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Through the Maze of Land Right Laws

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'If markets do not exist in areas such as land, then they must be created [...] state intervention in markets beyond creation must be kept at bare minimum.' Harvey (2005)

1 OVERVIEW

It is widely recognised that the fuzziness of land rights is a constraint on Tanzania's development. In rural areas, land is the main resource of a large population of poor farmers and cattle herders – as well as of modern production units that can exploit a source of comparative advantage. Conflicts could be avoided for as long as land was abundant, but since the 1980s there has been growing pressure on land. With an expanding urban population, unclear land rights also constrain development in urban areas.

Private ownership of land is a concept that has always been ideologically foreign to Tanzanian society. Instead, ownership of land is vested in the president, who is supposed to use it for the public good. Laws define various *occupancy rights* for land users, which are meant to be substitutes for formal *property rights* in other economies. These occupancy rights have to allow for various local customary rules of land allocation and transmission, which apply to much of the country's land.

Because of this – and various flaws in the existing formal laws and their implementation – the present system is far from offering the security that is required for an efficient and productive economic use of land. There is a heavy administrative apparatus, which is commonly judged as inefficient and the source of rent-seeking opportunities. As noted by Fischer, many developing countries are characterised by poor policies and weak institutional settings, which create opportunities for corruption and embezzlement by privileged interest groups (Fischer, 2005).

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The next section of this chapter gives a brief historical perspective on land tenure issues, tracing continuity from colonial times through the 'villagisation' era to the recommendations of the Presidential Commission of Inquiry into Land Matters, Land Policy and Land Tenure Structure, which resulted in the 1995 National Land Policy and 1999 Land Acts. During this time the pendulum has swung between the desire to protect customary small-scale landholders and the desire to give investors the security they need to develop long run and large-scale projects.

Despite many critiques and partial reforms, the system established in 1999 still provides the basis of land management in Tanzania. Section III explores that system, which categorises land in three ways: *village land*, which is under the jurisdiction of village councils, and accounts for around 70 per cent of all land in Tanzania; *reserved land*, which includes forest reserves, beaches, and game parks, and accounts for 28 per cent of all land in Tanzania; and *general land*, which accounts for only 2 per cent of land but is economically crucial because it includes urban land and large-scale agricultural projects.[1]

Different rules of occupancy apply to village land and general land, and disputes commonly involve attempts to reclassify village land as general land, which is necessary for it to attract external investment. When proposed changes to village land involve over 50 hectares, they need to be approved by the Commissioner for Land. The process is slow, cumbersome, and subject to various costs. The law provides for compensation for the people who previously occupied the land, but in practice this is typically inadequate and delayed.

The situation is complicated by the fact that the formal rights of occupancy defined by the 1999 Act coexist with various informal ones, and the administrative process of surveying land to grant formal rights has been progressing slowly – indeed, a large majority of rural Tanzanians, and about half in urban areas, still do not have formal rights over the land they use. Section IV explores these informal rights, completing a description of the actual situation regarding land tenure in Tanzania.

Section V provides an overview of the institutional arrangements for land administration in Tanzania, which are complex. It sets out the ways in which land rights can be granted, and the mechanisms for selling rights over land or using them to raise credit – although it is sometimes said that land in Tanzania has no value because it is formally owned by the state, there are actually various ways in which the right of occupancy is transferable for value. This section also explores the mechanisms for resolving disputes over land, of which there is a large and growing backlog.

Section VI draws on the preceding discussion to identify the eight main institutional issues and challenges with the system. Although proposals for

[1] Section 5(12) of the Land Act 1999 on the transfer of village land to general land.

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revising the National Land Policy are currently being discussed, these seem unlikely to be fully resolved:

- *Duality of tenure*: The handling of the distinction between general land and village land is the main source of friction and inefficiency, combining often inadequate protection for villagers with disincentives for investors that may lead to missed economic opportunities. Better defined, better implemented, and fairer administrative procedures for land transfers would provide efficiency gains on both sides.
- *Immense powers of eminent domain*: Land is deemed to be akin to state property, and the state has not always used its resulting powers judiciously or in the public interest – indeed, what constitutes the public interest is a matter of debate. Customary landholders are not protected by fair information and consultation procedures, and the losses they endure can be very great.
- *Limited formalisation*: Procedures for formalisation are bureaucratic, unrealistic, expensive, and time-consuming. Registry records are often unclear and automated systems are rare.
- *Gender discrimination*: Although discriminatory practices under customary law are illegal, in practice it remains a serious problem that women's access to and control of land often depends on the will of male relatives, making it harder for them to obtain loans or invest in improving their land.
- *Institutional overlaps*: Multiple and diverse institutions are involved in implementing land-related laws and policies. The resulting overlaps can create inefficiency and undermine accountability.
- *Corruption and inefficient land administration*: While the government discourages informal payments, they are widely used. This indicates the need for further institutional reform and efforts to make people more aware of their legal entitlements and to create incentives to report rent-seeking behaviour.
- *Ineffective land dispute settlement framework*: Dispute resolution mechanisms are often hard for ordinary people to access, whether because of the need to travel, the fees involved, language barriers, delays, or lack of clarity about authority.
- *Inadequate resources*: Shortfalls in human, material, and financial resources exacerbate problems with the legal and institutional framework.

The chapter concludes by summarising areas in which reform is a priority, including tackling corruption, improving coordination, scaling up programmes to formalise occupation rights, and streamlining procedures to demarcate land available for occupation and investment.

II A BRIEF HISTORICAL PERSPECTIVE ON LAND TENURE ISSUES

There is some continuity in matters of land tenure between colonial times and post-independence Tanganyika, and later the United Republic of Tanzania, with some basic principles of the colonial era retained but with disorderly

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and sometimes contradictory additions. What was kept from the colonial era is essentially the view that land, whatever its type and its use, is formally the property of the government. It is now formally in the hands of the president, considered as the 'trustee' of the national land.

Since colonial times, however, the sensitive issue has been the status of all the land under customary law and the alienation of that land for use by non-indigenous or foreign investors, notably for export-oriented large-scale agricultural production (Tenga and Mramba, 2014, p. 55). The explicit rejection of full private property – and consequently the necessity to rely on rights of occupancy somewhat akin to long-run leases – was strongly reaffirmed by Nyerere in the mid-1960s, often against the advice of foreign advisers. Nyerere expressed his view on that issue before independence (Nyerere, 1958, pp. 55–6):

> [I]n a country such as this, where, generally speaking, the Africans are poor and the foreigners are rich, it is quite possible that, within eighty or a hundred years, if the poor African were allowed to sell his land, all the land in Tanganyika would belong to wealthy immigrants, and the local people would be tenants. But even if there were no rich foreigners in this country, there would emerge rich and clever Tanganyikans. If we allow land to be sold like a robe, within a short period there would only be a few Africans possessing land in Tanganyika and all others would be tenants.

This view has not been debated since. In essence, it was realised during this time that – as recommended by the East African Royal Commission of 1953–5 – market mechanisms had to enable willing sellers to make land available to willing buyers (Shivji, 1998), but market freedom could not be left to price alone. It had to be further regulated.

Modifications to colonial rules related to the ways in which land could be alienated from customary users: from total discretion in colonial days (see Box 7.1) to the official protection of small farmers under customary law. The strength of this protection, however, fluctuated somewhat over time. Cases demonstrate a clear struggle between the need to protect customary small-scale landholders and statutory large-scale farmers. Indeed, the whole period after independence was characterised by an ongoing debate about the space to be given to customary laws and the way to give investors, including public entities, the security on the use of land they need to develop long run and large-scale projects.

In some cases, the government used statutory instruments to frustrate customary land tenure in favour of statutory land tenure.[2] The situation was

[2] Consider the enactment of the Range Development and Management Act, No. 51 1964, which once applied in areas where pre-existing customary rights were extinguished. The Nyarubanja Tenure Enfranchisement Act, No. 1 1965 and the Customary Leaseholds (Enfranchisement) Act, No. 47 1968 abolished the Nyarubanja form of feudal system in Karagwe and customary tenancies respectively. The Rural Farmlands (Acquisition and Regrant) Act 1966 and the Urban Leaseholds (Acquisition and Regrant) Act 1968 granted land to tenants in rural and urban areas respectively. See also the Coffee Estates (Acquisition and Regrant) Act 1973 and the Sisal Estates (Acquisition and Regrant) Act 1974, which enable the government to take over land.

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Box 7.1: Pre-independence land cases

The 1953 case of *Mtoro Bin Mwamba* v. *A.G* (*2TLR*, 1953, *327*) decided that the Washomvi law, or customary law, did not recognise individual ownership to land except for an individual's usufructuary rights – and that where land was held by a native, the inference was that the possession was permissive and not adverse. In that case, the interest of the small-scale natives was merely right to the growing trees and not ownership of the land itself. In the cases of *Descendants of Sheikh Mbaruk bin Rashid* v. *Minister for Lands and Mineral Resources* (*EA 348*, 1960) and *Muhena bin Said* v. *Registrar of Titles* (*16 EACA*, 1948, *79*) it was established that land occupation by natives was none other than the admitted general permissive occupation by all inhabitants of the territory.

complicated by the creation of the *Ujamaa* villages in Nyerere's socialist era, the massive population resettlement operations undertaken under that programme, and the objective to improve agricultural productivity and the country's export potential. The alienation of customary land was rather common during the 'villagisation' period, whether at village level in order to reorganise production and increase productivity through mechanisation, or through parastatals being given the right to alienate large swaths of customary land.

Mpofu argues that villagisation marked the apex of the state bourgeoisie's efforts to put rural production under its hegemony. He sees resettlement of peasants in chosen localities as a vehicle to facilitate state supervision and control of smallholding producers (Mpofu, 1986, p. 120). Tenga and Mramba note that the relocation of peasants, during operation *vijiji*,[3] caused massive land tenure confusion and legal disputes (Tenga and Mramba, 2014). As a result, peasants whose land had been acquired sued in courts of law for restoration of such lands, and when they won their cases, the government reacted by issuing notices to extinguish their customary tenures (Mchome, 2002, p. 70; Tenga and Mramba, 2014, pp. 61–2).

The general trend away from peasants' control in the 1970s was evidenced in the overhaul and abolishment of local institutions that had grassroot-level participation, and their replacement with more bureaucratic ones directly controlled by the central government.[4] This is reflected in Shivji's view that *Ujamaa* served the interests and ideological hegemony of the state bourgeoisie (Shivji, 1986, p. 3), as *Ujamaa* remained a variant of petty bourgeois socialism and the official ideology of the state (Mpofu, 1986, p. 122).

[3] Swahili word for villages (plural); the singular is *kijiji*.

[4] Consider Mpofu on the abolishment of district and town councils with assumption of their functions by regional authorities (Mpofu, 1986, p. 122).

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The liberalisation period in the mid-1980s reverted to the dual land system with the development of large-scale plantations and better-protected customary land: a relative shortage of food products reinforced the weight given to farmers and cooperatives under customary law. Cases that witnessed the unavoidable tension between the two types of agricultural exploitation during this time include *National Agricultural Food Corporation (NAFCO)* v. *Mulbadaw Village Council and sixty-seven others* (see Box 7.2) (Tanzania Law Report, 1985, Case No. 88).

Box 7.2: *NAFCO* v. *Mulbadaw Village Council and sixty-seven others*

About 26,000 acres of land in Basotu ward, Hanang district, including 8,125 acres in dispute between the litigants in this case, were occupied by the Kilimo department from 1968–9. NAFCO succeeded Kilimo, entering into occupation of 22,790 acres of the land in 1969. NAFCO was offered a ninety-nine-year right of occupancy in January 1973. No wheat was planted on the land until 1979. The Mulbadaw Village Council, and another sixty-seven villagers of the same area, filed a case in the High Court against NAFCO, claiming damages for trespass over their lands and destruction of their crops and huts during the time of its occupation. The High Court awarded the Mulbadaw village TZS 250,000 as general damages, all the other claimants a global sum of TZS 1,300,000 as general damages, and TZS 545,600 as special damages.[5] The judge also declared that the 8,125 acres in dispute belonged to the claimants, and ordered NAFCO to cease its trespass forthwith.

However, after NAFCO appealed, the Court of Appeal stated that:

> An administrative unit did not necessarily imply that the land within its administrative jurisdiction was land belonging to it. The village council could acquire land only by allocation to it by the District Development Council under direction 5 of the Directions under the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975 […] those villagers who had testified had customary tenancies or what are called deemed rights of occupancy […] had to establish that they were natives before a court could hold that they were holding land on a customary tenancy. The 4 villagers [who] had not established that they were in occupation on the basis of customary tenancies were thus not ‘occupiers’ in terms of the Land Ordinance. (Court of Appeal of Tanzania, 1985)

[5] TZS 250,000 was equivalent to USD 29,070 (1 USD = TZS8.6 in 1975), TZS 1,300,000 was equivalent to USD 151,163, and TZS 545,600 was equivalent to USD 63,442, all according to the Bank of Tanzania (2011, p. 115).

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Little progress was achieved in trying to codify this complex relationship between formal and informal, or modern and traditional, land tenures and agricultural farms. This led to the aforementioned Presidential Commission on land matters under the direction of Professor Shivji, and the passing of the National Land Policy in 1995 and the Land Act in 1999. Despite many critiques and partial reforms, this system still provides the basis of land management in Tanzania.

III LEGAL LAND TENURE IN TANZANIA ACCORDING TO THE 1999 LAND ACT

Section 4 of the Land Act reiterates the basic public property principle of land tenure in Tanzania:

> [A]ll land in Tanzania shall continue to be *public land* [*our emphasis*] and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania [...]. The President and every person to whom the President may delegate any of his functions under this Act, and any person exercising powers under this Act, shall at all times exercise those functions and powers and discharge duties as a trustee of all the land in Tanzania so as to advance the economic and social welfare of the citizens.

It categorises land in three ways:

> (4) For the purposes of the management of land under this Act and all other laws applicable to land, public land shall be in the following categories: (a) general land; (b) village land; and (c) reserved land.

Village land is under the jurisdiction of *village councils* (*Village Land Act* 1999, sections 7 and 8) and therefore governed by statutory law (*Village Land Act* 1999) and customary law.[6] The councils, elected by *village assemblies* (*Local Government (District Authorities) Act, No.* 7 1982, section 57) are in charge of the management of all land in their perimeter (*Village Land Act* 1999, section 8). Village land mostly comprises rural land and peri-urban areas.[7] Village land accounts for around 70 per cent of all land in Tanzania, supporting around 80 per cent of the population – many being farmers and pastoralists (Tenga and Kironde, 2012, p. 17; *Draft Land Policy*, 2016).[8]

[6] See the *Village Land Act* 1999, sections 18(1)(d) and 20, which provides for the application of customary law to regulate customary rights of occupancy.

[7] Under section 3 of the Land Act, peri-urban area means an area which is within a radius of 10 kilometres/6 miles outside the boundaries of an urban area or within any larger radius which may be prescribed in respect of any particular urban area by the minister. See *the Local Government (District Authorities) Act, No. 7 1982*, section 28(2), which allows the minister for local government to provide for the inclusion of neighbouring villages in the area over which a township authority is established, for the purposes only of provision by the authority of any specified services to those villages.

[8] The figures could have changed – for instance, general land is assumed to be between 3 and 5 per cent, while village land is considered to have decreased to between 67 and 65 per cent.

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Reserved land is set aside for special purposes, including forest reserves, beaches, game parks, game reserves, land reserved for public utilities and highways, and hazardous land (*Land Act 1999*, sections 6 and 7). It is administered under different legislation: for example, forestry reserves are administered under the Forest Act (Sundet, 2005). Reserved land accounts for 28 per cent of all land in Tanzania.

General land covers all the land that is not either village land or reserved land. It is administered by the Commissioner for Land on behalf of the president (*Land Act* 1999, sections 9 and 10). Although it accounts for only 2 per cent of land, it is economically crucial, supporting 20 per cent of the population (Tenga and Kironde, 2012, fn. 28): it includes urban land and agricultural land granted to investors for large-scale operations (Tenga and Kironde, 2012, fn. 28).

The distinction between village land and general land is a potential source of dispute when attempts are made to free village land for external investors, a frequent case that is found not to be satisfactorily handled in the Land Act. The official definition of general land – 'all public land which is not reserved land or village land and includes unoccupied or unused village land' (*Land Act* 1999, section 2) – creates an apparent ambiguity, as there is no provision in the Act to clarify what is exactly meant by 'unoccupied or unused village land'. The process for non-villagers to access land under the control of villages is slow and cumbersome, as villages are limited in the amount of land they can allocate: any amount above a maximum of 50 hectares must be approved by the district council or Commissioner for Land (Tenga and Kironde, 2012).

The distinction between the types of land is of utmost importance and justifies the division of the Land Act 1999 into two parts. The Village Land Act deals with customary land occupancy rights in rural areas, while the Land Act deals with all the other land, including agricultural investment and urban development as well as reserve land.

A Rights of Occupancy

Under the Land Acts, village and general land are ruled by different rules of occupancy (Tenga and Kironde, 2012). A 'Right of Occupancy' is defined as 'a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law' (The Village Land Act, 2006, np).

The definition has two vital parts: the meaning, that is the title, to the use and occupation of land; and who shall qualify to occupy such land, including tribal communities that profess customary law. While the provision is a typical remnant of the British land policy, its retention in the law carries less weight, as various laws – including the United Republic of Tanzania (United Republic of Tanzania) Constitution 1977 as amended – recognise the rights of tribal communities. People who do not profess customary law can alternatively acquire a

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Granted Right of Occupancy (GRO) upon conversion of the land from village land into general land, even if they are not of the stated descent such as whites or those of Asiatic origin such as Indians. Moreover, under the British Land Ordinance, natives in the context of land occupation included Swahilis and Somalis, while the Land Act 1999 only requires membership of a tribal community to hold land under customary law.

Two types of rights of occupancy apply, respectively, to general and village land: the GRO reasserts the pre-existing system of formal land titles on general land, while the Customary Right of Occupancy (CRO) refers to informal land rights granted by village councils on village land.

1 Granted Right of Occupancy

This right, granted on general land, is deemed to be the main form of landholding in urban areas. It is granted by the commissioner on behalf of the president for a maximum of ninety-nine years. The cost involves application fees, the cost of preparing the certificate of title, registration fees, survey fees, deed plan fees, stamp duty on the certificate and a duplicate, and a premium (Kironde, 2014; World Bank, 2014b, p. 27). Tenga and Kironde note that government efforts to generate funds to acquire and service land, by charging a premium based on some formula of cost recovery, makes it difficult for low-income households to access land registration services (Tenga and Kironde, 2012, p. 28).

The premium has been 7.5 per cent of the land value since 2015, but a budget speech delivered by the Minister of Lands, Housing and Human Settlements Development (MLHHSD) expressed the ministry's intention to reduce it to 2.5 per cent of the land value (United Republic of Tanzania, 2018, p. 18). This will mean a huge decrease in the amount of premium and relief to land title applicants. Section 31 of the Land Act provides that, in determining the amount of a premium, the minister shall have regard to:

a. The use of the land permitted by the right of occupancy which has been granted;
b. The value of the land as evidenced by sales, leases, and other dispositions of land in the market in the area where the right of occupancy has been granted, whether those sales, leases and other dispositions are in accordance with the Act or any law relating to land which the Act replaces;
c. The value of land in the area as evidenced by the price paid for land at any auction conducted by or on behalf of the government;
d. The value of the land as evidenced by the highest offer made in response to a request made by or on behalf of the government, a local authority or parastatal for a tender for the development of land in the area;
e. Any unexhausted improvements on the land; and
f. An assessment by a qualified valuer given in writing of the value of land in the open market.

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TABLE 7.1 *Current official costs of first-time registration of a government grant (in TZS)*

Fee	Amount	Comments
Premium	2.5% of land value	Application for a right of occupancy – 20,000 Preparation of certificate of title – 50,000 Registration fees – 80,000 Survey fees – 300,000 Deed plan fees – 20,000 (0–1 hectare varying with increase in size) Stamp duty on certificate and duplicate – 1,000
Land rent for one year	Paid per annum	Per m^2 depending on category, locality, and use

Source: United Republic of Tanzania (2015)

In addition, as for the land rent, section 33 of the Land Act provides that:

Rent is determined by the Minister depending on factors such as: (a) the area of the land; (b) the use of land; (c) the value of land; (d) where there is insufficient evidence of value in that area from which an assessment of the value of land may be arrived at, an assessment by a qualified valuer of the value of land in the open market in that area which may be developed for the purpose for which the right of occupancy has been granted; and (e) the amount of any premium required to be paid on the grant of a right of occupancy.

Table 7.1 shows the estimated cost to be incurred as premium and land rent to be granted land. It assumes that the land is acquired from previously unsurveyed land that has been made the subject of planning followed by survey, parcelling, titling, and certification.

If the land has occupiers, a process of compensation will be followed: it was stated in the cases of *Mwalimu Omary and another* v. *Omari Bilali (TLR* 1990, 9) *Suzana Kakubukubu and two others* v. *Walwa Joseph Kasubi and the Municipal Director of Mwanza (TLR* 1989, 119), and *James Ibambas* v. *Francis Sariya Mosha* (*TLR* 1999, 364) that pre-existing rights to land can be extinguished only upon payment of compensation. The amount of compensation paid to original occupiers follows criteria in the Land Act and the Land Acquisition Act. However, concerns remain as the amount is not necessarily dependent on prevailing market rates and the payment is not always prompt.

Efforts by the government to ensure availability of surveyed plots is unsatisfactory. For instance, the number of registered titles, transfer documents, and certificates of unit titles issued in the financial year 2017/18 is below what was originally intended. In the stated financial year, the MLHHSD registered 79,117

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titles, of which 32,178 were certificates of title (from the initial plan of 400,000 titles) and 46,939 transfer documents (from the initial plan of 48,000 documents) (United Republic of Tanzania, 2018, p. 27). The capacity of the ministry to deliver is low, since issuance of new titles is not more than 35,000 titles per year.

The GRO can be likened to a 'term of years' or lease granted by a superior landlord. In the case of *Abualy Alibhai Aziz* v. *Bhatia Brothers Ltd* (2000), it was stated that:

> A right of occupancy is something in the nature of a lease and a holder of a right of occupancy occupies the position of a sort of lessee *vis-a-vis* the superior landlord. It is a term and is held under certain conditions. One of the conditions is that no disposition of the said right can be made without the consent of the superior landlord. [Since] [...] there is now no freehold tenure in Tanzania all land is vested in the Republic. So, land held under a right of occupancy is not a freely disposable or marketable commodity like a motor car. Its disposal is subject to the consent of the superior or paramount landlord as provided for under the relevant Land Regulations.

The implication is that the government exercises oversight powers over land dispositions under the custodial duty of the president (*Land Act* 1999, section 4). Under that mandate, he not only approves dispositions, but also receives notifications on any dispositions that are about to take place. Although this may seem unnecessary control over the freedom of disposition, it remains a regulatory mechanism, especially in cases of fraud, tax avoidance, breach of conditions, and transfer irregularities.

Sometimes the land for grants may include reserved land, where the president so permits. The grant is generally subject to the payment of rent,[9] although the commissioner has power to grant the land without rent.[10] The use of this power is less common, although it can be used as an incentive to attract investment in land. The grant has to be mandatorily registered under the Land Registration Act if it is for more than five years. The GRO may be acquired compulsorily in the public interest subject to prompt, reasonable and fair compensation, as provided under the Constitution and the Land Acquisition Act, Cap. 118.

Under section 19 of the Land Act, the GRO can be granted to citizens or non-citizens. Non-citizens can get it for investment purposes when they are registered with the Tanzania Investment Centre (TIC) or the Export Processing Zones Authority (EPZA).[11] The section created debate in the recent past when foreign investors became much more interested in agricultural investments in Tanzania and were accused of 'land grabbing'.

A major area of concern, further explored later, is that investors cannot get village land unless it has first been transformed into general land. Boudreaux remarks that, to attract investors, the government has stated its intent to transfer

[9] See the *Land Act 1999*, section 33: the holder of a right of occupancy shall pay an annual rent.
[10] See the Land Act 1999, section 33(7).
[11] See the 4th Written Laws Misc. Amendment 2016, which amends section 19 of the Land Act.

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a significant portion of village land to the general land category, with arguments that plenty of land in Tanzania is freely available and unoccupied (Boudreaux, 2012, p. 3).

In urban areas, which are general land, GROs coexist with other types of occupancy, including private individual semi-formal occupancy through derivative rights in the form of residential licences; private individual informal occupancy, where land is used informally with no or limited involvement of public authorities; communal or collective occupancy under the Unit Titles Act;[12] and informal occupation owing to encroachment of public land. In all these types of urban tenure, occupancy is formal or informal, individual or collective, and legal or illegal. From a governance point of view, the regulation of these different types of land occupancy is very dependent on a resilient, effective, institutional framework to avoid disputes.

In a survey done by Land Matrix (2016) to provide the average land market demand and scale of land acquisitions in Tanzania, it was noted that, overall, thirty-two investors from seventeen countries were engaged in large-scale land investments in Tanzania. Investors from the United States had the largest size under contract, while investors from the United Kingdom (UK) had the highest number of concluded deals. African investors did not play a significant role in land deals in Tanzania. Most of the land involved in these deals is customary land, which must undergo conversion into general land before it is granted to the investors. Owing to inadequate compensation paid and delays in the payment, discontent arises with the government and between investors and local communities.

2 *Customary Right of Occupancy*

The CRO bears all the attributes of a GRO except that it only applies in a customary tenure setting and on village land. The Village Land Act provides room for both individual and collective land rights (*the Village Land Act* (1999), sections 12 and 13). Village land can thus be used by an individual occupier or by a community, such as a pastoral community as grazing land, for forest reserve, water dam, and so on. These options provide flexibility for occupiers to enjoy the preferred rights of occupancy.

The Act allows village councils to issue *Certificates of Customary Rights of Occupancy* (CCROs) upon application.[13] In effect, these formalise customary tenures; but their issuance depends on regularisation of the village land.

[12] The Unit Titles Act No. 16 of 2008 was enacted to provide for the management of the division of buildings into units, clusters, blocks, and sections owned individually and designated areas owned in common; to provide for issuance of certificate of unit titles for the individual ownership of the units, clusters, or sections of the building, management and resolution of disputes arising from the use of common property; to provide for use of common property by occupiers other than owners; and to provide for related matters.

[13] See *the Village Land Act* 1999, sections 18(1)(a) and 22–5, on procedures for application of CRO and the issuance of the CCRO by the village council thereof, under section 25.

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In essence, the Village Land Act provides room for a village to have its outer boundaries surveyed, demarcated, and registered by the MLHHSD in order to obtain a Certificate of Village Land (CVL). The individual villagers could then apply to have their private parcels surveyed and registered. Only at the end of that process can villagers receive their CCRO document. It is also necessary that the village has issued a land use plan identifying what part of the village land could be individually titled, what part could be used communally, and what part could be reserved for further as-yet undefined uses. In the absence of such regularisation, landholdings on village land are based on the 'deemed right of occupancy', which may result from inheritance or clearance of unsettled land.[14]

The CCROs are meant to provide land occupiers on village land with the same advantages and protection as the owners of GROs in general land. This is not completely the case because of some specific constraints in the case of the CCROs. One such constraint is the impossibility of transmitting CCROs, through sales, donation, or bequest, to somebody *outside* the village community without the approval of the village council.[15] Of course, this is to make sure that the land of a village does not end up being controlled by people foreign to the village. Yet it seriously reduces the collateral value of the CCROs for potential lenders, undermining one of the objectives of CCROs – to allow holders to access the credit market.

B Land Transformation by the State and the Issue of Compensation

The Village Land Act allows for the transformation of village land into general land.[16] The initiative may come from the government needing to acquire land for some public purpose, in which case a standard expropriation procedure is followed, including compensation of evicted people. Askew suggests that determining what land can be transferred to the general land category is

[14] The Land Act provides that CRO includes deemed right of occupancy. 'Deemed right of occupancy' is defined under section 2 as meaning 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. Customary law under the Interpretation Act 1996 Cap 1 R.E. 2002 means any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African community in Tanzania and accepted by such community in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 9A of the Judicature and Application of Laws Ordinance.

[15] See section 18(1)(g) and (h) on the attributes of the CRO, which includes transferable, inheritable, and transmissible by will; however, section 31(3) requires that, unless otherwise provided for by the Act or regulations made under the Act, a disposition of a derivative right shall require the approval of the village council having jurisdiction over the village land out of which that right may be granted. See factors to be considered by the village council before approval in section 33.

[16] What follows draws extensively from Makwarimba and Ngowi (2012).

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one motivation for mapping and certifying village land areas, which necessarily raises the spectre of widespread dispossession among the native communities in the wake of commercial agricultural expansion (Boudreaux, 2012, p. 3; Askew et al., 2017).

The rights of people whose land has been expropriated or acquired and the procedures for expropriation are provided for by the Land Acquisition Act 1967, Land Act Cap. 113,[17] Village Land Act,[18] and the Land Acquisition Act Cap. 118.[19] The right to compensation is assessed according to the concept of opportunity, which takes into account the market value of the real property, relying on land transactions within the neighbourhood (excluding use being made of land, crops being grown, yields, and prices); disturbance allowance; transport allowance; loss of profits or accommodation; cost of acquiring the land; and any other loss or capital expenditure incurred in development of the land. Interest at the market rate is charged for delay in payment exceeding six months (*Land Act 1999*, section 3(1)(g); *Land (Assessment of Compensation) Regulations*, 2001).

In practice, compensation is usually inadequate and rarely paid on time. There have been many cases in urban Tanzania where the payment of compensation has been affected many years after the assessment, without reflecting the decline in the value of money. As Shivji (1998, p. 35) puts it:

> Compensation is hardly ever paid before dispossession. The amounts are paltry and have long been overtaken by inflation resulting in universal dissatisfaction with compensation.

The distribution of compensation also often ends up being inequitable within the households. Displacement often disturbs cultural and social values and norms as well as the composition and bonds of families, who may be dispersed in different locations, in opposition to human rights ideals. The far-reaching socio-economic impacts of compulsory land acquisition include income levels, land utilisation, land ownership structure, and farming practices.[20]

It should be borne in mind that when the government is acquiring land, it both sets the rules for determining and paying compensation and actually determines and pays the compensation. This could be seen as violating legal rights, as landowners expect to have their land assessed by a non-interested party.

1 Compensation and Market Value Dichotomy

Generally, compensation and market value for land have continued to be incongruent. Msangi, citing Ndjovu, argues that since there is no freedom of transaction in compulsory acquisition, there is no market as such for

[17] Section 3(1)(g).
[18] See, for instance, sections 3, 4, 6, 14(2), and 18(1)(i).
[19] Sections 6–18 of the Act.
[20] For a study of Kenya, see Syagga and Olima (1996).

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the compulsorily acquired property and that just compensation cannot be the same as market value (Ndlovu, 2003; Kironde, 2006; Ngama, 2006; Msangi, 2011, p. 20). He considers market value as the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably and without compulsion, which is not the case for compensation (Msangi, 2011, p. 20). In compulsory acquisition, where the transaction is not based on willingness from the seller in a free exchange, the market value cannot be said to have been attained because sellers have been compelled to sell against their will (Msangi, 2011).

As far as obtaining land market value based on crops is concerned, the government employs a formula for both perennial and seasonal crops. For a seedling crop it pays 30 per cent per stem, for mature crop 60 per cent, for optimum producing crop 100 per cent, and for aged crop 15 per cent. The price of an acre would stand at roughly between USD 180 and 1,500, depending on the age of the trees/plants (United Republic of Tanzania, 2013a).

Under the Land Acquisition Act, vacant land is not to be considered in assessing compensation, but this situation changed under the Land Act (1999). The National Land Policy (1995) recommended an improvement to the compensation package. The Land Act 1999, under section 3(1)(g), generally clarifies and improves on the nature and manner of the compensation package to be paid.

The government may give alternative land of the same value in the same local authority area in lieu of or in addition to compensation, if this is practicable (s. 11(1)(2); s. 12(3) of the Land Acquisition Act 1967). Under section 3 of the Land Acquisition Act 1967, where land is compulsorily acquired the minister is required to pay compensation *as may be agreed upon* or as determined according to the provisions of the Act. In practice, however, the government has preferred to determine compensation rather than to negotiate.

In urban areas declared to be planning areas, where a grant of public land is made the value of land is not paid. Previous landowners may be asked whether they should be paid compensation in cash, in land of equivalent value, or a bit of both. In order for this to work, the market for land needs to be transparent and not administratively determined, as is the case.

As for village land, it has been argued that despite the supposed protection of village certificates (which constitutes the first stage of formalisation), villages are undergoing state-directed re-surveying of their boundaries for the purposes of cutting off large parcels for farmers and investors (International Work Group for Indigenous Affairs (IWGIA), 2015). In Kilombero, state-directed re-surveying, branded re-formalisation, has permitted the acquisition of large tracts of land for the purposes of accommodating agriculture and rendering pastoralism untenable (Boudreaux, 2012, p. 3).

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2 *TIC-Led Commercial Land Operations*

The initiative to acquire land may come from the TIC, responding to the demand of local and foreign investors who are granted certificates of incentives (*the Tanzania Investment Act* 1997, section 17) for the right to use land for specific purposes – cultivation, factories – judged to be in the Tanzanian public interest.[21] Formally, the decision is validated by the Commissioner for Land, but the centralisation of the decision-making process depends on the size of the operation. Up to 50 acres/20 hectares, the village assembly and village council are the final decision makers (*Village Land Regulation GN No. 86*, 2001). Above that limit, the process is in the hands of the district council, Commissioner, and Minister for Lands, with consultation of the village councils concerned (*Village Land Regulation GN No. 86*, of 2001, Reg. 76(2) and Reg. 76(3). Under section 5(12) of the Land Act, the land will have to be transferred to the general land category, upon which the Commissioner for Land will have general mandate.[22]

There are also less formal procedures in use. For instance, investors may identify the suitable land directly or through intermediaries. They then approach the relevant district council,[23] which in turn deals with village councils and assemblies. Minutes of the meetings where the land acquisition is approved by those bodies are then submitted to the TIC, thus *ex post* rather than *ex ante* as in the official procedure, or the Commissioner for Land, for the effective transfer procedure to be launched.

Compensation is due to people whose CROs are extinguished. Although there is no uniform resettlement policy, there have been efforts at resettlement when the acquisition emanates directly from the government.[24] For large operations, however, the evaluation of the Tanzanian public interest in the projects that require land acquisition by foreign investors plays a huge role in the decision-making process. Not surprisingly, despite the detailed procedures included in the law, land acquisition operations do not go without frictions and disputes. Examples of successful and unsuccessful land acquisitions can be seen in Boxes 7.3 and 7.4.

[21] See the context of public purposes under section 4(1) of the Land Acquisition Act, Cap. 118 R.E. 2002, which includes uses of general public nature such as land for mining minerals or oil, exclusive government use, for general public use, for any government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services, or housing.

[22] See the power of the commissioner under section 10(1) of the Land Act that the commissioner is the principal administrative and professional officer of, and adviser to, the government on all matters connected with the administration of land and is responsible to the minister for the administration of the Act and matters contained in it.

[23] The district is a local administrative layer above the village.

[24] See, for instance, United Republic of Tanzania, Ministry of Agriculture and Food Security (2003); United Republic of Tanzania, Bank of Tanzania (2014); United Republic of Tanzania, Ministry of Energy and Minerals (2015); United Republic of Tanzania PMO-RALG (2014).

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Box 7.3: Examples of success stories of land acquisition

NEW FOREST COMPANY LTD (UK AND TANZANIA)

The New Forest Company engaged in agroforestry in the Kilolo-Ihemi cluster of the Southern Agricultural Growth Corridor (SAGCOT) area in Iringa region. The company was incorporated in 2006. It faced the challenge that, although the land was available, it was not in a single lot but in fragments owned by separate individuals. The company initially asked for 30,000 hectares of land for pine forest plantation, and succeeded in obtaining 8,000 hectares through the following steps:

Step 1: Land Identification

- The investor consulted TIC on the intended investment.
- The investor complied with the statutory requirement of capital threshold and obtained a certificate of incentives.
- The investor visited the Kilolo District Executive Director (DED) for possible investment in his district.
- The DED contacted prospective village councils with potential land.
- Notice was sent to the village council of the intention of the investor to inspect the available land.
- The investor was introduced by the DED to the village council for a site inspection.
- The investor and the village council discussed options for investment.
- The village council convened to discuss the investor's request. The village assembly was convened to approve the village council's decision.
- The amount of land that could be allocated was considered, bearing in mind land disposal limitations.
- For occupied land, the investor negotiated with the occupiers on terms of surrender and compensation. The district council worked out the property valuation for the land that would be offered: an acre of land was compensated for TZS 100,000 (approximately USD 45). In addition, the investor was required to pay statutory compensation as per the Land Acts.

Step 2: Land Transfer Process (Conversion of Land from Village Land to General Land)

- The village council informed interested parties as to the content of the notice.
- Affected persons made representations to a village assembly meeting attended by the Commissioner for Land.
- The Commissioner for Land/Authorised Officer attended negotiations on the terms of compensation.
- The Land Officer submitted the agreements and the intention to transfer village land to general land to the Commissioner for Land (Form 8).
- The commissioner prepared a notice of transfer and submitted it to the minister.
- The minister submitted the notice for transfer to the president.
- The minister issued a transfer permit.

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- The transfer of village land notice was gazetted and posted on places in the village for thirty days before it took effect.
- After the lapse of the notice period, the land was surveyed, and preparation for a certificate of GRO followed.

Step 3: Grant of Right of Occupancy to TIC

- The TIC applied to the commissioner for a GRO for investment purposes.
- The commissioner granted title to TIC for ninety-nine years.
- The commissioner forwarded the title to the Register of Titles for registration.

Step 4: Issuance of Derivative Right and Registration of Leasehold Title

- The TIC prepared a leasehold agreement for the investor, incorporating conditions and covenants, for ninety-eight years.
- The TIC sent the leasehold agreement and the right of occupancy to the registrar for registration of the leasehold title (derivative right).
- The Registrar of Titles issued a leasehold title as an encumbrance to the GRO on 1 July 2011.

Currently, ten villages are involved in the project: Kidabaga, Magome, Ndengisirili, Isele, Kisinga, Kiwalamo, Idete, Makungu, Ipalamwa, and Ukwega. The transfer of the land from the village and villagers was relatively smooth. There were some complications: although the company made promises, such as support for school renovation, local health services, and road maintenance, these were not put in enforceable contracts. Nevertheless, at present, there are no conflicts between the investor and the host communities.

Rungwe Avocado Project (Tukuyu, Mbeya Region)

Where land acquisition is not possible owing to scarcity or tenure issues, there is room for contract farming or out-grower schemes. This has been the case for part of Rungwe (in Tukuyu district, Mbeya region), where an avocado project is being implemented.

The Rungwe avocado project is considered a success story. No land was taken from the community, avoiding the complex procedure of compensation, and a contractual agreement was reached quickly for the investor to provide farmers with seedlings and an assured market for their produce. The investor shares modern technology with farmers and conducts market research for the farmers.

Some weaknesses have been pointed out. In interviews, some of the farmers voiced concern that there was no room to verify the accuracy of the prices given or the possibility of suing in the case of losses attributable to market variations. Some complained that the seeds cannot be replanted, as can those of indigenous species. Nonetheless, relationships between the investor and the host communities are generally good.

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Box 7.4: Example of unsuccessful story of land acquisitions

SUN BIOFUELS AFRICA LTD (SBF) (UK)

SBF was set up in September 2005 and wanted to acquire land for agribusiness. The process – which involved identifying a suitable area of land; meeting villagers; issuing letters to the government gazettes; engaging a consultant to carry out valuation on the land; identifying, mapping, and valuing areas that were occupied, farmed or otherwise utilised by the villagers; and satisfying the TIC that the whole process had been done – took four years (Kitabu, 2011, pp. 7–10). In January 2009, the village land was gazetted as general land and title granted to TIC. In May 2009, the TIC issued a leasehold title to SBF for ninety-eight years.

SBF negotiated with village authorities with the support of local politicians. According to district officials, twelve villages in five wards gave part of their land, totalling about 20,000 hectares. The process involved village council and village assembly meetings, but villagers complained that it was not participatory. The SBF had no formal contract with villagers in Kisarawe, for example: the only document the village had was minutes of the village council, which contained promises by the investor – but no timeframe for implementation or legal mechanism to ensure delivery. These promises included helping with the drilling of wells; providing modern farming implements, seeds, fertilisers, pesticides, and a milling machine; jobs; constructing buildings for a dispensary, extension officers, and teachers, classrooms, pit latrines, a technical school, student dormitories, secondary schools, library, sports facilities, and a land registry office; solar energy for schools; and compensation for those adversely affected.

Land officers from the district land office started the process of surveying and mapping the area to be acquired before discussions at the village level were concluded. The modality for determining the amount of compensation to be paid was not made open. The villages had no land use plans, which made it hard for village authorities to know the size of the land acquired. It was difficult for villages to prove ownership of some land because it was deemed unoccupied, although clearly it was being used and formed part of the village land that was not allocated to individual occupiers. The acquisition did not take into account prospects of future village population growth.

Eventually, the investor decided that his initial biofuel project was not viable, and sold the project to another private firm. However, the operation ultimately left many local farmers with no land and no job.[25]

[25] See Carrington et al. (2011). The collapse of SBF has left hundreds of Tanzanians landless, jobless, and in despair for the future. Consider also the case of a Dutch firm called Bioshape in the southern Tanzanian district of Kilwa, where a large jatropha plantation went bankrupt, leaving locals complaining of missing land payments and the land not being returned to its owners.

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IV THE DISTRIBUTION OF ACTUAL LAND TENURE STATUS IN TANZANIA

The previous section's description of the law governing the rights of land occupancy in Tanzania might suggest that the absence of private ownership has been fully compensated for by an alternative system of essentially public land leases. However, there are other land tenure statuses than the granted rights of occupancies, customary rights of occupancies, and the derivative rights – that is, subleases – in Tanzania. This is essentially because of the administrative burden of delivering granted rights and customary rights of occupancies, and also because of the difficulty of establishing precisely the boundaries of the land that could be concerned by the delivery of additional formal titles. Surveying land occupation develops at a very slow pace.

It follows that informal land tenure statuses coexist with formal ones. In 2012, a large majority of Tanzanian citizens lived without a formal land occupancy status.[26] So far, in urban areas, roughly over 50 per cent of inhabitants have no formal title. In rural areas, most villages now have village land certificates, meaning their boundaries have been surveyed, only a few of them have elaborated their land use plan and are in a position of issuing certificates of customary rights. In 2020, it was estimated that 200,000 certificates of granted rights and 520,000 certificates of customary rights would be issued between 2020 and 2021, but by 15 May 2021, only 56,390 and 34,869 respectively had been issued, representing roughly 5 per cent of the rural population.[27]

The tenure typology in urban areas as reviewed by the World Bank in its 2012 Study includes formal private use, semi-formal private use, informal private use, communal use, and informal occupation of state urban land.[28] In the rural sector, the tenure types are also diverse. They range from individual private use under GRO to private individual land use, communal use of rural land, reserved lands, and informal occupation of reserved land (legal squatting).

The government's expected land use changes in both urban and rural areas may imply intensification of certain forms of tenure: in particular, there is expected to be a substantial shift to general land from village land. This calls for clear strategies such as restructuring of the areas for cultivation, especially conversion of land from village land to general land, which may impact rural tenure typologies; restructuring the settlement areas, especially village land, where transfer to general land is involved; and restructuring areas for conservation for ecological and ecosystem maintenance.[29]

[26] See Deininger et al. (2012)

[27] See United Republic of Tanzania, MLHHSD Budget Speech (2021/2). See also Schreiber (2017).

[28] See Deininger et al. (2012).

[29] Consider United Republic of Tanzania MLHHSD (2011a, p. 48).

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V INSTITUTIONAL FRAMEWORK FOR LAND ADMINISTRATION

As the Land Act provides, all land in Tanzania is public land vested in the president, who is required to manage the land for the benefit of the citizens. The president can acquire land for public purposes or transfer land from one category to a different category (*Land Act* 1999, section 4(7)). Aspects of this custodial duty are legally mandated to others, as summarised in Figure 7.1, including the MLHHSD, the Commissioner for Land, supported by various authorised officers, land allocation committees, LGAs, and the National Land Advisory Council (*Land Act* 1999, sections 8–14 and 17).

The MLHHSD is responsible for sector management including policy, regulatory, support, and capacity building, as well as national functions such as national mapping, land use planning, and record keeping that cannot be fragmented into district and village functions (*Land Act 1999*, section 8). The National Land Advisory Council, whose chairperson is appointed by the president, reviews and advises the minister on all aspects of land policy (*Land Act 1999*, section 17). The Commissioner for Land reports to the permanent secretary of the MLHHSD and is mostly responsible for operations of land acquisition, transfer, disposition, and revocation (*Land Act 1999*, sections 9, 10, and 11).

The regional restructuring and local government reforms have also assigned much of the responsibility for land administration, particularly the interaction with land users, to LGAs, which are under the authority of the President's Office – Regional Administration and Local Government (PO-RALG)(*Land Act 1999*, section 14) Yet land allocation is ratified by the land allocation committees (*Land Act 1999*, section 12).[30] These committees deal with land other than village land.[31] They consist of local representatives of the commissioner – or the commissioner himself at the national level – and local officers responsible for various tasks, including land surveying (*Land Act 1999*, section 12(2)).

[30] See also the functions of the *Land Allocation committees* under the Land (Allocation Committees) *Regulations, GN No. 72* (2001).

[31] At the district authority level (excluding land within boundaries of an urban authority) in respect of plots for central/local government offices; plots for residential, commercial/trade, and service purposes; plots for hotels, heavy and light/small industries; plots for religious and charitable purposes; farms not exceeding 500 acres subject to the approval of the minister; and land for other purposes not specified here. At the urban authority level in respect of plots for central/local government offices; plots for residential, commercial/trade, and service purposes; plots for hotels, heavy and light/small industries; plots for religious and charitable purposes; land for urban farming; land for other purposes not specified here. At the ministry's headquarters or central level in respect of land for creation of new urban centres; plots for foreign missions; beach areas and small islands; plots for housing estates exceeding an area of 5 hectares; land for allocation to the TIC for investment purposes under the Tanzania Investment Act (1997); land for use of activities which are of national interest.

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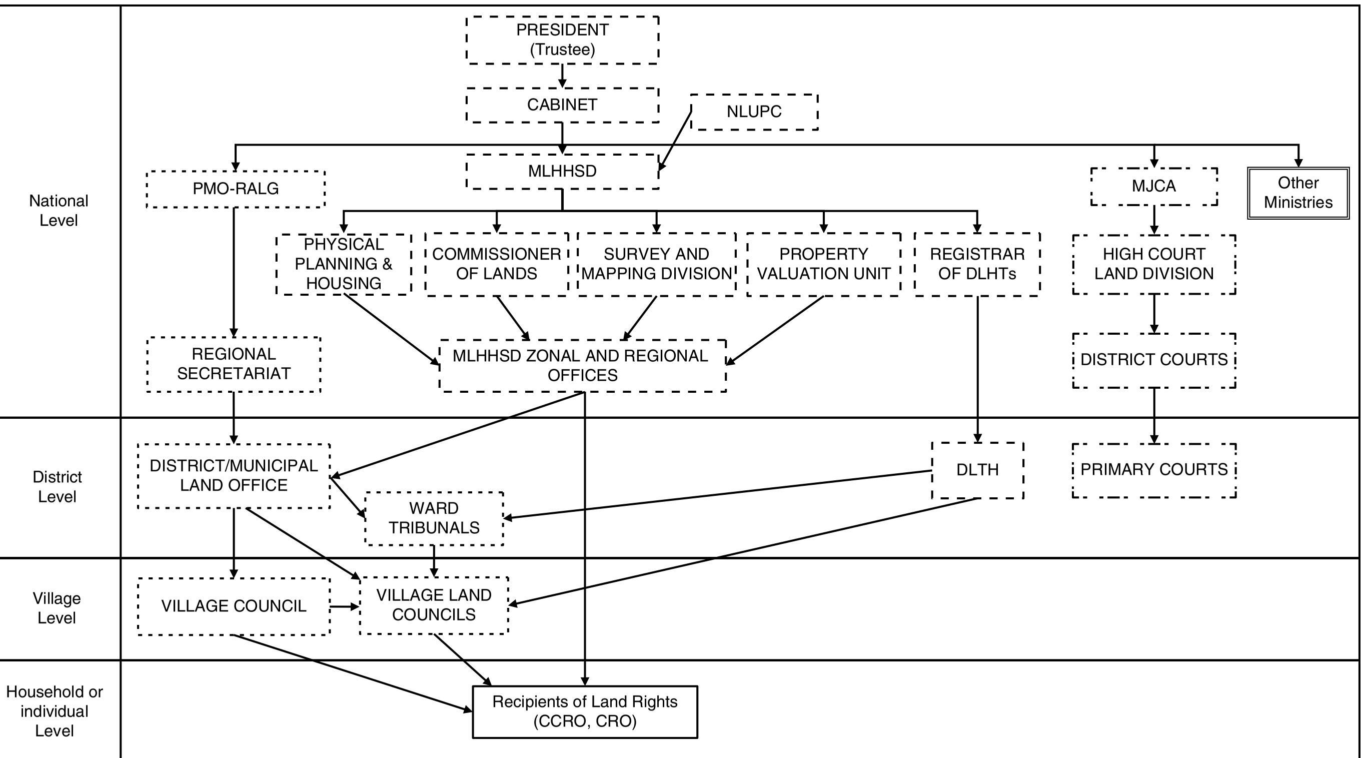

FIGURE 7.1 Institutional arrangements for land administration in Tanzania
Source: United Republic of Tanzania, Strategic Plan for the Implementation of the Land Laws (SPILL), 2013b

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Other entities include the National Land Use Planning Commission, which advises the minister on land use issues and the practice of land use planning at local, regional, and national levels (*Land Act 1999*, section 12(2)).

A Institutional Mandates on Grant and Allocation of Land Rights

As provided under the Constitution of United Republic of Tanzania (1977 as amended), citizens have the '*right to own property*' (United Republic of Tanzania (1977 as amended, Art. 24(2)) in the sense of 'rights of occupancy'. The laws regulate and administer land rights and concomitant duties. One of the core functions of the institutional framework is to facilitate delivery in terms of land acquisitions.

Land in Tanzania can be acquired in various ways, such as grant, purchase, and gift. For general land, the law provides that land rights can be acquired by both citizens and non-citizens. For citizens, the procedure is to make an application to the Commissioner for Land, who may grant in the name of the president.[32] For non-citizens, the Act provides that the only kind of interest they can acquire is for investment approved by the TIC or EPZA. This implies that the TIC or EPZA are the authorities that can approve an investment and/or issue derivative right to an investor. The mandate of TIC and EPZA does not apply where the entity is a non-profit foreign or local corporation or organisation with the aim of the relief of poverty or distress, the public provision of health, or other social services for the advancement of religion or education under an agreement to which the Government of United Republic of Tanzania is a party (*Land Act 1999*, section 19(3)(a)).

As far as village land is concerned, the institutional framework includes the minister, who is responsible for policy formulation (*Land Act 1999*, section 8; *Village Land Act* 1999, section 8(11)), and the Commissioner for Land, who is the principal administrator of all land including village land (*Village Land Act* 1999, section 8(7); *The Land Act* 1999, sections 9, 10, and 11). Village assemblies approve village land allocation or the granting of CROs by village councils (*Village Land Act* 1999, section 8(5)). The latter deals with the

[32] Section 22 of the Land Act provides for the application for a GRO. The application must be: submitted on a prescribed form and accompanied by a photograph; accompanied by the prescribed fee; signed by the applicant or a duly authorised representative or agent of the applicant; sent or delivered to the commissioner or an authorised officer; contain or be accompanied by any information that may be prescribed or that the commissioner may in writing require the applicant to supply; accompanied by a declaration in the prescribed form of all rights and interests in land in Tanzania which the applicant has at the time of the application; where any law requires the consent of any local authority or other body before an application for a right of occupancy may be submitted to the commissioner, accompanied by a document of consent, signed by the duly authorised officer of that local authority or other body; if made by a non-citizen or foreign company, accompanied by a Certificate of Approval granted by the TIC under the Tanzania Investment Act, and any other documentation that may be prescribed by that Act or any other law.

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management of the village's land (*Village Land Act* 1999, section 8). The ward development committee, the ward being the administrative level just above the village (*Village Land Act* 1999, section 8(6)(b)) can require reports from the village council on the management of the village's land. (*Village Land Act* 1999, section 8(6)(b)). At the next level, the district council provides advice and guidance to any village council within its jurisdiction on the administration of its land (*Village Land Act* 1999, section 9).

Where the boundaries of the village's land are not in dispute, that is after surveying, the Commissioner for Land is required to issue a CVL certifying the boundaries of the village land and giving a mandate to the village council to manage the village land (*Village Land Act* 1999, section 7(6)). The CVL is granted in the name of the president, affirming the occupation and use of the land by the villagers in accordance with the customary law applicable to land in the area.[33] For pastoralists, the CVL affirms the use of land for depasturing cattle in a sustainable manner in accordance with the highest and best customary principles of pastoralism practised in the area (*Village Land Act* 1999, section 7(7)(c), section 7(7)(d) and section 29). Together with the Land Use Planning Act, the Act also provides for the establishment of land use plans for villages and the creation of village-level committees under the village council that would oversee the implementation of the land use plans.[34]

A study on how 90 per cent of the citizens of Tanzania in rural areas acquire, hold, and dispose their lands has confirmed that customary landholding is still the prevalent mode (Kironde, 2009) for medium and smallholder farmers. Not all land in villages is allocated by village councils, since the Village Land Act generally recognises other forms of acquiring land such as purchase and inheritance. As a result, both the Land Act and the Village Land Act acknowledge 'deemed rights of occupancy', which emanate from occupation by villagers from time immemorial and allocations made by village councils upon application from villagers or non-villagers. Allocations by village councils are mainly on the land reserved for future use to needy applicants upon complying with certain formalities.[35]

Since the deemed rights are not compulsorily registrable,[36] they remain more precarious against the GROs (which are preferred by large-scale farmers) owing to their weak protection and lower competitive market status. Correcting these calls for pragmatic land use plans and issuance of CCROs to all landholdings on village land. There are also debates on uniform certificate of title for granted rights and customary rights in order to do away with the

[33] On conditions of the CCRO see *the Village Land Act* 1999, section 7(7)(c) and section 29.

[34] See generally on village land administration: Wily (2001); Geir (2005); Josefsson and Aberg (2005); Larsson (2006); The National Land Use Planning Commission (2011).

[35] See the power of the village councils to allocate land to applicants (*Village Land Act* 1999, sections 22–2).

[36] Case of *Methusela Paul Nyagwaswa supra.*

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stigma associated with CROs. In the financial budget 2016/17, the MLHHSD planned to prepare land use plans for five districts comprising 1,500 villages. By 15 May 2017, however, the ministry and various stakeholders had managed to prepare land use plans for only ninety-one villages in twenty-three districts (United Republic of Tanzania, MLHHSD, 2018, pp. 49–50). This lack of success reflects that the plans were prepared unsystematically.

Village councils are constrained in various ways. They are supposed to seek approval of the village assembly for various decisions, in particular the portions of village land that can be set aside as communal village land and other purposes. They must consult with the district council on the exercise of their functions. To ensure proper record keeping, they are required to maintain a register of communal village land in accordance with any rules that may be prescribed. And, of course, they are constrained by the customary law in their area.

The Village Land Act provides that customary law governs CROs (*Village Land Act* 1999, sections 18 and 20). Yet any rule of customary law and any decision taken in respect of land held under customary tenure must take into account the fundamental principles of national land policy and of any other written law (*Village Land Act* 1999, section 20(2)) such as the United Republic of Tanzania Constitution. Any rule of customary law, customs, traditions, and practices of the community that conflicts with the fundamental principles or written law shall be deemed to be void and inoperative and shall not be given effect by any village council or village assembly or court of law (*Village Land Act* 1999, section 20(2)).

Despite such a clear legal position, it is intriguing that some customary norms still disregard fundamental principles – including equality over land, which results in dispossession of women through customary inheritance rules.[37] In particular, some discriminatory statutory laws conflict with the well-intentioned principles of the Land Act and the United Republic of Tanzania Constitution

[37] Various judicial decisions have been registered on this, such as *Ephrahim* v. *Holaria Pastory and Another* (2001) AHRLR 236. In this case a woman, Holaria Pastory, had inherited some clan land from her father by a valid will. Finding that she was getting old and senile and had no one to take care of her, she decided to sell the clan land to one Gervazi Kaizilege, a stranger and non-member of her clan. One Bernado Ephrahim, a member of the clan, filed a suit in the Primary Court at Kashasha, Muleba district, praying for a declaration that the sale of the clan land was void under the Haya Customary law – for females have no power to sell clan land. This was in accordance with the Haya Customary Law (Declaration) (No. 4) Order of 1963; specifically, its paragraph 20, which was to the effect that 'women can inherit and acquire usufruct right but may not sell'. The Primary Court granted the prayer. She appealed to the District Court at Muleba. Here the decision of the Primary Court was quashed on the basis of the Bill of Rights in the Constitution that guaranteed equality for both men and women. Bernardo Ephrahim was not satisfied and appealed to the High Court of Tanzania at Mwanza. At the High Court, the decision of the District Court was upheld on the ground that the relevant Haya Customary Law was discriminatory on the basis of gender, thus inconsistent with Article 13(4) of the Constitution.

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on equality on land rights. One such law is the Customary Law Declaration Order, Order No. 4 of 1963, which classifies heirs into three degrees with women holding the third position.

B Institutional Mandates on Disposition

The Land Act defines disposition as follows:

> Disposition means any sale, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a right of occupancy or a lease and any other act by an occupier of a right of occupancy or under a lease whereby his rights over that right of occupancy or lease are affected and an agreement to undertake any of the dispositions so defined. (*Land Act 1999*, section 2)

In other words, land can be exchanged, transferred, and subject to a variety of market transactions. This is important as agribusiness investors need tools to raise capital, for example mortgages. If the right of occupancy were not fungible, the raising of credit for modern agriculture would be extremely limited (Tenga and Mramba, 2018, p. 10).

This is not always appreciated, as suggested by the antiquated phrase 'land in Tanzania has no value' – in fact, there are various ways in which the right of occupancy is transferable for value. That phrase often meant that since a right of occupancy is a grant for 'use and occupation', the value to the landholder would only be value that is generated through his investment on land – that is, 'bare land' has no value *per se*. But this kind of statement is fraught with danger as it has led to a lot of negative sentiment, which necessitated the amendment of the Land Act to state clearly that land has value (Tenga and Mramba, 2018, p. 10).

The Land Act, for instance, provides for the disposition of the GRO in three separate parts. First, it provides for the administrative oversight, where one can make the necessary applications to the Commissioner for Land or his authorised officers to approve and register a disposition of land. Second, it deals with what one may consider to be a theory of land transfers – the legal assumptions that underlie each disposition of land, such as that the need for each disposition must be in writing and that certain conditions are implied in every transfer, including that there are no latent defects in the land that have not been disclosed to a purchaser. These 'consumer protection' provisions are essential in modern property transactions; in the old days, the concept of *caveat emptor* or 'buyer beware' gave little protection to the unwary purchaser.

Third, there are detailed regulations for certain major forms of dispositions, such as the sale, mortgage, or lease of the GRO. The Land Act contains separate parts for each form of disposition. Previously, consent to any kind of disposition was mandatory, but under the Land Act (1999) there are many exceptions – only for specific kinds of disposition is official approval mandatory, otherwise a notice to the Commissioner for Land will suffice.

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The president is the highest authority in the regulation and control of disposition of land in Tanzania. His mandate includes overseeing transfers of land. Practically, however, this function has been under the responsibility of the Commissioner for Land, assisted by authorised officers, as detailed in sections 36–41 of the Land Act. These sections have been referred to as mandate for oversight of the dispositions of GRO on general lands: disposition that has not obtained the requisite approval from the Commissioner for Land is rendered ineffectual, unless it is of a kind that requires only the furnishing of notice to the commissioner (*Land Act* 1999, sections 36 and 37). The cost is considered high, and it can take from two to four months to get a registered title.[38]

The amendment of section 41 of the Land Registration Act, Cap. 334 on registration of disposition calls for disposition of land to be subject to registration with mere notification to the commissioner, mainly to facilitate disposition by way of mortgage. The initial position was that no disposition could be registered unless the registrar received a certificate in writing from the Commissioner for Land signifying his approval, and only registered dispositions could create, transfer, vary, or extinguish any estate or interest in any registered land. Under the amended section, the applicant can now simply submit for registration all relevant documents accompanied by a prescribed fee, and the registrar then registers the disposition and notifies the commissioner.

For village land, the disposition of customary rights of occupancy requires approval of the village council. This is intended to protect village land against acquisition by non-villagers, but it is debatable if it has succeeded. A village council has exclusive decision power only if the land does not exceed 20 hectares. Where it exceeds 20 hectares, the approval of the district council is needed. If it exceeds 50 hectares, the approval of the Commissioner for Land is required (United Republic of Tanzania, MKURABITA Report, 2005). Such a provision seems to challenge the freedom of village councils and go against the principles of devolution and subsidiarity as expressed in the United Republic of Tanzania Constitution,[39] and reflected in Local Government Authorities Acts.[40] Powers seem to be legally granted to the village council by one hand only to be taken away by the other.

There is thus a kind of dualism in the land disposition system: centralisation of control and management of general land, with devolution of control to customary law at the village level. Such dualism cannot go without frictions and incidents likely to affect the economic efficiency of the whole land sector and to produce social frustration, such as those detailed in Box 7.5.

[38] See the United Republic of Tanzania, MKURABITA Program on Formalization of the Assets of the Poor in Tanzania and Strengthening the Rule of Law Report (2005d).

[39] See Articles 145 and 146, that the purpose of having LGAs is to transfer authority to the people. LGAs shall have the right and power to participate, and to involve the people, in the planning and implementation of development programmes within their respective areas and generally throughout the country.

[40] See *the Local Government (District Authorities) Act, No. 7 1982*, sections 26 and 142.

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Box 7.5: Control of mandate of village councils

LUHANGA VILLAGE, MBARALI DISTRICT

The government in Mbeya returned 5,000 hectares of village land in Luhanga village Mbarali that had been taken from more than 200 villagers belonging to the Luhanga community for an investment project. The government directed the district council to take action against all village government officials who were involved in the process of allocating the land without respecting the legal procedure.

When handing back the land to the Luhanga community, the Regional Commissioner, Amosi Makala, said:

> The government had made such decision after discovering that the process of allocation contravened procedures under the Village Land Act and its Regulations […]. Act No. 5 of 1999 makes it clear that village councils have no mandate to allocate more than 20 or 50 hectares but, in that case, they allocated more than 5,000 without even consulting the district council […]. [Furthermore,] apart from the allocation lacking procedural compliance, the investors did not seem to be genuine due to their failure to honour their promises to facilitate socio-economic issues in the area.

Lukenge Village, Kibaha District

In January 2018, the government, through the Kibaha District Commissioner, ordered an investor who had taken 5,000 hectares from the village government without following legal procedures to return it to the community within ninety days. The investor had failed to develop the land for eight years, contrary to the contract of disposition agreed with Lukenge village, Magindu ward.

The District Commissioner took action after villagers complained to her about the land transfer. According to the commissioner, the investor took the land for the purpose of investing in livestock and fish farming, but failed to commence the project. Instead the investor was using the land for other projects and did not support community socio-economic activities.

Data on the amount of land transfer in Tanzania are sketchy. Sule (2016), for instance, while cautious of the data, considers that:

> There [have been over] 34 deals with about 1,000,000 ha owned by foreign investors (and joint ventures between the Tanzanian and foreign investors), whether announced, ongoing or concluded land acquisition processes. Out of these deals, only deals with a total of around 555,000 ha are reported by at least two different sources and can thus be considered as verified with certain reliability. Of the verified deals, only ten deals with a total area of 145,000 ha can be considered as concluded deals. The remaining reported area of 410,000 ha derives from deals that are so far only announced or

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Box 7.6: Centralisation of land management

In September 2006, the minister of MLHHSD banned sale of land by villagers to foreigners. The minister gave the stern directive in a public meeting in Magu district, Mwanza, when resolving a land dispute that had lasted for thirty years between villagers and an investor. He said that 'there is a habit by a majority of villagers of allowing the so-called investors to come in to buy land from separate villagers, resulting in the investor occupying land which exceeds the statutory limit. Worst still, instead of developing it, the investor uses it as collateral to borrow money from banks and afterward sell it by surveying and creating plots.' He directed that it was prohibited for the district council or officers in his ministry to approve any such transactions.

that have land acquisition ongoing, but not concluded (including the contested AgriSol Energy deal with an area of 325,000 ha). [It is appreciated that] since these data are three years old, a number of new projects are likely in place and some projects have either ceased or become dormant. (Sule, 2016, p. 112)

In its assessment of investment in commercial agriculture, the MLHHSD found that out of 121 commercial farms in the country – amounting to 223,443 hectares – in Tanga, Morogoro, Pwani, Njombe, and Kagera regions only 63 (about 52 per cent) had been developed, while 58 (about 48 per cent) had been abandoned (United Republic of Tanzania, MLHHSD, 2018, p. 22). This is quite alarming and could point to a problem with the investment conditions or failure to closely monitor investors' compliance with investment plans. An example is given in Box 7.6.

C Institutional Mandates on Dispute Settlement

The Land Acts provide for the establishment of a land dispute settlement mechanism in Tanzania. They assert the need for structures to be instituted at the lowest local level with room for accessing higher levels in case of no resolution. In 2002, the Land (Disputes Courts) Act was enacted. It provides for a dispute settlement system with five levels of hierarchy.

The lowest level is the village land council, followed by the ward tribunal, where procedures are mostly informal as advocates are not allowed and decisions are taken by lay judges. The next level is the District Land and Housing Tribunal (DLHT), where advocates are allowed so procedures are more formal. There are too few tribunals, so some serve an entire zone rather than a single district. In regions where DLHTs are scarce, citizens face high travelling costs to get their case settled in a tribunal. This renders the principle of equality before the law somewhat illusory.

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TABLE 7.2 *Land disputes in DLHTs*

Total number of pending land disputes by 30 June 2016	Total number of land cases filed from July 2016 to 15 May 2017	Total number of land cases decided from July 2016 to 15 May 2017	Total number of pending cases on 15 May 2017
13,89	26,245	18,571	21,564

Source: United Republic of Tanzania, MLHHSD (2018)

The upper levels of the land judiciary hierarchy are the High Court (Land Division) and the Court of Appeal. Procedures in these courts may be cumbersome. For instance, a person whose dispute was first handled in the ward tribunal cannot appeal from the High Court to the Court of Appeal unless (s)he receives certification from the High Court that there is a point of law involved. Moreover, an appeal from the High Court for a matter that originated in a DLHT, or High Court must seek leave before appealing to the Court of Appeal. These restrictions have been deemed to be challenges in the settlement of land disputes. Overall, it is an intricate institutional structure of land administration, the complexity of which reflects somewhat antinomic basic principles.

When presenting the MLHHSD budget in the financial year 2016/17 in parliament, the minister of MLHHSD outlined the status of land disputes in DLHT in the country from 30 June 2016 to 15 May 2017. Table 7.2 summarises.

It would appear that the stock of pending cases is increasing at a vertiginous rate: up 60 per cent in a year, equating to more than a full year of new cases. This clearly unsustainable if the judiciary capacity is not improved or the causes for disputes reduced.

VI INSTITUTIONAL ISSUES AND CHALLENGES

The Land Acts were passed in 1999 and began to be implemented in May 2001. Although they represented an improvement, they were quickly found to be unsatisfactory on several grounds. Major challenges are still present, as evidenced by the impressive number of reports that have since been produced on the persistent institutional weaknesses of the land rights system and land administration, and several partial reforms that have attempted to improve the situation. For example, only four years after implementation, the law was amended to repeal and replace Chapter 10 related to mortgages, under pressure from financial institutions, which found that it inhibited bankable projects. Another amendment in 2005 changed provisions related to leases, followed by one in 2008 to promote mortgage financing.

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More fundamentally, reports including the MKURABITA (Property and Business Formalisation Programme) Report (2005), BRN (2013), and the Land Governance Assessment Framework (LGAF) (2009 and 2015) pointed to major institutional challenges. The 2009 LGAF report proposed a systematic review of the National Land Policy of 1995 to explore the extent to which expected gains had materialised and what could be done to improve the performance of land management. Issues touched upon include: land surveying, mapping, and registration; affirmative action to address gender issues; redefining institutional mandates; strengthening of decentralisation; making land use planning more participatory; changing expropriation practices; and improving conflict resolution mechanisms. The same institutional issues were again stressed in the 2015 LGAF report. The government reacted by commissioning in 2016 a review of the National Land Policy 1995. A draft policy is presently under consideration.

The implementation of the Land Acts was sufficiently difficult that it gave rise to two Strategic Plans for the Implementation of Land Laws, the first in 2005 (SPILL-I) and the second in 2013 (SPILL-II). A SWOT (strengths, weaknesses, opportunities, and threats) analysis undertaken in the latter pointed out positive but also numerous negative sides of land policies in Tanzania. The negatives are summarised in Table 7.3.

Clearly, the weaknesses listed in Table 7.3 result both from unsatisfactory institutional arrangements and limited state capacity – aspects that it is not really possible to completely disentangle. Despite the SPILL's well-conceived analysis, and despite some, though unsatisfactory, progress over recent years, the main difficulties affecting the functioning of the land sector have not been resolved. The 2016 draft National Land Policy proposes to introduce some substantial changes in the National Land Policy 1995 and its implementation instruments. As the Policy is not finalised at the time of writing, the next sections describe the main present shortcomings of land management in Tanzania without consideration for the reforms considered in this new version of the Policy. The few debates organised about the draft of the National Land Policy 2016 do not suggest most challenges listed here will disappear, as the focus of these debates seems mostly to concern the protection of smallholders against large-scale investors.[41]

A Duality of Tenure

There is little doubt that the duality of tenure introduced by the key distinction between general land and village land, and the associated difference between GROs (and derivative rights) and CROs, is the main source of friction and inefficiency in the institutional setting of land rights in Tanzania. Transforming

[41] See, for instance, The Citizen (2017).

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TABLE 7.3 *Weaknesses and threats in land policies*

Weaknesses	Threats
Inefficient and ineffective land administration	Massive growth of irregular settlements
Institutional arrangements uncoordinated	Unregulated land markets
Land administration services concentrated in limited parts of Tanzania	Limited housing/building mortgage market
Shortage of staff, particularly in land disputes	Underfunding of the land administration infrastructure
Implementation of new land law is slow	Oversight of land dispute mechanisms questioned
Key mechanisms (National Land Advisory Council, village land councils, tribunals, etc.) not in place	Increasing land conflicts
Shortage of planned, surveyed, and serviced land	Lack of harmony with laws in other sectors
Poor enforcement of rules and planning regulations	Growing marginalisation of the poor
Dispute settlement machinery not empowered	
Lack of maps	
Tarnished image of the land sector in the eyes of the public	

Source: United Republic of Tanzania, MLHHSD, SPILL (2013b)

village land into general land to facilitate large-scale investments, in agriculture as well as in other activities, is often an uneasy and unpopular operation, to such an extent that it may act as a disincentive for investors and lead to missed economic opportunities.

One of the objectives of the present land management system is clearly to protect indigenous smallholders from their land being acquired by large-scale operators who might use the land more productively but with lower employment, a different output mix, and insufficient compensation for evicted people. This objective – so clearly expressed in Nyerere's quotation at the beginning of this chapter – is justified, even though it implicitly means some strategic choices about agricultural development have been made that may not have been fully analysed; for example, how much land for food crops in smallholdings and cooperatives and how much for commercial crops in large-scale plantations.

It is estimated that by 2017, more than 11,000 of Tanzania's approximately 12,500 villages had mapped their outer limits, but only about 13 per cent had

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adopted land use plans. Of the approximately 6 million households located in rural villages, only about 400,000 had obtained individual title documents (Schreiber, 2017, p. 1). This implies that more than half of Tanzania's 12,500 villages still do not have CVLs and very few rural citizens hold occupancy certificates to secure their individual land parcels.

The problem is that, within the present institutional setting, this protection is often elusive. This has two consequences. On the one hand, smallholders feel insecure and may not take the necessary steps to improve their land, increase yields, and respond to market incentives. On the other hand, large-scale operators may be discouraged from acquiring land by endless procedures and high transaction costs. Better defined, better implemented, and fairer administrative procedures for land transfers would provide efficiency gains on both sides.

From a sociological or political science point of view, however, there is much more to land than economics. At all levels, the choice of an institutional structure through which land rights are managed has major implications for the distribution of power in society and ultimately on control over land.

The frequency of incidents about rights of occupancy is high and rising. These incidents arise from the perceived violation of the principle of equality behind the intended comparable status of the GROs on general land and the CROs on village land (*The Village Land Act* (1999), section 18(1)). Although one could assert that the attributes of the CRO under section 18(1) of the Village Land Act are not realistic, since they depend on the administrative inclination of relevant authorities and judicial interpretation, they remain important features in the protection of customary right holders. Judicial trends before the enactment of section 18(1) of the Village Land Act relied on inquiries called upon by the Minister of MLHHSD in the case of land conflict that had shown disregard for customary right and the mandate of village councils, as exemplified in Box 7.7.[42]

Many incidents have also arisen from the acquisition of customary land rights for the public interest. Since 98 per cent of land in Tanzania is village land or reserved land, village land is the main source of land acquisition for other purposes, where there are particular development needs. Nonetheless, conflicts may also be brought about by overlaps between individual villages' land and reserved land (parks, game reserves, conservation areas). Schreiber, for instance, notes that villagers have faced pressure from government officials and conservationists, who wanted more land allocated to conservation and lucrative tourist lodges (Schreiber, 2017, p. 2). Within villages, there have also

[42] See cases such as *Methusela Paul Nyagwaswa* v. *Christopher Mbote Nyirabu* (1985), *Suzan Kakubukubu and two others* v. *Walwa Joseph Kasubi and the Municipal Director of Mwanza* (1988), *AG* v. *Lohay Akonaay and Joseph Lohay* (1995), and *Mwalimu Omary* v. *A. Bilali* (1990), in which the CRO was in dispute against the GRO.

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Box 7.7: Interference over mandate of village councils

In Mabwegere, village authorities had to defend their village boundaries all the way to the Court of Appeal, where they had won in September 2011. However, the regional and district authorities refused to implement the court order to respect the village boundaries, and instead maintained their intention to redraw the village boundaries to reallocate land to the neighbouring rice farming village of Mbigiri. On 30 May 2015, the Mabwegere village chairman was arrested and ordered to publicly announce his support for the redrawing of his village boundaries in order to be released. As he refused to do so, he was jailed for a month. This was followed by a ruling of the Morogoro DLHT on 3 June 2015 to rescind the village certificate of Kambala village and reduce the village land from 48,650 to 16,104 hectares – a reduction of 66 per cent (ITV, 2015).

been many disputes between pastoralists and farmers, with pastoralists often removed from their habitual or traditional grazing lands, as for instance in Kilosa-Morogoro.[43]

B Immense Powers of Eminent Domain

The concept of public land has given the state immense power, because land is deemed to be controlled by the state and thus akin to state property.[44] Yet the power of eminent domain, and the state's policing and managing capacity – which allow it to regulate land use in the public interest through planning and granting of planning permission – have not always been used judiciously and in the public interest.

What constitutes public interest has remained a matter of contention. In the recent history of Tanzania, for instance, public interest included acquiring land for private investors. On the management side, large-scale allocation of land by the state was often undertaken with no consultation of the affected communities. In effect, customary landholders are not protected by fair information and consultation procedures. Free, prior, and informed *consent* for the allocation of customary lands is not obligatory when the public interest is involved. There is also no assurance that evicted customary landholders or those deprived of parts of their lands will be able to find jobs or other livelihoods to compensate for their losses. Needless to say, the losses endured by local communities can be very great, including the commercial value of the

[43] See Mkomazi Game Reserve in the case of *Lekengere Faru Purut and 52 others* v. *Minister for Tourism, Natural Resources and Environment and three others*.

[44] 'Eminent domain' formally refers to the power of the state to take private property for public use while requiring 'just compensation' to be given to the original owner.

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land or, in the absence of well-functioning markets, its recurrent-use value and its potential for a commercial enterprise.

Commons in communities under customary tenure have been particularly vulnerable, on the argument that they are unowned, or idle, or simply that they belong to the state. Often the most valuable land assets of rural communities are targeted by commercial investors, leaving these communities sinking deeper into poverty (Songela and Maclean, 2008; Action Aid, 2009; Chijoriga, 2009; Mwamila et al., 2009; Sulle and Nelson, 2009; Kaarhus et al., 2010; Oakland Institute, 2011). Such cases include land acquired by Bioshape in Kilwa for Biofuel, Sun Biofuel in Kisarawe, and SEKABBT in Bagamoyo.

Occasionally, compensation has been paid to evicted communities, but they complain it is grossly inadequate. Promises made about employment opportunities and the improvement of rural infrastructure often do not materialise (LEAT, 2012). Expected tax revenues at the local level also fail to be realised as investors demand and get exemptions. This has the effect that host communities rise up against investors. It has been suggested that the government should adopt alternative models that engage more of the existing producers, such as contract farming and out-grower schemes, rather than displacing them (Vermeulen and Cotula, 2010; Tenga and Kironde, 2012).

C Limited Formalisation

In rural areas, land surveys and issuance of CCROs are still done sporadically and on an *ad hoc* basis. In most cases land CCROs have depended on pilot projects that have not managed to cover a large part of the country. As also noted in Section IV, informal urban tenure outpaces formal tenure – a clear indication that unplanned settlements are increasing fast. This is because of a high rate of urbanisation and arbitrary expansion of city boundaries, which has even eaten into self-governing villages.[45]

Even when land occupancy rights have been granted at one level or another, procedures and standards for formalisation are characterised by being bureaucratic, unrealistic, expensive, and time-consuming. Only a minority of land records are found in the land registers. Registry records are often unclear and cases of multiple titles for the same piece of land are not uncommon. Automated land recording and documentation systems are rare. Land administration is often centralised. Possibly because of this, it is characterised by non-transparency and lack of accountability. This scares low-income households, as well as potential investors.

[45] See, for instance, Gastorn (2003).

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D Gender Discrimination

Gender inequality in access to and control of land remains a serious problem. As noted by Shivji, while people can have access to land through various means including allocation and purchase (Shivji, 1998, p. 84), control of the proceeds from the land is another matter. The Food and Agriculture Organization notes that rural women in particular are responsible for half of the world's food production and produce between 60 and 80 per cent of the food in most developing countries, but they lack effective decision-making power as individuals under traditional law (Food and Agriculture Organization, 2002, p. 26). Often, women are left holding whatever rights they have at the will of male relatives (Food and Agriculture Organization, 2002, p. 26).

One of the major remaining obstacles to increasing the agricultural productivity and incomes of rural women is insecurity in their land tenure, reflected in rules of access and control. Traditional or customary systems that might protect women's access to land have failed to promote their full control over the land they operate. While land may be considered valuable collateral by credit institutions, the marginalisation of women excludes them from obtaining loans and making important investments.

Although the Village Land Act provides for the illegality of discriminatory practices in customary law (in section 20), there are still complaints about the mistreatment of women in terms of land rights. Improving access and security for women will require changes in cultural norms and practices.

E Institutional Overlaps

Land administration is affected by potential overlaps in implementation of land-related laws and policies owing to the multiplicity and diversity of land-related institutions. Overlap of responsibilities, and the complexity of the relationships between the various public entities in the land management system, undermines efficiency and sometimes threatens basic principles such as the separation of powers.

For example, land officers in the LGAs – village, ward, and district – are under the responsibility of the MLHHSD. While they are paid by and report to superiors in the ministry, they execute functions for local governments, which are themselves under the responsibility of the PO-RALG. Another example is that sectoral ministries have their say on swaths of land under the MLHHSD – the Ministry of Natural Resources and Tourism deals with reserved lands, for instance.

Problems of overlap and lack of coordination are also acute in the land dispute settlement system. At the lower level of the system, the village land councils and the ward tribunals are under local government authority responsibility, which falls under the PO-RALG. Right above them, the DLHTs are under the MLHHSD. At the top, however, the High Court (Land Division) and the Court of Appeal are under the judiciary. This institutional set-up creates

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problems of accountability and contravenes the principle of separation of powers (Gastorn, 2009, pp. 583–4; Kironde, 2009). It also creates unnecessary problems in the delivery of justice, hence the need for reform.

F Corruption and Inefficient Land Administration

Much as institutional framework is crucial in land governance, Askew notes that:

> [W]eak land governance and property rights systems can lead to opaque land deals, which facilitate corruption and undercut responsible actors seeking access to land for productive investment. Weak governance […] allows unproductive land speculation and undermines agricultural productivity. (Askew et al., 2017, p. 5)

Kironde points out that corruption challenges in the land sector are partly blamed on lack of an efficient land records system. Falsifying or hiding land information has led to long delays in getting approvals for land use plans, land surveying, and change of use (Kironde, 2014, p. 12). He notes that although the government discourages informal payments, through public notices in offices and public education campaigns, they are paid all the same. Mechanisms to detect and deal with illegal staff behaviour exist in some registry offices, such as use of the Prevention and Combat of Corruption Bureau, but it has proved difficult to eliminate rent-seeking, and the general public does not have the incentive to report it. Indeed, rent-seeking is condoned through intermediaries as it seems to speed up delivery.

Transparency International (2017) has indicated a slight overall improvement in the fight against corruption: from 2016 to 2017, the country's score increased from 32 to 36, and it climbed by three places from a global rank of 106 to 103. In a more focused study, Afrobarometer noted some likelihood of corruption-related practices to facilitate land registration, with rich people very likely to offer bribes (Afrobarometer, 2017, p. 7). Ordinary people also seem to be used to making informal payments, which indicates that institutional practices still need further reform (Afrobarometer, 2017, p. 7). See Figure 7.2 for an overview of the likelihood of corruption on land transactions for ordinary and rich individuals. It could also demonstrate that many people are not aware of their entitlements, and there is need for more efforts on awareness raising on land rights. The Information Land Management Integrated System is expected to minimise the avenues of corruption and fast-track land delivery.

G Ineffective Land Dispute Settlement Framework

The dispute settlement machinery is complex, straddling the judiciary and the executive, and disputes are on the rise. The nature of the disputes varies: some result from conflicting land uses such as agriculture and pastoralism, agriculture and conservation, or pastoralism and conservation, and others result from

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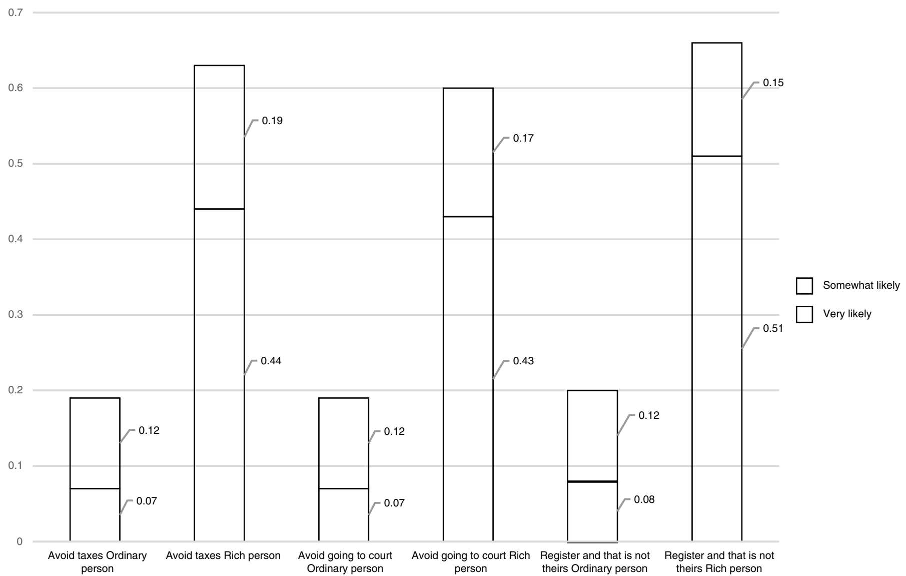

FIGURE 7.2 Corruption Index on Land Transactions
Source: AfrobBarometer (2017)

transfer of village land to general lands or dubious land deals by investors on village lands.

Despite some government efforts to improve both formal and informal mechanisms, weaknesses persist. As seen earlier, most DLHTs are located far away from local communities. On top of that, filing fees and legal representation are expensive; there are language barriers, as the language used in legal matters is English; jurisdictions may be limited; DLHTs' chairpersons may lack independence; there is an excessive multiplicity of land disputes settlement authorities; and, because of ineffective voluntary mediation, most matters end up in full trial (Massay, 2013, pp. 167–82).

A report by the Law Reform Commission acknowledges that the legal system governing settlement of land disputes has not met the desired standard. Problems such as delay in settlement of land disputes, backlog of cases, inaccessibility of institutions, inadequate financial and human resources, and multiplicity of institutions contribute to a huge degree of inefficiency and ineffectiveness (United Republic of Tanzania, Law Reform Commission, 2014).

H Inadequate Resources

Even if existing policy and laws were fully satisfactory, inadequate human, material, and financial resources would frustrate their successful execution. For instance, there was little progress on many of the actions set out in SPILL

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TABLE 7.4 *MLHHSD staffing by March 2013*

	Filled positions		Approved positions		Deficit	
MLHHSD staffing	HQ	Outposts	HQ	Outposts	HQ	Outposts
Total	707	379	1,093	1358	386	979

Source: United Republic of Tanzania, MLHHSD, SPILL (2013b)

(2005) owing to a lack of funds outside the Government Medium Term Expenditure Framework. This was the case in particular for the establishment of a Land Administration Infrastructure Fund and District Compensation Funds. The cost of creating these institutions was estimated in SPILL (2005) to be roughly USD 300 million (United Republic of Tanzania, MLHHSD, SPILL, 2013b, p. 20).

Addressing administrative capacity is a lengthy process. For instance, as of March 2013, the MLHHSD had a total of 2,451 approved positions but only 1,086 were budgeted for and filled. The remaining gap was 386 in headquarters and 979 in the outposts. The filling of these positions is irregular, depending on the state of the economy and available budget. In one report, the MLHHSD mentioned that the government's attention was focused on the education and health sectors, leaving much of the land sector's manpower needs unfilled (United Republic of Tanzania, MLHHSD, SPILL, 2013b, p. 20) The staffing figures noted in Table 7.4 make it obvious that the MLHHSD is operating below capacity. Although these figures relate to 2013 and efforts to fill positions are being made, until 2018 the situation had not changed substantially, owing to attention focusing more on immediate socio-economic demands.

As for training capacity, it has been considered that the output from Ardhi University and other institutions can go a long way to satisfying the staffing requirements for high-level land sector professionals. Ardhi Institute Tabora (ARITA), and Ardhi Institute Morogoro (ARIMO), which are under the MLHHSD, have been useful in training manpower at technician and certificate levels. ARITA offers certificate courses in Cartography, Land Management, Valuation and Registration, and Graphic, Arts and Printing, as well as a Diploma Course in Cartography. ARIMO offers certificate and diploma courses in Geomatics (United Republic of Tanzania, MLHHSD, SPILL, 2013b, p. 30).

These two institutions can play an important role, working with Ardhi University, in outputting staff suitable for manning the land sector at district, ward, village and *mitaa* levels (United Republic of Tanzania, MLHHSD, SPILL, 2013b).[46] Since there are some 12,000 villages, 3,337 wards, and 2,651 *mitaa* in the country, which may go up in the near future, it would be necessary to train 20,000 land administration auxiliaries in at least one cadre in

[46] A *mitaa* is a sub-location.

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support of the land sector for about five years (United Republic of Tanzania, MLHHSD, SPILL, 2013b). Enrolment at the Morogoro and Tabora land institutes in 2015–16 was 495, and in 2016–17 it rose to 559 (United Republic of Tanzania, MLHHSD, SPILL, 2013b, p. 65).

Although the ministry through SPILL projected training of 474 staff at a total estimated cost of TZS 803.99 million (about USD 0.5 million) (United Republic of Tanzania, MLHHSD, SPILL, 2013b), funding has remained a challenge. In the 2017/18 budget speech by the Minister of MLHHSD, it was established that in the financial year 2016/17, the ministry had planned to build the capacity of 150 employees, and by 15 May 2017, it had supported training to 491 employees. In the financial year 2017/18, the ministry planned to provide training to 70 employees and employ 291 new employees, besides improving working facilities (United Republic of Tanzania, MLHHSD, 2018, p. 64). This is a positive trend, but it remains to be seen whether the kind and level of training offered is adequate to meet the current demands.

VII CONCLUDING REMARKS AND RECOMMENDATIONS

This chapter has assessed the land tenure system, the way it is implemented, and how it is supposed to work. It has analysed how the administrative and judiciary apparatus may help the economy exploit its comparative advantage in agriculture. It has shown that while the legal framework has put in place essential principles for land governance, these principles are not self-executing – their success depends on a vibrant and capable institutional framework.

Among the key recommendations which emerge from this chapter, it has been noted that there is a need for more effective coordination, collaboration, and capacity building at the various governance levels; procedures for large-scale investment in land need to be streamlined; there is a need to scale up land use programmes in rural areas to address village land conflicts and demarcate land available for occupation and investment; in urban areas, also, large-scale regularisation schemes need to be rolled out; and more efforts are needed to raise awareness on land rights to tackle corruption.

The existing political economy situation is a source of conflict between large-scale farmers holding CROs and small-scale farmers holding CCROs. The gaps in the land registration system for village land, that is CCROs, make it difficult for smallholder farmers to access credit. CROs are not accepted as collateral by banks. Moreover, the slow and complicated process of transferring village land into general land undermines investment in agriculture. If one is lucky, it takes three to five years to complete the process and receive the CCRO from the MLHHSD. The powers of the commissioner to grant the transfer could be on paper only, but applicant investors are often told that their certificates could not be issued in time because of the awaited approval from the President's Office.

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TIC approval is also complex, largely because it does not have a land bank. It therefore has to go through the same process of transferring village land. It has proved to be very difficult for the TIC to establish its own land bank, for whatever reason. Better institutional arrangements between village councils and the TIC could solve this. How to protect indigenous smallholders' land from acquisition by large-scale farmers has surfaced over time. This can, however, be addressed by identifying vacant land and demarcating it for use by large-scale operators. Contract farming and out-grower schemes are a good approach to address the problem, as is currently being demonstrated in the SAGCOT area. The establishment of a Tanzania commodity market could address the price-fixing issues.

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