

HIGH LEVEL COMMISSION ON LEGAL EMPOWERMENT OF THE POOR
WORKING PAPER FOR TANZANIA
MAKING PROPERTY RIGHTS WORK FOR THE POOR IN TANZANIA

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ABSTRACT

Tanzania is at the forefront of fighting poverty and is placing emphasis on the role that secure and formalises property rights can play in poverty alleviation. This paper addresses the importance of secure property rights in fighting poverty and traces the evolution of property rights in Tanzania from the colonial period, to Independence, through the land reforms of the 1990s to the current situation. There are impediments and threats preventing the maximum enjoyment of the benefits from property rights. These emanate out of the fact that most property is not formalised and the procedures and processes for formalising this property are complicated, centralise, and non-inclusive. Many property rights are vaguely defined and are threatened by urban expansion, infrastructure development, large-scale investment undertakings such as mining, unrealistic official standards and compulsory acquisition.

Two cases, one rural, one urban, where the government is formalising property rights for low income households are presented and both show promising results.

Property rights and tenure security issues are complex and cannot be addressed adequately through one approach such as titling. Titling is one of them, but an overall policy of inclusion of current and prospective property owners is required.

A policy of decentralisation and capacity building at local and community levels will help speed-up the formalisation process.

1. POVERTY AND PROPERTY RIGHTS IN TANZANIA

1.1 Introduction to Tanzania

The United Republic of Tanzania consists of two formerly independent states that is Tanganyika (now also known as Tanzania Mainland) and Zanzibar. These two states united in 1964. Tanzania has an area of 945,087 km² out of which 61,500 km² is water. Tanzania Mainland is divided into 21 regions (Figure 1), and 106 Administrative Districts. In total there are 117 urban and district local authorities, and some 12,500 villages.

Figure 1: Tanzania's Geographical Location

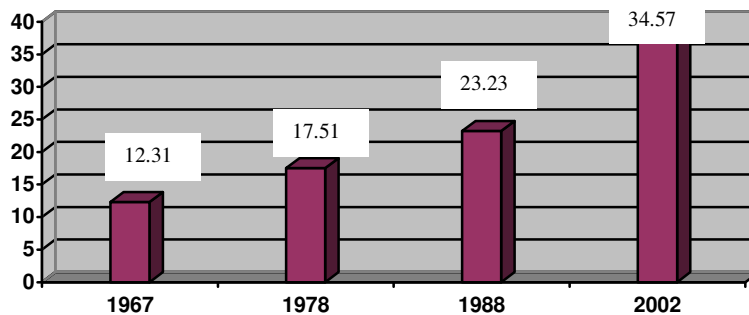


Demographic Trends

Since Tanzania achieved independence in 1961 the population has grown from 12,313,000 persons in the first post-independence census in 1967 to 34,569,000 persons counted in the recent census held in August 2002. Figure 2 shows the trends in the demographic growth.

Over the period from 1967 to 2002 the population has doubled every 20 years and the average rate of growth of the population has been 2.9 percent per year (Tanzania, 2003).

Figure 2: Population of Tanzania; Census Counts (millions)



Source Tanzania (2003)

Tanzania is urbanizing very rapidly. From 1980 to 1997, the urban population grew at a rate of about 10 percent per annum. Around 36 percent of the total population of 34,569,000 are currently living in urban areas, if population living in townships and trade centres is included. Dar-es-Salaam alone, the largest urban area in the country, is said to receive between 100,000 to 300,000 people a year. Most of these migrants live in unserviced parts of the city with environmental conditions, which threaten their own lives and health. Here, land is informally acquired and in most cases it carries no legal evidence of ownership. Studies by the Ministry of Lands and Human Settlements Development have shown that about 80% of people in urban areas live in unplanned settlements.

Land Use Picture

The land use picture in the country is as shown in Table 1

Table 1: Basic Population and Land Data on Tanzania

Land Area	881,289 km ²
Water area	61,495 km ²
Total Population	33,584,607 (2002 Census)
Population Density	38 people per km ²
Population Growth p.a. 1988-2002	2.9%
Type of Land	Area (millions ha)

Small holder cultivators	4.1
Large-scale agriculture	1.1
Grazing Land	35.0
Forests and Woodland	44.0
Other Land	4.4
Arable Land	3.6

Tanzania is still basically an agricultural economy. Around 80% of the population lives in rural areas including townships and trading centres. This population depends mainly on traditional agricultural and related activities.

While it is agreed that urbanisation is a positive phenomenon since cities are considered to be powerful engines of development, African urbanisation (Tanzania included) is taking place under excruciating circumstance, with unemployment and poverty becoming widespread and the resources in urban LGAs getting more acutely scarce. Consequently investment in infrastructure, including housing has failed to keep pace with the growth in population in most cities. This adversely affects the living conditions resulting in widespread poverty. The thousands of the youths who flock to urban areas annually do not find ready employment waiting for them. Many end up doing casual jobs or being petty traders. There are many who plod the streets with their wares seeking buyers. In Tanzania they are known as *Machingas*. Most of these have no property rights to speak of.

1.2 Poverty in Tanzania

Tanzania is a poor country. In 2001, the GNP per capita was US\$ 246 and the per capita GDP was US\$ 251 (US\$ 1= Tshs 800/= in 2001). Agriculture is the backbone of the economy and the source of livelihood for the majority of the population. However, both agricultural output and the prices of agricultural products have gone down in recent years, thus exacerbating rural poverty and fuelling rural to urban migration.

Household Budget Survey (HBS) 2000/01 results indicated that basic needs poverty had declined, but the absolute number of the poor has been increasing over the years. These results revealed that basic needs poverty declined from 38.6 percent in 1991/92 to 35.7 percent in 2000/01 (Table 2). Nonetheless, taking into consideration the results of the 2002 Population and Housing Census these rates represent 9.3 and 11.7 million people respectively equivalent to an increase of over 200,000 people annually. Furthermore, the HBS results comparing those two periods revealed growing income inequality as measured by the rise in the Gini-coefficient from 0.34 to 0.37.

It should however be noted that there has been an increase in the overall GDP growth. In 2004 for example, real GDP grew by 6.7 percent compared to 5.7 percent in 2003. However, real GDP growth is yet to benefit many people. Thus the greatest challenge is how to make the various sectors to contribute to sustainable poverty reduction. Secure property rights can contribute in this direction.

Table 2: Poverty Trends in Tanzania

Attribute	DSM 91/92	DSM 00/01	Other Urban 91/92	Other urban 00/01	Rural 91/92	Rural 00/01	Mainland 91/92	Mainland 00/01
Food Poverty (%)	13.6	7.5	15.0	13.2	23.1	20.4	21.6	18.7
Basic needs poverty (%)	28.1	17.6	28.7	25.8	40.8	38.7	38.6	35.7
Female household heads (%)	14.1	20.9	23.9	27.9	16.7	22.1	17.6	22.9
% females with no education	11.7	10.6	18.7	17.7	36.0	37.1	32.3	32.5
% widowed	10.9	16.9	19.1	26.1	37.9	37.9	32.8	34.4

Source: Household Budget Survey 2000/2001

Figures in Table 2 also reveal the rural-urban dichotomy. Progress in poverty reduction has been relatively faster in urban areas particularly in Dar es Salaam. The figures also attest to the situation of females. There has been an overall increase in female-headed households, females without education and widows – all attributes that manifest poverty. Rural-urban differences are more pronounced in education. The percentage of females without education has gone down in urban areas but has gone up in rural areas.

What the comparison of growth and poverty trend reveals is that much of the growth between 1991/92 and 2000/01 did not translate into poverty reduction. In other words, the process was not pro-poor (Tanzania, 2005). It is partly for this reason that the government wants to see if inroads can be made into poverty reduction through the formalisation of property rights.

1.3 Concepts of Property Rights

Property rights have been defined as *the liberty or permit to enjoy benefits of wealth while assuming the costs which the benefits entail* (Achian and Demsetz 1973). They are not physical things or events, rather they are abstract social relations. The owner of the property right has the consent of fellow men who allow him to act in a particular way expecting the community to prevent others from interfering with his actions, provided that these actions, are not prohibited in the specification of his rights. Property rights prevent a person or group of persons or institutions from forcibly appropriating what belongs to the other and thus enable the co-operative solution to arise voluntarily.

This ownership of enjoyment rights is one of the most important aspects of property rights because it ensures the owner the right to use, to benefit from it, to change its form and substance and to transfer such rights. These rights give an owner the incentive to use them in the most productive and competitive manner. The rights are categorised into three: the right to use, the right of exclusion and the right of transfer (Jaffe and Louziotis 1996; Feder and Noronha, 1987). Owners of property rights must have the final say as to whether the resource should be used and if so how. The right of exclusion prohibits those who have no claim to a resource from benefiting from that resource. The right to transfer enables the owner to trade the rights for another bundle of rights contained in another asset instead.

The above are captured in Eaton's definition of property rights:

Property rights are economic interests supported by the law. In real estate these property rights are referred to as bundles of rights because the ownership of a parcel of real estate may embrace a great many rights, such as the right to its occupancy and use, the right to sell or rent it out in whole or in part; the right to bequeath; the right to transfer by contract for specified periods of time, the benefits to be derived by occupancy and use of real estate (Eaton 1995:45).

Snare (1973) identifies six main rules that are applied to property:

- The right of use: An owner at his own discretion is allowed to possess, use and dispose of his property and has the right to perform any operation with the property, which does not contradict the law.
- The right of exclusion: this is excluding others from using his property unless he has given consent.
- The right of transfer: Permanently transferring the rights to specific persons by consent;
- Punishment rules: Rules to deal with those who may interfere with the enjoyment of property by the property rights owner;
- Damage rules: Damages including compensation paid to the owner as a result of interference with his enjoyment of the right;
- Liability rules: This is where the owner could be held liable for liabilities emanating from his property which injuriously affect others.

Taylor has summarised property rights in Table 3

Table 3: Property Rights and their meanings

Property Rights	Meaning
Occupy/use/enjoy	The right to occupy without the threat of eviction
Restrict	The right to restrict others to from accessing the land/property (right of exclusion)
Dispose/Buy/Inherit	The right to sell, or give away, or mortgage, or buy or inherit
Develop/Improve	The right to be able to put land to some form of development such as building, or institution of infrastructure
Cultivate/Produce	The right to use land/property to grow food, keep animals, or operate home-based economic enterprises
Sublet	The right to be able to pass on the land or property to somebody else for rent and for a duration of a period
Sublet and fix rent	Freedom from rent control legislation
Pecuniary	The right to benefit from any increase in property values
Enforce	The right to legal redress in event of breach of laid-down rights
To access services	The right to enjoy services such as access roads, drains, open spaces, sewers, and social services
To access formal credit	The right to use property in financial transactions, including it as collateral.

Source: Taylor, W.E. (2004), “Property rights – and responsibilities? The Case of Kenya”, *Habitat International*, Vol. 28, pp. 275-287.

Interference with any of these bundles of rights may restrain the benefits that can be obtained from property and enhance poverty.

1.4 The Importance of secure Property Rights in the Context of Poverty Reduction

In recent years, the importance of secure and well defined, transferable property rights has been highlighted together with the encouragement of people to take on loans using property as collateral. However, the importance of property rights is more than their use as collateral.

There is considerable worldwide evidence that demonstrates the importance of secure property rights to land as a pre-condition for land-related investment in many settings. Farmers with short-term or insecure rights do not make long-term investments in land, nor do they exchange their land with others who might be in a better position to develop it. The same is true of urban residents. It is now clearly realised that land and institutions governing its ownership and use are of great importance for broader economic growth and poverty reduction from a broader range of perspectives including: improving the investment climate, improving access to credit markets, improving the revenue for central and local governments, land as a social safety-net, improvement in good governance, and improved social confidence and self-esteem:

1.4.1 Improving the Investment Climate

Setting up or expanding a business requires space. Non-transparent, corrupt or inefficient land administration systems constitute a major bottleneck that makes it more costly for small or potential entrepreneurs to transform their good ideas into economically viable businesses. Investment climate surveys indicate that access to land was the main obstacle to conducting and expanding business by 57% of the businesses interviewed in Ethiopia, 35% in Bangladesh and 25% each in Kenya and Tanzania (Augustinus and Deininger 2005).

1.4.2 Improving Access to Credit Markets

Well-functioning land institutions and markets also improve the investment climate because the ability to use the easily transferable land titles as collateral reduces the costs of accessing credit for entrepreneurs, and also contribute to the development of the financial systems. Lending in many countries including Tanzania is greatly hindered by the lack of titled and easily transferable properties. This is a point that is now well realised and emphasised by the Tanzanian government.

1.4.3 Improving the revenue for central and local government

The increased demand for land resulting from economic development together with public investment in infrastructure tends to lead to higher land values. However, the lack of a well-functioning mechanisms to tax land means that the potential for society particularly local governments to benefit from these increases in land values is limited. It is much easier to tax land when property rights are formalised.

1.4.4 Land is a Social Safety Net

Soon after Independence, Tanzania realised that the country's development had three key enemies that is ignorance, disease and poverty. It was also promulgated that in order for the country to develop, four requisites had to be in place that is: land, people, a good political system, and good leadership.

Land is thus an important input in social and economic development particularly in a country like Tanzania where by the far the majority of households depend on the land for their livelihood. Access to land for example allows households to improve their food and shelter security at a cost that is much lower than government programmes. With increased food and shelter security, households can take on more risks to venture into non-farm enterprises.

1.4.5 Improvement in Good Governance

Since much of the wealth in developing countries is related to land and real estate, a system to administer this wealth that is efficient and transparent leads to higher confidence in the ability and legitimacy of the public system to deliver. This in turn leads to the confidence in the rule of law and the competence of the state. Improving land administration can thus contribute to broader public service reform. Satisfied property owners are key stakeholders in improving national accountability and transparency.

1.4.6 Improved social confidence and self-esteem

Secure property rights increase the social status of the owners, including enhancing their self-esteem. This builds confidence not only for the present generation but also for the future generations. This can clearly lead to higher investment levels or higher confidence in undertaking other economic and social activities and responsibilities

1.4.7 The Situation in Tanzania

Clearly, the use of property as collateral is just one angle that can be used in poverty alleviation. There are many other aspects in which property can play an important role in poverty alleviation

Although the advantages of clear property rights are well-known, improving the security of tenure and the property rights for millions of Tanzanians in rural and urban areas is a gigantic challenge.

Currently, conventional systems in sub-Saharan Africa do not function properly. In many countries less than 1% of the country is covered by the land titling cadastral systems.

In Tanzania, most of the rural land is not mapped. Around 2% of rural land is held under statutory granted rights of occupancy. This is in the main, land used for large-scale farming. Statutory land is granted by the government. With the ongoing privatisation exercise, a number of formerly parastatal-held large farms have been transferred through sale to the private sector.

Some 36% of the population live in urban areas, 80% of whom live on land holdings that had not been brought into the cadastral system. These areas are called unplanned or informal settlements. The majority of landowners in these areas have no official evidence of ownership such as a title. They enjoy their property rights in use but they cannot transact in them formally.

1.5 Government Policy towards Poverty Reduction and empowerment of the poor

There is general agreement within the international development sphere that all efforts must be made to fight poverty. Goal number one of the Millennium Development Goals (MDGs) is to eradicate extreme poverty and hunger. It has two targets. Target 1 is to reduce by half, the proportion of people living on less than a dollar a day. Target 2 is to reduce by half the proportion of people who suffer from hunger.

Tanzania is in the forefront of fighting poverty. The Poverty Reduction Strategy Paper (PSRP) (Tanzania, 2000) was developed as a medium term strategy for poverty reduction through broad consultation with national and international stakeholders. It commits the Government to ongoing efforts to reduce poverty, in the light of the long-term strategies outlined in the National Poverty Eradication Strategy (Tanzania, 1998) and the Tanzania Development Vision 2025 (Tanzania, 1999).

The first Poverty Reduction Strategy targets were similar to the Millennium Development Goals. The PRS provided a vehicle for increasing public allocations to priority areas where education and health featured strongly. The new strategy, the National Strategy for Growth and Reduction of Poverty (NSGRP, or MKUKUTA) put more emphasis on poverty-reducing growth.

The first phase of the Poverty Reduction Strategy (PRS 1) was implemented in the period of three years 2000/01-2002/03 and focused on the priority sectors identified as education, water, rural roads agriculture, HIV/AIDS and the judiciary. Despite the achievements of the PRS 1, the prevalence of income poverty is still high. Also, as alluded to above, indicators of income poverty showed increasing disparity between urban and rural populations, as well as across and within regions and districts.

Tanzania's intention to build on the strengths of peace, unity and self-esteem and to break with past weaknesses is drawn in the Tanzania Vision 2025 and the various reform programmes pursued in the last 17 years. Tanzania Vision 2025 expresses both hope and

determination in ridding the country of poverty, disease and ignorance, and enhancing good governance. It seeks to do so by achieving high and sustained economic growth at an average of 8 % p.a., halving abject poverty by 2010, and eliminating it altogether by 2025.

The recently promulgated National Strategy for Growth and Poverty Reduction builds on the Poverty Reduction Strategy Paper and has three pillars that is:

- Growth and reduction of income poverty
- Improvement of quality of life and social well-being
- Governance and accountability.

The Property and Business Formalisation Programme is conceived in the context of the NSGPR and fits into the millennium Development Goal one target one. Its main objective is to systematically transform the properties and businesses now held in the informal sector into entities held and operated within the formal sector in accordance with the law so as to provide the disadvantaged majority of Tanzanians an entry point to the formal market economy as well as lay the ground work for unleashing their dormant potentials for growth and increased participation in the modern market economy

Legislation such as the National Economic Empowerment Act 2004 are efforts towards creating a better environment for equitable economic growth. Moreover, since 2003 the government has laid special emphasis on the role that property can play to pull Tanzanians out of poverty.

2. CATEGORISING PROPERTY RIGHTS IN TANZANIA

The current property regime in Tanzania has evolved over a number of years and is a particular product of the land tenure system that was imposed during both the German and British colonial times; and as inherited and modified after independence. Broadly speaking, one can identify statutory tenure, customary tenure and public land.

2.1 Historical evolution of property rights in Tanzania

2.1.1 Property Rights during the German era

One of the major aims of colonialism was the control of resources in the colonies and in particular, land. Thus laws were passed that enabled the colonial government and foreign settlers to legally take over land and exploit it or direct its use as was deemed fit by the colonial government.

The Germans started showing interest in Tanzania in the 1880s and in 1895 an Imperial Decree declared all land in German East Africa to be unowned Crown Land vested in the German Empire. The only exception was where proof of ownership could be shown either through documentation (i.e. titles giving ownership to private persons, or legal persons), or, in the case of natives, through effective occupation. In April 1900 a circular was issued clarifying the extent of the dominion of the empire which was to be

determined by the established Land Commissions. Native lands would be considered to be such as long as land was occupied. Land Commissions were required to leave aside four times the land currently held by natives to cater for future expansion.

The Land Registration Ordinance of 1903 established a land registry system which allowed the registration of indigenous lands as long as they were located within the boundaries of the communities or villages the principal types of property rights established during the German era were as follows:

- Freeholds: granted mainly to European Settlers and arising from the conveyance of property through purchase/sale or public auction
- Leaseholds granted by the government
- Crown Land, that is unowned land as determined by the Land Commissions appointed by the governor; and,
- Customary Land Tenure, over land which was occupied by the native communities.

2.1.2 Property Rights during the British Era

Under the British rule, all rights in relation to any public land were vested in, and became exercisable by the governor in trust of the monarch. The first land tenure statute was the Land Ordinance of 1923. This land declared all land in the territory except the freeholds acquired before the passage of that law as being public land. All rights of this public land were placed in under the governor of the territory to be held as rights of occupancy for a certain duration. Freeholds and leases that had been granted by the German administration we inherited.

In 1928, the scope of the application of the Land Ordinance was extended in order to include the occupancy rights of native communities. Anyone holding land under customary tenure was declared a legitimate holder of the land holding it under a deemed right of occupancy.

Property rights under the British rule were as follows:

- Freeholds: granted during the German rule
- Granted Rights of occupancy: (long-term for 33, 66 or 99 years)
- Granted rights of occupancy (short-term, 6 years or under)
- Granted rights of occupancy (from year to year)
- Deemed rights of occupancy in urban areas, applicable to land held under customary tenure that became engulfed in urban boundaries
- Deemed right of occupancy outside urban areas: This was land held by most native communities
- Public land, that is, land that did not fall under any of the above categories.

It can be mentioned that in urban areas some kind of informal tenure was developing. This is land that was found in urban areas but could not be categorised as customary land or statutory land. In 1953, the colonial government proposed that customary tenure should be deemed to be extinguished once an area was declared a planning area, but this did not solve the problem of land that was not customary; nor did it propose what tenure would apply to land that would cease to be customary land but remain unplanned within the urban areas.

2.1.3 Land Tenure after Independence

The conceptual framework set up during colonial times was taken over by the independence government. The Land Ordinance 1923 continued to be the principal legislation on land tenure until 1999. Other colonial legislation such as the Land Registration Ordinance of 1954 also continued to be used. However some changes were carried out:

In 1963 all freeholds that had been granted by the German administration and upheld by the British administration were converted into government leases for a period of 99 years.¹ However, in order to streamline the land tenure system government leaseholds were converted into Rights of Occupancy in 1969.² This streamlined the system of land tenure, which recognised only Rights of Occupancy titles, either granted, or in the case of customary tenure, deemed granted.

The other area of concern soon after Independence, was the prevalence of feudal tendencies in rural landholdings as well as the spectre of absentee landlords in both rural and urban areas. The Nyarubanja Tenure (Enfranchisement) Act of 1965 enfranchised the Nyarubanja tenants in the parts of Tanganyika where the system existed³. This law was restricted in geographical extent and failed to address the many different forms of feudal tenure around the nation. As a result, the *Customary Leaseholds (Enfranchisement) Act*, 1968 was enacted three years later abolishing all types of feudal land holding in the country. In 1966, the Rural Farmlands (Acquisition and Regrant) Act of 1966 granted leases to tenants of land belonging to absentee lease owners, and in 1968, the Urban Leaseholds (Acquisition and Regrant) Act of 1968 did the same for tenants of urban land. Other relevant laws include the Coffee Estates (Acquisition and Regrant) Act 1973, the Sisal Estates (Acquisition and Regrant) Act 1974.

Thus all freeholds and enfranchisements were converted into leaseholds for a definite period under the right of occupancy regime. Thus all land became public land vested in the President as Trustee for the people. Property rights established after independence are:

- Granted rights of Occupancy (Long-term for 25, 33, 66 or 99 years)

¹ Freehold Titles (Conversion) and Government Leases Act 1963.

² Government Leaseholds (Conversion to Rights of Occupancy) Act 1969.

³ The *Nyarubanja* system was a feudal kind of land holding in the Kagera region whereby one person or institution owned a large tract of land (called the *Nyarubanja*) on which were tenants or fiefs.

- Granted right of occupancy (short-term, 6 years or under)
- Granted right of occupancy (from year to year)
- Deemed right of occupancy in villages within urban areas
- Deemed right of occupancy in villages outside urban areas
- Deemed right of occupancy in areas which are neither recognised nor registered as villages
- Public Land (Unowned land)

As pointed out above, there are tenures which are developing and are not well-captured by the law such as when customary tenure breaks down. Quasi-customary tenure or informal tenure develop. This is particularly the case in urban areas.

2.1.4 Land Law Reform

During the 1980s there was considerable confusion in the spheres of land tenure and administration. Complaints and land conflicts grew in number and the increased awareness of the land value led to the development of informal land markets. There was also the need for increased land tenure security for customary land holding. In 1989 a policy-making process was initiated aspiring at working out new land legislation. The government set up a Commission in 1991 to look into land affairs. After two years of intense research and discussion on matters of land tenure the Commission submitted its exhaustive Report in 1992. This crucial document called for the formulation of a land policy as a backbone for the formulation of the new legislation. In June 1995, the National Land Policy was published and formed the foundation for the new Land Laws (Tanzania, 1995).

2.1.5 The Land Act 1999 and the Village Land Act 1999

Together the Land Act and the Village Land Act form the basic land law for mainland Tanzania. The laws clarify many of the previously grey areas in the large body of legislation that they replace. They also define in law, the many procedures which had previously only been set down through administrative directives.

The structure of the land acts

Originally, the two land laws were drafted as one whole land legislation, but got split up because of its bulkiness. The Land Act should be seen as the chief legislation among the two, covering fundamental principles, such as classifications of land and definition of certain terms used in the acts. Furthermore, issues of mortgage as well as ownership between husband and wife are described only in the Land Act, although it is relevant for the Village Land Act as well. Other than these mutual issues, the Land Act covers land rights in general land, i.e. outside villages or reserved areas. This includes all urban areas. The Village Land Act, on the other hand, deals strictly with land within village areas. This includes the locally rooted systems for management and administration of village land, as well as land dispute settlement on village level.

In addition to the acts, a few other laws touch on issues of general and village land: the Land Acquisition Act 1967, regulates in which way the state are allowed to acquire private land, including land held by villagers; the Courts (Land Dispute Settlements) Act 2002 gives guidance on land dispute resolution; and the Forest Act 2002 enables villagers to declare their own village forest reserves on land within the village area. On top of these, the Local Government (District Authorities) Act 1982 and the Local Government (Urban Authorities) Act are crucial.

Land categories

The land acts separate land in three categories; general land, village land and reserved land. Transfer of portions of land between these categories is possible following stated regulations (Land Act 1999: section 4), (Village Land Act 1999: sections 4-5). Additionally, hazardous land is described (LA 1999: s.7), (VLA 1999: s.6) as portions of land within the three categories, being protected mainly for environmental reasons, or to protect people from danger. The law exemplifies hazardous land by mentioning mangrove swamps and coral reefs, wetlands and offshore islands, as well as land on steep slopes or riverbanks, which are likely to be exposed to erosion if not protected.

General Land

By definition, general land is described as consisting of all land which is neither village land nor reserved land. (LA 1999: s.2) All urban areas fall under this section, except areas that are covered by laws constituting reserved land, or that are considered hazard land. General land is governed by the Land Act and, hence, under the control and jurisdiction of the commissioner for lands. This ministerial key person has delegated much of the powers to the district councils and district land officers in the 141 districts. The definition of general land in the Land Act is supplemented by a statement, "*General land... includes unoccupied village land.*"

Village Land

Village land is declared as being the land falling under the jurisdiction and management of a registered village. As Tanzania consists of a vast countryside with only a few urban areas, most land in the country is village land. In order to fulfil the provisions of the acts, the village first has to acquire a certificate of village land. The certification procedure includes compulsory agreement upon the perimeter borders among neighbouring villages. When consensus is reached and the border is properly demarcated, a formal certificate of village land is issued in the name of the president, and registered in the *National Register of Village Land*. (VLA 1999: s.7), (Wily, 2003:25ff).

Each village is required to define three land-use categories within its own borders: 1) communal village land, 2) individual and family land, 3) reserved land. (VLA 1999: s.12) Reserved land in this context is to be understood as land set aside for future individual or communal use, and needs to be distinguished from the national land category, "*reserved land*", mentioned above. (Wily, 2003:28)

Reserved Land

Reserved land is defined as land being reserved and governed for purposes subject to nine listed laws. (LA 1999: s.6). These include: environmental protection areas, such as national parks, forest reserves and wildlife reserves, including marine parks are gathered, but also areas intended and set aside for spatial planning and future infrastructure development. (Wily, 2003:23)

Land ownership

One of the main advantages of the new legislation is the move to legally secure customary land rights. Having previously been vaguely defined as deemed rights of occupancy, according to the 1928 amendment of the Land Ordinance, customary land rights are now given equal status to granted rights of occupancy. For the first time, the Village Land Act provides for the possibility to acquire written and registered documentation of customary land rights. (Wily, 2003:22).

A title in village land is called a Customary Right of Occupancy, whereas in general land it is called a Granted Right of Occupancy. Within reserved land, both customary rights and granted rights can be issued, depending on the character and purpose of the reservation. Rights of occupancy within Tanzania are primarily issued to Tanzanian citizens or groups of citizens. Organisations, associations or companies interested in acquiring land are required to show that the majority of the shareholders are Tanzanian citizens. The only legal exception from the prohibition of allocating land to foreign companies or associations is for purposes of investment in accordance with the Tanzanian Investment Act, 1977. (LA 1999: s.19) Allocation of village land is primarily given to residents in the village. Also non-resident persons and non-village organisations may apply for a land right, but will then be submitted to certain conditions. (VLA 1999: s.22f), (Wily, 2003:36f).

Land titles according to the Land Act: Granted Right of Occupancy (LA 1999: part V, VI)

In areas outside of village land, granted rights of occupancy can be held by a single person, or a group of people, a company or an association. Granted rights of occupancy are mainly issued within urban areas, but can also be issued for general land in rural contexts, or within areas of reserved land. A significant difference between customary titles and granted titles is that the latter is always limited in time, having a maximum admittance of 99 years. According to the former directives, residential developments were allowed terms of 33 years, whereas commercial property and farms were allowed 66 years, and finally, 99 years were intended mainly for agricultural purposes. (Ndjovu, 2003:71).

Land titles according to the Village Land Act: Customary Right of Occupancy (VLA, s.18f, s.23)

Customary rights of occupancy arise when villagers are allotted, or in other ways get hold of land in accordance with the customary law applicable in the area. Full customary rights exist equally, regardless whether written certificates are being issued, or not. (Wily, 2003:22) In order to formally register someone's interest in land, the land has to be adjudicated. This means to thoroughly investigate and confirm the tenancy of the plot, as belonging to the claimant. The law does not require the borders to be surveyed, measured or mapped; instead a written description, or a simple sketch explaining the area with the help of natural existing items, is enough to provide legal validity. (Wily, 2003:26) Customary rights of occupancy are, contrary to granted rights of occupancy, without limit in time.

The legislation grants land security and legal recognition of tenancy to every land-holder regardless of formal certification. (LA 1999: s.4(3)) It is, though, only through the holding of a registered Certificate of Customary Right of Occupancy, that the landholder can make factual use of all the extended potentials that the new legislation seeks to provide. The Mbozi Pilot Project aimed at pioneering the granting of Certificates of Customary Occupancy is described later on in this paper.

2.2 The Right of Occupancy System

The prevalent form of land tenure outside customary tenure is the Right of Occupancy system. The first definition of the Tanzanian right of occupancy is to be found in the Land Ordinance (Cap 113) of 1923⁴ and is as "*a title to the use and occupation of land*". When this definition was criticised by the League of Nations for not sufficiently recognising and protecting the land rights of indigenous peoples, a second, more precise, definition was given in the Land Ordinance of 1928⁵ where it was stated as, "*the title of a native or a native community lawfully using and occupying land in accordance with native law and custom*". (James, 1971:96f).

Since then, a dual system of land tenure exists in Tanzania embracing *deemed rights of occupancy*, which allowed natives the right to land according to their customary laws, and *granted rights of occupancy*, which secured mainly foreign settlers and companies well defined and legally protected rights to land according to a British model.

The deemed rights of occupancy, though, remained only declaratory, and was neither brought within the public sector of the land tenure structure, nor explicitly mentioned in any law until the current legislation was passed in 1999. (Ndjovu, 2003:76), (James, 1971:97) From the current the Land Acts, a right of occupancy is to be understood as "*a title to the use and occupation of land, and includes the title of a Tanzanian citizen of African descent...*" or a community thereof "*using and occupying land in accordance with customary law.*" (LA 1999:2), (VLA 1999:2)

The right of occupancy system in its statutory form is built on the leasehold principle. The carrying idea is that the *radical title*, i.e. the ultimate ownership and control of land,

⁴ Ordinance No. 3/1923

⁵ Ordinance No. 7/1928

belongs to the community, entrusting the government its legal instruments. (Ndjovu, 2003:76). This is clearly stated in the Land Act 1999 that: “*All land in Tanzania is public land vested in the President as a trustee on behalf of all citizens*”. Some officers have translated this to mean that all land belongs to the President, and this many times has governed their attitude towards private or community owners of land when such land is deemed to be required for public purposes.

The right of occupancy system shows similarity to a leasehold system by granting rights to use the land for a fixed term of certain duration. Three main durations were given, depending on the use of land. For residential development, 33 years; for commercial property and farms, 66 years; and for agricultural purposes, 99 years (Ndjovu, 2003:71), although this is not usually followed in practice. The decision to offer 33 or more years seems to be discretionary. The Village Land Act 1999 introduces infinite duration for villagers in the countryside. (VLA 1999:27)

Keeping land under the radical title of the central government allows it to ascribe conditions to the use and maintenance of land. This is meant to avoid undesired land speculation or abuse of property rights. A primary condition in order to keep the accorded right to land is, that the land must be under continuous utilisation. (LA 1999:34, VLA 1999:29) This condition has, also traditionally, been imperative for the security of tenure.

2.3 Customary Rights

Customary law in Africa is the non-formal complex of codes of behaviour and social control that have guided rural life in tribes and societies from generation to generation. These laws vary among societies and also show local differences between villages within the same tribe.

It is made up of fragments of rules, customs and taboos embedded in the tradition and comprises practical knowledge about methods of land management, procedures for dispute settlement, rules for social privileges and obligations within the society, as well as rules for leadership succession et cetera. (Ndjovu, 2003:75) Significant for customary laws is the oral tradition, whereas written documentation has not yet been fully accepted.

Customary laws may seem conservative in preserving old manners and ethics, but they are also dynamic through their ability to transform over the years. (James, 1971:61f). The Colonial concept that customary tenure was static, communal and non-monetary ignored a lot of circumstances such as the introduction of cash crops where customary tenure had to adapt.

Although the official land legislation in Tanzania has formally recognised customary laws since the 1928 amendment of the Land Ordinance, whereby holders of customary tenure were considered to have a deemed right of occupancy directions on how to deal with these customary laws have never become incorporated in any written legislation, and have therefore often been neglected by the officials (James, 1971:96f). Indeed, when it comes to urban areas, there has always been an assumption that customary tenure

ceases the minute an area is declared to be a planning (urban) area. Although the position was cleared by the courts in the 1980s, the confusion in the minds of actors and officials is still there and can work adversely for low-income property owners in urban and peri-urban areas.

Thus customary law means any rule, custom, traditions and practice that is established by usage and accepted as having the force of law by the community. Such customary laws are fully recognized by the Village Land Act as long as their practice do not conflict with the National Land Policy 1995, or in any other respect, works discriminatively.

Security of tenure and Land Value under Customary Tenure

Except for a few areas in Tanzania, land has always been abundant. Every young family was allotted as much land for cultivation as they could clear and manage in the vicinity of the village. (van den Brink, 2003:6) The prevailing practice was either shifting cultivation, where old fields after some years of cultivation were left fallow in order to recover, or transhumance, requiring a more mobile lifestyle. This way of farming brought about a flexible attitude towards the holding of land and formed the base for the traditional land-rights system. Instead of emphasizing the perpetual ownership of the plot itself, it was the temporary occupation, the efforts laid down in the farming, which created security of tenure. (Ndjovu, 2003:75) The abundance of land, together with the traditional belief that land was given by God for free to all men, caused the view that land had no economic value. Instead it was the productive efforts made upon the land that was important (James, 1971:62), (Ndjovu, 2003:74) Out of these traditional beliefs the widely used concept of *unexhausted improvements* has come. The concept includes improvements of many kinds, which invariably increase the productive capacity, the utility or amenity of standing crops or growing produce⁶.4 (Ndjovu, 2003:74)

Traditionally, land security is related to the idea that land value is created through labour. Security of tenure comes namely with continuity of cultivation. Abandoned fields would after some years be returned to the village, in order to be allotted anew to someone who could make better use of them. On top of the individually used land, being a part of the village also included equal and non-exclusive rights in the village commons. For every village, there are locally adapted rules and customs, many of them inherited from previous generations, on how to deal with the common areas.

Customary laws normally recognise exchange of land between land-holders within the same community. When involving outsiders, the exchange is sometimes surrounded by restrictions, ranging from outright prohibition of sale to outsiders, to requiring the fulfillment of certain conditions, for example to join the community. (James, 1971:64ff)

⁶ The following assets as example of unexhausted improvements, (from First Schedule of the Land Regulations 1948): farm buildings, fencing, water burrows, trees or live hedges, walls, wells, reclamation of swamp land, road making, bridges, clearing land for agricultural purposes; water boring, water races, sheep or cattle dips, embankments or protective works of any kind, long-lived crops, water tanks, irrigation works, fixed machinery, reservoirs, dams of permanent nature etc

Changes within customary land tenure

In areas where perennial cash crops are cultivated, a tendency towards recognition of individual and lineage proprietary land rights tends to occur. This development disrupts the traditional pattern of land use and disturbs the community's power to allocate land. (James, 1971:62f) The same trend is also unfolded in areas where land has become scarce. Under such circumstances, land acquires an intrinsic value, and what James has called: "*a development of a private sector in customary law*" is taking place. (James, 1971:63). To some extent, these changes prompted the formulation of the National Land Policy and the subsequent land laws. On the other hand, changes in the nature of customary tenure creates a vacuum when this change cannot easily be fit into the existing tenure categories. Thus, vague tenure types such as quasi-customary or informal tenure arise. There is need to capture such changes to quickly fit them into proper tenure categories.

2.4 Women and Property Rights in Tanzania

Women make up the majority of citizens in both rural and urban areas in Tanzania (Box 1). The kinds of discrimination against women's access to property exist in traditional societies in Tanzania. Women's claim to land within customary systems is usually through husbands or male relatives. Such rights are known as "Secondary" rights. Other holders of secondary rights include migrants, pastoralists and young persons. Such rights, are of uncertain duration, are not well-defined and are subject to change, and are based on maintaining good relations between parties. Women may hold land for use. Indeed they are the main managers of land resources. But their ownership rights are restricted. In most societies women are not allowed to inherit land

BOX 1: WOMEN IN TANZANIA

- **National Population:** Males 16,829,861; Females 17,613,742.
- **Urban Population:** Male: 3,897,182; Females: 4,046,379.
- **Rural Population:** Males: 12,932,679; Females: 13,567,363
- **HBS:** Female Headed Households, up from 18% in 1991/92 to 23% in 2000/01
- **2002 Population census:** 33% of all Households, female headed

Tanzania has taken several steps to improve women's rights to land. The National Land policy 1995 recognised the existence of discrimination of women in matters related to access to land and asserts equality between men and women, and declares land to be a constitutional right. Both the Land Act 1999 and the Village Land Act 1999 emphasise that the right of every woman to acquire, hold, use and deal with land should be to the same extent as subject to the same restrictions as the rights of every man. Disposition, mortgage, assignment or transfer of land or matrimonial home requires the consent of a spouse or spouses. In surrendering or re-granting land under customary tenure, the rights of women must not be compromised under the village Land Act. Affirmative action in favour of women is emphasized on bodies that make decisions on land matters such as the National Land Advisory Council and Village Adjudication Committees. Village

Councils are prohibited from discrimination against women when allocating land. Customary law is rendered null and void where it operates to discriminate against women. Nevertheless, activists feel that the retention of reference to customary laws in the land acts still provides room for discrimination.

While the policy and laws prohibit discrimination, deep-rooted beliefs and customs cannot be quickly done away with, thus the need for public education campaigns and even positive action. A recent study in unplanned areas where formalisation of property rights is taking place found that most property is registered in the names of males even in the case of marriage.

Numerically, there are more women than men, but evidence from the informal settlements in which residential licenses have already been issued shows that the number of residential licenses, which have been registered in male names is large compared to number of licenses which are registered in female names. Taking the available data from the Kinondoni Municipal Council, 65% of the licences have so far been issued in the name of men, 30% in the name of women and 5% in the names of both men and women, or family members (Table 4).

Table 4 Residential Licences issued disaggregated on a gender basis, Kinondoni Municipal Council (9/5/2006-2/9/2006)

Licence issued in name (s) of	Numbers	Percentage
Men only	8831	65
Women only	4015	30
Men and women/Family Members	622	5
Total	13468	100

Source: Project Office, Kinondoni Municipal Council

It will be clear that more work is required to ensure equality of access to and management of land.

3. IMPEDIMENTS TO THE FULL REALISATION OF BENEFITS FROM PROPERTY RIGHTS

Tanzania has some advantages compared to some other countries in the sense that since land is vested in the President as a Trustee for all Tanzanians, access to land should be relatively easy. However, there are many impediments preventing landowners from realising the full benefits from property rights.

3.1 Most property is not formalised

The first is that most property rights are not formalised. While titling is not the only way of formalisation it is considered to be the highest form in a continuum of various forms of and levels of formalisation/security.

We have seen that only about 30 percent of urban property is in planned areas, where it carries a certificate of occupancy or at least an offer for a right of occupancy. The rest is in unplanned areas, where land development is haphazard, and many properties may not get a long-term right of occupancy unless there is some form of regularisation. Even in the case of the 30 percent who are in planned areas, such property may be inaccessible for lack of land servicing; it may be extra-legal because many ownership and land use conditions are violated or not met. In the rural areas only 2 percent of rural land has certificates of title.

3.2 Poor Accessibility and Servicing

Although there has been major investment in infrastructure, much of the country is still poorly accessible mainly for lack of perennially passable roads. The data on the status of national roads demonstrates this (BOX 2)

BOX 2: Status of Roads in Tanzania

The road network in Tanzania comprises approximately 85,000 km of roads categorised into five groups: Trunk road network; Regional roads network (both approximately 35,000 km); urban roads; district roads and feeder roads estimated to be around 50,000 km (Table 5).

Table 5 Tanzania Road Network data

Road Class	Length (km)	% of total roads
Trunk	10,230	12
Regional	24,700	29
Urban	2450	3
District	20,000	24
Feeder	27,550	32
Total	84,930	100

Source: Ministry of Works

Trunk and Regional Roads are under the jurisdiction of TANROADS, a newly constituted government agency under the Ministry of Works. TANROADS is mandated to design, construct, improve and maintain these roads, while the MOW is responsible for strategic planning of the network, and also for the development and regulation of the operation of road safety.

District, urban and feeder roads are under the administration of local authorities, under the MRALG. In this Report, the term District roads is used to include rural, urban and feeder roads, and these are roads that link district headquarters with ward centres, important centres within districts and important centres to higher class roads.

The bulk of district roads are, either earth tracks or, gravel roads and are in poor conditions requiring rehabilitation. Some 99% of these roads are unpaved, and only 8% are in good condition (Table 6).

Table 6 The Condition of District Road Network in Tanzania

Type	Good		Fair		Poor		Total	
	km	%	km	%	km	%	km	%
Paved	40	1.0	98	1.0	365	1.0	500	1.0
Unpaved	3955	99.0	9657	99.0	35888	99.0	49500	99.0
Total	3995	8.0	9755	19.5	36250	78.5	50,000	100.0

Source: URT 2001

Clearly much of the national property is not easily accessible.

Property that is poorly serviced or cannot be easily reached cannot yield its optimum benefits to property owners. This is even more so in urban areas where, as has been shown above 80% of property owners are in unplanned areas which are poorly serviced and property is not easily accessible (Box 3).

BOX 3: THE CASE OF DAR ES SALAAM ROADS

Many roads are in a poor state, although rehabilitation work is going on for some of the major thoroughfares. However, many neighbourhoods, be they planned or unplanned, remain inaccessible especially during the rainy seasons. There are only 1,200 kilometres of roads in Dar es Salaam. Of these, 200 kilometres are arterial, and 1,000 kilometres are collector. Only 450 kilometres are paved. The rest are gravel rolled or earth compacted. Only about 10% of the roads are in good condition while those, which are in very poor condition include most local roads. Roads comprise less than 0.5% of the City's area, and even when road reserves are taken into account, the percentage of land used as roads rises to only 2.3% as opposed to the normal proportion of 15%. Considering that ideally each plot should front to a road, a lot of land in Dar es Salaam has no direct access to roads. This reduces accessibility and lowers property values

Accessibility is also made worse by the lack of street names and house numbers that is characteristics of many urban areas in Tanzania.

3.3 Poor Property/Land Information Systems

Mollel (2002) notes that the most serious shortfall about land as a basic resource in developing countries is the lack of records on ownership, which puts all other major economic resources in jeopardy. He further points out that since land is immovable, it can be used as an address, collateral, a credit worthiness barometer, and an environmental safeguard.

Lack of information on property emanates from the fact that much of the land is not surveyed or registered. There is highly limited and readily available information of the details of the various property parcels, their ownership. A lot of the value of property remains unrealised because of a poorly working property market. Property exchange transactions are usually concluded secretly and this makes it difficult to gauge what the true value of property is. To know this you need a transparently working property market system.

Knowledge of the laws related to property is limited and in some cases it is not known which law is in application. Institutions dealing with property are not well-known to the people and sometimes it is not clear which institution is legally empowered to conclude a deal. For example, people transacting in land may conclude their deal at the office of the Mtaa Chairperson or Ward Executive Officer. This deal may not be recognisable at higher levels on the level of the Ministry of Lands. Where people transact in land in unplanned urban areas, it is not clear whether provisions and procedures under the Land Act 1999 apply.

3.4 Poor transferability

Where land is not registered transfer may be swift, but then there is the risk of entering a bad transaction. Transferring statutory property can get embroiled in bureaucracy

involving the Ministry of Lands and other authorised officers. In general, the official system is not for property transfer, particularly if the property is undeveloped or that is only partially developed. Powers of managing land are still heavily vested in the Ministry of Lands as opposed to local authorities, while local authority themselves lack the capacity to oversee an efficient land management regime.

3.5 Institutional Impediments

These include a land administration system that is generally centralised. This means many transactions take long before they are implemented or sanctioned. Continued centralisation of land administration powers means that capacity is not being built at the lower levels within local authorities where powers should be concentrated.

Lack of institutional finance is a major bottleneck in the workings of the property markets. Ever since the collapse of the Tanzania Housing Bank in 1995 there has not been a major institution dedicated to the supporting of property acquisition or development. As a result many would-be property owners acquire land first and put up their properties slowly over along period sometimes running to twenty years. A survey into many neighbourhoods will reveal many incomplete vacant or unoccupiable houses or many that are occupied without being complete. This is uneconomic since a lot of capital lies idle without being utilised. Lack of property institutions such as estate agents is another problem that leads to the non-optimal realisation of benefits from property.

4. THREATS TO PROPERTY RIGHTS

In order for property rights to work for the poor they must be secure. This does not just, or always mean individual titling and registration although titling is the highest form of security. Property rights can be the subject of numerous threats. Increased demand from population growth and from social, economic and technological developments brings pressure on customary land, the commons and range lands, leading to possible conflicts. Other threats include the following:

- Vague definitions of property rights
- Compulsory Acquisition
- Delienation and enclosures
- Urban expansion
- Unrealistic development conditions and standards

4.1 Vague Definitions of Property Rights

The land tenure system that subsists in Tanzania was inherited. One of the aims of the colonial land tenure regime was to acquire land from the natives at little or no cost and to enable the government to always be in the position to get land when this was deemed necessary. Thus, to some extent, property rights are vague.

For example, the definition of customary tenure has always, and remains relatively vague and devoid of dynamism.

The current land tenure regime in Tanzania with its impacts on both rural and urban areas emanates from the impact of colonialism. Although it is accepted that indigenous people had their own land tenure systems, German and later British colonial rules introduced the concept of land being held in the state. The British Land Ordinance of 1923 declared all lands in the country to be public lands “under the control and subject to the disposition of the Governor to be held *under a right of occupancy* and no title to the occupation and use of any such lands would be valid without the consent of the governor” (s.2 and s.3).

The omission of customary rights from the Land Ordinance brought criticism from the Permanent Mandates Commission of the League of Nations, so that in 1928, an amendment was deemed necessary. This expanded the meaning of the right of occupancy to include “the title of a native or native community lawfully using or occupying land in accordance with native law and custom”.

It has been argued that although the Land Ordinance recognized customary titles, (which came to be known as deemed rights of occupancy) the definition was only declaratory. It did not define the rights (and obligations) of landholders as against the state, nor were these rights entrenched in law in any form. The lands occupied by indigenous people remained public lands under the control and subject to the disposition of the state. This means customary titles were recognized but were not protected. In effect, they were held at the discretion of the Governor (and later the President), who could withdraw his consent as and when he found it suitable.

This has had impacts on land at the periphery of urban areas, which is under pressure for development. The declaration of such areas to be planning areas immediately brings about an uncertain tenurial status as far as customary tenure is concerned. Indeed, in 1953 the colonial government construed that customary tenure was extinguished after an area was declared to be a planning area, and issued a circular to that effect.

Lack of security of tenure in the case of customary tenure was a deliberate action of the colonial government, which declared all land to be public lands vested in the Governor (and later, the President). Insecurity of tenure is not an inherent factor of customary tenure. However, in view of the insecurity introduced after colonialism, observers came to see customary tenure as being inferior to statutory tenure. Progress was seen as moving away from customary tenure to statutory tenure. Thus even up to this day customary tenure seems to be viewed as being transitional to more advanced forms of tenure.

The Land Ordinance saw customary tenure as the use of land by a native community according to native law and custom. Colonial policy saw this as being communal, and the complete negation of individual land ownership. This definition did not include any dynamism such as the movement of people from one area to the other; or the changing in the modes of managing land, as a result of changed socio-economic circumstances.

According to the Land Act 1999 a “customary right of occupancy” *includes* a “deemed right of occupancy”. This implies that customary tenure is more than the definition of a deemed right of occupancy, which latter is defined 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”

Note that there is no geographical delimitation of the applicability of customary tenure in the above definition.

A number of recent writers on urban development in Dar es Salaam (such as Kombe (1995), and Lupala (2002)) recognize at least two types of tenure outside the granted tenure:

- Customary tenure, which they see as being clan land, where land is inalienable, or can only be transferred after very wide consultation with, and consensus of, clan members. This type of tenure is slowly being replaced.
- Quasi-customary tenure, where land is alienable. This is seen as the tenure recognised by local administrators and leaders, elderly indigenous inhabitants, and adjoining landowners (Kombe, 1995). Consultation is less wide compared to the case of customary tenure. The right to sell lies mainly with the individual landowner. This is the most common form of tenure in informal settlements in major urban areas such as Dar es Salaam.

From these two categorizations, it can be concluded that a third category exists. This is informal tenure. This is where transaction in land no longer involves customary requirements such as the consent of a larger family (clan), or “elderly indigenous inhabitants” but could be between any land seeker, and anyone who purports to own the land. The Land Act 1999 seems to hold the view that there is customary tenure as well as other forms of informal tenure. (see BOX 4)

BOX 4: VAGUENESS IN DEFINING CUSTOMARY TENURE

In a case involving the expansion of a major highway in Dar es Salaam in 1996, invocation by landowners whose houses were built in an unplanned area and were earmarked for demolition, that they held their land under customary tenure, was rejected by the attorney General because, *inter alia*, the claimants were not indigenous to the area (i.e. they came from other parts of Tanzania). Besides, they had no evidence of ownership of their land. In other words, the government seems to recognise customary tenure among a community composed of the same tribe, or may need evidence that the ‘stranger’ to that tribe has been initiated into it. In another court case in 1998 (*Mwalimu Omari and Ahmed Baguo v Omari Bilal*, Civil Appeal 19 of 1996), the court ruled that customary tenure applied only in rural areas. In urban areas, it applied only to registered villages existing in these urban areas. Anyone who owns land in an urban area without a granted right of

occupancy was declared to be a squatter without title. This ruling turns the majority of landowners in urban areas into squatters (although the Land Act 1999 has altered this situation). Nevertheless, the Court itself is not of one stand. Going through a number of land cases at the Registrar of the High court, it is evident that many judges recognize unsurveyed land to be land held under customary tenure. The Courts therefore have themselves wavered, sometimes in favour of customary tenure in urban areas, and sometimes against it. Likewise, the definition of customary tenure has not been explicitly propounded by the various authorities.

Customary tenure has moreover been suffering from the onslaught of urbanisation and government planning schemes, and has been replaced by neo-customary and informal tenure.

Other forms of vagueness may arise when the period for the statutory right of occupancy expires; or when land continues to be held when development and occupancy conditions are being violated; or where people occupy land which potentially belongs to the government (eg a road reserve) and the public authorities take no action. An example is the expansion of the Ubungo-Mlandizi Highway, when, in April 1997 property owners, some of them having certificates of occupancy, and others having been in the area for decades, were removed by the government without compensation since they were found to be occupying a road reserve (Ndjovu, 2003).

All this implies a situation where property rights can exist in a vague framework. This point is more prevalent in urban and peri-urban areas where land is acquired informally. It is difficult to protect such rights.

4.2 Compulsory Acquisition

All countries in the world have legislation which allows the government to acquire land from its owners compulsorily. In Tanzania this is the Land Acquisition Act 1967, although provisions related to land acquisition exist in the Land Act 1999, the Town and Country Planning Ordinance 1956, and other legislation.

The Land Acquisition Act empowers the President to acquire land for public interest but these public interests, which include the acquisition of land for town planning purposes, are vague. The President must give a six weeks' notice to landowners whose land is earmarked for acquisition, but this can be shortened if the President so wishes. The notice is supposed to be delivered to individual landowners, but if the President does not do this, this does not make land acquisition invalid as long as notice has been put in the government Gazette. Compensation is payable and this must be fair and prompt, but there are numerous complaints from the public against both the amount of compensation and delays in its payment.

In most cases, property owners are not put in an equivalent position and resettlement is rarely contemplated. Loss of land particularly at the urban periphery or where land is required for the expansion of infrastructure is a major threat to property rights.

The government has put in place remedial measures such as increasing the amount of compensation as provided for under the Land Act 1999, but there is need to look at this whole issue anew to minimise the possible degeneration into poverty of former property owners, and to address resettlement issues. A proper definition of property rights, adequate and prompt compensation and resettlement, are key ingredients of a pro-poor land acquisition system.

4.3 Delienation and enclosures

Many times public authorities have to take measures to exclude the general public from certain lands. Such action may be required for investment purposes, such as when villagers lose land to mining investors or investors in large-scale agriculture. Alternatively such action may be required for conservation purposes such as declaring and delimiting national parks, game reserves, forest reserves, water catchment areas, wetlands, road reserves and so on. This could mean infringement on property rights of neighbouring communities. In order to minimise the adverse impacts, the government is adopting a Participatory Natural Resources Management Approaches.

4.4 Town planning and urban expansion

Tanzania is urbanising fast. Urban areas are growing both in terms of population numbers as well as in terms of areas covered. Urban expansion has connotations for property owners who get included in urban boundaries or those who remain at the periphery of the growing urban areas.

Urban expansion and declaration of peri-urban or village lands to be planning areas have moved together. In many cases, the town planning has led to the displacing and dispossessing of indigenous customary landowners surrounding many urban areas. Until recently, the boundary of the city of Dar es Salaam had some forty registered villages within it⁷. There are however, many traditional villages which are not registered villages but which are under intense pressure for urbanisation. There are also many areas which were formerly villages but which have now grown to high densities on the basis of customary tenure transactions. In the peri-urban areas, indigenous inhabitants occupying farmland are being displaced and are moving further out, pushed by various pressures, including market pressures. Inhabitants from the City have been acquiring land usually through purchase from the original inhabitants. A typical scenario is for such an inhabitant to buy farmland from the original occupant owning land under “native laws and customs”. Many indigenous landholders, faced with the pressure of urbanisation on the one hand, and poverty on the other, sell their landholdings wholly as a farm (*shamba*), or in small pieces at a time. The sale will many times be evidenced by a sale agreement usually witnessed by local government or political party leaders, or respected elders. Transfer of land between natives does not require the consent of the Commissioner for Lands⁸. On the strength of the sale agreement, the purchaser may get a land officer to

⁷ All villages in the City of Dar es Salaam have been deregistered.

⁸ Under the Land Ordinance, 'native' is defined to mean 'any person who is a citizen of the United Republic

sanction the survey of the plot and issue a letter of Offer. Once the survey is done and a deed plan prepared, a certificate is issued. This land will have moved out of the realm of customary tenure. However, it must be mentioned that land that moves out of customary tenure to statutory tenure through this process is highly limited. In most cases the land that is bought or otherwise acquired outside a grant for a right of occupancy remains under an informal kind of tenure.

Evidence put before the Presidential Commission of Inquiry into Land Matters of the early 1990s from villages surrounding Dar es Salaam all told the same story of the expanding city consuming surrounding lands, with a good number of the original landowners getting displaced (Tanzania 1994:76).

Declaration of areas to be “Planning Areas” under the Town and Country Planning Ordinance 1956 is another way through which traditional landowners get displaced. Once an area is so declared, a process gets in motion, which makes it impossible for the traditional landowners to hold onto land in the customary sense. They may or may not get compensation as a result of the implementation of a town planning scheme. Where compensation is paid, the universal complaint is that it is inadequate and is rarely paid on time. It does not put the affected person into a position of “equivalence”. In some cases, traditional landowners are offered a piece of land on their now planned land. Many are unable to meet the new land use conditions, and may have lost part of the input to their subsistence from agriculture. Thus they sell the plot(s) allocated to them and move further out of town.

Town planning, therefore, has traditionally meant the expropriation of customary lands and the extinction of customary land rights, without necessarily putting other rights in place. In the mid-1980s, the judiciary addressed this issue. In the case of *Nyagwasa v. Nyirabu* (1985) the Court of Appeal made a tentative statement that it was not prepared to accept that the declaration of a planning area alone extinguished customary titles. This was upheld in a subsequent case of *Kakubukubu v. Kasubi* (1991), where the courts decided that:

In any event, a Right of Occupancy under customary law does not become void merely upon an area being declared a planning area...Other statutory provisions must operate to occasion such an eventuality (Tanzania, 1994).

All the same, the full implication of these decisions on the security of customary tenure in urban and peri-urban areas however has been minimal and the planning system continues to operate as if customary tenure ceased to exist once an area was declared to be a planning area.

4.5 Difficult development conditions and unrealistic standards

When land falls under statutory conditions development conditions apply. For example, those who get long-term certificates of occupancy for residential purposes are obliged to

and who is not of European or Asiatic origin or descent'.

submit their development plans to local authorities within six months and to have completed the building in three years. This is the case whether land is serviced or not and despite the lack of development finance. Many households cannot meet these conditions and there is ample evidence that many take many years to complete the development of the plots. This potentially puts many property owners especially those in low income categories in a situation where they could lose their property rights, since after the expiry of the period property owners will be in breach of development conditions and can have their titles revoked.

Moreover quite a number of planning standards are on the high side making it difficult for the poor to hold onto land. An example is the minimum plot size of 400 square metres as provided for under the Town and Country Planning (Space Standards) Regulations of 1997. These mean that the minimum planned plot is too expensive for the poor to afford, while, because such standards lead to the extensive use of land, more of peripheral land owners get displaced. If such standards are applied in unplanned areas earmarked for regularisation, they can lead to considerable displacement of the property owners in such areas.

Land parcels in most of the older inner city unplanned areas are as a rule below this minimum size. Plot sizes recorded during the implementation of the residential licences project for the Kigogo Ward in Dar es Salaam are as shown in Table 7.

Table 7 Plot Size ranges, Kigogo Unplanned Settlements

Plot Size range (m²)	No. of Plots	Percentage
Up to 99 m ²	380	8.0
100-199 m ²	1779	37.4
200-299 m ²	1362	28.6
300-399 m ²	642	13.5
400-499 m ²	310	6.5
500-599 m ²	125	2.6
600-699 m ²	53	1.1
700-799 m ²	26	0.5
800-899 m ²	21	0.4
900-999 m ²	14	0.3
1000 m ² and above	50	1.0
Total	4762	99.9

Source: Project Office, Kinondoni

From Table it will be seen that 87.5% of all the plots are under 400 m² and 98.2% are under 800 m² and are therefore not eligible for subdivision. Clearly the standards being aimed at are unrealistic if the property rights of the poor are to be safeguarded.

5: GOVERNMENT INITIATIVES AND CASE STUDIES

Ever since the passage of the Land Laws as well as the focus of the government on property as a key faculty in attacking poverty, there have been numerous initiatives that have been undertaken. We highlight two, one in the Mbozi District in Southern Tanzania, being an initiative undertaken under the Village Land Act 1999; and the other being the Formalisation of Land in unplanned areas in the city of Dar es Salaam undertaken under the Land Act 1999.

5.1 Piloting the Village Titling Process: the Mbozi District example

The first pilot area to implement the Village Land Act is the Mbozi district in the Mbeya Region of Tanzania. In order to initiate the implementation process, a team from the village Land Act Implementation task Force spent four weeks from April to May 2004 in the Mbozi district holding seminars, training and talking to villagers

Mbozi is a district located in southern Tanzania. It was selected as a pilot project site because of the availability of recent aerial photographs. During project design it had been decided that an alternative to conventional cadastral survey would be used. That alternative methodology was the use of aerial photographs. The result was such a success that it has become the standard model for other districts.

The involvement of stakeholders in the design, adoption and implementation of land reforms is crucial as emphasized in the National land Policy. Participatory approach has been the cornerstone of success in many community development programs. It was also adopted with success in the pilot project to issue Customary Certificates of Rights of Occupancy – CCRO in Mbozi District. The process leading to the issuance of CCROs started with public awareness meetings. Initially sensitisation began with the administration at District, Ward and Village levels, finally reaching the village assembly. Following the sensitization meetings, neighbouring villages demarcated their own village boundaries.

Land surveyors were called in to record the agreed demarcated boundaries. A cadastral survey plan was prepared and approved following which the Commissioner for Lands issued Village Land Certificates, the principal document that supports land administration in the village. The survey of the boundaries of farms for individuals in the village was done by photo interpretation of rectified, geo-referenced Roth-photos. The information collected in the field was transferred into a computer database where coordinates of boundary points were extracted and parcel areas calculated. Surveyed 451 parcels were each given a number, which, in the database, linked the parcel with the name/s of the occupier/s. A model village land registry was constructed and equipped in Halungu village, Mbozi District. Applications for Customary Certificate of Occupancy - CCROs, compiled by the village council are presented to the village assembly for consideration.

The Village Assembly is the authority responsible for land allocation in villages. It is the forum that brings together stakeholders to consider applications for CCROs to ensure that individual and community rights are not infringed. CCROs for the successful applicants are prepared incorporating a deed plan based on information from the database. The

application of computer technology played an important role in making Mbozi pilot project a success. Photo interpretation and computerized database were also applied in an urban environment to get an inventory of properties in unplanned settlements (Kifanga, 2006).

Some villagers in Mbozi have already benefited by using their Customary Certificates of Rights of Occupancy to access financial facilities.

5.2 Property Formalisation in unplanned areas in Dar es Salaam

Much of the land in urban areas of Tanzania is obtained from the informal sector and has no legal documents. In realisation of this, the National Land Policy stated that such land owners will not be cleared but will instead be secured in law and regularised. The Land therefore included provisions addressed to such area and where the local authorities were supposed to give land owners in unplanned areas, residential licences, and the landowners themselves were to be recognised as legal occupiers of land with a year to year tenancy, unless they were occupying hazardous land or land required for public services.

In 2004, the Ministry of Lands in collaboration with the Dar es Salaam Local Governments Authorities, and with the assistance of the World Bank started implementing the residential licences project. This is in part, implementing the provisions of the Land Act 1999. It is also a response to government policy, which seeks to encourage the use of land in poverty reduction strategies.

The issuing of Residential Licences was formally launched in the Manzese ward in Dar es Salaam on 9th May 2005. Eleven property owners (6 men, 5 women) were issued with Residential Licences and from thereon property owners have been reporting to Municipal authority offices to submit application forms and to collect licences.

As of November 2005 about 220,131 properties had been mapped (identified) and their details taken and by August, 2006, 52,000 applications for residential licences had been received, and 38,000 licences had been issued (collected). See Table 8 which also shows the amount of revenue collected

Table 8 Licences issued and revenue collected 9/5/2005-19/08/2006

Municipality	Applications for Licences	Licences prepared	Registered Licences	Collected Licences	Revenue Collected		
					Land rent and stamp duty	Licence fees	Land Rent 2005/2006
Kinondoni	17,984	16,286	16,286	13,432	60,970,820	90,238,922	6,942
Ilala	14,772	13,063	13,063	12,101	61,500,049	73,680,000	
Temeke	19,243	14,104	13,614	12,587	73,710,537	95,691,486	3,416,472
Total	51,999	43,453	42,963	38,120	196,181,406	259,610,408	3,423,414

Source: Project Reports, MLHHS

Among the advantages of the Project to issue Residential Licences in Dar es Salaam are the following:

- Registering property in unplanned areas is a first step towards regularisation of unplanned and irregular settlements
- The Property owners' Register will be an important input when it comes to issuing certificates of occupancy (titles) after regularisation.
- Legal recognition of property owners in unplanned settlements increases tenure security and opens the entering of such property in the formal economic system;
- Enabling the property owners to use land to support development and enhanced welfare, thus contributing to poverty reduction strategies through the use of land as collateral in dealings with financial institutions;
- The created database can enable the making of quick and rational decisions with regard to the use of land and property.
- Addressing the question of continued development and growth of unplanned areas in urban areas such as Dar es Salaam
- Enhancing local and central government revenue which can be utilised to improve living conditions among the areas inhabited by the poor
- Enabling the extension of services to residents of unplanned areas
- Enhancing the security of persons and their property.

Residents are happy with the licenses although they argue that the two-year duration of the licence is too short a time. The duration is renewable. A number of financial institutions have expressed willingness to issue loans on the basis of these licences provided the would be borrower meets other relevant criteria. The Project creates a potential for poor people to increase their chances to move out of poverty.

6: THE WAY FORWARD: ACTION TO PROTECT AND BROADEN THE BASE OF BENEFITS FROM PROPERTY RIGHTS FOR THE POOR

6.1 Property rights and tenure issues are complex

Property rights and tenure issues are extremely complex and no single tenure option can solve all these problems (Deininger and Augustinus, 2005). Policy on land tenure and property rights can best reconcile social and economic needs by encouraging a diverse range of options, rather than putting emphasis on one a single option, typically land titling. This will involve adapting and expanding existing tenure and land administration systems where possible, and introducing new ones selectively. Types of useful rights for the poor include anti-eviction rights, limitations of compulsory acquisitions, resettlement policies, occupancy rights or the right of possession, adverse possession rights and family/group rights.

Examples of such ‘intermediate secure options’ include the residential licensing undertaking being implemented in Dar es Salaam, Tanzania referred to above, where already over 200,000 properties in informal settlements have already been identified and some 50,000 have already been issued with residential licences as a stepping stone to future full titling.

6.2 Provision of greater tenure security for all

Both the National Land Policy 1995 and the National Human Settlements Development Policy 2000 propose positive initiatives towards the property of the poor. The National Land Policy states unequivocally that all persons exercising powers over land should seek to:

Ensure that existing rights in, and recognised long-standing occupation and use of land are clarified and secured by law.

This statement is reiterated in section 3(1)(b) of the Land Act 1999, being recognition of the fact that a lot of people do acquire and develop land in unplanned and informal areas.

The government is implementing this policy as exemplified by the two examples cited above. More should be done to improve the security of tenure for all land users through political statements to that effect and also by undertaking specific action of rapid titling, avoiding the displacement of the poor and regularising their settlements and increasing the accessibility of their property. In providing greater security of tenure interests of women, children pastoralists, fishermen, hunters and gatherers and other secondary rights holders need to be taken into account.

Laws and procedures that need to be looked into include those related to town and country planning, land surveying and land registration to speed up land delivery, and to enable decentralisation, community participation

On the technological side, there is need to introduce low cost survey and registration procedures for demarcation and confirmation of individual and community rights.

6.3 Housing Policy and Law

The majority of property owners use their land as housing. The majority of the poor aspire to acquire housing. In this respect Tanzania now needs a housing policy and a housing law that will address housing as a product, how it is acquired, how it should be enjoyed and maintained, and how it could be used in poverty alleviation strategies. The aim really should be to reach low income households and have them own houses.

6.4 Convergence and divergence between customary and statutory tenure

There is need to address the issue of convergence and divergence between customary tenure and statutory tenure, in particular bearing in mind that customary tenure is not static and the changes in it need to be accommodated to avoid having forms of tenure that are vague.

6.5 Pro-poor land delivery schemes

There is need to undertake specific pro-poor urban land delivery schemes. To some extent, the residential licensing project reaches all households especially the poor but many formal land delivery schemes tend to leave out the poor either because the standards adopted are too high, the entry point is at a level where the poor fail to get on board, or the poor get displaced (through the market or through official action) from their land, or development conditions are too high, or there are no financial facilities that can assist the poor to acquire or develop property.

Areas that need looking into include space standards, location for planned land schemes, regularising of existing settlements particularly on the basis of community participation, cross subsidization in infrastructure development and so on. There is the need of ensuring beneficiary participation in land adjudication and land allocation.

6.6 Decentralisation, Transparency and Accountability

The whole land delivery process needs to be implemented bearing in mind the principle of subsidiarity and the principle of devolving powers to local and community institutions while ensuring transparency and accountability. This will enhance the chances of the poor having their property rights protected and secured. Any disputes must be resolved in a transparent, fair and swift manner.

6.7 Streamlining Processes and improving awareness

Together with decentralisation, many land delivery processes need to be simplified and as much information as possible should be in the public arena and should easily be accessed. Knowledge dissemination on land laws and land rights and processes is crucial. In order to get as many people as possible to understand these, they need to be delivered in a language that most people understand.

6.8 Effective development and use control

Many poor property owners lose their property because of laxity on the part of public authorities when the latter do not enforce development and land use control. This may result for example into people constructing on public land, only to be removed later without compensation. Effective development control will help the poor people to invest in confidence, knowing they are not breaking the law. Nevertheless, development and land use conditions must not be in such a way as to make it impossible for the poor to develop land and acquire property in suitable locations.

6.9 Land Acquisition

The current land acquisition and compensation law and practice needs to be reviewed since it vests too much power in the government vis a vis landowners. A new law should encourage the practice of more negotiations, higher levels of compensation which should be paid before the acquired land is taken over. The whole process should be more transparent particularly to all parties who are being acquired. There should be an attempt to put the acquired people in an equivalent position. Moreover issues of resettlement must be part and parcel of the acquisition process.

7. CONCLUSIONS

Tanzania is keen to see to it that property rights work for the poor and play a positive part in poverty alleviation. A lot has been achieved, but a lot remains to be done. The number of people suffering from income and non-income poverty is on the increase despite impressive macro-economic achievements. Thus there is need to mount a new onslaught on poverty. Steps to formalise property rights and to ensure secure tenure for as many Tanzanians as possible are required. These should hinge on more inclusion of all stakeholders in land delivery undertakings, streamlining institutions, processes, procedures and standards; and addressing all issues that can lead to poor people losing their property rights. That way we may see property rights working for the poor and playing a positive role in poverty alleviation.

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