Upholding Customary Land Rights Through Formalization: Evidence from Tanzania’s Program of Land Reform

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Paper prepared for presentation at the
“ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, April 23-26, 2012

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Abstract

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

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

Many nations in the “global south” have revamped or overhauled their land policies and land laws in the past decades (Alden Wily 2003), and continue to grapple with how best to implement both structural and ideological shifts in their land administration framework. Many are attempting to simultaneously uphold customary land tenure, and to bring informal land relationships into a formal, individualistic system. These two goals were once generally seen as mutually exclusive and incompatible, yet scholarly research has pointed to the importance of each, and World Bank policy supports both agendas as pivotal for strengthening security of tenure and for poverty reduction efforts (Deininger 2003).

My research in Tanzania considers the questions: Is it possible for customary land tenure to exist, not only side-by-side with but as an intrinsic part of a formal, statutory land administration system? What are the challenges to bringing informal, customary land arrangements into a universal formalized land administration that is sensitive to traditional land tenure? How does the current wave of land administration reform in Tanzania improve security of tenure for rural peoples with customary land rights?

This paper focuses on developing an answer to these question by exploring the program to advance formal land administration systems and secure customary land tenure in Tanzania. By developing an understanding of the national context to land administration reform within that country, this paper highlights the lessons and experiences that can shed light for future success and challenges in other countries where attempts are underway to uphold informal, customary land tenure through formalized land administration systems. Tanzania is very much attempting to both uphold customary land rights and to develop a formalized universal land administration system that encompasses village (customary) lands while being sensitive to the existing informal land tenure regime. The formal registration of land is posited as a means to poverty reduction, while strengthening customary land tenure rights is seen as an important measure for ensuring security of tenure in rural areas. This dual focus upon customary and
statutory rights to land can seem contradictory. I examine the interplay of the tension between these differing agendas, and posit that Tanzania is attempting to create a hybrid approach to land administration that is at once formal and centralized, and informal and localized. Analysis of this hybrid is crucial for assessing the promise of forging land tenure systems that are both simple to administer (locally and nationally), and that are sensitive to local conditions and norms.

Background

Tanzania, on the Indian Ocean in East Africa, has a population of about 36 million (2002 Census). From the late 19th century until World War I, it was a German colony; thereafter, until independence in 1961, it was a British colony. As a British colony, indirect rule was practiced. Not long after independence, the country embarked upon a socialist phase (ujamaa) when the entire population was forcibly moved into centralized villages. Enforcement of ujamaa waned in the 1980s during economic crises, and there was a resultant upsurge in the number of land disputes between “traditional” land users and ujamaa land users. With the recognition that there was no clear policy or law regulating the multiplicity of claims to land, then-President Mwinyi began a long process for creating a new framework of land law. In 1991, he appointed a Presidential Commission of Inquiry into Land Matters (hereafter referred to as the “Lands Commission”), which submitted its final report in November 1992. In 1995, a new National Land Policy was adopted and passed by Parliament. This new policy, while incorporating some considerations from the Land Commission, did not reduce the powers of the executive government in land affairs. This National Land Policy was to be the underlying framework for the creation of new land law, the Land Act and the Village Land Act of 1999. The National Land Policy and the Village Land Act were translated into a plan of implementation in the Strategic Plan for the Implementation of the Land Laws (SPILL), produced in 2005. These four documents have been singled out as the main body of policy formulation and are referred to in the analysis of policy implementation.

The Village Land Act of 1999, the cornerstone of the new direction for land administration, promises to uphold customary land rights equally with statutory land rights, and includes many clauses
whose chief aim is to protect security of land tenure in villages. There are currently approximately 12,000 registered villages in Tanzania.

I employed mixed methods to explore my research questions, including a detailed analysis of official policy documents through comparing the development of themes related to security of tenure within this official, written channel and through visiting the sites of implementation at the national, district, and local levels, conducting numerous semi-structured interviews in order to gain an understanding about the most prominent rhetoric and most important principles underpinning the implementation of the official policy documents. And, most especially, I interviewed numerous land users about their perceptions of the importance and the impact of village land administration reform.

FIGURE ONE: Location of Tanzania and the Fieldsite Districts

While these districts are geographically distinct, the main livelihood in each is small-holder subsistence farming. Livestock was a less important activity in all four, though in Bariadi it was once very important. Kisarawe has very little livestock and this was not an important livelihood in the village I visited; Mbozi’s indigenous people keep a moderate amount of livestock, but it was always secondary to their crop production. Bariadi once had large herds of cattle, but in the villages I visited there have been ongoing campaigns to reduce livestock and this livelihood has diminished in importance. In Handeni, traditionally there has not been a lot of livestock keeping, but there has been an influx of pastoralist peoples since the 1970s, bringing some tension over land use. Further research on the impact of land administration reform in pastoralist areas is warranted, for the findings are likely to be quite different in those areas.

Global Initiatives – Land Registration for All

A global initiative to formalize land tenure can be traced to the 1950s. In the 1960s and 70s, there was a general consensus by international development agencies that title deeds were necessary to
formalize property rights (van den Brink 2006, p. 12), and that formal property rights would provide farmers with greater security of tenure, thus giving them “the incentives they required to improve and invest in land” (Manji 2006b, p.121). The ability to improve and invest in land was predicated upon the promotion of land markets and, especially, on the accessibility of credit through the use of title deeds as collateral. The 1980s, in particular, saw the operalization of these theories through structural adjustment programs.

The formalization agenda has been redefined significantly in recent years to incorporate existing practices and to recognize that formalization does not happen in a void, but interacts with the existing societal norms, however “informal” these might be. Indeed, ignoring the customary, existing land tenure regime is now seen to undermine formalization initiatives (Toulmin and Quan 2000, p.2). While privatization and individual titling of land have often been viewed as the polar opposite of informal, customary land regimes, upholding customary land rights is now an important element of processes that advocate for highly formalized land tenure. Thus, the interplay of the informal and formal is, again, at the forefront of understanding how customary land rights will be upheld.

There are two major approaches to upholding customary land rights: one, pursued by the World Bank through its financing of projects, is to “bring the informal into the formal”, an idea popularized by Hernando de Soto; this approach is expected to result in a standardized, statutory land administration system that prioritizes individualization of land ownership, and is based on an evolutionary theory of tenure development. The other approach is to mold administrative structures that allow for legal pluralism and/or flexible localized tenure; in this approach, devolution is of paramount importance, and it is not expected that individual parceling would be the only outcome. Instead, diversity in land tenure regimes is promoted through local flexibility and decentralization. Customary land tenure systems are encouraged to flourish, and are arguably just as, or even more, conducive to economic development and to reduction of poverty (Yngstrom 2002; Manji 2006a; Fitzpatrick 2005; McAuslan 2006, p.9; Crook 2008).
The Hybrid Approach in Tanzania

Both these approaches are present in current Tanzanian land legislation (Village Land Act 1999). Customary tenure is legally recognized for the first time, and yet implementation of the legislation has largely centered on individualization and replication of the Western cadastral system, though with some important differences. This approach might offer more security of those currently with customary rights, but it also changes customary rights, making them lose much of what makes them customary – they lose their flexibility, and those customary rights which were communal in nature seem to disappear altogether when each parcel of land is titled to individual land users. Land that was once used by a variety of land users, sometimes concurrently, and sometimes at different times in an annual cycle, becomes exclusively used by one person. Furthermore, the multiple ways of relating to land become fixed as one accepted way, and thus fluidity might be lost. The national linkages to the local level administrative structures often do not exist except in a bureaucratic way that inhibits local flexibility. There is also the tension between standardizing land records and using digital land administration technologies, on the one hand, and encouraging a variety of means for locally-based administrative systems.

Thus, while scholars have largely converged on the need for flexible tenure systems that are adaptive to regional and local conditions, where one-size-fits-all solutions are no longer sought (cf Palmer 2000; Lim 2003; Bruce and Migot-Adholla 1994; de Janvry et al 2001; Fitzpatrick 2005; Manji 2006a; van den Brink 2006), it is not clear whether vesting land in the village (via the Village Council) in the legal framework which exists in Tanzania will be conducive to flexibility (cf Sundet 2005; Shivji 1994). So far, each village is following nationally set procedures that are not locally flexible, but the possibility for flexibility remains.

Defining “Customary”

What is meant by “customary” tenure? This is a pivotal question in understanding how laws are created and implemented in countries that begin to uphold customary rights to land. In practice, in many countries including Tanzania, upholding customary tenure has come to mean simply upholding the
current land usage patterns, and giving the force of law to users of the land in their rights to access the land they are currently using, so long as they have been using the land for a specified amount of time prior. Even the people or bodies that make decisions about allocation of lands can be very much removed from a “traditional” colonial system where it was often clan elders who would distribute land amongst the group members. So for example, in Tanzania authority over rural land allocation decisions rests with the elected village government (the Village Council), which is clearly not a traditional decision making body. The trend in land administration:

“is for authority to move from traditional to elected hands at community level. The result may be described as ‘communitisation’, a move from customarily based to community-based rights and administration” (Wily 2003, p.46, emphasis in original).

For the purposes of this paper, customary land tenure can be defined, for Tanzania, as the current land usage patterns in village lands. In defining customary land tenure as synonymous with current usage patterns, Tanzania neatly sidesteps potential (and existing) conflicts between land users and those with traditional land rights who might have been previously alienated from their land. In essence, this definition upholds current, ongoing social, informal processes.

Implementation of Policy

While the Village Land Act was passed in 1999, and enacted in 2002, very little was done to implement the new laws until 2004 / 2005. Implementation is speeding up, now, though, particularly with World Bank funding.

Mbozi was the first district with an implementation scheme for the Village Land Act. It was chosen to be the pilot district in 1999, though implementation did not really begin until 2004 (with aerial photography being undertaken in 2002). Mbozi has by far the longest history with implementation of the 1999 land laws, and has officially issued over 12,000 Certificates of Customary Rights of Occupancy (CCROs), with the first being issued in 2004. Once Certificates of Village Land (CVLs) are issued, and land use plans prepared, the land administration reform project beings the process for issuing CCROs for residents in villages. The Village Land Act states that land which is occupied or used continuously for the
past twelve years by an individual, family or group under customary law, and land which may be made
available for communal or individual occupation can be granted to village residents through a CCRO,
which, unlike a granted right of occupancy, can be granted in perpetuity.

What are the components of “the Mbozi Model”?

TABLE ONE: Components of the “Mbozi Model”

The Mbozi Model was been replicated in a handful of districts, and is the model being used in the
current World Bank funded project for completely surveying all parcels and issuing CCROs to all land
users in fifteen districts that began in earnest in early 2009, with two pilot districts, Bariadi and Babati.
The figure below shows districts with some land reform experience under the Village Land Act; the map
is misleading in that projects covered only a handful of villages in most of these districts.

FIGURE TWO: The Geographic Spread of Land Reform Implementation

Districts that have been included in these pilot phases start with about seven villages being
systematically adjudicated with extensive help from district (and even national) experts; the process is
then envisioned to become decentralized through education of key participants during the initial pilot
phase. With time, the village government takes the lead in implementation. However, the pilots in Babati
and Bariadi are being carried out through the involvement of both district and national experts, even as
the project expands to include more villages. For instance, after the first round of 9 villages in Bariadi was
completed, national and district personnel continued to not only direct but to carry out most of the work
of plot registration in the next 22 (or 34) villages. Senior personnel involved with the project expressed
some concerns to me that the project was too result-oriented; time was not being taken to learn from past
experiences before rushing on to the next batch of villages. Furthermore, shortcuts were being taken that
diminished the quality of what was accomplished. Indeed, the district land registry that I examined in two
districts was rife with inconsistencies and errors, and it was clear there had been no well-thought out plan
for backing up data and for quality control. Most digital data in one district visited, representing months
of work, had been lost due to computer viruses.
In practice, the Mbozi Model is followed when systematic adjudication is undertaken -- a team of experts gathers with members of the village government (including the Village Executive Officer who must sign every land certificate), users of each parcel, and neighboring users, and using tools available to them, inscribe the boundary coordinates of each parcel in the entire village. Where high-resolution satellite imagery (or aerial photography) exists, it forms the basis for sketching parcel boundaries – the surveyor simply circumambulates the parcel, hand-drawing the boundary onto a high-resolution printout of the satellite image. Sketches are subsequently digitized on the georeferenced layers at the district headquarters. In districts where no satellite imagery has been obtained, hand-held GPS units are used to record relatively precise geographic coordinates for parcel boundaries. Thus, a complete digital registry is created at the district land office for all parcels in each village that is surveyed. At the same time that this parcel registry is being created, information about each parcel is also collected – the name of the owner(s) (who is given a paper that states the unique parcel id for his/her plot of land), and the names of all owners of bordering parcels. This information is also entered on the district land office computer. Thus, every parcel, whether or not a CCRO is issued to the land holder, is registered during systematic adjudication. Land rights are registered in the district land registry and replicated at the local level, with the Village Executive Officer being responsible for maintaining the local registry on behalf of the Village Council.

**Impact of Implementation on Village Security**

There are several aspects of land administration reform that pertain to a village as a whole. In this short paper, I discuss just one aspect in depth: issuing Certificates of Village Land (CVL), and the impact of the issuance process upon village tenure security. Certainly, if village lands are not secure, then individual lands within the village are not secure either, and so this does, also, impact village residents. However, village lands have their own history of security and insecurity as whole units, with village lands (including communal lands and lands not used by single individuals) being susceptible to alienation by the national government. Thus, in this section, I concentrate on tenure security of villages as units. In the
subsequent section, I discuss Certificates of Customary Rights of Occupancy (CCRO), which chiefly impact residents within villages.

Village lands make up over 80% of all land in Tanzania (SPILL 2005, p.xii). The Village Land Act provides a lengthy (and quite liberal) definition of which lands fall into the category of “village lands”; included are any lands that have previously been treated as village lands, whether through demarcation of boundaries or not (with caveats for who must agree on the boundaries, such as adjacent villages), and any lands that the villagers have been using for the prior twelve years (including fallow land and land for cattle grazing and cattle passage), whether recognized officially as a village or not. Thus, the definition of “village land” is based upon customary usage patterns, which have generally been informally regulated by village governments (and, previously, chiefs and elders).

A CVL confers land administration and management functions to the Village Council. The certificate delineates the boundaries of the village, following general boundary rules, and provides village tenure security in that lands cannot be easily alienated from the village. The National Land Policy of 1995 upholds the previously existing land tenure system, with rights of occupancy the means of access to land, and the President remaining as the trustee for all land. There are three classes of land: village lands (all land within village boundaries, whether used by individuals or by the community, or unused village reserves, forest, or idle land), reserve lands (land under the national parks system, not within village boundaries, and set aside as protected), and general lands (everything else – rural land not within village boundaries, and all urban land). All three types of land are by definition “public land” and therefore vested in the President. This fundamental principle of the land tenure system was upheld in the resultant Village Land Act, as well. However, a major change is that land in villages remains administered by the village even if it is granted to an individual through a certificate (a CCRO is issued in this case). Previous to the Village Land Act being enacted, if a villager got a certificate for their land, it was a “certificate of granted right of occupancy”, and the land was no longer administered by the village – indeed, the land automatically transferred to being “general land” and was taken out of the village domain.
While there was fear that defining village land explicitly would result in unused village lands being expropriated by the national government as general land (Shivji 1999, p.7; SPILL 2005, p.46), there is currently no evidence that this is happening in the districts under study. Villages are contiguous to each other, with no general land between them. Rather, I argue, the defining of village lands to include all used land has instead brought more land into the official record of village lands, and has enhanced the security of each village.

However, while the new policy defining village lands has augmented village lands, and enhanced village security, the process of delineating borders between villages has often resulted in conflict. In practice, national and district survey teams have very quickly delineated village boundaries for most, if not all, villages in the pilot districts. This was done speedily by having minimal input from villages; indeed, in interviews with villagers and village government officials, many could hardly remember the process for delineating their boundaries. The delineation of village boundaries is seen as the first step in implementing land administration reform. This step is pivotal to the rest of implementation, since the village is the basic building block for authority over land administration. The general process for boundary demarcation has been for the district surveyors to come to each village, survey the boundaries, create a map showing the coordinates of the village, and to issue a village land certificate. The boundaries must be agreed upon by village residents from both sides of the boundary; where irreconcilable differences exist over the boundary location, the surveyors are instructed to move on, meaning that the villages that have disputes will not be able to receive a CVL until a later phase of the project. Villages want to be part of the land reform project, and so sometimes make concessions to neighboring villages in order to be issued their land certificates.

In Halungu Village, for instance, there was some lingering ill-feeling over some farm land that had been lost to Itaka Village to the north, but the loss was now accepted in the interest of proceeding with land administration reform:

Government officials came to do village boundary demarcation in Halungu around 2004, and they put down landmarks to show the boundaries. They also asked elders in our area about the boundaries. Since that time, we have had some small conflicts with...
Hampangala and Halambo over the boundaries, but nothing major. But, we lost a lot of land to Itaka, probably several hundred acres. It started happening in the 1980s. Farmers from Itaka came into the farms of people in Halungu and took lots of land. Some farmers lost portions of their land, while other farmers became inhabitants of Itaka. The arguments over that land went on for many years. Finally, in 2002, the aerial photographs were taken. After that, district and national Ministry of Lands people came to survey the village boundaries. Because the farm patterns in that area now seem to fit into Itaka Village, the boundaries were drawn to give that land to Itaka.

What could we do? We were tired of the arguments and tired of going to the ward tribunal trying to get our land back. We finally gave up. And so, the Certificate of Village Land issued to Halungu does not include that land, and now we are decided on that and have dropped the case [summary of excerpts from interview with the Halungu Land Council, Oct.2009].

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

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

In these cases, current land use patterns determined where boundaries were placed, and while there was a “winner” and a “loser”, long-lasting disputes were settled once and for all.

One village, however, is an example of a place where the setting of boundaries has clearly resulted in greater conflict. Mitengwe, in Kisarawe District, had ongoing conflict with a neighboring village over their boundary. This boundary cuts through a wooded land that has areas of spiritual significance to both villages, and each village wants that area to be within their boundary. Each claims the area belongs to them traditionally. People in Mitengwe remember that district officials first came to the

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1 It should be noted that Sanungu Village already has a land use plan that they created in consultation with the National Land Use Planning Commission after receiving their certificate of village land.
2 This story is according to my interview with members of the Village Council. Details are not independently verified.
village in 2005 in order to survey the village boundaries; this process was done using GPS units by the
district surveyor. By 2007, they received the CVL; district surveyors arbitrarily decided to allocate part of
the wooded area to Mitengwe, and part to neighboring Mihugwe, however the most sacred area is now
entirely within the boundaries of the neighboring village. While CVLs are not supposed to be issued if
there are any unresolved conflicts, these villages now have their certificates. The Village Council of
Mitengwe is very unhappy and has lodged a complaint with the district, stating that they do not agree with
the boundaries drawn upon their certificate. Unfortunately, the district is ill-prepared to assist with
conflict resolution and so if the villages want to be part of the land reform project, they must accept the
certificates as they are. Otherwise, they will be skipped over, and district officials warn that if they are
skipped, it could be years before their turn comes again. The Village Council of Mitengwe is continuing
to debate whether to proceed with the project and the currently demarcated boundaries, or to pursue their
claim for the land they believe is rightfully theirs. They wonder why the certificates were issued when
there was still a dispute. They are not sure what to do, since they have been told that if they bring their
dispute to the district tribunal, they will no longer be a part of the land pilot project.

FIGURE 3: Village council members in Mitengwe with their Land Use Plan in the background

There was another problem with the issuing of CVLs in Kisarawe. Before these certificates were
prepared, there were vague boundaries between the villages, but they were not strict. There were wide
expanses of forest and uncultivated land between them. However, after the boundaries were surveyed and
marked, it was found that some residents of one village were actually farming land that now belonged to a
neighboring village (and vice versa). Some of these farmers were told to leave their land and find new
land in their own village; through education from the District office, though, they now know they can
own land in the neighboring village, but they need to apply for their CCRO in that village (they need not
reside in that village).
In summary, village boundary demarcation has proceeded quite quickly and efficiently under the Village Land Act implementation. Nearly 8,000 village boundaries have been surveyed, and more than 2,000 CVLs issued\(^3\). Village governments are not always happy with the results; many, though, put aside their differences in order to receive their certificates. They clearly put a lot of value in receiving their CVL. It is likely, too, that while old bitterness remains over some boundary disputes, land use patterns often clearly show that the land in question is “used” more prominently by the village that receives that land through the demarcation process. For land in use as cropland, this follows the stipulation of the Village Land Act that “use” is measured by the current user of the land, if they have used that land continuously for the past twelve years. Indeed, deciding definitively on these long-lasting land disputes puts the matter to rest and may clear up lingering grievances.

But, the land dispute in the case of Mitengwe and Mihugwe villages is more troubling. The cause of this dispute is a shared resource. Both villages had “user rights” to the sacred area, and because there was no fixed boundary through the forest, both villages were free to use that area as they pleased. In such cases, conflict is exacerbated or even created through the delineation of village boundaries. In the interest of upholding customary land rights, such cases warrant further review and possibly new ways of recording and administering that land; the Village Land Act has a clause allowing for joint management of land by multiple villages, but this type of land administration is not being implemented even in cases that clearly call for it.

The following table summarizes key policy documents and implementation measures being taken in four districts regarding village lands and CVLs:

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<th>TABLE TWO: Summary of policy and implementation in four districts</th>
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**Impact of Implementation on Individual Security**

The focus of implementation in all districts is the issuance of CCROs to individual land users. CCROs are meant to quickly bring informally recognized land relationships into a standardized national

\(^3\) According to interviews at the Ministry of Lands in July 2009. Remember there are approximately 12,000 registered villages total in Tanzania.
cadastre that is statutorily administered by the village government. In this section, I discuss the impact of the issuance of CCROs upon individual land users in villages.

All village councils and most individuals I interviewed were able to list several benefits of having a CCRO. These benefits included (1) the ability to access bank loans using the CCRO as collateral; (2) a faster resolution to land disputes (especially boundary disputes); (3) the ability to get recompense if land was taken for a government project; (4) and security for family members (especially widowed wives).

Yet, I also found that people living in the villages where CCROs were initially issued within a district were far more likely to apply for and receive their CCROs. Thus, for instance, in Mbozi District, nearly 1100 CCROs had been issued in Halungu Village, the first pilot village in the district, but only 45 had been issued in Ipunga, which joined the reform project in the second round, despite about two-thirds of all plots within each village being adjudicated. This disparity was for two main reasons. The first reason was that the project costs were solely donor-funded in initial villages, so that there was no user cost associated with receiving a CCRO (though there was the known liability of future land taxes); late-start villages were passing on a small portion of the project costs to land users in the form of an application fee. While these fees were minimal (ranging from $2 to $15 in the villages visited), they were enough of a deterrent that only small numbers of village residents were applying for their CCROs. These residents tended to have larger farms, with more cash crop acreage, than the residents who were not pursuing a CCRO application.

Jackson moved to Ipunga in 1993. He has a four-acre farm where he grows coffee and corn, and he has nine head of cattle. He got three of those acres in exchange for a cow shortly after he moved to the area. He knows about CCROs, but has no interest in getting one. He would like to get a bank loan but doesn’t think it is possible to get one, even if he did have a CCRO for his property. And, he doesn’t feel he can afford a CCRO in any case, since it now costs about $10 to apply for it.

The second reason is that the promised benefits to having a CCRO were not being experienced or met. With the absence of perceived benefits accruing to the CCRO holder, farmers are even less likely to invest in applying for a CCRO.
Wilson S. moved to Ipunga in 1974 during Operesheni Sogea, by force. He has a five-acre farm where he grows coffee, corn and beans; he has no livestock. He was present during the day when his farm was surveyed and the process went smoothly, he just showed the district officials where his boundaries were and his neighbors agreed. He followed up by getting his CCRO but he hasn’t seen any benefits at all from getting it. No bank will give him an individual loan.

Village residents I interviewed were all\(^4\) in agreement about the single most important benefit of getting a CCRO: the ability to use it as collateral for a bank loan. However, many also shared that this was not an actual, realized benefit – that many people with CCROs had attempted to get loans but had been unsuccessful. This, they said, is why there had been a flurry of activity at the beginning of the CCRO project, with many villagers clamoring to get their CCROs, and why now, after time had passed, no one was trying to get their CCRO anymore. Every single person I interviewed wanted to get a bank loan; only two were aware that if they defaulted on their loan repayment, they would risk losing their land. The reasons they wanted loans ranged from starting a fertilizer business to, much more commonly, paying for school fees for their children. This lack of understanding about the nature of loans is very troubling, and highlights a major conundrum of the entire project. The rhetoric behind the project is that CCROs can be used as collateral, and that access to loans will result in poverty reduction. However, receiving loans is also a risk, and for people with no education about loans, this could be an avenue to losing their land. Hence, while bank policies currently protect villagers (by not giving them loans unless they have a very sound business plan), the increasing pressure on banks to grant more loans to CCRO-holders could very well result in a decreased security of tenure, and increase the number of landless poor.

Of course, bank loans are not the only “benefit” of getting a CCRO, though this is the lynchpin of donor involvement in the land reform project. People I interviewed also mentioned the decreased number of boundary conflicts and their restitution if their land was taken through imminent domain. However, again, no one had any concrete instances of a CCRO being used for these types of cases.

\(^4\) In fact, there was only one person of the many interviewed (70 single interviewees; 20 group interviews with many people in each) who felt that being able to access bank loans was a disadvantage rather than a benefit. This gentleman was a teacher who had been assigned his post in Sanungu Village; he wasn’t a permanent resident and was not planning on applying for a CCRO.
And, finally, many people pointed to the greater protection for women’s land rights as a major benefit. Most men and women I interviewed were happy that both the husband and wife’s names could be registered. The CCRO was seen as security for the woman’s ongoing tenure on their land, should the husband die. However, some people also mentioned that this was the law, anyways, regardless of whether the CCRO existed; educated women would know they could keep their land according to constitutional amendments. But, more women are aware of their right to their land thanks to their name being registered on the CCRO. Women, overall, valued CCROs, if registered in their name or dually with their husband, for the potential tenure security that might therefore be afforded them should their husband die.

FIGURE FOUR: LAND USERS IN HALUNGU VILLAGE

Conclusions

There is a tendency to discuss land tenure in either/or terminology. Land tenure is often described as either formal or informal, and either locally or nationally administered. Property rights are either customary or statutory (and, by extension, either based in illegality or legality). Land administration systems are either top-down or bottom-up, and concurrently centralized or decentralized. Land tenure regimes are either flexible and fluid, or standardized and regulated. Yet, in reality, no land tenure system, anywhere in the world, is wholly one or the other; all tenure systems fall somewhere in between on a continuum, incorporating elements of each extreme. There is informality in the formal system; an informal system incorporates formal elements. The danger of using a binary lens such as this is that it oversimplifies the issue (Cotula 2007, p.14; Van Gelder 2010, p.455). Viewing “the formal” and “the informal” as a dichotomy is precisely what led to defining informal tenure situations as insecure (by definition) and formality as providing tenure security, which led to land policy that simply did not work. While policy is now couched in terms of upholding customary (i.e. informal / non-statutory) land rights, with provisions for local flexibility, the push for individual parcel registration is eclipsing all other land...
reform activities. Parcel registration is being pursued in a time-intensive and expert-centric fashion which does not allow for local variation, thus far.

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

Delineating village boundaries, and registering village lands, enhances village security as a whole, despite sometimes creating conflict between villages in the process of demarcating the boundary. Village lands are duly registered and brought into the statutory record. Allowing for some flexibility, for example, sharing of common resources between villages, is an important element that was legislated, but is not being implemented; attention to this detail could curb some ongoing disputes.

Land use by village residents is thus administered by village officials. The main brunt of land reform implementation is the issuance of CCROs to all land users, and, concurrently, the registration of every parcel in a district land registry that is duplicated at the village level. This process formalizes “customary” land holdings, bringing them into the statutory system, yet allowing them to continue to be managed by the village government. Thus far, only one system of land management is being pursued, and village governments are being trained in this system; it is too early to know whether local flexibility will be encouraged later on. Local flexibility will be important, especially as the project expands into areas with diverse livelihoods.

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

For small-holder farmers who already have informal individual or family rights to their land, registering land parcels to land users does, on the one hand, uphold customary rights, in the sense that customary land user rights are validated and formalized. On the other hand, once land is formally brought into the district registry, it is expected that future land transactions will take place through formal channels, ensuring that the land registry remains up-to-date. The common channels that were used previously were village government officials; these same officials are included in the new, formal channels, so it is perhaps not a stretch to envision the formal systems replacing the customary ones. There simply have not yet been enough land transactions amongst the population that have received CCROs and registered their parcels to speculate on how successfully informal methods have been supplanted by formal methods. It is likely, however, given the low level of individual support for the CCRO project, that district land registries will quickly become obsolete as village residents conduct their land transactions through the same informal and unrecorded channels that they have always used.

A major stumbling block to universal land registration is that individuals are not buying into the process. Those villages that were initially chosen in pilot projects, and where fees were not passed on to land users, were also initially very engaged in the process, with a majority of villagers applying for their CCROs. But, these same villagers have generally not seen the promised results they were hoping for. Most wanted their CCRO because they thought they would be able to access bank loans; because very few farmers have been able to get such loans, there is now disillusionment with the entire project. “Late-starter” villages that are added after the initial pilot phase are more reticent to apply for CCROs, especially because they must pay modest application fees. In these villages, residents who have more land (and therefore by implication more wealthy) are more likely to apply for their CCRO. It would seem that pushing the project on the basis of the feasibility of obtaining bank loans is misfiring. It attracts people initially, but when no loans are forthcoming, interest dwindles. Focusing on other, more valid benefits
(tenure security for all family members; protection from alienation of land without compensation) would be helpful.

Flexibility in land tenure arrangements is not being pursued; each village is being educated in how to create the same type of village registry and to form very similar village land use plans, with elements of national policy very prominent in both. Authority over some land decisions is thus devolved to village government, yet the scope of what villages can build is limited. Only certain types of customary tenure, those that lend themselves to individual titling, are being upheld and protected. Thus, the vision of a functioning hybrid where customary land rights are both upheld and interact with the formal law to create something new and locally varied is not being realized, even though the success of the land administration project might depend on it; instead, land administration reform is being deployed by district and national bodies without understanding or allowing for local variation and exigencies. The idealized hybrid would include the top-down implementation together with bottom-up adaptations to local differences. And thus, village residents will “hybridize” the project themselves, in their own unique ways, to guarantee their own land security when they do not perceive benefits in the formal system – and these unique adaptations will not be captured in the formal statutory system.

References


### TABLE ONE: Components of the “Mbozi Model”

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>WHO INVOLVED?</th>
<th>TIME FRAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Aerial photography, or obtain satellite imagery</td>
<td>National (Ministry of Lands)</td>
<td></td>
</tr>
<tr>
<td>2. Surveying village boundaries</td>
<td>District surveyors, village residents, neighboring villages</td>
<td>A few days per village</td>
</tr>
<tr>
<td>3. Issuing Village Land Certificates</td>
<td>District Land Office</td>
<td></td>
</tr>
<tr>
<td>4. Creating a land use plan</td>
<td>National Land Use Plan Commission, village government, district personnel such as Agricultural Officer</td>
<td>A few days.</td>
</tr>
<tr>
<td>5. Systematic adjudication of individual plots</td>
<td>District personnel, village government, plot owner and adjacent neighbors</td>
<td>Several weeks to cover whole village</td>
</tr>
<tr>
<td>6. Issuance of CCROs</td>
<td>District and village government</td>
<td>A few weeks</td>
</tr>
</tbody>
</table>

SOURCE: Compilation of information from interviews and official documents.

### TABLE TWO: Summary of policy and implementation in four districts

<table>
<thead>
<tr>
<th>Policy/District</th>
<th>Summary / Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lands Commission</td>
<td>Village lands should be as extensive as possible. Radical title should be given to the villages, who would then have absolute control over their lands. General boundaries should be followed; high surveying accuracy is not important.</td>
</tr>
<tr>
<td>Land Policy</td>
<td>General boundaries will be used.</td>
</tr>
<tr>
<td>Village Land Act</td>
<td>General boundaries will be used rather than fixed boundaries, as this is more economical. Village demarcation should be done quickly; where disputes exist (between villages), if a mediator cannot resolve the issue quickly, it moves on to the courts.</td>
</tr>
<tr>
<td>SPILL</td>
<td>Village boundary demarcation should be completed quickly. Fixed boundaries are important (as opposed to general boundaries) to avoid disputes in the future.</td>
</tr>
<tr>
<td>Mbozi pilot</td>
<td>Surveyors from the District Land Office completed boundary demarcation for 152 villages very quickly (in 2004 to 2006). There was minimal input from villages; most boundaries were fairly well known and there were few disputes created by this process (though there were lingering disputes that were finally settled once and for all).</td>
</tr>
<tr>
<td>Handeni pilot</td>
<td>Boundary demarcation was done by outside experts for six of the seven pilot villages (the 7th had previously been demarcated) because village officials did not participate as they were supposed to. The boundaries were not accepted in several cases, including one entire neighborhood that was erroneously assigned to the wrong village. This was seen as a major setback and a reason for the Handeni project overall to lose legitimacy. Also, a</td>
</tr>
</tbody>
</table>
“lesson learned” was that some lands are jointly used as common-resource (water supply, for instance), and that is creates conflict to allocate land to only one village.

<table>
<thead>
<tr>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kisarawe pilot</td>
<td>Boundary-setting has increased conflict in some cases, where there were shared resources previously. Boundaries have not always followed land use patterns, and some villagers find their farm plots re-assigned to a neighboring village (or perhaps they were all along farming in the other village, with no one aware of this since there was no firm boundary in the past).</td>
</tr>
<tr>
<td>Bariadi pilot</td>
<td>National and district personnel demarcated villages, with some local input. In the interest of being included in the project, villages made peace with old quarrels over land. All the villages in Bariadi have been demarcated.</td>
</tr>
</tbody>
</table>

Source: Compilation of official documents, personal observations, and interviews.

FIGURE ONE: Location of Tanzania and the Fieldsite Districts
Map © 2012 by Elizabeth Fairley. Source of Data: Open source data and ESRI.

FIGURE TWO: The Geographic Spread of Land Reform Implementation
FIGURE 3: Village council members in Mitengwe with their Land Use Plan in the background
FIGURE FOUR: LAND USERS IN HALUNGU VILLAGE

Photo taken by the author, © 2009.

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