World Bank-funded

project for completely surveying all parcels and issuing CCROs to all plot “owners” in fifteen districts began in earnest in early 2009 with these two pilot districts. The Ministry of Lands temporarily relocated Mbozi District Land Officer Nyerembe to Bariadi and the Iringa District Land Officer to Babati to lead the projects there, in recognition of their success in their own districts (Mdemu 2009). Initial efforts in both Bariadi and Babati closely followed the Mbozi model (table 4).

Replication of the Mbozi Model

Districts that have begun implementation of the VLA following the Mbozi Model include Iringa, Handeni, Bagamoyo, and Kisarawe.⁹⁷ Two others, Namtumbo and Manyoni, have adhered to the model in many respects but have employed hand-held GPS units because neither satellite imagery nor aerial photos were available.⁹⁸

So far the Mbozi Pilot experience has been extended to ten (10) Districts: Iringa 40 Villages, Handeni 6 Villages, Kilindi 10 Villages, Babati 5 Villages, Monduli 49 Villages, Kiteto 6 Villages, Kilolo 9 Villages, Namtumbo Villages, Ngorongoro 1 Village, and Muleba 2 Villages. All these Villages have been issued with Certificates of Village Land (CVL), and by June 2006, 1,088 CCROs have been issued in these Villages. The estimated cost of this activity is US \$3.6 million (Hayuma and Conning 2006, 7; number for Namtumbo omitted in original).⁹⁹

Most of the districts included in pilot phases have started with about seven villages being systematically adjudicated with extensive help from district (and even

⁹⁷ For information about pilot projects in Iringa, see Stein and Askew 2009; for Handeni, see Kosyando 2007, Mkulila 2007, and MKURABITA 2006 and 2007a; for Bagamoyo, see Kosyando 2008. Very little has been done in Kisarawe despite its being chosen as a pilot district.

⁹⁸ I can find no official sources or reports about the projects in Manyoni and Namtumbo. Everything I know about those projects is from interviews with officials and personnel at the Ministry of Lands.

⁹⁹ This study from 2006 lists several districts where very little was subsequently done; it highlights the importance of the Mbozi case as a model for other districts.

national) experts. The process is expected to become decentralized through education of key participants during the pilot phase.

In the newer pilot projects funded by the World Bank, in both Babati and Bariadi, national and district personnel were intimately involved not only in the registration process in the initial seven (or so) villages, but also continued to direct and carry out most of the work of plot registration during the next phase, which started in early 2010.¹⁰⁰ Bariadi and Babati were expected to scale up to include all villages, and thirteen more districts were to be added while that was happening. According to senior personnel at the Ministry of Lands, the World Bank chose these fifteen districts to capture the diversity of livelihoods among Tanzanian villages (some primarily farming and others dominantly livestock raising, some a mixture of these two, and others including more business and trade) to enable analysis of the efficacy and impact of village boundary demarcation and the issuing of CCROs in different contexts.

The second phase in Bariadi District was originally planned and funded to cover 22 villages. However, by the time it began in January 2010 (one year after initiation of the first phase), several of the villages had split into smaller ones, resulting in a total of 34 villages. While the new project leader (a senior official from the Ministry of Lands in Dar-es-Salaam) was adamant that only 22 villages could be included in the next phase, others were equally certain that all 34 would be included. These 34 were the only villages in the district fully covered by high-resolution satellite imagery.

¹⁰⁰ I learned only in 2012 that the second phase was abandoned not long after I left Tanzania in 2010. Donors wanted the second phase to be managed by personnel from the local district rather than assigned from other districts by the Ministry of Lands (informal personal communication with project donor, April 2012).

One senior official was quite unhappy with recent developments at the time I interviewed her in January 2010.

We were supposed to meet and have an evaluation of the four pilot districts [referring to Bariadi and Babati which were funded by the World Bank, and Nyamtumbo and Manyoni, which were funded by Ministry of Lands]. Two were done with satellite images and two were done with handheld GPS units. We were to learn from our experiences, learn about best practices before carrying on, but that hasn't happened. They are running on to do all the villages covered by satellite images. Just because we have satellite images doesn't mean we have to rush. We need to learn and improve. If we are wrong, now we'll be really, really wrong. It's like if you have a lot of rice, you don't have to cook it all and eat it now These three months, from now until April, was an excellent time to build a new district land registry and do an evaluation, visit the villages already covered. Instead we are just running on to the next phases, without learning from our mistakes (Anonymous interview 2010).

Technological Expertise and Sustainability

Implementation on the ground is quite different from what is described in official reports. The quotation at the end of the preceding section points to the inadequacy of monitoring and evaluation of efforts at the district level to inform later efforts. Another problem is lack of accuracy in reporting from the district to the national level. Funding mechanisms require periodic reports that show progress. I found that official reports overstated accomplishments; in one district, the reported number of CCROs issued was more than double the actual figure issued, according to a perusal of the land registration files. Another example comes from Bariadi, where the second phase was not supposed to begin until CCROs for all parcels in the first round of nine villages had been issued. The new project director for the second phase was upset to discover that all CCROs had been

issued in only three villages, whereas official reports stated they were complete in all nine.

Of much greater concern is the loss, incompleteness, and inaccuracy of data obtained at great cost in money, time, and effort. The impact of data loss in Mbozi District was described above. More details are provided here before a description of incompleteness and inaccuracy of data in Bariadi District.

A computer virus caused the loss of digitized data for thousands of parcels in Mbozi District,¹⁰¹ erasing years of work that continues to be viewed nationally as a source of pride. I could not confirm whether backup data had been stored at the Mapping Division in Dar-es-Salaam.¹⁰² The loss of data led to abandonment of systematic adjudication. In October 2009, when I was observing the functioning of the Mbozi District Land Office and interviewing GIS Pioneers there, only spot adjudication was taking place upon request by individual parcel holders. The GIS Pioneers no longer had an active role in villages but were performing administrative functions in the district office. At the village level, the VEO was responsible for adjudicating parcel boundaries, but these were being drawn without reference to any geographic reference control points. Earlier, when adjudication had been systematic and parcel boundaries digitized, each CCRO included precise parcel boundary coordinates recorded, with a digitally rendered map showing the exact location. After the loss of digital data, including the orthophotos upon which adjudication had been based, general parcel boundaries were being drawn

¹⁰¹ Several of the GIS Pioneers I interviewed in October 2009 mentioned this occurrence.

¹⁰² I did not see any of the backup data, though some interview respondents tried to downplay the severity of the data loss by mentioning that the data still existed at the national level. National-level respondents seemed unaware of the data loss in Mbozi and did not confirm that there had been any data sharing.

and names of holders of all adjoining parcels written on a plain white sheet of paper, with no coordinate information whatsoever. These hand-drawn sketches were then transferred to the official CCROs but would be unlikely to reduce boundary disputes, thus failing to achieve a major objective of individual titling.

One of the highest long-term priorities for VLA implementation is formation of a national land registry. In both Mbozi and Bariadi, a district-level GIS has been employed to store parcel information, including boundary coordinates and ownership. Both districts lack sufficient professional expertise to maintain this digital registry adequately. Rudimentary GIS expertise for data entry is available but not a systems administrator or other computer professional to institute a data-backup plan or provide quality control for the digital data entered.

In Bariadi, too many individuals were involved in compiling the digital district land registry. All parcel information was digitized, but in addition to the three office desktop computers, copies of the registry were being continually updated by several team members on different laptops. Copies of the registry were not synchronized, so it was impossible to verify which version was most up-to-date. The registry shown to me in the district office, with assurances that it was the final, complete version that included everything, had major gaps in data that could not be located on any of the other versions. Furthermore, lack of quality control was an obvious problem; in my brief perusal of the registry, I came across numerous inconsistencies. For example, many parcel numbers in the digital registry did not match those in the official hard-copy book that was the ostensible source for the digital data. Ownership information in the digital registry often

did not match what was in the book either and in some cases had been attached to the wrong parcel. District staff had spent countless hours compiling the digital version of the district registry.

A final issue is the lack of expertise in many districts. The districts that have accomplished the most are those with strong leadership in the District Land Office. Kisarawe District is easily accessible from Dar-es-Salaam, and the district land officer commutes from there daily. New in his position at the time I interviewed him, he was championing VLA implementation. Despite extensive demarcation of village boundaries and issuing of land certificates to most villages in 2006, efforts in Kisarawe (one of the first districts selected for implementation) had stalled early on. In 2006, extensive work was done on demarcating village boundaries, and most villages have their Village Land Certificate. Complete surveying of parcels was planned, but as of December 2009 only twenty CCROs in eight villages had been issued. These relied on spot adjudication with only rough sketch maps of parcel boundaries. The new District Land Officer and personnel working with him had concrete plans for educating village residents about the importance of CCROs, training VEOs to use of hand-held GPS units, and setting procedures for issuing CCROs firmly in motion. Clearly, continuation and success of VLA implementation depends in large measure on expertise and commitment at the district level. In addition, ongoing monitoring, data backup, and provision of additional resources and training from the national level are essential for effective work at the district level.

Mbozi District Land Officer Nyerembe is highly trained and exceptionally competent. His vision and enthusiasm contributed greatly to the early success of VLA implementation in his district and development of the Mbozi model. His plans included training other individuals in modern technologies (reading aerial photography, digitizing orthophotos, processing data in GIS). However, he is the only one in his district trained at a high level. His reassignment to assist with land reform in other parts of the country (especially to direct the pilot project in Bariadi) has greatly hampered continued efforts in Mbozi. Such “poaching” of expertise, coupled with the high turnover rate for government appointments generally, undermines sustainability of even initially successful implementation.

In summary, no pilot district has reached “full coverage” with every land parcel registered. While the initial phase can accomplish a lot in a short time, funds and human resources are not sufficient to scale up to an entire district (or, generally, even to an entire village, though the majority of plots were completed in villages included in the initial phase in Bariadi and Babati). When VLA implementation is ineffective or stalled, general support for land reform wanes. This has happened to some extent in every district where implementation has begun.

Chapter 6

THE IMPACT OF LAND ADMINISTRATION REFORM ON VILLAGE TENURE SECURITY AND AUTONOMY

Chapter Overview: In this chapter, I turn to a topical discussion of the major themes found within the current land reform process that pertain to strengthening customary land rights, and to the incorporation of informal land arrangements into a formalized hybrid system. The Village Land Act 1999 (VLA) breaks with the past, turning the management of village lands over to local authorities (both village and district level authorities are considered “local” in Tanzania’s governmental organization). I provide a detailed look at provisions in land policy for issues surrounding village lands management and administration. I address these themes through thinking about the village population as a whole, or rather, the effects of land reform upon village tenure security as a whole. In the subsequent chapter, I look at the same themes but through examining the impact upon individuals within villages. There are five themes thus treated in this chapter: (1) the process for demarcation and registration of villages and village boundaries, (2) the formulation of village land use plans, (3) the issuance of CCROs, (4) the village land registry, and (5) the formation of dispute resolution machinery. Each of these topics is related to the tension of incorporating informal land arrangements into a more formal system, and the impact upon security of tenure for village land users is explored.

One of the most adventurous new land laws is the Village Land Act, 1999 of **Tanzania**; this makes the elected governments of each of the 12,000+ rural communities the legal land manager, including powers to set up Village Land Registries, identify and register lands belonging to all members of the community, as well as issuing title deeds to individuals or families for house and farm parcels. Fewer than 800 villages so far have taken steps towards this and only where donor-funded projects assist them to do so (Alden Wily 2011, 7).

Vignette: Sanungu Village

Sanungu Village, in Bariadi District, is an old village.¹⁰³ It has existed for longer than anyone can remember. Elders believe it existed before colonialism. It also used to be much larger in area than it is currently. Over the years, according to villagers I interviewed, land was lost to neighboring villages during various government boundary setting projects, particularly to Somanda which lies to the west. Four villages border Sanungu to the north, east, and west. To the south lies Bariadi Town – and the southern lands of the village are felt to be secure because the boundary is marked by a river.

Sanungu Village has a population of about 3,800 in 415 families.¹⁰⁴ Nearly all of these families belong to the Sukuma ethnic group, the largest ethnic group in Tanzania, and popularly known for keeping livestock. In reality, the Sukuma traditionally relied upon crop agriculture for their livelihoods, but supplemented this with cattle (with some families relying more heavily on livestock than others). It became clear very quickly during my time in Sanungu that livelihood patterns have changed quite dramatically in recent times. Every family still farms, and many have a few cows on the side, but there aren't any families who solely subsist on livestock anymore. In the past, some of the larger herds held by a single family were more than 200 head; but, with land scarcity and the lack of grazing land within the village, village administration began restricting herd-

¹⁰³ A village that existed before the villagization of the 1970s is called “kijiji cha asiri” in colloquial Swahili. This literally means a “natural village”. Lest the reader assume a great differentiation between villages created under *ujamaa* and those that had previously existed, it should be understood that populations within all villages were profoundly affected by villagization because people were forced to move to village centers.

¹⁰⁴ All village population figures are based on Village Council reports and are not independently verified. National agencies are quite skeptical of the statistics kept by the Village Council, with one national official telling me “Village statistics are very political and not based on the reality. They want to show a different picture than what exists, and you can't rely on them.”

size in the late 1990s. Some people with large herds moved away; most reduced their herds, with the largest herds now at around 20 head. Not only is there no communal grazing land – there is no communal land at all, with every sliver of land belonging to someone who farms it. Those with cattle use a portion of their land for grazing.

Up until around 1985, there was plenty of land in Sanungu. Anyone could move into the area and request land from the Village Council, and most requests were not turned down, since there was a lot of undeveloped land. But now, the only way to get land is to buy it from the current owner, unless you can inherit it directly from a relative. Land is scarce, because of population increase and the large number of children in each family. The Village Council tells me that they are now constantly educating the population about family planning and encouraging people to have fewer children. This is also the cause of the need for reducing cattle herd sizes. Most of the land disputes in Sanungu, too, are related to population increase and the resulting rise in the value of land (as well, of course, as those related to inter-familial disputes).

Sanungu got its Certificate of Village Land in 2008. Before that, there weren't any permanent boundaries as such – they just knew generally where the boundaries between villages were, mostly based on the edges of farm properties (besides for the river on the southern border). The Village Council also says they don't know much about the land laws so they really aren't aware of most issues. While they did have conflicts, especially with Somanda, in the past, these have all been resolved, especially now that they have their Certificate which clearly demarcates their land. Having the certificate is really important because now they can concentrate on creating a village land use plan,

especially using the map which was created during the CCRO project – a map showing current land use patterns.



Figure 16: Meeting with members of the Sanungu Village Council. Our meeting was held in the new premises of the village government. It was still under construction, and so, to enter the meeting hall, we had to climb over piles of rocks and debris. In addition to the meeting hall, there were three offices – one for the VEO, one for the chairman, and one to house records (including the village land registry). Funds for this structure were provided by (or rather, via) the District Land Office as part of the land reform project.

Sanungu also has a Village Land Council (“Baraza la Ardhi”), which was first formed in 2002. However, the Land Council has not done much; last year, only two land disputes were brought to it; most cases get resolved at the neighborhood level, or even at the family level. As part of the CCRO project, a new village government facility is being built. It is a three-room building including an office for the Village Executive Officer (complete with space to house the village land registry, which consists of one filing cabinet), an office for the Village Chairman, and a large meeting room. Funds for this

building came from the land administration reform project, and when I visited the structure was nearly complete, with the exception of the floor.

Sanungu is typical of the project villages that I visited. While each village has its own situation and circumstances, most remember a history of some (usually minor) disputes with neighboring villages over land, sometimes brought on by national boundary setting projects. Some villages also remember losing land to the government (for instance, Halungu in Mbozi District lost land to an army base in the mid-1980s; Lwati, which is a neighboring village of Halungu, lost a substantial amount of land to a NAFCO farming estate at around the same time).¹⁰⁵ Village boundaries were generally only vaguely known, in most cases, and the exact location of that boundary was not set, and was not considered to be very important.

While scarcity of land happened at different times, ranging from the early 1980s up to the early 2000s, in every village (with the exception of Mitengwe Village in Kisarawe) the era of land being given for free to newcomers is a thing of the past. Land now is seen to have value. Land allocations have always been controlled by village authorities, though most people got their land through inheritance.

¹⁰⁵ The National Agricultural and Food Corporation (NAFCO) was established as a parastatal in 1969 (Chachage and Mbunda 2009, 1); it is especially well known for managing the large-scale farm projects of the 1970s, such as the wheat schemes discussed in Chapter 2. There have been numerous court cases since the 1970s of traditional land holders attempting to get their land back after it was alienated to NAFCO projects.

Thus, the village as a unit has a history of land tenure security and insecurity, and being issued with a Certificate of Village Lands is widely seen to improve village tenure security overall.

**Theme 1: Surveying and Demarcation of Village Boundaries
and the Certificate of Village Lands**

The surveying of village boundaries and the subsequent issuance of the Certificate of Village Lands (CVL), firmly establish the extent of each village’s lands, and are a prerequisite for all other VLA implementation activities. This process, which is much simpler and speedier than ever before, is paradoxically strengthening village tenure and mitigating some inter-village boundary conflicts in some cases, while exacerbating or even creating conflict in others. While the VLA provides for sensitive handling of inter-village disputes, including allowing for joint village management of shared resources, in practice land is divided between villages with no overlap.

Table 5¹⁰⁶: Policy and Practice for Registering Village Lands

	Summary / Overview
Lands Commission	Village lands should be as extensive as possible. Radical title should be given to the villages, who would then have absolute control over their lands. General boundaries should be followed; high surveying accuracy is not important.
Land Policy	General boundaries will be used.
Village Land Act	General boundaries will be used rather than fixed boundaries, as this is more economical. Village demarcation should be done quickly; where disputes exist (between villages), if a mediator cannot resolve the issue quickly, it moves on to the courts. Joint management is possible.

¹⁰⁶ To assist the reader, a short table is presented at the beginning of each theme discussion; this table, which is always seven rows, summarizes the four main government documents related to land reform that were described in Chapter 4, as well as the practical application as observed in the three selected fieldwork districts.

SPILL	Village boundary demarcation should be completed quickly. Fixed boundaries are important (as opposed to general boundaries) to avoid disputes in the future.
Mbozi pilot	Surveyors from the District Land Office completed boundary demarcation for 152 villages very quickly (in 2004 to 2006). There was minimal input from villages; most boundaries were fairly well known and there were few disputes created by this process (though there were lingering disputes that were finally settled once and for all).
Kisarawe pilot	Boundary-setting has increased conflict in some cases, where there were shared resources previously. Boundaries have not always followed land use patterns, and some villagers find their farm plots re-assigned to a neighboring village (or perhaps they were all along farming in the other village, with no one aware of this since there was no firm boundary in the past).
Bariadi pilot	National and district personnel demarcated villages, with some local input. In the interest of being included in the project, villages made peace with old quarrels over land. All the villages in Bariadi have been demarcated.

Prior to villagization in the 1970s, village boundaries were vague, and less important.¹⁰⁷ The Agriculture Policy of 1983 placed special emphasis on the titling of villages (and eventual titling of owners); it was iterated that village titles would be a safeguard from encroachment and alienation of village lands to outsiders.¹⁰⁸ In the mid-1980s, the process for issuing village title deeds was initiated, and all villages were supposed to be issued their title deeds by 1992. But, only 2% were completed by that time. 22% had been surveyed, 15% had certificates prepared (but not issued). The process of village titling was very slow, because of the costly surveying and preparation of title

¹⁰⁷ Many rural people lived on farmsteads in loosely linked communities that were not really “villages” and did not have true boundaries. Villages that did exist had general boundaries that were often well-defined by topographic features; in other cases, the boundary was flexible and fluid, and land might be shared by neighboring villages.

¹⁰⁸ The Land Commission suggests that the true reason for village titles was to create a very tight, top-down government control of village lands by vesting all village lands in the Village Council, an organ of the central government.

deeds under the Registration of Titles Ordinance. Aerial survey was supposed to be the method used, but there was much delay due to unavailability of equipment. Furthermore, there is evidence that land marks fixed by villagers have often been deliberately or mistakenly mislocated, so that the resulting maps do not depict the proper and true boundaries which were agreed upon by the villages in question. Such “errors” resulting in further delays and calling off of the survey work (URT 1994, 36).

The Land Commission raised several questions about village survey. They wondered whether the methodology being used at the time of their research used appropriate technology and was affordable, whether it was fair and ensured minimizing boundary conflicts, and how much villagers are able to participate, amongst others concerns (ibid, 37).¹⁰⁹ They were also concerned that the process of village boundary demarcation not be a mechanism to reduce village lands. Some officials suggested to the Commission that titling must be preceded by land use plans, in order to ensure that the village

has only that land which it *needs* and that sufficient land is left in the hands of the state for allocation to non-local investors. It is clear that what is being suggested here is nothing less than expropriation of village lands behind the backs of the villagers (ibid, 37).

There is firm evidence, that land use plans are seen as a way of demarcating village boundaries and defining land rights of the villagers with a view to leaving sufficient ‘vacant’ land. This means planning becomes a means of depriving the village and the landholders – in particular customary landholders – of their lands (ibid, 50).

¹⁰⁹ The legality of village “title deeds” is also in question. Professor Shivji notes that the procedure being used amounted to a double-allocation of land – the individuals who were using the land had customary rights to the land, while the certificate of granted rights of occupancy to the Village Council (albeit on behalf of the village residents). In the new system, the CVL grants *management rights* to the Village Council only.

The Land Commission recommended that, while village boundaries are important, they should be delineated on general boundary rule, and should also rely upon traditional perceptions and mutual agreements of the villagers. They should not be based upon land use plans; rather, land use plans should follow, after the delineation, to ensure that the delineation is not done with an eye to reduce village lands. Certificates of Village Lands would be issued in the name of the Village Assembly as evidence of the vesting of the land; the certificate is non-negotiable and could never be used as collateral for a loan.

The National Land Policy concurred that the land information system had been poorly maintained; most land occupied through Operation Vijiji¹¹⁰ and indeed, most village land, was not recorded or registered. Furthermore, because of the slow process in issuing land certificates, areas had often been double-allocated, resulting in a plethora of ugly land disputes. While more than 7,000 villages were registered during Operation Vijiji, the work of surveying village boundaries could not keep up with the demand. Therefore, the National Land Policy concurs with the Land Commission and states that faster methods should be used (“General Boundaries”), instead of “Fixed Boundaries Method”. Disputes over village boundaries are to be settled within an allotted time.

The Village Land Act provides for the demarcation of village boundaries using general boundaries, and the issuance of Certificates of Village Lands. The District Commissioner shall maintain a registry of village land.

SPIII does not differ largely from the officially stated policy and law. It emphasizes the it is critical to increase the number of surveyed, registered villages; prior

¹¹⁰ Operation Vijiji, also called “Operation Sogea”, “Operation Move” or simply “Ujamaa” is the villagization scheme enforced in the 1970s. It was described in some detail in Chapter 4.

to this, specific activities include deciding on a funding mechanism for village boundary survey works, and carrying out rigorous village surveys. Whether these surveys are to be based on general-boundaries principles is unclear.

In practice, national and district survey teams have very quickly delineated village boundaries for most, if not all, villages in the pilot districts (and many more beside).¹¹¹ This was done speedily by having minimal input from villages; indeed, in interviews with villagers and village government officials, most could hardly remember the process for delineating their boundaries. The delineation of village boundaries is seen as the first step in implementing land administration reform. This step is pivotal to the rest of implementation, since the village is the basic building block for authority over land administration. The general process for boundary demarcation has been for the district surveyors to come to each village, survey the boundaries, create a map showing the coordinates of the village, and to issue a CVL. The boundaries must be agreed upon by village residents from both sides of the boundary; where irreconcilable differences exist over the boundary location, the surveyors are instructed to move on, meaning that the villages that have disputes will not be able to receive village land certificates until a later phase of the project. Many village boundaries are clear because they follow natural features (such as a river, or the top of a hill between the villages). Villages want to be part of the land reform project, and so sometimes make concessions to neighboring villages in order to be issued their land certificates.

¹¹¹ 3,296 Village Land Certificates were issued by March 2011 (Tanzania Ministry of Finance 2011, 149); approximately 8,000 villages had their boundaries surveyed.

Mbozi District: In Mbozi, by January 2009, 152 village boundaries had been surveyed and demarcated (out of an estimated 187 villages at that time) and village land certificates issued. Village boundary demarcation was very much directed by government officials with minimal input from village residents beyond showing surveyors where the boundaries are. Village boundary demarcation was first started in the early 1980s, with a five-year plan to demarcate all villages; by 1997, 11 villages in Mbozi had been demarcated, and no village land certificates had been issued. Hence, the new system for doing this is clearly much more efficient and manageable and it is a great accomplishment that nearly all the villages have been completed. The village governments that I interviewed in Mbozi were satisfied with the process and felt it had been fair and that the boundaries finally recorded on their certificates were correct. Even boundaries that did not follow natural features were generally well-known and had often been marked by the villages themselves prior by trees, or by the edges of certain farm plots. Thus, the process of demarcating the boundaries did not lead to conflict, generally. In those cases where there had been some dispute, the villages finally agreed over a particular positioning of the boundary because they wanted to receive their certificate. In Halungu Village, for instance, there was some lingering ill-feeling over some farm land that had been lost to Itaka Village to the north; however, it was done and the people in Halungu accepted that loss in the interest of proceeding with land administration reform, as shown in the following description:

Government officials came to do village boundary demarcation in Halungu around 2004, and they put down landmarks to show the boundaries. They also asked elders in our area about the boundaries. Since that time, we have had some small conflicts with Hampangala and

Halambo over the boundaries, but nothing major. But, we lost a lot of land to Itaka, probably several hundred acres. It started happening in the 1980s. Farmers from Itaka came into the farms of people in Halungu and took lots of land. Some farmers lost portions of their land, while other farmers became inhabitants of Itaka. The arguments over that land went on for many years. Finally, in 2002, the aerial photographs were taken. After that, district and national Ministry of Lands people came to survey the village boundaries. Because the farm patterns in that area now seem to fit into Itaka Village, the boundaries were drawn to give that land to Itaka.

What could we do? We were tired of the arguments and tired of going to the ward tribunal trying to get our land back. We finally gave up. And so, the Certificate of Village Land issued to Halungu does not include that land, and now we are decided on that and have dropped the case. We got our Certificate of Village Land in 2004, and we were the first village to get this in Tanzania. Since Sasenga Village was created recently, we will have to re-do our village land certificate though. [summary of excerpts from interview with the Halungu Land Council].

The Halungu Land Council is glad to have their CVL, since this protects the village. They remember what happened to Lwati and some other villages to the east. NAFCO took a lot of their land to start agricultural plantations, this could have been in the 1980s. Even though there were farmers there who had been there for generations, yet they were forced off their land and not given any compensation because they could not prove the land was theirs. Another major injustice that is remembered very strongly in Halungu happened around 1984, when the army came and took a large portion of the land in the northwest corner of Halungu. Some of the land they took was also from Itaka. This again was more than a hundred acres.¹¹² Some of the land was undeveloped, but some of

¹¹² The Swahili word for “acre” is “ekari” or “eka”. This is the generic word most farmers used to describe the size of their farm. However, in the metric system, which is in use in Tanzania, area should be described in “hectares”, or “hektari” in Swahili. I noticed that these two terms were sometimes used interchangeably; this either points to my difficulty in hearing the difference between “ekari” and “hektari”, or to the fact that most small-holder farmers do not know the exact size of their farm. I believe the figures they stated were in approximate acres, however. There are just under two and half acres in one hectare (2.471 to 1).

it belonged to farmers in Halungu. Since the army could do what it wanted, Halungu did not contest this. But they still remember it with bitterness. Halungu believes that their CVL will protect them from any future injustices such as these from occurring.

Ipunga, a “late-start” pilot village in Mbozi, received its CVL in 2005, after aerial photos had been taken in the area – villagers remember the planes flying over in 2001 or 2002. After receiving the CVL, systematic adjudication was initiated in the same year. The process of demarcating village boundaries was without incident in Ipunga; no one remembered or spoke of any conflicts in the process, or mentioned any disputes with neighboring villages.

Bariadi District: In Bariadi, while CVLs were issued to all villages in 2008,¹¹³ there was more discontent about the demarcation process than in Mbozi. For instance, as mentioned in the opening vignette to this chapter, Sanungu Village, which got its CVL in 2008, had quite a bitter dispute with the neighboring village of Somanda over a large tract of land. This dispute preceded the boundary demarcation project – it had been going on for decades. They finally resolved their conflict with Somanda by relinquishing their claim to some land; this was worth it, according to the Village Council, because:

now we have our village land certificate that clearly shows all our boundaries. This is really important because now we can concentrate on creating a village land use plan by using the map on our certificate (interview with VC, January 2010).¹¹⁴

¹¹³ According to interview with NLUPC personnel on January 10, 2010, all village boundaries were drawn in 2008 for the entire district. CVLs were issued thereafter, with the process completed in 2009.

¹¹⁴ It should be noted that Sanungu Village already has a land use plan that they created in consultation with the National Land Use Planning Commission after receiving their certificate of village land.

Kisarawe District: Mitengwe Village, in Kisarawe District, had quite a different story to tell, and is an example of a place where the setting of boundaries has clearly resulted in greater conflict; it is also a striking example of an instance where flexibility in land tenure could result in less conflict, and yet was not pursued. Mitengwe had ongoing conflict with a neighboring village over their boundary.¹¹⁵ This boundary cuts through a wooded land that has areas of spiritual significance to both villages, and each village wants that area to be within their boundary. Each claims the area belongs to them traditionally. People in Mitengwe remember that district officials first came to the village in 2005 in order to survey the village boundaries; this process was done using GPS units by the district surveyor. By 2007, they received the CVL; district surveyors arbitrarily decided to allocate part of the wooded area to Mitengwe, and part to neighboring Mihugwe, however the most sacred area is now entirely within the boundaries of the neighboring village. While village land certificates are not supposed to be issued if there are any unresolved conflicts, these villages now have their certificates.¹¹⁶ The Village Council of Mitengwe is upset and has lodged a complaint with the district, stating that they do not agree with the boundaries drawn upon their certificate. Unfortunately, the district is ill-prepared to assist with conflict resolution and so if the villages want to be

¹¹⁵ This story is according to my interview with members of the Village Council. Details are not independently verified.

¹¹⁶ A similar problem existed in Handeni district, a district I was not able to visit but which has had two separate, well-documented pilot projects. Boundary demarcation was done by outside experts for six of the seven pilot villages (the 7th had previously been demarcated) because village officials did not participate as they were supposed to. The boundaries were not accepted in several cases, including one entire neighborhood that was erroneously assigned to the wrong village. This was seen as a major setback and a reason for the Handeni project overall to lose legitimacy. Also, a “lesson learned” was that some lands are jointly used as common-resource (water supply, for instance), and that it creates conflict to allocate land to only one village. See MKURABITA 2007 for more information. According to LHRC review, while the “irritating” border conflict between Kwamkono and Kwamsangazi precluded surveying land parcels in that hamlet, land parcel survey in other parts of the village proceeded, even though this is contrary to law and procedure (Mkulila 2007).

between the villages, but they were not strict. There were wide expanses of forest and uncultivated land between them. However, after the boundaries were surveyed and marked, it was found that some residents of one village were actually farming land that now belonged to a neighboring village (and vice versa). Some of these farmers were told to leave their land and find new land in their own village; through education from the District office, though, they now know they can own land in the neighboring village, but they need to apply for their CCRO in that village (they need not reside in that village).

In summary, village boundary demarcation has proceeded quite quickly and efficiently under the Village Land Act implementation. Nearly 8,000 village boundaries have been surveyed, and more than 2,000 village land certificates issued.¹¹⁷ However, villagers are not always happy with the results. Many, though, put aside their differences in order to receive their certificates. They clearly put a lot of value in receiving their certificate of land. It is likely, too, that while old bitterness remains over some boundary disputes, land use patterns often clearly show that the land in question is “used” more prominently by the village that receives that land through the demarcation process. For land in use as cropland, this follows the stipulation of the Village Land Act that “use” is measured by the current user of the land, if they have used that land continuously for the past twelve years.

But, the land dispute in the case of Mitengwe and Mihugwe villages is more troubling. The cause of this dispute is a shared resource. Both villages had “user rights” to the sacred area, and because there was no fixed boundary through the forest, both

¹¹⁷ According to interviews at the Ministry of Lands in July 2009. Remember there are approximately 12,000 registered villages total in Tanzania.

villages were free to use that area as they pleased. However, when all village lands are to belong to only one village, multi-village land cannot be accommodated. In such cases, conflict is exacerbated or even created through the delineation of village boundaries. In the interest of upholding customary land rights, such cases warrant further review and possibly new ways of recording and administering that land (for example, a designation as village lands, but the lands are not included on any one village land certificate).

Customary tenure thus could be better captured in the formal system if the hybridization envisioned in VLA was being encouraged. Land need not belong to only one village, communal relationships between villages could continue unharmed, and shared resources could continue to be shared with each participant continuing to have a stake in protecting the shared resources. Instead, because only one inflexible system is being implemented, there will either continue to be parallel informal and formal systems that are not integrated (with unsanctioned “hybridization”), or costly and destructive land disputes between villages as they are forced into a non-communal structure.

Theme 2: Village Land Use Plans

Once a village has been issued its CVL, but before individual parcels can be titled, land that falls within the village boundary is catalogued by land use, and land use plans are created. In an ideal situation, ample land is set aside as reserve (for instance, some wooded forest land), other land for grazing and other communal uses, still other land might be reserve farmland that the village rents out, and so forth. The majority of the land is “zoned” for resident farm parcels. The resulting land use plan is a mixture both of current land use patterns and future plans for improving land use. These plans are created

through a combination of local knowledge and expert-driven goals regarding anything from agricultural inputs and outputs to ideal farm sizes to limiting livestock.

Table 6: Policy and Practice in Creating Village Land Use Plans

	Summary / Overview
Lands Commission	Should be user-driven rather than top-down.
Land Policy	District Commission is responsible for creating land use plans, but must involve the Village Council in the process. No new settlements can be formed before a land use plan is done.
Village Land Act	Village Assembly votes to accept the land use plan, which is created by the Village Council with the help of the District Commission.
SPILL	Concentrates on regional and district land use plans with an eye to forming resettlement villages.
Mbozi pilot	Land use plans created after certificates of village land were prepared, and before issuing CCROs. Land use plans highlight village services (such as schools), and reserve areas (especially forests); some villages have extensive grazing lands mapped while others have very little communal land. [Land use plans might bear little resemblance to what is on the ground, however].
Kisarawe pilot	Villages have prepared land use plans that show the general land use. Specific areas are set aside for certain crops (e.g. rice), and other areas are shown to be reserve. Follows the already-existing land use patterns.
Bariadi pilot	Land use plans are created in the first phase of the CCRO project (after village land certificates are done). They are extremely general in nature, following existing land use patterns. They are prepared with the population growth rate kept in mind; however they are such small-scale products that it is hard to use them for true village planning.

There is a long history of attempts to plan village spaces in Tanzania. Indeed, villagization was predicated on the need for the population of a village to be centralized in order to efficiently provide services such as schools and clinics.¹¹⁸ The Land Commission found that the promotion of planned villages, together with the creation of

¹¹⁸ The *Arusha Declaration* of Julius Nyerere is widely cited as the blueprint for villagization. Yet, it does not specifically mention the formation of villages; rather, it describes Nyerere's view of a socialist nation.

village land use plans, had been largely unsuccessful; it attributed this in particular to the slow process of surveying, which was the first step in the creation of a land use plan. Ten years after the adoption of the agricultural policy¹¹⁹ that promoted village land use plans, only 2% of the total number of villages (165 out of 8,367) had land use plans (URT 1994, 50). The number was low because, in addition to the lack of finances and manpower for surveying, as discussed above, there were inadequate facilities, lack of coordination between planning teams, unresolved boundary disputes, and a lack of firm policy on the resettlement of people from ‘overpopulated areas’.

The Land Commission concluded that the entire project of creating land use plans was flawed – it was pursued as a dominantly top-down with little effort to understand the existing land use patterns and their rationale, or to involve and let the land users participate fully in the planning. The considerations (service provision) were more suited to town planning – instead of considering productive farming and enhancing agricultural output.

The National Land Policy concurred that village land use planning had previously been rigid and often without regard for proper local management of rural land resources. It stipulates that land use plans will be developed by District Councils in collaboration with Village Councils and will be participatory in nature. They will be based upon local knowledge of the conditions and existing land tenure and land use patterns. Village land use plans will be a means for guiding development of modern agricultural and livestock techniques. While resettlements of people into less densely populated areas will continue,

¹¹⁹ URT Department of Agriculture (1982).

it must be preceded by land use plans to assess the land carrying capacity. Large scale investments in agriculture will be directed to areas with underutilized potential.

The National Land Policy makes special mention of supporting pastoralist land use. Due to haphazard alienation of land for large scale agriculture, pastoralists have often been disowned of their grazing lands. To ensure security of tenure for pastoralists, gazetting to protect their grazing land will be done. **Certificates of Village Land will be issued to protect common property regimes.** Neglected agricultural land that was previously pasture will be restored to pastoralists (when not in conflict with national interests). However, free movement of pastoralists creates land use conflicts, and unregulated movement of livestock leads to land degradation. Shifting agriculture and nomadism will be prohibited while modern transhumantic pastoralism¹²⁰ will be encouraged through incentives such as cattle dips. Provision of stock routes must be planned for, and pastoralists and peasants will be educated on good land management.¹²¹

¹²⁰ What is meant by modern transhumantic pastoralism is unclear. Transhumantic pastoralism is a synonym for nomadic pastoralism. The elements that would transform this into a “modern” form is not elaborated, but likely includes semi-permanent settlements as well as regulation of cow-dips and other “modern” safeguards for protecting the health of herds.

¹²¹ The National Land Policy also mentions that agricultural land will be protected from encroachment by pastoralists, but that resource sharing will be promoted in areas of conflict over land use. One of the stated objectives of the National Land Policy is to “ensure that existing rights in land especially customary rights of small holders (i.e. peasants and herdsmen who are the majority of the population in the country) are recognized, clarified, and secured by law”. While this objective specifically mentions “herdsmen”, it is notable that several clauses and indeed entire sections of the document are aimed at eliminating the pastoralist way of life rather than securing their customary land rights. The SPILL notes that one of the four most critical tasks is to reduce sources of explosive land conflicts on village lands by addressing ill-effects with regard to (a) disregarding and violating land rights, (b) nomadic cultures, and (c) excessive stock holdings. These will be addressed by (a) ensuring respect for individual land rights (empowering communities and offering public education) and (b) reducing stock (offering public education, and creating livestock markets and exchange centers). In other words, while both documents pit farmers against pastoralists, SPILL is overwhelming anti-pastoralist.

In the Village Land Act, it is stated that the Village Council makes recommendations to the Village Assembly on which land is communal village land, either through a land use plan, or through specific recommendations. The District Council provides advice and guidance on this. The Village Assembly approves or rejects the recommendations. Furthermore, part of the village land will be designated as “communal village land”, which is occupied and used (or available for occupation and use) on a community and public basis. Such land shall not be made available for individual occupation; communal land is not eligible for the grant of customary right of occupancy (CCRO).

The SPILL document states that lower (or minimum) limits on land holding acreages per household must be instituted to facilitate the reduction of poverty and reduce conflicts in villages, and this is one of the most critical items to be addressed. This is addressed by (a) preparing national, integrated district and integrated regional land use plan frameworks, (b) identifying areas suitable for agricultural and pastoral village settlements, (c) determining and agreeing on the minimum acreages for reduction of income poverty, and (d) registering people for resettlement into new villages. [Notice the language is very non-participatory and top-down bureaucratic]. The SPILL plans do not concentrate on local-level input to land use plans, despite local input and participation being of paramount importance according to the National Land Policy.¹²²

¹²² As an example of the top-down nature of SPILL, the SPILL document identifies two important thrusts for land use planning implementation. The first is to provide national mapping infrastructure and undertake topographical mapping, land cover data and map revision to feed into land use planning and land development projects. This includes (a) designing geodetic networks and establishing horizontal and vertical geodetic frameworks, (b) complete and revise Y742 maps (?what are these?), (c) acquiring high resolution satellite imagery, (d) and mapping the country at 1:10,000, and mapping townships at 1:2,500. The second thrust is to produce participatory village and other land use plans to guide physical planning

In practice, in each of the pilot districts that have gone beyond the step of issuing Village Land Certificates, land use plans have been created prior to beginning to issue individual CCROs. Experts in land use planning assist the village to create a sustainable land use plan for all the lands within their boundary. These experts, for initial villages in pilot projects, sometimes include national personnel from the NLUPC, the District Agricultural Officer,¹²³ GIS experts, and district land office personnel. As the implementation progresses in more villages with less outside input, district-level personnel take the helm. In each village, people from each neighborhood within the village participate in planning, including neighborhood chairmen, and village council members. The purpose of this exercise, which takes anywhere from three days to a couple of weeks, is to create a map showing the current land use patterns and to create a second map delineating an ideal land use plan, with reserve lands (such as forest reserves), grazing lands, agricultural areas, village communal lands (including village institutions upon village lands, such as schools and clinics), and the village center all clearly mapped. Sometimes the land use plan is a mirror of the current land use map; other times they are very different.

and land use processes. This includes (a) set up and empower a GIS unit at the NLUPC, (b) collect data and digitize maps for district framework land use plans, and (c) prepare 15,000 village land use action plans.

¹²³ Colloquially, “Bwana Shamba”, or “Farm Mister”.



Figure 18: Village Executive Officer in Itaka with Land Use Plan. This land use plan was created locally without outside assistance and is very different than the computer-generated land use plan maps created in most pilot villages.

Mbozi District: The Ipunga Village Council land use plan which includes 100 acres in reserve as forest, and 30% of the total land held in reserved; there is also some land set aside for grazing cattle, though portions of this are rented out by the village government to earn income. The Council told me about the fines they would impose on any villager who chops down trees in the forest reserve. Interestingly, in interviews with individual farmers, there is no local knowledge of the existence of forest reserves, leading me to conclude the reserves do not exist in reality. Farmers insisted that there are no forest lands in the village, and very little grazing land. This calls into question the validity

of Ipunga's land use plan. It is clear it is not being followed but that the Village Council does not want to break the illusion of compliance.



Figure 19: Members of Ipunga Village Council. The GIS Pioneer from Vwawa and the author are also pictured; the building is the Village Council office.

Halungu also has a village land use plan. This was first done a long time ago. [The members discussed this at some length, they finally guessed it was in the 1980s]. The land use plan was drawn by government officials, but all the chairmen from the neighborhoods (kitongoji) were members of the committee that participated in creating the land use plan. The land use plan includes several grazing lands for cattle, especially along the river that now divides Halungu and the new village Sasenga. There are also reserve lands – especially in the northern and western parts, there are large forest areas

where cutting trees is forbidden. There is a hill that is protected, too, in the middle of the forest. These areas belong to the village and they can't be sold or given to anybody. If someone cuts down trees in the forest, they have to pay a fine.

Bariadi District: Land use plans were created for each of the original nine villages in the pilot village, and were underway in January 2010 for villages in the next phase; five new villages were being done simultaneously at that time, because there were enough expert personnel to cover five villages at a time, with about eight members in each team. These members made up the Village Land Use Management Committee (VLUM). It took the team about one week to create a map of existing land use; this was done through conducting a village meeting to explain the project on the first day (which was announced at least one day prior to beginning),¹²⁴ then conducting Participatory Rural Appraisal (PRA) exercises over a period of two or three days, to learn about current conditions of the village, including existing land use patterns such as prevalence of various crops and livestock, and to discuss problems related to current land use. A community action plan was formed to help resolved the identified problems, and these would be included in the land use plan for the village.

The following notes illustrate the process for forming a land use plan:

Bulolambeshi, in Bariadi District, is an example of a village that was preparing a land use plan. On the second day of the project, they were already working on their land use plan. The people who attended were split by neighborhood; Bulolambeshi has five neighborhoods. While they were supposed to come prepared with all their neighborhood statistics, they hadn't. So, each group spent over an hour preparing a list of all the people and families in their neighborhood, from memory, with some basic demographic information such as age and gender for each person.

¹²⁴ Education was on the general land administration reform project, on the importance of CCROs, and general information about land policy and land laws.



Figure 20: Participants from Bulolambeshi working on their statistics. This was one of five neighborhood groups.

The afternoon was then spent preparing various tables with statistics about the population of each neighborhood, and the main economic activities of each family. While a handful of residents rent their land (30 families out of a total 320 families approximately), the vast majority (90%) own their land. The way the owners obtained their land is predominantly through inheritance (230 families), while 40 got their land from village officials (perhaps when they moved to the area decades ago); the remaining 32 families bought their land.

The average family has about 8 acres, according to the neighborhood reports. Four acres are generally used for corn, while two acres are reserved for cotton, their cash crop. The remaining two acres are used for sorghum, rice, peanuts, and potatoes. Many families reserve a small portion of their land for cattle grazing, since there is no common grazing area anymore.

While the planning process was couched in terms of participation, and was meant to be the villager's input on their land-use plan, using local knowledge, the atmosphere was very much one of experienced teachers

(the outside experts leading the exercise) with children who knew very little and who had to be chastised if they didn't perform to expectation. When the neighborhood groups were reporting on their agricultural activities, the agricultural expert would tell them they were wrong sometimes, and chastised one group vociferously for admitting that they were not using fertilizers on their crops (no other group made the mistake of being truthful about fertilizer usage after that). Thus, rather than being an exercise in learning what the current agricultural practices are, it turned into a performance, with each group reciting what they thought the experts wanted to hear so that they would be awarded with a compliment (cf. Mercer 2003).

Following this collection of local knowledge from the villagers, the experts would draw a map showing current land-use patterns, and develop a land-use plan for the future, with very general detail on where the center of the village is, where key services are located (such as schools and clinics), where agricultural lands are, and where any reserved lands are or where reserved lands should be developed.

Once the land use plan was developed, the work of surveying all parcel boundaries would begin.

Kisarawe: Mitengwe's land use plan is very simple. The village is divided into eight broad sections. Three of these, not continuous to each other, are dedicated to the farming of crops. Another, which is a wetland area, is dedicated to growing rice. The railroad runs very close to the village, and so another section is for a railway housing complex for railway workers; this area is owned by the Tanzanian-Zambian Railway (TAZARA) and effectively cuts the village into non-contiguous sections. The last three sections are reserve areas: one is for cattle grazing, another is a forested area where firewood collection is allowed, and finally, a large section is a protected forest area where cutting or collecting firewood is strictly prohibited. There are some smaller sections within these, indicating a plot for the school, and other village services.

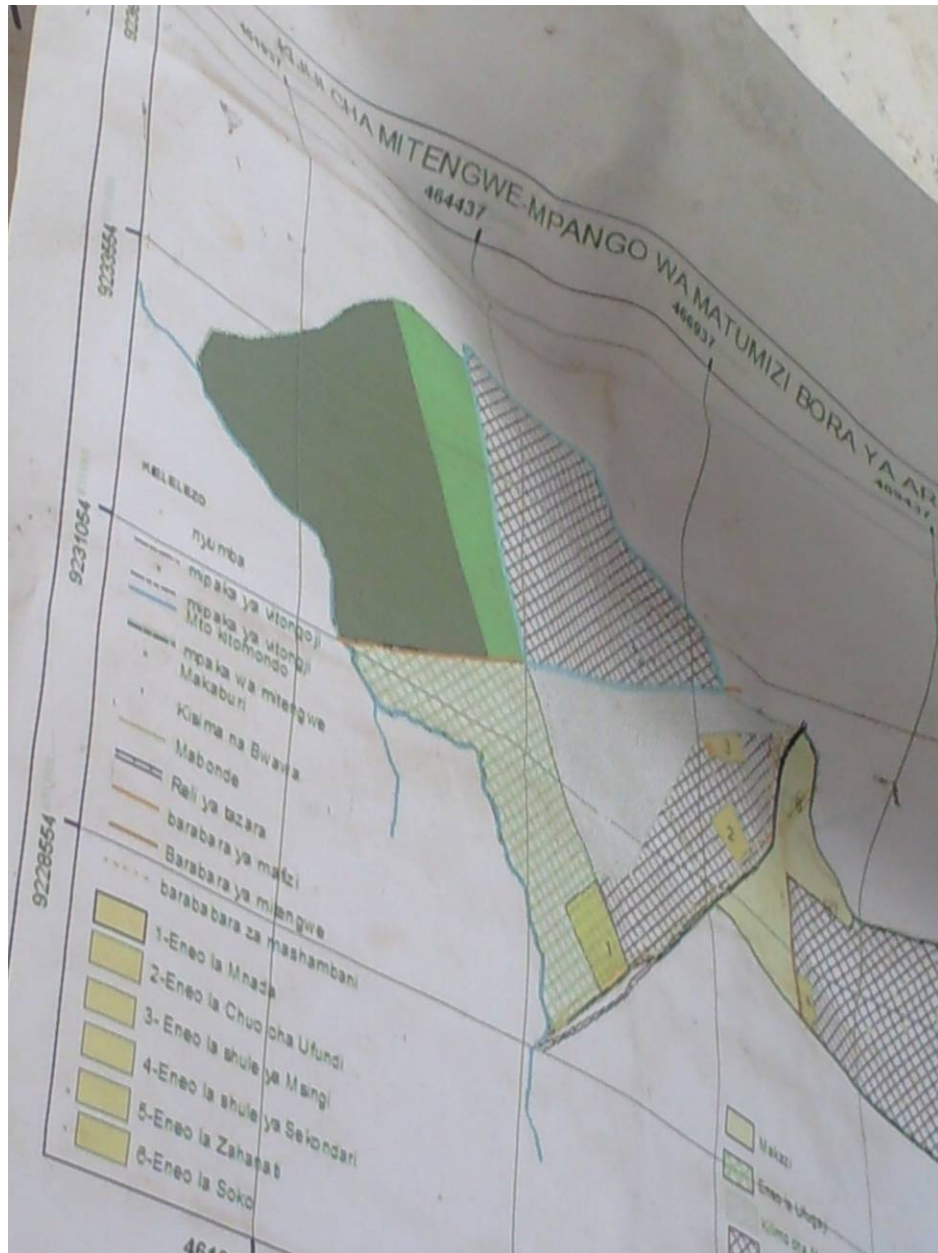


Figure 21: Land use plan for Mitengwe, Kisarawe district.

General: Land use plans are not supposed to be simply a means to the end of issuing CCROs. Instead, they are supposed to be a tool to assist the Village Council in planning development of the village, for example, in determining where to place new

services such as schools, or where new grazing lands could be located. However, knowledge about the land use plan has not trickled down for the most part. Some villages are able to protect their forest reserves, and to ensure that communal lands for grazing are maintained, while others pay lip-service only to these concepts. The land use plan is supposed to ensure the environmental protection for future generations in the village, and to plan adequately for different livelihood pursuits, both of which are important for future village tenure security (and especially, for individual tenure security). More detailed land use plans might be helpful; but, for land use planning to be effective, the knowledge of the planned zones must be shared with the entire community, which is not routinely happening. Instead, the land use plan is created simply because it is a step in the process to issuing CCROs, which are seen as the end result.

Land use plans are being created as a necessary means to an end – individual parcel registration cannot be done until a land use plan is created. It is unfortunate that most villages are not actively engaged in using the land use map for their village planning, which is the intended outcome. Instead, land use plans are used to show compliance with national regulations but are not effectively being used. Land use planning therefore continues to follow informal channels, predominantly. Some villages are exceptions: for instance, Halungu is clearly benefitting from the use of its village land use plan, and is following the regulations it set out for land use.

Theme 3: Certificates of Customary Right of Occupancy (CCRO)

Previously, village lands were not registered. Land users who wished to register their land applied through the Ministry of Lands, and their land reverted to “general land”

and out of the village domain if they were successful in the registration process.

However, almost no village residents attempted to register their land through this process.

Therefore, all village land was held under informal customary land rights. CCROs are being issued in order to formalize individual land rights in villages.

Table 7: Policy and Practice in Issuing CCROs

	Summary / Overview
Lands Commission	Village authorities will issue CCROs with no outside intervention; husband and wife should both be listed on registration.
Land Policy	CCROs are issued by Village Councils, and registered at the district level. All villagers may obtain CCROs for their land; CCROs may be used as collateral for loans.
Village Land Act	Specific, extensive guidelines on who may be issued a CCRO are provided. Village and district government issue CCROs together.
SPILL	Issuance of CCROs is prioritized. No allowance is made for group tenure.
Mbozi pilot	CCROs are jointly issued by the Village Council and the District Land Officer.
Kisarawe pilot	Very few CCROs issued; no procedures in place.
Bariadi pilot	CCROs are jointly issued by the Village Council and the District Land Officer.

In 1994, the Land Commission recommended that customary owners of village lands be registered and certificates of occupancy be issued to them; these certificates would be countersigned by all neighbors who share boundaries with the owner. Trees should be grown to mark their boundaries, and the name of the spouse should appear on the certificate too. Individuals should be able to sell their land, but not to outsiders; their certificates should also be able to be used as collateral. No individual should own more than 200 acres (though a village would be free to reduce that ceiling if it sees fit). Some lands in the village are inalienable, such as water catchment areas, common pasturelands, and the like. Registration of village lands would be done by village authorities on behalf

of the Village Assembly, with no outside intervention; the resulting village land registry would be a stand-alone, local registry not duplicated elsewhere.

The National Land Policy provides for a separate Customary Right of Occupancy (CCRO) for use in villages which will be issued by the Village Councils and registered at the District Land Registry. Individual villagers are to be able to obtain these certificates of their land holdings and to use them as collateral to obtain loans.

The Village Land Act states that land which is occupied or used¹²⁵ by an individual, family or group under customary law, and land which may be made available for communal or individual occupation can be granted to the user(s) through the issuance of a CCRO. A person, family unit, group of persons recognized as such under customary law, or who have formed an association or other lawful body and who are villagers may apply for a CCRO. The signed application is submitted to the Village Council, who must determine whether to grant the CCRO within 90 days. When the Village Council determines to grant a CCRO, it delivers to the applicant an offer in writing; the applicant has 90 days to accept or refuse the offer in writing. Acceptance is conditional upon payment of the required fee. Thereafter, within 90 days, the Village Council shall issue a CCRO to the applicant, signed by the chairman and secretary of the Village Council, by the applicant/grantee, and signed, sealed and registered by the District Land Officer. The

¹²⁵ “Use” is defined as twelve years. Those who have used a parcel of land continuously for twelve years are considered to have *de facto* rights to that land and can apply for a CCRO.

CCRO might be indefinite¹²⁶ or for any definite term not exceeding 99 years. The Village Council may require the payment of annual rent in some cases.

According to the Village Land Act, “[a] customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy.” Customary law (with regard to customs, traditions, and practices of the community) are followed insofar as they are in accordance with provisions about the access of land by women, children and persons with disability.¹²⁷ The customary law which shall be applied is that which has hitherto been applicable in that village (when not established through Operation Vijiji), or if it’s a Operation Vijiji village, then the customary law applicable immediately before extinguishing of customary rights,¹²⁸ or for land customarily used by pastoralists, the customary law recognized as such by those pastoralists.

The SPILL sees as critical the deliverance of CCRO to villagers, and specifically plans to extend “the Mbozi experiment” where CCROs were first issued. No provisions are made in SPILL for anything but individual or family based registration, despite the clauses in the National Land Policy and in VLA about customary groups that might hold land.

¹²⁶ A grant in perpetuity is different from the general certificates of right of occupancy that were used before the VLA was in place. Previously, all grants of land were for a fixed term, usually of 33 or 99 years, this latter term being the maximum term possible.

¹²⁷ The National Land Policy also inserts a special clause regarding women’s rights to land; however, though stating that women are entitled to acquire land in their own right, both through purchase and allocation, the policy largely upholds customary tradition so long as it is “not repugnant to principles of natural justice”. In other words, the policy stops far short of ensuring gender equity in land law.

¹²⁸ This is confusing, since customary land rights that pre-date Operation Vijiji are extinguished when in conflict with land rights established by Operation Vijiji.

In practice, the process for obtaining official certificates of customary rights of occupancy (CCRO) when doing systematic adjudication is therefore quite simple. The parcel boundaries are already known because these were registered during the adjudication process, so all that the land holder need do is to submit their application for a CCRO (duly signed by the appropriate witnesses, including the Village Executive Officer) with evidence of their parcel id, together with the requisite number of passport-size photographs to affix onto the official certificates, and the filing fee.

Village government plays a key role in both issuing, and in managing, CCROs. As seen in the Mbozi example, most of the village work has devolved to the VEO to carry out, and requests for CCROs are brought by the VEO to the district headquarters. Signatures of the VEO and the Village Chairman are required. While there is certainly room for abuse of power in this system, it certainly makes the issuance of CCROs more efficient than ever before; when district offices are fully staffed, there should be no bottlenecks of the sort that existed in the old system.

The issuance of CCROs should also be flexible, as conditioned in the VLA. So far, the processes are not flexible, and do not allow for creative registration, for instance, in the name of a clan. The impact of CCROs on individuals is discussed at length in the next chapter, including a discussion of this inflexibility.

Theme 4: The Land Registry

Prior to the VLA, only land in the “general land” classification was registered, upon application to do so, and a registry was kept at the national level of this land. Any village land that was registered by individuals was taken out of village lands and was

governed under the laws for general lands. The national land registry was centralized, and difficult to access. Under the VLA, land registration is decentralized to local authorities, with the district land registry as the primary land registry and first point of entry, with duplication at the village level, with a village land registry managed by the Village Executive Officer on behalf of the Village Council.

Table 8: Policy and Practice in Creating Land Registries

	Summary / Overview
Lands Commission	Village Assembly should keep the village land registry, with no input from outside. Nationally, only the boundaries of the village need be known.
Land Policy	The Village Land Registry is kept by the Village Council; it is duplicated at the District level, the zonal level, and the national level.
Village Land Act	The Village Land Registry is a branch of the District Registry. The VEO is responsible for maintaining the registry. The VEO must follow the rules and standards as set out by the MoL.
SPILL	[only comments on higher-level, such as national land registry; plans for digitization and technological development of the national registry].
Mbozi pilot	The District Land Office keeps both an analog and a digital land registry. It is replicated at the village level, where the VEO is responsible for keeping the filing cabinet which houses the village registry.
Kisarawe pilot	Not developed.
Bariadi pilot	The District Land Office includes a structure for keeping the district land registry. Funding is provided for building land registries in the villages, as well, and the village land registry, for which the VEO is responsible, should be a mirror of the district registry. Because CCROs are prepared at the district office, the district registry is considered the most-up-to-date and the final say.

The Land Commission recommended that the Village Assembly should be responsible for keeping a Village Registry of all land transactions and customary ownership; this should be maintained without outside assistance. They did not comment on duplication of this registry for the maintenance of higher-scale registries (such as a

national land registry), nor on whether village registries would be standardized to any extent. It was implied that village boundaries would be registered at higher-level registries, but that internal village boundaries would be the sole responsibility of the village-level authority.

In the National Land Policy, while land registries are to be decentralized to the local level as suggested by the Land Commission, the village land registry is duplicated at the district level, which in turn is copied at the Zonal Registries, which in turn are copied and stored at the Central Registry as a national archive for land records.

The Village Land Act provides a little more elaboration on the system described in the National Land Policy. It states that the Village Council shall maintain a register of village land in accordance with rules prescribed by the Minister. The Village Executive Officer (VEO) is responsible for keeping that register. This registry is considered a village branch of the district land registry.¹²⁹ The VEO cannot make an entry until s/he is satisfied that all dues/rent/taxes etc have been paid for the CCRO.

The SPILL describes the scaled-up activities for land registries. It plans to develop Land Information Systems (LIS), Geographic Information Systems (GIS) and Management Information Systems (MIS) in district land offices so as to enhance data manipulation, information flow and record keeping. Specific activities are to (a) identify host institutions for land sector information systems, (b) acquire appropriate hardware and software, and (c) digitize existing records and create databases. The SPILL does not elaborate on local-level (village) registries.

¹²⁹ In practice, there are three “original” copies prepared of the CCRO, with one going to the land user, one to the district files (and the parcel registered in the district land registry) and one to the village file (with the parcel registered in the village registry).

In practice, while villages carry primary responsibility for the disposition and management of their lands, the implementation of the “Mbozi model” and of the Village Land Act relies upon the sharing of information across different levels of administration. Currently, there are three important levels: local (village), district, and national; while the vision is to have a fourth level, the “zonal level” between district and national levels, very few concrete steps have been taken to implement this latter. For the land administration system to run smoothly, with each level of administration able to access and act upon the most up-to-date information, protocols for the sharing of land registration information must be in place (but are not).

Before the new system of village land administration was introduced, the national land registry was, for all intents and purposes, the only record of land holdings throughout the country. Those with “customary” use of land were not included, and thus the national land registry consisted of land parcels in the category of “general lands” only – primarily large agricultural operations, and formalized urban plots. The vast majority of land in Tanzania was unregistered.¹³⁰

After VLA implementation, the Village Land Registry (which is a subsidiary of the District Land Registry) is maintained by the Village Executive Officer on behalf of the Village Council. VEOs have been getting training in this function in the pilot districts.

Mbozi District: In the Mbozi model, the District Land Office prepares and produces the CCROs. It prints three original paper copies of the CCRO: one for the land owner, one for the village land files, and one for the district land files. It also stores the CCRO digitally, and keeps a computerized version of the land registration information,

¹³⁰ 89% of all properties were “extra-legal” according to the 2004 report of the ILD.

including digitized parcel boundaries. Because the village and the district personnel work closely together in preparing CCROs, the village and district land registries can be kept synchronized – both the village and the district have input into each CCRO and therefore there is a built-in check on the different levels of administration being completely redundant – that is to say, mirrors of each other.

However, these most up-to-date and most-complete registries are analog. The challenge with these systems is to ensure that the filing system is not compromised (resulting in the infamous “the file is lost”),¹³¹ either through misfiling, or non-return of files. There are important considerations and quality-control checks that should be in place in keeping the registration books as well, to ensure that parcel registration numbers are not duplicated.¹³²

To counteract such difficulties with analog filing systems, the Mbozi office also created a digital district registry. This registry was linked to both the attribute data of each parcel (such as ownership information, the parcel registration number, and the like) as well as to the geographic coordinates (with digitized parcel polygons stored in ArcGIS). A digital copy of the CCRO and digital photograph of the CCRO registrant were also attached to the parcel record.¹³³

¹³¹ Certainly, the excuse “your file is lost” has also been used by corrupt officials looking for a bribe. However, a cursory inspection of most large paper filing systems in public administration buildings in Tanzania will convince the inspector that many files are truly lost.

¹³² I saw evidence of such problems in the Mbozi registration books.

¹³³ In addition to being an easily updatable record of land holdings throughout the district, the District Land Officer (DLO) was particularly cognizant of the potential for the ease of data-sharing across administrative levels through keeping a digital registry. If computer networks existed in the Ministry of Lands at all levels, and if there were accessible internet capability (and electricity) throughout the country, land registration could be revolutionized. The DLO was seeking funding to implement a village computerized registration system. The prototype was developed in Halungu village while I was present: desktop computers that ran off solar power were installed; ArcGIS was used and two GIS Pioneers from the District Office



Figure 22: Jakaya Kikwete, President of Tanzania, arriving in Halungu village¹³⁴

Bariadi District: In Bariadi, the registration system is very similar to that used in Mbozi, with three copies made of each CCRO – one for the district registry, one for the village registry, and one for the land user. Similar challenges in maintaining these registries are already apparent, and were discussed in Chapter 5. At the district headquarters, a new building was constructed to house the registry; the project director was pleased with this, because donors originally suggested that shipping containers be used.

demonstrated the ease of registering parcels and of viewing a map of parcel boundaries within Halungu. The DLO's vision is to facilitate the sharing of information between the villages and the district office via mobile phone towers.

¹³⁴ The President of Tanzania, Jakaya Kikwete, visited Halungu in October 2009 to tour the new village council office, including the land administration registry room, and spoke about the importance of the CCRO project. This visit provided the impetus to complete finishing touches on the new office buildings, and to showcase the possibility for using computers in village land registries.



Figure 23: Village Land Registry of Sanungu. The registry is housed in this building which is still under construction and serves as a village government office.

Kisarawe District: I did not learn much about the development of a village land registry in Kisaware district. Very few CCROs have yet been issued and little or no effort has yet been made in setting up functioning village land registries. Only ten residents of Mitengwe have received CCROs, while an additional ten residents in the district have received CCROs. The District Land Officer, who travelled to Mbozi to learn from that pilot project, is quite new, and he is planning to train the 8 VEOs in Kisarawe in how to administer a land registry soon. He said that before, the project “was just seen as a government project, it’s not for us. So no one was participating. This is why education in the villages is important”. Each village will receive one hand-held GPS unit, and the VEOs will be trained on how to get coordinates with a GPS and how to register land parcels.

National Level: With this new system in place, the national land registry is no longer the most accurate and most up-to-date registry of land holdings in the country. Currently, there is no formal system of sharing district land registry information with the national level registry. There have been several attempts to formulate plans for doing this because the goal is to have complete information at the national level, both to foster better planning and to act as a backup and monitoring mechanism. One such attempt is the universal land registry proposed by Huber et al. (2008, and in more detail in Mithofer's 2006 dissertation), as well as various projects funded by international donors to modernize the existing land registry and to develop information-sharing protocol between levels of administration.¹³⁵ Such attempts have been frustrated by a lack of technical expertise and perhaps a lack of organizational will to effect the changes necessary. To date, little progress has been made in updating and restructuring the national land registry.¹³⁶

Theme 5: Mechanisms for Land Dispute Resolution

Under the VLA, Village Land Councils are being formed to handle land disputes at the local level. Previously, the formal mechanisms for land dispute resolution included ward tribunals, and a legal court system.¹³⁷ Despite the High Court being flooded with land dispute cases, the majority of people with grievances were unable to access these

¹³⁵Other materials about technical aspects of creating a land registry in Tanzania include Derby 2002; Silayo 2002. Studies and recommendations about land registries not specific to Tanzania include Augustinos et al. 2006; Badurek 2009; Barnes 1990; De Vries et al. XXXX; Siriba and Farah 2008; Steudler 2004; Ting 2002; Williamson 2001.

¹³⁶ I spoke informally with an international consultant who was working closely with the Land Registry at the Ministry of Lands. This consultant was aghast at how underprepared the office was to embrace change and did not think it was currently possible with existing leadership and expertise to move forward in developing a digital national land registry.

¹³⁷ It should be noted that I did not research dispute channels beyond the village level personally. No one I interviewed had ever taken a dispute beyond their village.

channels. Furthermore, most people were able to successfully resolve their complaints through informal channels within their village. Village Land Councils are envisioned as the first point of contact for land disputes. These councils are comprised of seven people (a minimum of three must be women).

Table 9: Policy and Practice in Creating Dispute Resolution Mechanisms

	Summary / Overview
Lands Commission	A “Land Council of Elders”, independent of the elected government, is proposed for the village level. The important of an independent judiciary process is highlighted.
Land Policy	The Ministry of Lands should not be involved in dispute resolution.
Village Land Act	A Village Land Council is the lowest level for dispute resolution and is nominated by the Village Council and approved by the Village Assembly. It is independent of the judiciary arm, which should remain accessible to all. The Village Council should also play a role in dispute resolution.
SPILL	Focuses on strengthening ward and district tribunals, in addition to initiating Village Land Councils.
Mbozi pilot	Village Land Council has been moderately busy with cases; most disputes are settled through the Neighborhood Chairman, however.
Kisarawe pilot	Village Land Council not yet formed.
Bariadi pilot	Village Land Council was formed but has heard only two cases in its handful of years of existence. Most disputes are settled through other channels, especially through the Neighborhood Chairman.

Another major issue discussed by the Land Commission is the establishment of impartial land dispute channels (URT 1994, 101). The Commissioners formed the impression that grievances and disputes over land are substantial and a large portion of them remain unresolved for long periods of time. The Commissioners also found that a high percentage of land disputes are resolved not by the judiciary but by executive organs. Complainants move from one office to another in search of solutions because there is no known and clear machinery for settling disputes. The dispute settling

machinery of 1992 was inaccessible to the large majority and many did not complain anywhere of their grievances. Often, traditional elders still command respect and are instrumental in resolving local disputes.

The Land Commission writes that “the multiplicity of institutions (executive, judicial, party, village) dealing with land disputes, with overlapping powers and jurisdictions, was responsible for delays and lack of finality in their resolution” (as cited in Coldham 1995, 232). Courts vacillated between removing land from *ujamaa* villagers and returning it to the traditional holders, and issuing blanket statements to the effect that traditional claims to land would not be entertained and had no legal recourse whatsoever (Shivji 1998). Procedures for land allocation were utterly ignored, resulting in arbitrary (and easily corruptible) decisions about the disposition of land.

Therefore, the Land Commission stresses the importance of dispute machinery independent of the executive arm. At the lowest (village level), it recommends that land disputes would be heard by a newly proposed *Baraza la Wazee la Ardhi* (Land Council of Elders).

The National Land Policy also advocates for a well-established land dispute settlement machinery; existing judicial bodies should be strengthened, and the Ministry of Lands should not be involved in the settlement of disputes. The appeals process should go from the village to the district, regional and national levels and finally to the High Court.

The last main section of the Village Land Act (besides for the miscellaneous section) covers the hierarchy of dispute machinery. Every village shall establish a Village

Land Council to mediate matters concerning village land. It is composed of seven people who whom 3 are women – they are nominated by the Village Council and approved by the Village Assembly. The Village Land Council or any member thereof may be called in to mediate in any land disputes to assist the concerned parties to arrive at a mutually acceptable solution. No one is compelled or required to use the services of the Village Land Council, however. The other means of addressing disputes are through: Court of Appeal, the Land Division of the High Court, the District Land and Housing Tribunal, the Ward Tribunal, and as a starting point, the Village Land Council.

The SPILL sees setting up Village Land Councils and other land courts as critical. It proposes activities such as having district LGAs visit villages to assist with establishing Village Land Councils, as well as strengthening ward and district tribunals.

Village Land Councils had been formed in all the villages I visited; however, they had very little work to do. Members of Village Land Councils complained that they did not have training in their tasks,^{138 139} and that villagers were not coming to them with

¹³⁸The Halungu Land Council stressed that they haven't gotten any training for their job. They are supposed to decide and help parties reconcile their differences, but they don't have any training in the law and they don't even know what the law says on questions of land conflicts. They need more training, they want to get seminars to learn their job better and to learn more about land law. Because Halungu was the first village to issue CCROs, and it's the pilot "example" village, people come to Halungu all the time to learn about the process. For example, students from Latin America came, and people from NGOs, and even village government members from other regions of Tanzania where they are going to start the CCRO project. But people in Halungu are stuck, they aren't learning anything more. "We should also get to travel and see the other areas where they are doing this project, we are only at the beginning phase and we are left out of all the new developments". "People come here to learn but we don't even know what they are learning". For example, people from Simanjiro district came because they were going to start their own project. Now we should get to travel there and see what they are doing, because for sure they learned from us and even improved on what we are doing.

¹³⁹Members of the Mitengwe Village Council have received four days of training on land laws and they look forward to more training. They have prepared a land use plan, and are knowledgeable about the rules that are stipulated in the Village Land Act about land allocations. For instance, they know they can allocate

their disputes. The Halungu Land Council was the most active, hearing over 20 cases in the past three years; the Sanungu Land Council had heard only one case in their two years of existence. From interviews with individual farmers, it was clear that most sought help from their neighborhood representative (mwenyekiti wa kitongoji) when there was a land dispute. Every dispute that I heard about between two members of the village had been cleared up in this way. The disputes that lingered on were with neighboring villages, and Village Land Councils did not see that they had any role for this type of dispute. Villagers do not see the Village Land Council as a decision-making body – if conflict resolution is needed, they go to their neighborhood representative; if a legal decision is needed, they would go to the court system or to the ward tribunal. Hence, without legitimacy from the general population, the Village Land Councils are without authority and without a function.

General: None of the villages I visited had experienced village lands being alienated under VLA provisions (though some had experienced this previously). Thus, I cannot contribute much to the burgeoning scholarship about land-grabbing. This is certainly happening in Tanzania, and village lands (e.g. in Kisarawe District, but not in the villages I visited) are being transferred to foreign investors in the national interest. Discussing this issue is beyond the scope of this dissertation, but does point to the threat of negation of all the checks and balances put in place in the VLA to protect village land rights.

up to 20 acres to an outsider if the Village Assembly agrees, and that the outsider then has the responsibility to develop and improve that land within three years, or forfeit their right to the land. It was not clear if this training was extended to the Village Land Council as well.

This concludes the thematic analysis of land administration reform that pertains to village administration of lands. The hybridization as envisioned in the VLA is contrasted to the systems being implemented and the on-the-ground hybrids that are resulting.

Chapter 7

THE IMPACT OF LAND ADMINISTRATION REFORM ON RURAL PEOPLES: CHANGES FROM THE CUSTOMARY?

Chapter Overview: In chapter 6, the focus of analysis was upon the impact of land administration reform upon villages as units. The issuance of CVLs was examined for its efficacy in securing village lands and protecting them from both encroachment by outsiders and from alienation or appropriation by higher levels of government. In this chapter, analysis shifts to the individuals who live in villages. What impact is land administration reform having upon village residents in Tanzania? To begin to answer this question, I break the discussion into five themes: (1) the adjudication of interests in village land and the delineation of parcel boundaries; (2) the issuance of CCROs and the perceived benefits and drawbacks of holding a CCRO; (3) the responsibilities of the land user; (4) the changing patterns of land acquisition; and (5) conflict resolution. Each of these is related to the overall research questions of the dissertation, focusing upon how these processes uphold customary land rights, whether security of tenure for village residents is enhanced, and the interplay between formal and informal elements in the creation of hybrid frameworks.

Jimmy Revisited

We now return to “Jimmy” who was introduced in Chapter 1. While Jimmy’s story was chosen as an exemplary anecdote to show changing land relationships over time, each individual story is unique. Jimmy was a long-time resident of his village, with landholdings much larger than the average. He enthusiastically participated in the plot

boundary demarcation project, and received his CCRO promptly,¹⁴⁰ subsequently he sees no use for the CCRO, however.

Compare Jimmy's story to the following two vignettes about two farmers in the village of Ipunga; one farmer also applied for and received a CCRO while the other did not.

Jackson S. was born in 1963 in a village close to Tunduma;¹⁴¹ he moved to Ipunga in 1993. He has a four-acre farm where he grows coffee and corn, and he has nine head of cattle. He got three of those acres in exchange for a cow shortly after he moved to the area. His farm borders Sakamwela Village and he has never had any land disputes, whether with a neighboring village, or with neighboring farmers. His chief concern is that there is not enough grazing land and so he cannot increase his number of cows. Also, because there is no grazing land, his cows are more likely to eat farm crops – he has disputes with farmers about this quite frequently and always has to pay for the crops his cows eat. This is the only kind of land dispute that he has experienced. He knows about CCROs, but has no interest in getting one. He would like to get a bank loan but doesn't think it is possible to get one, even if he did have a CCRO for his property. And, he doesn't feel he can afford a CCRO in any case, since it now costs about \$10 to apply for it.

Wilson S. was born in 1939 in Sakamwela, the neighboring village. He was forced to move to Ipunga in 1974 during Operesheni Sogea. He has a five-acre farm on the border with Sakamwela where he grows coffee, corn and beans; he has no livestock.

¹⁴⁰ Certificate of Customary Right of Occupancy (CCRO).

¹⁴¹ Tunduma is a large town in Mbozi District right on the border with Zambia, and is approximately 30km from Ipunga.

A river divides his farm plot from neighboring Sakamwela, so there is no room for disputing where the boundary is. He was present during the day when his farm was surveyed and the process went smoothly, he just showed the district officials where his boundaries were and his neighbors agreed. He followed up by getting his CCRO but he hasn't seen any benefits at all from getting it. No bank will give him an individual loan.

The focus of implementation in all districts is the issuance of CCROs to individual land users. CCROs are meant to quickly bring informally recognized land relationships into a standardized national cadastre. As these vignettes show, a key element for success will be the support of local residents. In this chapter, I identify key aspects of reform under way, and discuss the ramifications upon customary land rights and security of tenure for individuals within villages. While I considered village land security in Chapter 6, I want to turn back to my original research questions regarding village residents. Are the new systems a harbinger of greater security of tenure for rural peoples? Is there latitude for flexibility in the new systems that support customary land rights?

Theme 1: Adjudication of Interest in Land

Once village boundaries have been demarcated, a Village Land Certificate issued, and a village land-use plan put in place, the work of formalizing land parcel holdings within the village begins. Before individuals can receive land titles, the rights to land within the village must be ascertained. This is done through a process of *adjudication*, which is the means of determining the existing rights and claims of people to the land.

This process is not supposed to change any existing rights (although in cases of dispute, sometimes decisions are made in favor of one party or another); instead, the adjudication process authoritatively establishes which land rights already exist. In the land reform pilot projects visited, the adjudication process was carried out primarily by district-level land officials (such as the GIS Pioneers in Mbozi District); two forms of adjudication were in use: *systematic adjudication*, where each farm plot in the village was painstakingly visited, with the boundaries of each plot being drawn (usually upon an aerial photograph or satellite image) until the entire village was complete; and *spot adjudication*, where, upon application by an individual village resident, the boundaries of just one farm plot were ascertained.

There are quite detailed regulations regarding land adjudication in the Village Land Act. It states that no grant of a customary right of occupancy can be made until boundaries of, and interest in that land have been adjudicated. ‘Spot adjudication’ will be done when any individual/group applies for a CCRO. The responsibility for village adjudication is vested in the Village Council.¹⁴² The village adjudication committee (or adjudication officer) will entitle a person (or a group of people) to a CCRO if they have occupied that village land under customary law for not less than twelve years, or if that

¹⁴² With many stipulations. For instance, if there is a complaint by 20 or more persons with interest in the land which is being adjudicated, they can report to the District Council. In such a case, the District Council might apply central adjudication. A Village Council can also recommend that the process of village adjudication be applied to the whole portion of village land available for grants of CCRO, for approval of the Village Assembly. If approved, a villager shall be appointed to act as the village adjudication adviser to the village adjudication committee. This committee (up to 9 members, of whom at least 4 are women) determines the boundaries and interest in land, makes reservations of land such as rights of way and other easements, and safeguards the interests of women. Any person who disagrees with their decisions can appeal to the village land council, and then can appeal to the court.

land was allocated them in title during Operation Vijiji,¹⁴³ it will entitle “unauthorized” users to temporary licenses if appropriate; it will also determine whether village land that is entirely free of any occupation or use should be communal village land; or, if the land is not village land, it will be declared to be general land. There is provision for “co-occupancy” – joint occupiers or occupiers on common land, whether they claim to be co-occupiers or are disputing occupation. There are also provisions for “land sharing arrangements” where there is dual use of the land (usually pastoralist and agricultural). While these latter stipulations seem to support flexible and unique land tenure regimes; the SPILL document does not include such provisions in implementation plans.

In practice, the Mbozi Model is followed when systematic adjudication is undertaken¹⁴⁴ -- a team of experts gathers with members of the village government (including the Village Executive Officer who must sign every land certificate), users of each parcel, and neighboring users, and using tools available to them, inscribe the boundary coordinates of each parcel in the entire village. Where high-resolution satellite imagery (or aerial photography) exists, it forms the basis for sketching parcel boundaries – the surveyor simply circumambulates the parcel, hand-drawing the boundary onto a high-resolution printout of the satellite image. Sketches are subsequently digitized on the georeferenced layers at the district headquarters. In districts where no satellite imagery

¹⁴³ While the VLA mentions an “adjudication officer” in practice, this responsibility has fallen to the Village Executive Officer (VEO).

¹⁴⁴ The process followed for systematic adjudication was not uniquely developed in a vacuum for the Mbozi project, however. National land officials travelled in 2002 to Cambodia and Ethiopia to learn about land reform in those countries, and the process for issuing CCROs (from surveying village boundaries, to systematic adjudication, to the content on CCRO certificates) mimics what was being done in those countries (particularly Cambodia, as described by Torhonen 2001, 2003; Dalrymple 2005).

has been obtained,¹⁴⁵ hand-held GPS units are used to record relatively precise geographic coordinates for parcel boundaries. Thus, a complete digital registry is created at the district land office for all parcels in each village that is surveyed. At the same time that this parcel registry is being created, information about each parcel is also collected – the name of the owner(s) (who is given a paper that states the unique parcel id for his/her plot of land), and the names of all owners of bordering parcels. This information is also entered on the district land office computer. Thus, every parcel, whether or not a CCRO is issued to the land holder, is registered during systematic adjudication.

But, what happens if there are disputes about the boundaries between parcels? In the fieldsites visited, disputes over the location of boundaries were rare. Parcel boundaries were generally well known, and could often be visually confirmed on a satellite image. Disputes over who owned the parcel were more common, and were usually between members of the same family. Such disputes were often between children of a living parent, and in such cases, the land was often then registered in the father's name. Clan elders sometimes made decisions in favor of one member or another. While disputes of this nature were common, they were often quickly resolved; those that could not be resolved were not registered in any name, pending further resolution efforts.¹⁴⁶

¹⁴⁵ Such as Namtumbo and Manyoni districts.

¹⁴⁶ An exception is Handeni, where disputes over boundary locations were common. The definition of land user (based upon length of land use) was purposefully misunderstood so as to exclude people of non-indigenous ethnic groups, even when such people might have been resident for more than a generation. For instance, many members of the Maasa'i ethnic group, pastoralists, lodged complaints that their customary land was taken from them because they were ignored during the adjudication process (Mkulila 2007, 3); additionally, "customary" was taken to mean "where your fore-fathers lived", and thus some people were claiming land they had not used for generations, and which was being used by others, because their ancestors had once lived there or were buried there.

Theme 2: Impact of the Issuance of Certificate of Customary Right of Occupancy (CCRO)

The Village Councils were interviewed in six villages, and all were well versed in the benefits that CCROs might provide. Indeed, the advantages listed were strikingly similar in every case and clearly were being recalled from the village information sessions that had been conducted by district-level personnel during the adjudication of parcel boundaries and the process of issuing the CCROs. For instance, the Village Council of Ipunga highlighted three benefits of obtaining CCROs: (1) the ability to get loans from the bank, using the CCRO as collateral – these loans can improve farming outputs by improving farming methods, and can also pay for children’s school fees; (2) the reduction of land disputes, because there is an official record of which land belongs to whom; and (3) the ability to get compensation from the government if village land is taken for a government development project (such as widening a road).

However, it was also frequently commented that some of these results have not been experienced in reality, despite the promises of those who initiated implementation in their village. People who have received a CRRO have not seen any result, and most people have not been able to get a bank loan. For instance, according to the Village Council in Ipunga, only three people have been successful in getting a bank loan using their CCRO as collateral. One such loan was intended for a business venture, while the other two were specifically for farming improvements.

In Sanungu Village, CCROS are being issued in the village to individuals only (this is predominantly the case everywhere; some associations have CCROs issued in their name, but never “clans”, or entire communities). Some of the land belongs to the

clan, but the certificates are issued in the name of the current user “owner”. The Sanungu Village Council has the following to say about the benefits of CCROs:

Having CCROs is important. It’s important for people to understand that “this is my land”, before people didn’t think like that and so they didn’t know the value of what they had. People could even give their land away for free. Another benefit is that we will be able to get bank loans. But so far, no one has been able to get a bank loan, and we don’t know when that will ever start to happen. So that value / benefit is still unknown. If we could get bank loans, it would be good. [A show of hands reveals that all but one person in the room would like to get a loan]. We would use this money to educate our children. Another reason that CCROs are important is that they protect women’s rights. There is really a problem of drunkenness with the men here. If women’s names are on the CCROs, then men can’t just sell their land when they are gambling. So this protects the family’s land.

Individual village residents I interviewed were all in agreement about the single most important benefit of getting a CCRO: the ability to use it as collateral for a bank loan.¹⁴⁷ However, many also shared that this was not an actual benefit – that many people with CCROs had attempted to get loans but had been unsuccessful. This, they said, is why there had been a flurry of activity at the beginning of the CCRO project, with many villagers clamoring to get their CCROs, and why now, after time had passed, no one was trying to get their CCRO anymore. Every single person I interviewed wanted to get a bank loan; only two were aware that if they defaulted on their loan repayment, they would risk losing their land. The reasons they wanted loans ranged from starting a fertilizer business to, much more commonly, paying for school fees for their children. This lack of understanding about the nature of loans is very troubling, and highlights a

¹⁴⁷ In fact, there was only one person of the many interviewed (70 single interviewees; 6 group interviews with many people in each) who felt that being able to access bank loans was a disadvantage rather than a benefit. This gentleman was a teacher who had been assigned his post in Sanungu Village; he wasn’t a permanent resident and was not planning on applying for a CCRO.

major conundrum of the entire project. The rhetoric behind the project is that CCROs can be used as collateral, and that access to loans will result in poverty reduction. However, receiving loans is also a risk, and for people with no education about loans, this could be an avenue to losing their land. Hence, while bank policies currently protect villagers (by not giving them loans unless they have a very sound business plan), the increasing pressure on banks to grant more loans to CCRO-holders could very well result in a decreased security of tenure, and increase the number of landless poor.



Figure 24: A family at their farmstead in Halungu (Mbozi District). This family has not applied for a CCRO, and does not intend to. They perceive no actual benefit to getting a CCRO, and it would cost them 11,000 TSH (about US\$10) to apply for their certificate.

Of course, bank loans are not the only perceived “benefit” of getting a CCRO.

People I interviewed also mentioned that possible benefits could be a decreased number

of boundary conflicts, and their guarantee to restitution if their land was taken through imminent domain. However, again, no one had any concrete instances of a CCRO being used for these types of cases.

Since the CCRO project started in Halungu (Mbozi District), there haven't been any conflicts in farms that have CCROs issued. In fact, the Land Council's main job is to resolve land disputes, but they don't have much work anymore. In 2009 there was only one land dispute case that the Land Council heard; they were able to resolve this case. Back in 2004 when the Land Council was first formed there were more than 20 cases in the year.¹⁴⁸ So, the Land Council concludes, the CCROs are reducing the number of land conflicts.

This is similar to the case of Ipunga Village (also in Mbozi District). In 2006, the Village Land Council was formed, but since its inception, it has not heard a single case. The Village Council assured me there were absolutely no land disputes in Ipunga.¹⁴⁹

And, finally, many people pointed to the greater protection for women's land rights as a major benefit.¹⁵⁰ Most men and women I interviewed were happy that both the husband and wife's names could be registered. The CCRO was seen as security for the woman's ongoing tenure on their land, should the husband die. However, some people also mentioned that this was the law, anyways, regardless of whether the CCRO existed; educated women would know they could keep their land according to constitutional

¹⁴⁸ This is a discrepancy; earlier they stated they were formed in 2002; it appears they are not sure when the Village Land Council was first appointed.

¹⁴⁹ There were many discrepancies between what the Ipunga Village Council told me, and what I learned in interviews with individual farmers. This was not as common in other villages. I was not able to interview the Village Land Council separately.

¹⁵⁰ This was a surprising finding to me, though perhaps I should have expected it. I did not specifically ask about women's land rights when interviewing villagers, and so it is significant that it came up so frequently with no prompting whatsoever.

amendments. But, more women are aware of their right to their land thanks to their name being registered on the CCRO.

In contrast to other villages, the majority of the people I interviewed in Sanungu were women (elsewhere, I only spoke to women when their husbands were not home, or when they had been widowed). Most of the people I interviewed in Sanungu were very concerned about women's rights, and CCROs had predominantly been issued in both the husband and wife's name (and in two cases, in just the wife's name!). For example, the following excerpt from an interview with Nkindo L., a 45-year-old woman who moved to Sanungu when she got married:

When the government officials came to survey our plot, my husband wasn't present because he was out drinking. So, I participated and showed the officials where the boundaries were. All my neighbors agreed on the location of the boundaries so the process went smoothly. My husband never understood the importance of getting a CCRO so when we had to sign the forms, he sent me, and I signed my own name. I got the CCRO last year and it is in my name only. I am relieved; my husband has a serious drinking problem and I was worried that if the CCRO was in his name, he could easily sell the land when he was drunk; at least now it's safe. (Nkindo L., personal interview summary)

And Mary S.¹⁵¹, about 70 years of age, whose CCRO is also issued in her own name:

I've had my plot for about 20 years. My parents gave it to me and it's five acres where I grow mostly maize... I was really happy to get my CCRO in 2009, just last month in December. I know it will protect my land... I remember before women couldn't own land, but now it's easy for a woman to register land and use her own name. Before, if a woman's husband died, the widow could often be forced to leave by her husband's family; if she had children, the elders would intervene and make sure she could continue to live on that land, but if by bad luck she didn't have children, no one would help her.

¹⁵¹ Mary S. was the only person I interviewed who did not speak Swahili. She spoke Sukuma, and so a neighbor who lived nearby translated for us.

And there is Jenifa Z., who has five acres and has applied for her CCRO:

I think CCROs are important because they protect women. Our CCRO will have both my name and my husband's name on it, so if my husband dies, his relatives will not be able to force me to leave our land; that used to happen to widows a lot. I've seen so many women get kicked off their land. My husband is really glad too that this CCRO will protect me.

While systematic adjudication is taking place in the current pilot districts¹⁵², and full-coverage of the district is envisioned, the land registry (including the CCROs themselves) becomes obsolete if villagers do not buy-in to the importance of keeping their formal documents up to date. Cost of land transactions (including fees for certificate issuance) are a major hindrance to the continued sustainability of the land registry system.¹⁵³ During the process of systematic adjudication in Mbozi, villages done early on in the project (such as Halungu) did not incur any fees in obtaining their CCROs, besides for the cost of getting their passport-size photographs. In these villages, a high percentage of residents applied for and obtained their CCRO. In late-starting villages (e.g. Ipunga), where there was a fee (approximately UDS \$10) for applying for the CCRO, very few people applied for and obtained their CCRO. Farmers in Ipunga, while they could list the supposed benefits of getting a CCRO such as access to a bank loan, did not see a practical value to getting the CCRO that was worth the cost. Thus, nearly 1,200 CCROs had been issued in Halungu, while less than 100 had been issued in Ipunga.

¹⁵² The current pilot districts are those in the World Bank funded project; at the time of writing, this includes just Bariadi and Babati districts.

¹⁵³ Paradoxically, *not* charging user fees also undermines the project; while donor funds can cover costs at first, eventually as the project comes to cover larger areas of the country, project costs would need to be met through user fees or it will not be financially sustainable.

During pilot phases of the implementation process, when there are funds available from donors, actual costs of the project are not passed on to the users (village residents). People are more inclined to obtain their CCRO in this case – they are not risking anything, and they might possibly gain some benefit. However, if they have to pay for it, they have not seen in reality any benefit to the CCRO and do not pursue it.

In the same way, when village residents who have received CCROs pass their land on in inheritance (through death), or who sell their land, such transactions are likely to take place through the old informal channels without bothering to update the official documentation or to inform the district land office. Thus, very quickly, the official village land registry will be outdated. A possible means to ensuring the updating of the village land registry is relying upon the village government to proactively monitor land exchanges; in most cases, approval of the village government is sought before land transactions occur. The village government could take this opportunity to check whether the land has previously been registered, and whether a CCRO should be reissued. In land inheritance, the neighborhood chairman is aware of the death of the land holder, and could ensure that names on official documents are changed. However, if the land users themselves are not interested enough to take the steps themselves, the official land registry is really nothing more than an illusion of order that serves no practical purpose.

Theme 3: Responsibilities of the Land Grantee

The National Land Policy states that land is allocated through a Right of Occupancy, and this form of tenure is predicated upon the landholder fulfilling development conditions. Thus, undeveloped land is at risk of being revoked if conditions

are not met in a timely fashion; creating conditions and procedures for revocation falls to the Village Assembly for village land.

According to the Village Land Act, the responsibilities of the grantee are to keep the land in good state, to farm in accordance with good husbandry customarily used in the area, or for pastoralists, in a sustainable manner, and to comply with all rules, including customary law. The grantee will also keep safe all boundary marks and will remain resident in the village. There follows a long section in VLA on derivative rights, and on breach of condition and what steps the VC should take before and after giving a temporary assignment when the occupier is found in breach (a temporary assignment is to always go in the first case to the spouse or spouses of the occupier). Land is taken as being abandoned when the occupier has not used that land for five or more years, or when the occupier (excluding farmers and pastoralists) has owed rent, taxes or dues for over two years, or if the occupier has left the country with no arrangement for any persons to be responsible nor notifying the village council. Special consideration is given for the age and physical condition of the occupier, the prevalent weather conditions of the prior three years, and any customary practices that may have contributed to the non-use of the land. An official notice must be made to the village of the pending declaration and due time given for any objections. A final order of abandonment revokes the customary right of occupancy and the land in question is available for re-allocation.

The SPILL sets out to enforce land development conditions embedded in CCROs through a network of “Land Rangers” who will carry out routine inspections. Thus, while it seems the intent in the VLA is for the village itself to self-regulate its land, and to

develop its own policies and procedures for ensuring compliance with usage responsibilities of land holders, SPILL centralizes the monitoring of compliance. This is a fundamental contradiction – VLA clearly vests much power in the village (or at least, the Village Council) for land administration oversight, while SPILL seldom discusses village-level administration and focuses upon higher-level organs to systematically enforce land laws and regulations. In practice, there is no evidence of any system of “land rangers” being created.

Thus, despite receiving a CCRO for a plot of land, that land is always subject to this usage clause; no one is able to accumulate idle land for speculation. A small-holder farmer is generally using their land continually and is not in danger of having their land revoked.

Theme 4: Changing Patterns of Land Acquisition

The process for acquiring land has changed significantly over the past several decades in most areas of Tanzania. Traditionally (and under the socialist paradigm of the 1970s) land was not sold and bought. This began changing in the 1980s in Mbozi, while in Bariadi this trend started a little later (in the 1990s), and in Kisarawe it has still not changed substantially in the village in which I conducted interviews.

Prior to the commoditization of land, it was easy to acquire land, according to the people I interviewed in the three districts to which I travelled. While most people inherited land from their parents or from their clan in those times, there were substantial movements of peoples to new areas continually, and these people would simply approach

the chief (or, later after villagization, the Village Council) to ask for land to use. The chief (or Village Council) would indicate some brush land that was unoccupied and roughly demarcate the boundaries, and the people would clear this land and begin farming it. This might be a family from a neighboring village, or it might be an influx from another ethnic group in times of stress, as in the following excerpt regarding the influx of Ndali into a predominantly Nyiha area:

“When the Ndali first came to the area (c. 1940), they were fleeing famine, especially in Ileje. They were outsiders, and so had to rely on the generosity of the Nyiha for their land needs. The Nyiha elders at that time gave land to the Ndali readily; however, the Ndali were given land that was sub-standard or not wanted by the Nyiha. Since then, the Ndali have been able to move into good land and in recent years, there is no ethnic prejudice any more in land allocation – the Ndali have been able to buy land the same as the Nyiha.” (paraphrase of discussion with Village Council of Halungu, Oct.2009).

The farmers I interviewed in Halungu got their land in three ways: inheritance from their parents, land allocation from the village government (or chief, if prior to 1974), and through purchase from the previous owner. All three of these forms of acquiring land were common. For instance, Cosmas K. requested land from the village government when he moved to the area in 1982, and was given a plot to farm, he did not have to pay anything. Cosmas M., on the other hand, who was born in Halungu, did not receive any land in inheritance from his parents, but had to buy his farm from an individual who was reducing the size of their farm in 1991. And Samuel K. inherited his five-acre farm from his father; the father had received the land from the chief in 1959. Land acquisitions in other villages followed similar patterns, with the majority of village residents

obtaining their land through inheritance, and the rest either through an outright land grant several decades ago, or through purchasing the land from the previous owner.

With greater pressure on land, and with most arable land already allocated in many village areas, there is no outright giving away of land any longer in the field site districts, with the exception of Kisarawe. For instance, in Sanungu Village in Bariadi District the Village Council told me that every sliver of land is allocated, to the extent that there is not even any communal grazing land any more. If someone wants to move to the area, their only option is to purchase land from the current land user:

Nowadays, the only way to get land in Sanungu is to buy it from the current owner. But up until about 1985, there was enough land. You could move to Sanungu and ask the village council for land, and they would just give it to you because there was lots of undeveloped land. But now, mostly because of population increase because of families having many children, land is scarce. Since 2005, we [the Village Council] have been educating the villagers about family planning and encouraging people to have smaller families. This measure is necessary, together with reducing cattle herd sizes. [interview with the Sanungu Village Council, January 2010].

This was true in other villages as well, such as Ipunga (in Mbozi):

“When Ipunga was first formed under “Opersheni Vijiji” in 1974, land was given freely to anyone who applied to the village authorities. But, starting around 1990, people started to buy land rather than obtaining it for free, because land was becoming scarce. Nowadays, the only way to get land is to inherit it or to purchase it – there is no wilderness left” [interview with the Ipunga Village Council, Oct.2009).

However, whether the land was vacant “virgin” land given by village authorities to a new inhabitant, or was long-cultivated land being sold to a neighbor, the procedure

for obtaining the land has remained remarkably similar. All people involved in land transactions have sought approval and sanction from the village authorities. Often, village authorities showed new inhabitants where the boundary of their plot was. Neighborhood representatives (“mwenyekiti wa kitongoji”) intervened when there was a boundary dispute and were usually successful in resolving conflicts.

Thus, the formal administration system being put in place through implementation of VLA closely mimics the informal system already being followed, at least in terms of authority over land decisions. Previously, the “formal system” was tightly controlled directly by the Ministry of Lands, and was inaccessible to the majority of Tanzanians. Those people who did go through the formal titling process were governed by national land authorities, and their land was no longer under the jurisdiction of a village. Now, those who receive CCROs are still accountable to their village authorities and yet part of the national formal system as well.

A chief concern of many people I interviewed is the lack of “virgin land” for their children. This concern, expressed time and time again, cannot be solved by issuing CCROs:

“My biggest concern when it comes to land is trying to provide for all my children. I have nine children, and only four acres. It’s too small to give a piece to each child. So what I’m planning to do is give the whole plot to my oldest boy. The girls will get married and go somewhere else. But I’m really worried about my other sons. I don’t know how they will get land in the future.” (Pius N., personal interview).

“My husband and I have six children, and we would like to give land to all of them. Probably we will divide it equally between them, even though it’s not really enough for all of them. We only have five acres.” (Jenifa Z., personal interview).

“My farm plot is only three acres. It’s not enough to support us even now, and we usually rent five more acres for \$25 per acre each year. So I don’t know what will happen to my children. I have ten children, five boys and five girls and obviously this land is not enough for all of them, but they all, even the girls, need land. I am very concerned. The only answer is to make sure they all get educated. I hope I can get a loan for that.” (Nkindo L., personal interview).

Theme 5: The Nature of Land Disputes

While a few farmers I interviewed had experienced small “misunderstandings” with neighbors over the boundaries of their plots, none had experienced a long-term, unsolvable conflict that they needed to take to a higher level of authority than to their neighborhood representative. For instance, one farmer’s neighbor had encroached on their plot by planting an extra meter’s length along one side of their plot; the neighborhood representative came and talked to the neighbor (and other neighbors), the neighbor admitted their mistake and the land reverted to the original owner. Such “misunderstandings” were rare, however. By far more common were disputes over inheritance, which had nothing to do with boundaries of the plot. These matters were generally solved within the family, or by the family clan, without involving outsiders. While the issuance of CCROs to each farmer, delineating with precise coordinates the boundaries of their plot, is touted as a major method to reduce boundary conflicts (by both national level officials and by individual farmers), in reality very few conflicts originate from imprecise, un-delimited plots. Plot boundaries are part of the local knowledge, whether they are transcribed onto an official paper or not, and the social organization that already exists in each village has proven very effective in resolving the majority of in-village boundary disputes.

My family has been in the Sanungu area for many generations, I don't know when we first came here. My farm plot is three acres and I got this land from my parents, who had a "shamba la ukoo" (a clan farmland). Their farmland was larger, and they subdivided it and gave me three acres in 2003. Since this is actually clan land, I cannot sell it without first getting the clan elder's permission. When the district officials came to survey my boundaries, it was very easy for them to do because I grew a row of sisal plants around my border, and all the neighbors agreed about the location of the boundaries. The reason I had those sisal plants, well I put the sisal plants in after a small disagreement I had with the neighbor to the north, who began to encroach into my land, extending the limit of his plot a little bit. But I resolved the situation easily – I called the Neighborhood Chairman (Mwenyekiti ya Kitongoji) who came and asked the other neighbors about the situation and finally the encroacher agreed and said he made a mistake and the situation was resolved. (Shenye S.)

Indeed, the transcribing of plot boundaries onto official certificates has, at least in the case of Handeni, allowed some people to grab land that did not customarily belong to them, in impunity to local knowledge; this calls into question the legitimacy of the CCRO and could potentially result in more conflicts, rather than fewer conflicts, if the CCRO is not revered as the final say in the matter and if CCROs are contrary to local knowledge. Taking the time to issue CCROs that are verified with local knowledge is important – in the Handeni case, a major complaint was that the process was rushed, adequate safeguards were not implemented, and this allowed land grabbing to take place.

Getting a CCRO reduces disputes over the land. Although, sometimes a CCRO can create more problems. For example, I know one man who took his childrens' land. He had three children, and two of them don't live in Sanungu but they still have their clan plots. But the father put his own name on the CCRO. Sometimes neighbors are living peacefully but then when they are getting their CCROs they start to argue over where their boundaries are. (Nkindo interview)

Implications for Individual Tenure Security

Land administration reform efforts in Tanzania are still quite new, and it is not easy to assess the impact of this reform upon individuals. Thus far, impact has been minimal, even in those districts with substantial pilot projects, yet the potential impact is still unknown and could be considerable.

Part of the difficulty in assessing impact is that customary land relationships were always in flux, and have continued to change with current exigencies. How to untangle which changes are a result of organic internal-system change, and which are a direct result of the land reform agenda? In any case, land reform works upon the customary, and the customary in turn acts upon land reform design, so what is being witnessed is the hybridization of top-down policy and bottom-up custom. How these are intertwined, and the degree to which they are integrated as envisioned in the VLA, versus running in parallel, has everything to do with how much flexibility is inbuilt into the national structure. With little inbuilt flexibility, informal systems will remain that allow customary land relations to continue as they are, and these informal systems will retain legitimacy for local land users. National systems forced on village governance will, in all likelihood, quickly become obsolete.

The most obvious formalization underway is the drive to issue CCROs to every farmer in Tanzania, and, in the process of doing so, to register every parcel in a district land registry, with a duplicate village land registry. This process thus formalizes customary land holdings, ensuring a certain basic level of land rights to land users, and

protecting their land not only from encroachment, but more importantly, from outside interests.

However, only certain types of customary land tenure lend themselves to fitting into the CCRO model. The districts that I visited were, by and large, predominantly composed of small-holder farmers who defined their parcel land rights either as individual family units, or sometimes as a larger, extended family. Such existing land use patterns are easily incorporated into the land reform project. Harder to define are shared rights to communal lands, and these types of land rights are not incorporated into the registration of land parcels. I did not visit communities that survive primarily through communal livelihoods that rely on communal lands (notably, pastoralists). However, the Mbozi CCRO would not work well in those areas without modifications on how land can be registered – instead of individual CCROs, group rights need to be recognized somehow. While group CCROs are possible in the legal framework, and indeed, are mentioned in the Village Land Act, they are not currently being implemented.

For small-holder farmers who already have informal individual or family rights to their land, registering land parcels to land users does, on the one hand, uphold customary rights, in the sense that customary land user rights are validated and formalized. On the other hand, once land is formally brought into the district registry, it is expected that future land transactions will take place through formal channels, ensuring that the land registry remains up-to-date. The common channels that were used previously were village government officials; these same officials are included in the new, formal channels, so it is perhaps not a stretch to envision the formal systems replacing the

customary ones. There simply have not yet been enough land transactions amongst the population that have received CCROs and registered their parcels to speculate on how successfully informal methods have been supplanted by, or incorporated into formal methods.

The themes I analyzed above were chosen as the most important and most impacted areas in the land administration reform project in Tanzania. The adjudication of land interests and the subsequent issuing of CCROs are the most prominent implementation efforts, and are clearly designed with formalization of land administration at the forefront. Parcel boundary adjudication has gone relatively smoothly. Again, this might be because in the districts I visited, there were seldom overlapping interests in particular land parcels, besides for land put aside as communal or reserve. Not one interviewee expressed any reservation about the method for delineating parcel boundaries; most felt it had progressed easily and all were satisfied with the results.

However, the continued process of issuing CCROs is murky. Those villages that were initially chosen in pilot projects, and where fees were not passed on to land users, were also initially very engaged in the process, with a majority of villagers applying for their CCROs. But, these same villagers have generally not seen the promised results they were hoping for. Most wanted their CCRO because they thought they would be able to access bank loans; because very few farmers have been able to get such loans, there is now disillusionment with the entire project. “Late-starter” villages that are added after the initial pilot phase are more reticent to apply for CCROs, especially because they must

pay modest application fees. In these villages, residents who have more land (and therefore by implication more wealthy) are more likely to apply for their CCRO. It would seem that pushing the project on the basis of the feasibility of obtaining bank loans is misfiring. It attracts people initially, but when no loans are forthcoming, interest dwindles. Focusing on other, more valid benefits could be helpful.

In the fourth theme, we saw how the process of acquiring land has changed over time. The current reforms do little to change these patterns for village residents, but they do restrict land acquisitions by outsiders. For a village resident, if not inheriting land directly from family members, the most common method of acquiring land is through purchase; before a purchase deal is complete, application for purchase is made to the Village Council, and this has not changed. In those villages that still have unused land, the Village Council might give bare land to applicants. For outsiders, an interest in the wellbeing of the village must be demonstrated, and then land can only be rented or leased for a fixed time, but not in perpetuity.

Finally, another promised benefit in the rhetoric of the CCRO project has been a reduction in land disputes. Yet, informal conflict resolution mechanisms have been highly successful for the majority of boundary disputes; delineating precise boundaries is not a prerequisite for determining encroachment. And, most land disputes are not about the location of boundaries but are instead about inheritance of land. CCROs are already being used by women as insurance against losing their land upon their husband's death. While statutory law has already granted women these land rights before the current reforms were under way, the process of issuing CCROs does have the benefit of

educating women about their land rights. Customary inheritance laws are being superseded by a new framework; this will no doubt lead to some heated conflicts in some cases.

The Village Land Act introduced legislation that strongly protects customary rights. Implementation efforts were originally conceived as a hybridization of formal systems (previously largely inaccessible to rural people) and informal processes, where the two would be merged into a new system that could be monitored nationally and yet would be flexible and attuned to local conditions and customs. In practice, much of the implementation work has focused on the de Soto idea that land titling will lead to investment by the landed poor, resulting in poverty eradication. Thus, the pinnacle, or ultimate goal of the land reform currently underway is the issuance of CCROs to small-holder farmers. Evidence from the field shows that banks are not willing to give loans on the basis CCROs, and thus investments in land are not happening. Hybridization is driven by the peoples' assessment of the CCRO; since they are not seeing the promised benefits, the melding of informal processes with formalization is likely to not take place; instead through passive resistance, the parallel formal and informal systems will continue to co-exist, where the formal system remains on-paper-only, and the informal system is the real method used for land transactions.

Chapter 8

CONCLUSION: THEORETICAL AND POLICY IMPLICATIONS

Chapter Overview: In this concluding chapter, I point to the strengths and weaknesses of the implementation schemes in Tanzania in enhancing village and individual tenure security, and the suitability of the de Soto theories of land and collateral to the Tanzanian experience. I point to policy implications based on the lessons learned in the districts that have had substantial implementation of the 1999 Village Land Laws. I then discuss future avenues for research, and finally, offer brief policy implications for integrating the findings about the hybridization of land reform in Tanzania into future land reform initiatives .

While Tanzania's land policy upholds customary rights, the implementation of the new laws takes land rights out of informal, customary land regimes and brings them directly into the statutory system. Yet, at the same time, village authorities officially determine who the customary land users are, and are charged with local land administration. Hence, the national framework is really a hybrid of customary land rights with built-in local flexibility, and individual, formalized land rights as proposed by De Soto. As From the cases I present in the dissertation, local authorities in those communities are not being trained or empowered to tap into the built-in flexibility and instead are following very routinized, prescribed procedures from the Ministry of Lands, without modification or adaptation to local circumstances.

The law's complexity and frustrated implementation may stem from the difficulty of creating a fully customary-formal hybrid system:... For example, the Village Land Act allows that village councils may go on

administering village lands according to local custom – yet then sets out extensive, exhaustive new procedures and rules, albeit designed to protect the rights of vulnerable groups and provide a systems of checks and balances on customary powers evidence, customary dispute resolution procedures, customary practices like the pointing out of land boundaries, and customary livelihood and land-use systems.... the Village Land Act required the creation of over 50 separate forms to be used in its implementation. Such a proliferation of paperwork automatically takes the process to a new level of administrative formalization; custom, being primarily unwritten, is forever changed.... **What room is there left for the flexibility inherent in custom among the multiple forms?** (Knight 2010, 209–10, emphasis added).

Theoretical Implications: The Melding of Informal and Formal

Tanzania’s land policy, drafted in 1995, upholds customary land rights as equal to granted rights of occupancy. However, customary land rights in Tanzania are largely a vestige of the 1970’s villagization project, and are predicated on elected village councils that bear little resemblance to truly “traditional” ways of managing land rights and access. For all intents and purposes, upholding customary land rights really means improving the tenure security of current land users, and the process being pursued for doing so includes both changing those existing rights through titling, and devolving land administration to local authorities.

Implementation of this policy, through the formation of land laws and now, district-based projects, seeks to “bring the informal into the formal” through the issuing of certificates of customary rights of occupancy; these certificates are almost all individual or family based. At the same time, with the devolution of allocation powers to village authorities, there is room for flexibility in tenurial arrangements and in the securitization of communal lands. Or is there?

Chimhowu and Woodhouse (2006) are concerned that the polarization of the discourse on land in Africa (between those who are proponents of state registration of individual titles, and those who claim that customary tenure (though idealized) is the only check against landlessness for the rural poor) leads to ignoring the vernacular land markets that have autonomously sprung up. Neither side in this debate is grounded in empirical evidence; the authors conclude that “while registration of individual title as part of a national cadastral scheme is likely to be unworkable and will disadvantage the poor, ownership vested in customary authority can leave the poor vulnerable to being squeezed out of vernacular land markets” (366). With the polarization, can there be a middle ground that offers the advantages of both individual titling and locally-based community authority? Certainly, this is the middle ground that Tanzania is seeking, yet in practice, individual titling through the issuance of CCROs has become the overwhelming focus of land reform efforts. This was not the original intention.

The World Bank project is a complete departure from Tanzanian policy and law! I’m not convinced at all that it will be successful. It is actually illegal and not following Village Land Act as it should be. But the government met and were given all this money so what happens? Are we going to take a LOAN from the World Bank for this stupid project? We are just doing their experiment so it should be a grant. The World Bank program is a costly departure from what was intended in the Village Land Act (Project Director, personal interview July 1, 2009).

**Policy Implications:
Certificates of Village Land (CVL)**

Perhaps the most effective piece of the current implementation is the issuing of CVLs. These certificates clearly lay out the boundaries of each village, so that there is no confusion over which lands fall under a village’s jurisdiction. This reinforces the

authority given to village governments to administer their own lands, as prescribed in the Village Land Act. Security of village lands is unequivocally strengthened, even though in the process of delineating village boundaries, it is not uncommon for some village land to be lost, especially to neighboring villages. Previously, village lands were generally known, but with imprecise boundaries, and large areas of wilderness between the settled areas of villages, there was ample opportunity to question village boundaries. The 1980s were rife with lands of entire villages being taken away from customary use without restitution because customary rights could not be proved.¹⁵⁴ This cannot happen to a village with a certificate that specifies their land holdings exactly. Outsiders cannot grab customary village lands on the grounds that they are not being currently used by the village, the President cannot remove land from the authority of the village government through eminent domain without adequate compensation to land users, and there are safeguards against the corruption within village governments that has previously led to village land losses – now, village land allocations are predicated upon democratic acceptance by the entire village adult population (the village assembly).

The process of delineating firm boundaries between villages is seen as a necessary step to granting greater autonomy to village governments. It is the first step undertaken in all pilot projects for implementing the VLA, and no other implementation activities take place until the village lands are clearly known. This is important, for it safeguards against land that might belong to the village, but is not registered or clearly identified as belonging to the village, from being easily transferred out of the village domain. It also

¹⁵⁴ For instance, the Hadzabe (a hunter-gather society) of northern Tanzania who have lost much of their land partly through being unable to prove their use of the land (Madsen 2000), and the Barabaig, also of northern Tanzania (Lane 1996).

safeguards against disputes between villages over vaguely known boundaries. However, the issuance of CVLs is, in practice, not conducive to communal sharing of resources between villages. In practice, each village consists of mutually exclusive land – that is, no boundaries are overlapping, and no land is administered jointly by multiple villages. Thus, existing common resources must be allocated to a single village, or divided up into discrete sections that are allocated singly to contiguous villages. In some instances, villages were already on completely mutually exclusive land, and the issuance of the CVL simply reinforces the village rights to that land. However, in others, such as the case of the shared forest resource between Mitengwe and Mihugwe villages in Kisarawe District which was discussed at length in Chapter 5, the division of land into mutually exclusive sections is contrary to the customary relationships to the land. The VLA supports flexible management of land, yet it is not being implemented to accommodate flexible relationships.

Internal village land arrangements can also be harmed. While CVLs provide greater security for village lands, with more protection against outsider encroachment or transfer, they are also meant to provide flexibility in local governance of land. While in theory flexibility is automatically encouraged by solidifying the village's right to govern its own land in statutory law, with registration documents that clearly grant this right to the village, in practice there is little evidence that such flexibility is flourishing. For instance, customarily clans have been very important in determining land allocations amongst members of the clan. In the practice of implementing VLA, Village Councils make allocation decisions. While formally individuals work with Village Councils to

register their lands, informally they work with clan elders to request a land allocation. The relationship between clan elders and the Village Council is thus extremely important, but not captured in the formal processes being implemented in pilot projects. Clan powers are completely invisible and are not formally incorporated into land allocation processes. Instead, that informal system runs parallel to what is formally created.

Questions also remain about how to ensure some national oversight of village administration to make sure there is no local abuse of power. One check is already in place – land decisions require approval of the Village Assembly (the entire body of village adults); however not all Village Assemblies are aware of this (and many Village Assemblies rarely meet), allowing some Village Councils to make their own decisions. Furthermore, the democratic decision of the whole village is not necessarily constitutional or lawful, and can still result in discrimination for minority groups.

Village Councils are not always aware of their own powers, either, and can be coerced by district, regional, and national bodies to act outside their own interest. For instance, villages in Kisarawe were under immense pressure to sell usage rights to foreign investors; they finally did so under the assumption that they would be recompensed in certain ways. Their contract with the foreign investors made no mention of the verbal promises they had been assured of by regional officials; they have lost their land and not gained much in return.¹⁵⁵

One of the stated reasons for demarcating village boundaries in Tanzania is so that each village will know which land it is responsible for, and then have the freedom and autonomy to administer that land in the way it sees fit to do so; in theory, this should

¹⁵⁵ For instance, see Sulle and Nelson 2009.

result in different forms of tenure arrangements, and could reduce external pressure to move towards Western cadastral arrangements within villages. The Village Land Act 1999 (URT 1999) upholds customary tenure as equal to granted occupancy; however provisions within the Act for transfer of land to the government when it is in the public interest only grant compensation to those holding land certificates. Villages then are encouraged to issue not only granted rights of occupancy, but also customary rights of occupancy (CCRO) – effectively creating a bureaucratic system very similar to individual titling and Western cadastres. Thus, while scholars have largely converged on the need for flexible tenure systems that are adaptive to regional and local conditions, where one-size-fits-all solutions are no longer sought (cf Palmer 2000; Lim 2004; Bruce and Migot-Adholla 1994; de Janvry et al 2001; Fitzpatrick 2005; Manji 2006; van den Brink 2006), it is not clear whether vesting land in the village (via the Village Council) in the legal framework which exists in Tanzania will be conducive to flexibility (cf Sundet 2005; Shivji 1994).

Whether or not CVLs are leading to flexible, localized land administration, they are seen as very important. Villages want CVLs for the enhanced security they provide for village lands. Hence, the delineation and registration of village lands and the issuance of CVLs is likely to proceed, and to replace other customary ways of managing village lands, and indeed, to replace local knowledge about village boundaries.

Thus, ensuring that every village is able to obtain a CVL is important. Modifications should be considered though that would allow for more flexibility, particularly in joint allocation of some village land to multiple villages to co-manage.

**Policy Implications:
Certificates of Customary Right of Occupancy (CCRO)**

To the extent that the costs exceed the benefits (in terms of increased security) which users obtain from registering, high cost can lead to a re-emergence of informal practices up to a point where “deformalization” will undermine the sustainability of a land registry system that was established at high cost (Barnes and Griffith-Charles 2007, 245).

The impact of parcel titling on individuals within in a village’s area of jurisdiction, which has become the major thrust of Village Land Act implementation, is much less clearly beneficial to tenure security than issuance of CVLs. Most interviewed people were able to articulate both benefits and drawbacks to obtaining CCROs, though such articulations were always in the abstract: no one had yet experienced any of the benefits first hand. Yet these perceptions might ultimately be the cause of the success or failure of costly implementation schemes.

There are numerous challenges to this approach to securing informal land tenure. It is clear, in the districts visited, that CCROs are being issued almost exclusively to individuals (or to several individuals together, most often jointly to a husband and wife). Many of the farming patterns in these districts are individualistic; however, land allocation patterns are not always so, with some lands customarily “belonging” not to an individual or to a family, but to a clan – a larger group of kinship than a family. Clan members often expect that, even after years of living away from the village, they will be able to receive clan land for farming should they ever return to their village. Non-farming communities, such as pastoralists, may never have had exclusive rights to a particular

parcel of land, but instead hold customary rights to much larger grazing lands in common with the rest of their village. These types of land relations are clearly not being supported in implementation, though lip-service was paid to them in the national land policy. Flexibility in land tenure arrangements is not being pursued; each village is being educated in how to create the same type of village registry and to form very similar village land use plans, with elements of national policy very prominent in both. Authority over *some* land decisions is thus devolved to village government, yet the scope of what villages can build is limited. Thus, only certain types of customary tenure are being upheld.

The hybridization that was envisioned in the Village Land Act was one where the de Soto approach of universal titling to customary land holders was joined with a devolution to village authorities with a wide latitude for flexibility. The evidence is quite clear that universal titling is becoming an exercise in futility. Logistically, without better organizational support mechanisms in place, land registries cannot remain accurate.

More telling, though, is the people's non-acceptance of the CCRO program. Because the program was sold as a vehicle to obtaining a loan, and because loans were not forthcoming to those who initially received CCROs, the program lost validity. This does not mean CCROs are necessarily without benefit; yet it was short-sighted to market them in this manner. True benefits may indeed include a decrease in boundary disputes between neighboring farmers and better protection for women's land rights. But CCROs are certainly useless as collateral in the large majority of cases. Banks, rightfully, are reluctant to give loans to small-holder farmers; farmers often do not understand loans,

and many would put their land up as collateral without any sound business plan in order to pay school fees for their children; they would certainly default on payments. The reluctance of the banks is therefore a protection to them. Indeed, several of the farmers I interviewed did not understand that their land was at stake if it was used as collateral.

The use of land as security and an engine of wealth creation in Africa will continue to be problematic until more creative mortgage systems and laws are applied. Where governments in Africa need to make changes is in their procedures and processes; it is this, rather than in any pluralist system of land tenure, that inhibits investment in land. It is therefore not “customary tenure” but “customary conservative state bureaucracy” and private mortgage practices and attitudes that need fundamental reform (McAuslan 2006, 10).

Collateralization in any event, is increasingly demonstrated as a red herring in poor agrarian contexts (Bruce and Migot-Adholla, 1994; The World Bank *passim*, Bromley, 2005; Cousins et al., 2005; Jacoby and Minten, 2005). The evidence and arguments need not be reiterated here except to note that common impediments in Africa centre upon lack of demand in stagnant or slow rural agricultural economies, the risks of losing livelihoods associated with foreclosure on peasant farms, and availability of alternative and less risky routes to obtain loans, such as through group-based micro-credit. (Alden Wily 2008, 48)

Policy Implications: Governance and Organizational Capacity

Throughout this dissertation, I have focused on specific, concrete aspects of the Village Land Act, particularly the impact of land registration, both at the village and at the individual level. I have looked at the intent of the law and how this intent plays out during implementation schemes. Much of what I have written has necessarily been from a best-case-scenario viewpoint -- where local governments follow the laws proscribed, where implementers strive their utmost to uphold the letter and the intent of the law, where the national government has the best interest of the peasant farmer at heart.

Yet, the political reality has certainly been far from this ideal in the past, and continues to be very complex. In my investigations, I interviewed government officials at the national, district, and local levels, and each of these levels of governance is important to the sustainability of the land administration reform initiative. The roles and responsibilities of each are described quite clearly in the Village Land Act and other policy documents. Yet there remain concerns that safeguards put in place can never be adequate in the face of widespread and endemic corruption. I did not address issues of corruption in my field work, but would like to offer a few generalizations and impressions.

Donor-Recipient Misreading: At every level of government (national, district, and local) I came across officials who were passionate and thoughtful about what they were doing, who clearly cared deeply about the processes they were putting in place, and who wanted to do things in a careful and systematic way that followed both the letter and the intent of the law. These officials saw the importance of training others, of working collaboratively, of learning from experience. Indeed, the Mbozi Model was developed through the earnest efforts of individual officials who strove to create a working process for the implementation of the Village Land Act in their geographic area.

And yet, these same officials were often promulgating plans they knew were bound for failure. For instance, while privately pronouncing the impossibility of issuing individual titles for the entire population, and mentioning the prohibitive cost of undertaking this project, publically the goal is to title every individual parcel.

There was clearly a disconnect between the vision of the Tanzanian government, the vision of international donors, and the Tanzanian government's *perception* of international donors' vision. The original pilot project in Bariadi had covered nine villages and was funded largely through World Bank funds; government officials felt the best course of action would be to take the time to evaluate that pilot project, and to slowly expand based on lessons learned. Yet, instead, the government was beginning an even larger project covering some 34 villages. This, they thought, would ensure that they would get more of the promised funding from the World Bank, and indeed, they thought this was exactly what the World Bank wanted them to do.

Meanwhile, it appears the World Bank was looking for the pilot project to be expanded through local expertise and training, rather than continuing to be conducted by national personnel. Shortly after my fieldwork was completed, the World Bank pulled the plug on project funding. The project was not sustainable and was prohibitively expensive. While this was the same view held by some Tanzanian officials privately, it came as a shock to realize the World Bank didn't want larger, more expensive, more comprehensive plans.

This disconnect is symptomatic of the donor-recipient relationship. The recipient (Tanzania in this case) becomes so preoccupied with obtaining the promised loans, that they subsume their own plans and observations to those of the donor. Yet, in this case at least, they misread the donor quite profoundly; indeed, if Tanzania had carried on the project the way they saw best, they quite likely would have continued their funding relationship with the World Bank and the project would still be proceeding as planned.

One of the main conclusions I elaborated upon above is that there is too much focus on individual titling, at the expense of other implementation processes that should be equally or even more important than the titling piece. While I intimated previously that part of the reason for this focus on titling is due to the easily measured outcomes (number of CCROs issued), it is also, again, partly due to the perception of the priorities of donors. The language of the national framework (BEST) prioritized formalization of property, which is translated into the issuance of CCROs. Never mind that the Village Land Act *a priori* protects customary rights to land, regardless of the existence of written documentation. Yet, if the administration reform were not titling-centric, what would be gained?

Focusing on less-tangible, less-measurable goals of land administration reform, like strengthening good governance at all levels, and ensuring that women understand and are able to realize their constitutional land rights, is of paramount importance for the long-term success of implementation. However, in the short term, these are difficult points to rally behind. Selling the project as a mechanism for obtaining formal documentation (as a means to obtaining better security of tenure) is more immediate and concrete, an easier path. But, as we have seen, by itself individual titling is unlikely to have the promised results. By divorcing it from the other initiatives, it will not likely lead to better tenure security.

System Abuse: Much has been written about system abuse and corruption at all levels of government in Tanzania. The Lands Commission (1994) highlighted numerous cases of corruption in lands transactions, and commentators on Village Land Act

underscored the inadequate checks and balances. Various scholars provide case studies on the difficulties in decentralization (for instance, Harrison 2008; Hodgson and Shroeder 2002; Logan 2009; Pallotti 2008; Snyder 2008), which is “often either not properly enacted legally, or not properly executed [and] open to hijack by local elites” (Brockington 2008, 104).

Governance is a key component to land administration reform (Meinzen-Dick et al. 2008; Olowu and Wunsch 2004). Devolution of authority to village governments can enable abuse of the system at the local level. Indeed, while the Village Assembly was to have final say in land allocations, in practice it appears it is generally the Village Council that makes decisions on land allocations. There are steps being taken to ensure that abuse does not happen: there is community-wide sensitization, where land laws are explained to the general public. There is training of village authorities in the land laws and in the regulations and procedures. There is oversight by the district authorities.

Because the districts I visited were pilot projects, under a lot of scrutiny by officials at all levels, no doubt there was less opportunity for deviation from the law. But what will happen when the new systems are engrained and village governments left to their own devices? Will local elites participate in surreptitious land grabbing? I saw no evidence of this, but admittedly was not looking for it, either. Further research should be conducted on this.

However, the devolution of authority to local and district levels is clearly beneficial when compared to the previous highly centralized system. Villagers are able to access formal systems much more easily. The formal systems are much more transparent.

The turn-around time for steps in the process of land formalization is much quicker. It is important that education and sensitization of communities continue to go hand-in-hand with other administration reform, for this is a safe guard against corrupt practices.

Perspectives for Future Research

The body of scholarship on the topic of land reform and security of tenure is quite staggering, though not surprising given the importance of access to land for basic survival. The broadness of this topic, and its relationship to almost every aspect of social and economic development, necessarily precludes addressing every aspect about security of tenure in this dissertation. I focus almost solely upon the formulation and implementation of specific policies within Tanzania that are predicated upon scholarship promoted by the World Bank, and how this is being worked into a land administration framework that protects customary land rights. Conning and Deb (2007) contend that there are very few rigorous studies of land policy reform project impact assessment, and thus much of the theoretical debate on the pros and cons of various courses of action remain untested with little or no empirical evidence to back them up; this study provides empirical evidence for impact assessment.

Six themes outlined below are of critical importance and are closely related to my research questions, but could not be covered adequately by my limited fieldwork study; each warrants further research and is briefly described here.

Women's land rights: The first such theme is the impact of customary tenure and legally codified land law upon women's land rights. There is lively debate over the merits

of each system; women often enjoy greater legal rights under individual titling *if they are able to secure such titles*; some though point out that under customary law, women often enjoyed greater protection to have access to land, whether or not they “owned” it, while under modern law they are often shut out by their family from having their name upon a title deed; hence they often have no legal recourse (Odgaard 2006, p.12; Razavi 2003; Tzikata 2003; Whitehead and Tzikata 2003; Yngstrom 2002). Englert’s 2003 study of gendered meanings of land tenure in a small area of Tanzania is helpful. This debate is beyond the scope of my dissertation topic and hence I will not engage with this literature beyond a passing mention.

The impact of HIV/AIDS: Another current theme in rural land rights considers the impact of HIV/AIDS on family land arrangements (e.g. Lim 2004; Aliber and Walker 2006; Kamusiime and Rugadya 2007). Child orphans often lose their land to land-grabbing extended family members; even if they do not, they are generally unable to farm as extensively as their parents and much land may sit fallow until it is encroached upon by neighbors. To understand family dynamics and how new laws and protections are being devised to protect orphans and their rights to land would require a very different type of ethnographic research than what I pursued, and thus this topic is also beyond the bounds of my dissertation.

Agricultural improvements: Another theme engages food security and improving agricultural methods, both through education and through innovation. The optimal farm size for the most efficient production of food crops is an ongoing debate in this field, while “modernization” of farming methods (such as increasing acreage yield through the

increased use of fertilizers and hybrid strains of grain) are common subtopics of this general theme, and each of these pertains to land administration in Tanzania – lower limits for farm size have been set in the Village Land Act, and a primary role of the District Agricultural Officers is to encourage the use of fertilizers and pesticides.

However, again, I did not conduct the type of research that would help me to add to our knowledge about these questions

Foreign land investors: A fourth theme that I allude to only briefly is the growing trend of foreign investors to purchase land wherever they can. Huge land grants to foreign countries, sometimes in excess of 100,000 acres, have been recorded in several countries such as Madagascar, and indeed, in Tanzania (Andrew and Van Vlaenderen 2011; Cotula 2011; Habib-Mintz 2010; Cotula et al. 2009;). The current rush towards the production of biofuels has exacerbated this trend, with large tracts of land being dedicated to biofuel production. This is hotly debated, because some countries have not achieved their own food security and yet are taking prime agricultural land out of food production; at the micro-level, small-holders that may have been farming that land have often lost their livelihood, perhaps being relocated to less-desirable land, or perhaps being made landless. This situation is increasing in scope annually, and is an important topic that deserves more research. The *Journal of Peasant Studies* recently devoted an entire issue to this question, entitled “Biofuels, Land and Agrarian Change”¹⁵⁶, and the International Land Coalition put out a report based on their study that involved the

¹⁵⁶ Borras Jr., McMichael et al. (eds.), 2010. See bibliography for full citation. This special issue includes sixteen articles on a wide range of biofuel topics such as the political economy of biofuels, the social and ecological consequences of biofuel production, competing claims on land use, power in decision-making, and processes of inclusion and exclusion, and addresses biofuel production in a wide range of geographic spaces, from Indonesia to the United States.

collaboration of forty organizations about the occurrence and impact of the global rush for land (Anseeuw et al 2012).

Urban land tenure: A fifth important theme regarding land tenure in on improving the security tenure in informal settlements (“slums”) in urban areas. Urban populations have grown at exponential rates, and unplanned settlements have proliferated. There is much research to be done (and that has already been done: cf. Abbott 2003; Koti and Weiner 2006; Lemma et al. 2006; Rakodi 2003, 2006; Sen et al. 2003; Sliuzas 2003 and 2004) on improving tenure as well as service provision in these areas. In Tanzania, land administration reform is taking place in both rural and urban communities¹⁵⁷. While there is important overlap, for instance, the titling process for formally registering land in informal settlements is very similar to registering village land, the authorities and systems being put in place are quite separate. Urban land in Tanzania is directly under the president, while village lands are now administered by village government. The focus of my research is strictly on rural areas, however, and thus I do not engage with the issues of registering informal land holdings in urban areas, nor with the complexities of providing improved services (such as sewage, garbage collection, electricity, adequate health facilities, schools, and so forth) that are at the heart of scholarship on informal settlements in the global south.

Pastoralist land rights: And, finally, a theme which is highly relevant to my work, but that I am unable to discuss except tangentially and anecdotally, is the impact of individualizing land rights upon pastoralists and other non-agricultural livelihoods. While

¹⁵⁷ The *20,000 Plots* is an important initiative for formalizing land holdings in urban areas. Dar-es-Salaam and Mwanza are the two cities that have had systematic campaigns for registering all urban land.

I do discuss the impact of individual titling upon a communal way of life, in general terms, it is clear that pastoralists in particular are amongst those most negatively affected. Pastoralists in Tanzania rely upon having communal rights to wide expanses of grazing land, and when these lands are not seen as customarily belonging to them, and so taken away from their use, or when some pastoralists are given individual rights to smaller tracts of grazing land, it has profound effects upon the survival of a pastoralist way of life (see, for instance, Benjaminsen and Ba (2009) on pastoral marginalization in Niger; for a study specific to Tanzania, see Gastorn's (2008) case study on the impact of new land laws on pastoralists in two districts of northern Tanzania, as well as Ojalammi 2006; Tenga et al. 2008; Igoe 2003, 2005; McKie 2007; Mwani 2007; and the previously mentioned studies by Lane (multiple years). See also Quinn et al. 2007 for a discussion of developing alternative land administration systems for communal land use in Tanzania). My study sites were not areas with large pastoral populations and thus I was unable to focus upon this theme¹⁵⁸. This is certainly a future avenue of enquiry that I can take up in future.

Concluding Thoughts

In the introduction, I asked how Tanzania is reconciling the challenges to bringing informal, customary land arrangements into a universal formalized land administration that is sensitive to traditional land tenure. The answer is not a simple condemnation of government attempts, nor a resounding congratulatory note on a job well done. Some

¹⁵⁸ Anecdotally, I have noticed huge increases in the number of Maasai on the streets in Dar-es-Salaam over the past decade. Men typically are trying to find work as security guards, while women do beadwork and sell traditional healing potions. It is clear increasing numbers of pastoralists are losing their rural livelihoods.

elements of reform have been more effective than others, and the degree to which reform melds the informal with the formal is not uniform across time or space.

Village lands as a whole are being effectively registered through the process of issuing CVLs, and village autonomy and security is thereby enhanced. Village governments are gaining more resources and training for effectively administering their lands. However, the impact of land reform on individual tenure security is difficult to measure thus far. Communal tenure is clearly impacted negatively, though some villages are improving their monitoring of communal resource use and developing strategies for preservation of shared resources. Village residents do not see much impact on their individual relationships to their land, and much of the land reform process seems inconsequential to them. Formalization of individual land holdings is thus unlikely to gain momentum, and the informal channels of administration will continue to thrive.

Tanzania's land policy and land legislation are extensive and sought to address all aspects of land tenure. While flexibility in land administration was seen as important, the bulk of the Village Land Act was devoted to formal procedures. Implementation plans further emphasized standardized land administration procedures and flexibility was not encouraged. Had flexibility been the focus of implementation, the hybrid approach might have resulted in a flexible, formal land administration mechanism that would truly allow both diverse land tenure systems and formal registration of lands.

In Chapter 1 I also asked the question how my findings might be relevant and applicable to what is happening in other countries. While I had hoped to find that the polarization of discourse around formalization and customary land tenure regimes was

mitigated in Tanzania through the development of hybrid approaches, instead I found that individual property registration, unfortunately the thrust of Tanzania's reform program, is likely inconsequential to land reform. To what degree, and to what consequence, hybrid approaches might help sustain the livelihoods of residents is a question of great significance in the further assessment of the Tanzanian hybrid approach and in considering its relevance in other land administration projects. For Tanzania, continuing the registration and certification of village lands is an important safeguard of village rights to land, while the individual property registration program needs to be reworked, paying special attention to developing local flexibility measures, if it is to result in a functional, formalized administration system.

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Appendix One

LAND TERMINOLOGY

Land tenure is a legal term that refers broadly to who “holds” the land, or who is the user of the land (Bruce 1993, 1; Cagdas and Stubkjar 2009, Alden Wily 2011, 1). The user of the land might own the land outright with individual land title, or might lease or work the land from another owner (including situations where the state itself owns the land), so long as the proceeds from the land (the harvest) goes to the user. Tenure includes the rights, the responsibilities and the restraints of the land user (Nichols 1993, 31); different land tenure regimes (whether formal or informal) recognize different “bundles” of rights and responsibilities for different types of land users. A more nuanced definition of land tenure is provided by the United Nations:

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. ... Land tenure is an institution, i.e., rules invented by societies to regulate behavior. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions. ... Land tenure is an important part of social, political and economic structures. It is multidimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be taken into account. Land tenure relationships may be well-defined and enforceable in a formal court of law or through customary structures in a community. Alternatively, they may be relatively poorly defined with ambiguities open to exploitation. (Food and Agricultural Organization of the United Nations (FAO), no date; as quoted in Harvey 2006, 294-5).

Land rights are generally defined “to include rights of access, use and transfer (rentals, sales, etc.), as well as broader management rights” (Cotula et.al 2004, p.1). While often customary land users legally have *de facto* rights to their land, in practice having formal documentation of these rights has generally been more enforceable and more accepted. Rights to minerals, and issues of mining rights, are not generally included in the definition of land rights, and are not included in the concept of land rights in Tanzania. Siri Lange (2008) has produced an excellent study of land rights in “mining districts” in Tanzania that the interested reader can pursue.

A *land cadastre* is generally defined as a comprehensive register of all lands, including information on the spatial attributes of land parcels, land ownership, and some limited socioeconomic data such as land value, or main crops (for agricultural land).

Secure land tenure refers to a state where the land holder is secure in their land – they are not under threat of losing their land, whether to encroachers, for debt, or through changing government policies. Tenure rights might include the right to the proceeds from the harvest, the right to make improvements on the land, the right to sell the land. Tenure responsibilities can include payment of land taxes, upholding zoning laws, and preserving natural resources. The rights and responsibilities associated with tenure are not universal – each national or local tenure system is unique. What secure tenure systems have in common, however, is that the rights and responsibilities are understood and upheld by (common) law.

Customary land tenure, then, refers to land that is administered by traditional authorities through culturally embedded practices – it is a culturally adapted (and localized) system of land management where the rights and responsibilities of those using the land are well understood by the community; it is not static and changes with the exigencies of time.

Statutory land tenure is the official system of people’s relationship to land, embedded within legal documentation and upheld through an administrative system for creating and maintaining land rights – both by written certificates and formally kept land registries.

Land titling and *individual land rights* are used in a most broad sense throughout this dissertation. Because the Government of Tanzania has often used the terms *title deed* and *right of occupancy* synonymously, I have often conflated the two, as well. Land in Tanzania is not “owned” but rather is “used”; a “title deed” would normally confer ownership, while a “right of occupancy” confers usage rights and is thus more technically appropriate for the Tanzanian case. Officially, the land certificates issued in Tanzania are called “certificates of right of occupancy” (for general land), and “certificates of customary right of occupancy” (for village lands). However, the term “title deed” is often used in the literature to refer to these same certificates.

Communal land rights and *communal land regimes* refer to the tenure patterns amongst communal groups of people. Ostrom (2001) identifies five property rights that pertain to the use of common-pool resources, including access, withdrawal, management, exclusion, and alienation. Members of the group generally share common usage rights that are not exclusive to communal lands, though different members may have different types of usage rights.

Appendix Two

INTERVIEWS CONDUCTED

National Level	No. Interviews
Ministry of Lands officials	7
NLUPC	2
MKURABITA	2
HakiArdhi	3
NPA	2
Ardhi University professors	3
District Level	
Mbozi District Land Office	17
Kisarawe District Land Office	1
Bariadi District Land Office	5
Ward/Village Level: Government bodies	
Halungu Village Council (14 present)	1
Halungu Village Land Council (6 present)	1
Lwati Agricultural Officer	1
Itaka VEO	1
Ipunga Village Council (5 present)	1
Mitengwe Village Council (5 present)	1
Mitengwe VEO	1
Sanungu Village Council (17 present)	1
Sanungu VEO	1
Banemhi VEO	1
Mwakibuga VEO	1
Nyangokolwa VEO	1
Somanda WEO	1
Village Level: Individual Farmers	
Halungu	16
Ipunga	12
Mitengwe	10
Sanungu	10