



**REGISTERING RURAL RIGHTS:
VILLAGE LAND TITLING IN TANZANIA, 2008–2017**

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SYNOPSIS

In the early 2000s, Tanzania struggled to protect the land rights of the 75% of its citizens who lived in rural areas. Rapid population growth and rising investment in commercial agriculture had increased land scarcity and created the potential for violent conflict in parts of the country. In accordance with the provisions of a new law, the national lands ministry launched a pilot project in 2001 to title 158 villages and more than 1,000 individual parcels. Building on lessons from the project, the government passed a new land-use planning act, created a new implementation program, and drew up a strategic plan to title rural land throughout the country. Starting in 2008, the lands ministry worked with community leaders to grant villages and their residents title documents that protected them from land grabbing. Villages also decided how they would use communal land and how they would set up committees to resolve boundary disputes. Officials constructed registry buildings in villages and districts to house title documents before surveying individual land parcels and handing over titles to village residents. By 2017, more than 11,000 of Tanzania's approximately 12,500 villages had mapped their outer limits, and about 13% of villages had also adopted land-use plans. Of the approximately 6 million households located within rural villages, about 400,000 also had obtained individual title documents.



INTRODUCTION

Casting his eyes across a grassy plain, the traditional grazing lands of the Maasai people in northern Tanzania, Edward Loure, a lawyer and land rights activist, worried aloud about boundary conflicts between farmers and herders. It was 2017 and Loure, who headed the Ujamaa Community Resource Team, said the number of conflicts had started to rise a decade earlier and started to threaten the very survival of the Maasai way of life. “We were losing more and more of our pastoral land in conflicts with the government and crop farmers, who simply settled on land they believed to be unoccupied,” said Loure, whose family had been evicted from its traditional grazing lands on the Simanjiro plains to make way for Tarangire National Park.

Maasai livestock farmers, often called pastoralists, depended on large grazing areas to rotate their cattle during the extremes of Tanzania’s wet and dry seasons. “[We] realized we faced a huge challenge because whenever we moved our cattle out of an area, we didn’t have any documents to prove the land belonged to us,” Loure said.

Three out of four Tanzanians lived in rural areas, and many shared Loure’s fears. In the early 2000s, increasing numbers of people and an expanding commercial agriculture sector combined to reduce access to land. In 2000, there were 34 million residents,¹ and the population growth rate was the 17th highest in the world.² Within less than a decade, demographers estimated, the number of residents in Tanzania would grow by about one-third. At the same time, economic liberalization had opened up many more opportunities for investment in agribusiness—especially for biofuel and food production—further raising the demand for land. Villagers also faced pressure from government officials and conservationists, who wanted more land allocated to conservation and lucrative tourist lodges.

As those changes were taking place, land conflicts spiked and villagers sometimes clashed with local and international investors who wanted more hectares they could put to commercial use.

The Village Land Act, which took effect in May 2001, was supposed to help rural Tanzanians by imposing some order on an otherwise chaotic scene. The law gave rural residents usage rights on any land they had occupied peacefully for more than 12 years. An entire village could have its outer boundaries surveyed, demarcated, and registered by the Ministry of Lands, Housing and Human Settlements Development in order to obtain a certificate of village land. Then individual villagers could apply to have their private parcels surveyed and registered. At the end of that process, villagers could receive individual title documents known as certificates of customary right of occupancy. The act also prohibited discrimination against women and created a framework for villages to settle disputes.³

But the mere stroke of a pen was not enough. Many Tanzanians living outside urban centers were still unaware of their rights, and without

documents to prove their claims, residents remained vulnerable to land grabbing. Although the lands ministry had made some progress with registering villages' outer boundaries, by 2008 more than half of Tanzania's 12,500 villages still did not have certificates of village land,⁴ and very few rural citizens held occupancy certificates to secure their individual land parcels.⁵ Local leaders, activists from nongovernmental organizations (NGOs), international donors, and officials from the national lands ministry had to take urgent, concrete action to turn the Village Land Act's provisions into reality.

To help communities start and then manage the registration process, the national government launched two programs, both of them initially focused on potential conflict hot spots. Seraphia Mgembe, on the staff of Mkurabita, a property and business formalization program in the president's office, founded in 2004, organized support for village land titling in 52 of the country's 169 districts. At the same time, Swagile Msananga, team leader of land regularization in the Business Environment Strengthening for Tanzania (BEST) program, a land ministry collaboration with the World Bank and other donors, aimed to title villages in 15 other districts. "We faced a massive challenge because 94% of rural land in Tanzania was held informally," recalled Mgembe, who later became chief executive of Mkurabita.

THE CHALLENGE

Support for a national role in land titling had intensified as the economic benefits of rural land registration became apparent to those at the highest levels of government. The first significant moves came after a September 2003 gathering at which Peruvian economist Hernando de Soto addressed Tanzania's cabinet on the importance of land and property ownership. Following the 2000 publication of his book *The Mystery of Capital*, de Soto had become world-renowned for his theory that property that was not formally registered lost much of its value because owners could not borrow money against it.⁶ De Soto termed the value lost due to an asset's informality as *dead capital*. The flip side of the argument was that whenever people registered property that was previously held informally, this formalization would unlock tremendous economic value. (Even though the theory proved popular, many economists questioned whether it had much basis in fact.)⁷

After de Soto explained his theory during the two-day workshop, President Benjamin Mkapa established within his office a government program known as the Property and Business Formalization Program—or Mkurabita,⁸ in KiSwahili. The program, a partnership with de Soto's Peru-based research organization called the Institute for Liberty and Democracy, supplemented the efforts of other parts of government to push land registration forward. Mgembe explained that Mkurabita's "ultimate aim was to create capital formation." She said, "We want to go beyond titling to make

sure that [occupancy certificates] become economic tools that people can use to obtain capital.”

Although in 2005 the government had issued a strategy to expand titling, progress was slow. Mgembe, working at Mkurabita, and Msananga, at the land ministry’s BEST program, had to achieve what their predecessors had been unable to accomplish, and that meant overcoming several difficult implementation problems.

An overarching challenge was to accustom policy makers, as well as other citizens, to new ways of thinking. Land tenure had undergone dramatic changes during the previous 50 years. In 1967, five years after Tanzania’s independence from Britain, the country’s central government abolished private landownership, made the president owner of all land in the country, nationalized major industries, and moved rural people into settlements known as *Ujamaa* villages, where people were supposed to farm the land collectively and shared the proceeds equally. But the policies resulted in economic collapse during the 1980s, and the government began the arduous task of instituting a new tenure system that permitted private landownership.

In addition, the Village Land Act had created a highly decentralized system of land administration that hindered rather than aided implementation efforts. Although the national lands ministry had registered about half of all villages’ boundaries, village councils—the lowest level of elected government—were responsible for issuing occupancy certificates for individual parcels smaller than 50 hectares. (The national ministry had to investigate and confirm the sizes of larger properties.) In addition to issuing paper-based property documents, villages also were responsible for maintaining records, and both the issuing and the maintaining were time-consuming and costly tasks. Local control also meant no national register existed to track occupancy certificates.

Assigning village councils the responsibility to issue occupancy certificates reflected a deeper shift toward decentralization, which had started in the 1980s. Below the national level were 169 districts, each comprising dozens of wards that in turn included one or more villages. Each level had its own elected government, and district councils appointed one civil servant to the position of executive officer in each village to facilitate coordination between the village and district and to assist the elected village chairperson with day-to-day management duties. With passage of the new land law, the village chairperson and the executive officer suddenly acquired new responsibilities for managing the land village registry.

The decentralization policy confounded effective implementation in three ways: first, by causing uncertainty about who was to do what; second, by curtailing coordination between various levels of government; and third, by saddling local governments—those with the weakest capacity and least access to revenue—with significant additional responsibilities and costs.

The law also sowed confusion about the division of responsibilities among different parts of government. Officials from the national lands ministry initially interpreted their roles as being limited to “policy making,” said Rasmus Pedersen, a Danish land rights expert who worked in Tanzania. “The ones to adjudicate and implement [land registration] are the villagers and local authorities.”⁹ It was up to individual village councils to initiate and implement land registration and titling projects by themselves.

With no single national agency in charge of overseeing the implementation process, village-directed titling projects had to coordinate between wide ranges of stakeholders, including the national lands ministry, the land-use planning commission, regional land surveyors, district land officers, NGO representatives, village councils, and village general assemblies. (All residents of a village who were at least 18 years of age had the right to vote in village council elections, and the meetings wherein all residents came together to vote and jointly take decisions were known as *village assemblies*.) Different NGOs across the country launched small-scale titling projects to assist villages, but bottom-up coordination was hard to achieve.

Finally, developing land-use plans, titling individual parcels, and creating local registries were difficult and expensive tasks. In a geographically diverse country that covered nearly 1 million square kilometers, much of which had never been surveyed, the demarcation of boundaries required the participation of many professional surveyors. The law required every district land office to employ at least one surveyor, and qualified candidates were in short supply. James Mtamakaya, director of rural survey in the national land ministry, said professional surveyors often had to work in more than one district.

Before registering villages and individual parcels, local officials sometimes had to resolve disputes over boundaries and access to resources such as forests and water sources. Although the 2002 Land Disputes Settlements Act created a framework for villages and districts to reconcile disputes without court action, the establishment and operation of adjudication committees and dedicated land tribunals added to the financial burden of local implementation.

Local and district governments often lacked basic tools like computers, GPS equipment, printers, and even locks to safeguard title documents. But in a country where more than half of the population survived on less than US\$1.90 per day (the extreme-poverty threshold stipulated by the World Bank at the time), it was difficult for local officials to justify spending money on titling when they faced other pressing social and economic needs.¹⁰

Uncertainties also arose from other provisions of the Village Land Act. Even though the law sought to enhance tenure security by giving occupants legal use rights over their land, it did not grant them outright freehold ownership; instead, all land remained vested in the president. The occupancy

Box 1. Urban Land versus Rural Land

At the same time that the Village Land Act took effect, the lands ministry also had to oversee the implementation of an additional piece of legislation, known as the 1999 Land Act. The separate laws essentially split Tanzania's land administration system in two. The Village Land Act governed most of the rural land in the country under a category called *village land*. But the act also created a separate framework that applied to what it called *general land*—which was located mostly in urban and peri-urban areas—and what it called *reserved land*, which referred to forests and conservation areas.

In the early 2000s, “urban and semi-urban land, as well as conservation areas, was generally much more valuable than was land out in rural areas,” Danish land rights expert Rasmus Pedersen said. As a result, politicians tended to prioritize *urban* titling projects over *rural* ones. But with higher rates of economic growth and greater population pressure, the delineation and enforcing of rights in rural areas were becoming more important. (It was also possible that some of those who supported rural land titling still had the financial interests of urban elites at heart because the process could protect land investments by absentee owners against villagers and also provide a basis for securing loans.)

certificate thus did not grant holders ownership over the land itself; it only gave them ownership over structures and assets on the land, as well as the perpetual right to use the land. The president, as ultimate owner of all land in Tanzania, retained significant powers to reclassify land from one use category to another. For example, subject to consultation with and the payment of compensation to affected communities, the president could change the classification of land previously regarded as village land to conservation or commercial land, thereby invalidating villagers' occupancy certificates¹¹ (See text box 1).

FRAMING A RESPONSE

Program leaders like Mgembe and Msananga could build on the experience of a pilot project the land ministry had launched in 2004 in the district of Mbozi in the country's far west. Christian Mwalugaja, the land ministry's acting assistant commissioner of village lands, said the ministry had prioritized Mbozi “because of its high agricultural potential.” Fertile soils in Mbozi's low-lying areas were well suited to crop and livestock production, and highland areas had the potential to produce crops like coffee, sunflowers, wheat, and potatoes.¹² With funding from the World Bank, the ministry put together a team of technicians and surveyors to map both village lands and individual parcels.

By 2006, the Mbozi project team had worked in all 175 villages in the district and had issued certificates of village land to 158 villages. However, the team issued only 1,117 *individual* occupancy certificates to village residents. The slow progress in the registering of individual parcels reflected a lack of demand. Surveyors used a method called *spot adjudication* to register parcels, which meant they waited for individual villagers to apply for registration before they started surveying. But few villagers came forward,

which pointed out the need for better focus on raising awareness. Spot adjudication also was expensive because it slowed the surveying work and required surveyors to be out in the field for longer periods of time. Going forward, ministry officials decided to instead adopt a method of *systematic adjudication*, which mapped all of the parcels in a particular village simultaneously.

The Mbozi project also pinpointed the significant hurdles in promoting and protecting women's rights to land in Tanzania. Of the 1,117 individual occupancy certificates issued under the project, 765 were registered to men and just 42 to women. The remaining 310 were issued jointly to men and women.¹³ Although the Village Land Act allowed women to become registered landowners and forbade any customary practices that discriminated against women, significant cultural resistance against women's ownership of land meant that very few customary certificates were registered by women in Mbozi. In other words, even though the law promoted gender equality in theory, officials had to extend themselves to make sure equality was realized in practice (See text box 2).

In addition, the pilot project potentially gave rise to land disputes by issuing occupancy certificates for Mbozi's villages even though the villages didn't have land-use plans. "It was an important lesson because we realized that villages should first have land-use plans in place," said Mwalugaja. "Otherwise, you can prolong conflicts." He explained that before the

Box 2. Types of Occupancy Certificates

The Village Land Act created six types of occupancy certificates, as follows.

- Men and women at least 18 years of age could register in their own names any land granted to them by their local governments or land they had used for more than 12 years.
- The law also permitted joint registration; for example, a husband and wife could register as co-owners, and the certificate would include both of their names.
- In the case of polygamous marriages or when more than two family members jointly owned land, the title could include the names of all of the users under a group registration.
- When a dispute arose over who should inherit the land of a deceased landowner, the family could appoint an administrator to temporarily manage the land until the family reached agreement on how to divide the property.
- In the case of a person younger than 18 years, the legal guardian could obtain a guardianship occupancy certificate, which would expire when the child turned 18.
- Finally, organizations like schools or dispensaries could obtain institutional occupancy certificates.

Aside from the case of legal guardianship, wherein the right expired once a child turned 18 years of age, all other occupancy certificate use rights were granted in perpetuity. The rights could be bought, sold, leased, and mortgaged. In all of those cases, the certificates were issued by village councils and registered in a local village registry. And although a certificate did not grant the holder ownership over the land itself, it did grant perpetual use rights to the land.

issuance of any occupancy certificates, it was important that a village have in place a land-use plan that clearly showed which areas should *not* be titled. Doing that would prevent individuals from claiming ownership over communal resources like forests and would prevent farmers from encroaching onto pastoral grazing land.

Under the auspices of the much larger BEST initiative, the lands ministry started planning a joint project with the World Bank and European donors to expand rural titling beyond the Mbozi district. The trigger for launching large-scale titling projects came in 2008, when world biofuel and other commodity markets crashed. With much of the promised economic benefits of private investment quickly evaporating and land conflicts increasing,¹⁴ the government, donors, and NGO partners had ample reason to move quickly on a long-standing problem.

GETTING DOWN TO WORK

In 2008, the national government's two-pronged effort got under way by bolstering the work of many different stakeholders, including NGOs that ran their own titling capacity building projects under Tanzania's decentralized approach to land administration.

Both the land ministry's BEST program and Mkurabita began to scale up the Mbozi experiment. Both started by targeting areas that were potential conflict hot spots. Msananga, team leader of land regularization under the BEST program, said, "The priority was on the areas that had high levels of conflict and a mix of land-uses." Although the two projects operated largely independently of each other, they had to follow the same set of procedures in order to ensure (1) that villages obtained certificates mapping their outer boundaries and (2) that residents received individual occupancy certificates.

Surveying village boundaries

Mkurabita and the lands ministry first had to make sure local village councils obtained certificates that registered and specified their villages' outer boundaries. In contrast to the system that applied to individual occupancy certificates—whereby local councils were in charge—the Village Land Act and its regulations clearly specified that it was the national ministry's responsibility to map all village borders.

Although the 1982 local government framework guided the process for formally establishing and registering a village—thereby granting it the right to elect its own council—it did not specify where each village's land began and ended. The Village Land Act addressed that shortcoming by mandating that village councils obtain certificates outlining their boundaries.

The task fell to the country's national survey and mapping department, housed in the land ministry's headquarters in Dar es Salaam, Tanzania's biggest city. In cases in which Mkurabita or officials from the BEST program wanted to issue titles to residents of a community that did not yet have a

certificate recognizing the village's outer boundaries, they approached the survey department for help.

By 2008, the department had already mapped about half of Tanzania's villages. "The government felt it was high time that we mapped the [remaining] village boundaries as a starting point" for titling, said Mtamakaya, director of rural surveying at the ministry. He added that the ministry had had some previous experience with mapping villages. "In the late 1990s, we launched a forest resource management project wherein we put together six teams of surveyors to map villages that surrounded specific vulnerable forests." After passage of the Village Land Act, the challenge was to scale up across the country.

The survey department first identified which villages still had to be mapped. The department then contacted district offices across the country to gauge the level of interest in specific regions. The department's assistant director of rural surveys, Huruma Lugalla, stressed that "it was up to the people from the regional offices to decide which districts to work in first. And once we went to a certain district, we made sure we finished mapping [each village throughout] the entire district."

The teams sometimes had to deal with conflicts between villages over disputed boundaries. In an effort to forestall such potential conflicts, surveyors made sure the local councils of all surrounding villages were consulted during the mapping process. "We had to be a mediator on-site because many of the conflicts are quite minor," Mtamakaya said. "For example, if the physical corner monuments, known as *beacons*, were placed in the wrong area, we get them to discuss and look for a compromise." Permanent land tribunals handled more-serious conflicts at the ward and district levels.

Resolving border disputes between villages often required compromise. One example was a long-standing conflict between the village of Sanungu in northwestern Tanzania and its neighbor, the Somanda community, over a piece of land along their shared border. After surveyors arrived in 2008, the Sanungu villagers agreed to give up their claims in exchange for the perceived greater value of the certificate of village land. "Now we have our [certificate of village land], which clearly shows all of our boundaries," the Sanungu village chairperson explained to a researcher from the University of Minnesota. "This is really important because now we can concentrate on creating a village land-use plan by using the map on our certificate."¹⁵

Mtamakaya said mediation worked well to resolve most inter-village disputes because village councils had the power to adjust their boundaries in mutually agreed-upon ways rather than having an outside authority come in and order changes. The surveyors "are not the ones who impose boundaries on them," Lugalla said. "The villages are the ones who decide on the boundaries; we just translate the boundaries onto paper to record them for future reference."

After villages agreed on their shared borders, the surveyors recorded the boundary coordinates on handheld GPS devices and placed physical beacons on all corners of each property. In most cases, the beacons were concrete structures six inches wide and set one foot deep into the soil. Mtamakaya said, “Villagers could also decide to designate physical features like rivers as boundary beacons.”

After marking the boundaries of a village, the survey teams returned to their headquarters in Dar es Salaam, where they uploaded the GPS coordinates to a national database. They also drew up a map of the village and a formal deed plan (known in other countries as a *survey diagram*). The surveyors then sent the deed plan to the commissioner of lands—a separate division within the ministry—where officials prepared a certificate of village land. In addition to the boundary record held at the national level, the land commissioner issued copies of the certificate to both the village council and the relevant district office.

Raising local awareness, building capacity

According to the legal framework created by Tanzania’s land laws, residents of villages that had received official certification could apply to register their own parcels. In practice, though, obtaining individual occupancy certificates was no easy task. Again the problem had its roots in the government’s initial decentralized approach. Few village councils were aware that their residents had the right to register their own parcels, and even fewer councils knew the procedures they had to follow in issuing individual occupancy certificates. “Providing capacity building for local leaders became absolutely crucial because you can use it to make the process easier, more cost-effective, and more sustainable,” Mgembe said. “The key was to empower local officials.”

In districts where councils expressed enthusiasm for land registration, officials from Mkurabita and the land ministry trained 10 members of the district’s Participatory Land-use Planning team—comprising land officers from a district and its villages—to draw up a formalization plan for the entire district. “We cover both the theoretical and practical sides of land registration when training the [land-use planning] team,” Mgembe pointed out. The decision to train a core group of officials at the district level had a cascading effect. Even after Mkurabita’s project ended, “The knowledge remained in the district, and those 10 officials could then go down to the wards and villages to train local people to launch their own titling projects,” she said.

In the different districts in which they operated, both the BEST program and Mkurabita also worked directly with individual villages to facilitate the processing of occupancy certificates. In some cases, district governments had already received requests from villages for support, so they knew that the demand existed. In others, national officials first had to meet with village councils to explain the process. After council members agreed to

support individual certification, they called a meeting of the village assembly, and residents voted on whether to endorse the process.

Msananga pointed out that even if a council was hesitant about titling, the decision could still be taken to the village assembly for a vote “if at least 50 people had applied to the council for registration.” The assembly’s status as the supreme decision-making body in the village meant that if it rejected the proposal, land titling could not proceed. (Villages sometimes rejected titling when land conflict was minor and villagers did not view titling as a major priority.) In practice, “the district council would engage with villages that rejected titling,” and the assembly could always vote again on the issue in the future, Msananga said.

Most assemblies did vote to move ahead with individual certification and then convened second, village-wide meetings to elect land adjudication committees to oversee the land-use planning and titling process. The committees, which could have as many as nine members—including at least four women—reported to their village councils. As with other aspects of the local process, capacity building was important. “We worked with the district’s land-use planning team to train committees in the content of the land law and what procedures to follow,” Mgembe said. At the end of the training workshops, which lasted about a week, the village had a democratically elected committee in place that could drive the titling process.

Creating land-use plans

The first task confronting each land adjudication committee was to draw up a land-use plan that formalized the specific uses of certain areas within a village and that distinguished between areas that could be titled individually and areas that were reserved for communal use.

Stephen Nindi, director general of the national land-use planning commission, pointed out that based on the lessons from Mbozi and after passage of the Land-use Planning Act in 2007, a village had to have a plan in place before it could process individual titles. “We are generally afraid of giving out [occupancy certificates] without a broader perspective on a village’s land. We don’t want to give out a huge portion of land [up to 50 hectares] to an individual without understanding the socioeconomic dynamics at play,” Nindi said.

Working with village councils and adjudication committees, Mkurabita and the BEST program brought in experts from the national commission to help village officials create land-use plans. The process started with a community survey that recorded basic information like number of households, population size and growth rate, and natural resources. Committee members then drew village maps that showed the locations of different land-uses such as housing, livestock grazing, crop cultivation, and water and firewood collection.

Based on villager-supplied information, planners created and printed large maps indicating the different use areas. In the next phase, the committee suggested bylaws communities could adopt in order to protect their resources. For instance, Nindi said, “during the planning process, you would often find places where the land has been degraded due to overuse.” In such cases, committees might propose bylaws that would limit the number of grazing animals until the soil recovered.

At the end of the process, planners from Nindi’s office drew up a consolidated land-use plan that established zones within the village for specific uses such as residences, crop agriculture, and livestock grazing; forested zones, too were demarcated. The plan also included the proposed bylaws and indicated areas that residents could receive individual titles for. Occupancy certificates generally were issued only for individual parcels where residents lived or farmed; most of the communal areas like pastures and forests were excluded. Then village assemblies voted to adopt the final land-use plans.

Setting up registries and demarcating parcels

Before they could begin work on the demarcation of individual parcels, teams from the BEST program and Mkurabita had to make sure district land offices and village councils had secure spaces to store title documents. For certificates of village land, digital records were stored at the national level, and districts and villages received paper copies. Because Tanzania had no national registry for individual certificates, each district and its individual villages had to build and manage their own local registries.

At a minimum, “we made sure the district registry had all the tools it needed,” said Godfrey Machabe, an economist in the land ministry. “We provided all of the equipment, including the physical building when necessary.” In some cases, teams also constructed or refurbished village registry buildings to house the documents. If a village already had a suitable building, “we sometimes had to just buy new locks or filing cabinets,” Machabe said. In each village, the local executive officer—a civil servant appointed by the district council—was responsible for managing and updating the registry when transactions took place. However, transfers could be scrutinized by the village council and during periodic meetings of the local village assembly.

After the physical infrastructure was in place, the project teams turned their attention to individual parcels. But to accurately record the boundaries, the teams had to bring in professional surveyors. Makame Pandu, a project manager who worked with Mkurabita beginning in 2006, said, “It was an expensive process because we have to pay for their accommodation and per diems.” If no qualified state surveyors were available in a district, the district had to either hire more expensive, private surveyors or wait for state surveyors to be seconded from other regions.

Once a surveyor arrived, the village adjudication committee joined in the systematic mapping of every plot in the village. “The committee would meet the owners of the land and then walk around the boundary with them. [The committee] also made sure the neighbors were consulted,” Mtamakaya said. If landowners and their neighbors agreed, surveyors recorded the boundary coordinates on a GPS device, recorded each owner’s personal information, and took a photo of the owner.

Settling disputes and issuing occupancy certificates

Disagreements were common. Some involved boundaries, whereas others centered on who owned land that one person may have farmed for a long time under an informal agreement with the original holder. The task of resolving such disputes initially fell to members of the village adjudication committee. If the group became unable to engineer an agreement, the case was referred to a dedicated land tribunal created at the ward level—the next level of government above the village. Melau Alais, a legal officer with the Pastoral Women’s Council, an NGO that worked in pastoral communities, explained that the law provided for permanent dispute-resolution tribunals to be established at different levels. “At the local ward level, residents elected eight members to the ward tribunal. These were laypeople, but they were respected by the community,” Alais said. Members of the land tribunals were elected for three-year terms.

Whenever a ward tribunal held a hearing, “at least three of the members had to be present, and at least one of those present had to be a woman,” Alais said. If either of the disputing parties rejected the ward tribunal’s ruling, the party could appeal to a more sophisticated district tribunal. The national land minister appointed the chairperson of the district tribunal, who was required to have a law degree. District residents then elected four others to serve on the tribunal. Members of district land tribunals also served three year terms. At the district level, “the tribunal chairperson [effectively] becomes like a magistrate,” Alais said.

Adjudication committees usually functioned well because their members were local, had received some training from the national organizations, and could visit disputed properties, but the tribunal system was often less effective. For one thing, with the exception of the district tribunal chairperson, those who served on tribunals received no pay, leaving members with little incentive to take on new cases. More importantly, tribunal members were laypeople who typically had little training regarding the law and other relevant aspects. Despite the legitimacy conferred by their elected positions, tribunal members’ lack of formal training meant that tribunals sometimes based decisions on weak evidence. “That is why a lot of NGOs, including the Pastoral Women’s Council, focuses on training members of land tribunals,” Alais said. “The framework is good, but we need to do a lot more to make sure tribunals understand the law.”

On the other hand, Alais said, village land adjudication committees generally worked well “because they report to the village council. People in the villages know who serves on the adjudication committees, and they often turn to them for help.” As a result, committee members resolved the majority of disputes relatively quickly.

If a dispute remained unresolved after successive interventions by the village adjudication committee, the ward tribunal, and the district tribunal, then the land division of Tanzania’s High Court had final jurisdiction.

After the resolution of individual disputes, the village council displayed a map of the proposed property boundaries. It posted the map at a central point in the community for two weeks. Unless objections arose, the council submitted the plan to the village assembly for approval. After that, the council submitted the required paperwork to the district land office. Using information from the land survey, the district land officer compiled, printed, and signed three copies of each certificate of customary right of occupancy, which also included photos of all owners. The district team then sent the certificates back to the village council, where the chairperson also signed and then officially issued them.

With all of the required signatures in place, villages usually held ceremonies to hand over the documents. One copy of the certificate went to the owner, another was stored in the village land registry, and the third copy went to the district registry. Mgembe said, “If the village did not yet have a suitable registry, we would at least make sure one copy was securely stored at the district office.”

Mgembe also pointed out that all three copies of each certificate were accompanied by a sheet for recording future transactions. Whenever a certificate was sold or transferred, the original owner had to update the transaction form and go with the buyer to the village registry, where the executive officer endorsed the transaction and updated local records. In turn, the village executive officer informed the district-level registry about the transaction.

Although Mkurabita and the ministry usually subsidized the initial titling process, villagers had to pay costs related to transfers. Such costs varied across the country, but Pandu said that in the areas where Mkurabita worked, updating a certificate cost about US\$35, and it was the buyer’s responsibility to pay for the endorsement.

Turning certificates into capital

Although most of the titling projects ended when villagers received their certificates, Mkurabita wanted to go a step further. Simply possessing a title document did not necessarily unlock the economic value of a property. The titling project’s ultimate aim was to ensure that beneficiaries could use their occupancy certificates as collateral to obtain credit from financial institutions. “We knew we had to make people aware of how to use their documents to

apply for loans,” Mgembe stressed. “We view capacity building as central to our work, and people need to know how to . . . use a formal document to get capital.”

Doing so required working with bankers as well as the new certificate holders. A few months after a titling project was complete, the Mkurabita team informed managers of financial institutions in the area that villagers had formalized their landownership, and the team invited the managers to meet a new group of potential clients. During village meetings at which Mkurabita officials acted as intermediaries, representatives of banks and pension funds discussed the financial opportunities available to property holders. “The banks now saw villagers as potential customers, and pension funds wanted farmers with titles to join their funds,” Mgembe said. “Once they saw villagers as customers, the banks actually started competing with each other.”

Project officials made certain to explain the risks of credit and the importance of using borrowed money only for productive purposes. According to Mgembe, the law specified that customary occupancy rights “cannot be sold outside the village [without approval by the village assembly]. So when someone defaults on a loan, the worst-case scenario is that the bank can force the borrower to sell the land to someone else within the community or to the village council itself.”

Mgembe added that Mkurabita officials provided support for borrowers who ran into problems with their banks, sometimes acting as debt counselors and identifying community members who could rent the land to get extra income. “It does not happen often that people are forced to sell,” she said. “And even then, they’re permitted to sell the land only to other community members. After we explain the risks to them, people are afraid of losing their land, so they mostly make good use of it.”

This work took place mainly on a pilot basis. In 2016, Mkurabita provided support in 7 districts out of 169, covering a total of about 1,400 people. The intervention offered a potential model for how to empower beneficiaries to use title documents productively. Scaling up post-titling support remained a high priority in 2017.

Titling pastoral land

In northern Tanzania, persistent tensions between crop farmers and semi-nomadic pastoralist communities like the Maasai posed an additional and unique challenge. Loure, who headed the NGO Ujamaa Community Resource Team, explained that “in 2008, we started lobbying the government to use occupancy certificates as a way of protecting communal grazing lands.”

Loure pointed out that mere possession of a certificate of village land was insufficient to protect pastoral community members. “The village land certificate protects only the *outside* boundaries of village land; it does not protect land-use rights *within* those boundaries,” he said. The main challenge

was that pastoralists and settled farmers typically lived together within the outer boundaries specified on a certificate of village land. And though farming households could obtain individual certificates of customary right of occupancy to secure their agricultural plots, pastoralists had no way to identify and protect their vast communal grazing lands.

To address that gap, Loure and his team planned to protect rangelands by registering the lands under communal occupancy certificates in the name of elected trustees, who could make and enforce rules. “We wanted to create a democratically elected communal entity to manage the land,” Loure said. (Unlike individual titles whereby owners were automatically responsible for managing their own land, communal titles additionally required the creation of a supervisory body responsible for enforcing land-use plans.)

In 2011, after three years of intense lobbying by community organizations, the national land ministry agreed that pastoral communities could register their communal lands under communal occupancy certificates. “We managed to show them [that it was unfair] for farmers to be allowed to get certificates to protect their land but that pastoralist members of a village [couldn’t] get certificates to protect their communal lands. [Without certificates,] how were [pastoralists] supposed to prove ownership of up to 40,000 hectares of land?” Loure commented.

As with other titling projects, the first step was to ensure that villages had certificates of village land that mapped their outer boundaries. Afterward, a village’s assembly held a vote to decide on whether to seek a communal occupancy certificate to protect grazing land within the boundaries identified by the certificate of village land.

If a village decided to seek communal title, it worked with a facilitator like the Ujamaa Community Resource Team to elect an adjudication committee that would sign the occupancy certificate on behalf of the community as trustees. And “because the committee members had to be trusted by the village, trustees could also include traditional leaders,” said Ruth Kihiu, head of the Pastoral Women’s Council. But the nine-member committees were not composed exclusively of traditional leaders and always included at least four women.

Land-use planning was critically important. “Based on the outer boundaries identified on the certificate of village land, you then have to do internal zoning in order to designate all of the different land-uses within a village,” Loure said. “The communal [occupancy certificate] would then apply only to land set aside on the map for grazing.” Together with district officials, the committee created a set of bylaws on how grazing lands were to be managed. The rules formally designated which pastures could be used for grazing only during the dry season and which were reserved for grazing only during the wet season. They also specified measures that could be taken against violators.

Another important requirement was that the land covered by the communal occupancy certificate be contiguous. “You have to indicate clear migratory routes and corridors to connect different areas,” said Loure. If, prior to creation of the land-use plan, farmers had settled in areas subsequently designated as grazing corridors, the committee had to find routes that bypassed them. However, if farmers settled in grazing corridors *after* a village obtained a communal occupancy certificate, they could be evicted.

Loure also stressed that enforcement of the land management bylaws was crucial: “The elected trustees establish grazing committees to make sure people follow the rules.” In case of a dispute, the village council could refer the matter to the ward land tribunal. But Loure also cited an example in which “a community sees that an outsider has moved onto the land without permission. In that case, in accordance with the local bylaws, [the local trustees backed by the village assembly] will [evict] the outsider.”

After setting up their detailed management plans, village councils could follow standard procedures to obtain title certificates. Once approved by the district and local assemblies, the elected trustees signed the occupancy certificate on behalf of the community. But that did not make them the owners of the grazing land; trustees could be replaced at any time through a vote by the village assembly. In addition to giving pastoralists in the community a powerful tool with which to protect their rangelands, the formulation of detailed bylaws and grazing committees “improved the health of both livestock and people because the protected communal land is managed” more effectively, Loure said.

If some villagers subsequently wanted to farm crops on land designated for grazing, those portions had to be removed from the communal title before the crop farmers could obtain their own individual occupancy certificates.

OVERCOMING OBSTACLES

Despite the progress made in titling land across different regions of Tanzania, two persistent problems remained with regard to the surveying of individual parcels. First, the use of professional surveyors to capture GPS coordinates was expensive and overstretched the land ministry’s limited budget. Perhaps even more significantly, the process of uploading different kinds of data, including GPS coordinates and photos and personal information about owners, was time consuming.

Mustapha Mpelembe, who had long worked on land titling for NGO Care International, said, “The complicated series of procedures someone had to go through before getting an occupancy certificate took a very long time, and it wasn’t always clear to people” what information was necessary. In addition to the cost of paying surveyors, district land officers had to combine

paper forms that contained GPS data, photographs, and other information into a single application document for each owner. If there was a delay or a mistake on any of the source forms, the entire process ground to a halt.

In response, the land tenure and property rights department of the US Agency for International Development (USAID) in 2014 proposed to design and pilot a new software application that would simplify and speed up data capture in the field, Mpelembe said. The idea was based on a research paper by Robin McLaren, a British land consultant, who postulated that “with cheaper mobile technology, it was now possible to drive down the cost and time of mapping,” said Yuliya Panfil, a USAID land and property rights lawyer. “Trusted members of the local community could use a mobile phone to map parcels themselves. We were looking to crowd-source the collection of land-rights information,” Panfil said. USAID named the proposed project the Mobile Application to Secure Tenure (MAST).

The first challenge was to convince the Tanzanian government of MAST’s potential usefulness. One of the land ministry’s biggest concerns was whether smartphone technology was capable of taking measurements that would be accurate to within the legally required range. Nindi said that although “people can adjudicate [occupancy certificate] boundaries without having to be too precise,” the government still required the surveys to be accurate to within five meters. According to Karol Boudreaux, land tenure and resource rights practice lead for the Cloudburst Group, which designed and implemented the software alongside Care Tanzania, the innovation team was “able to demonstrate that the approach was accurate enough.” Satisfied that the tool met the technical criteria, the ministry allowed the pilot project to move forward.

The next challenge was to choose a place to conduct the project. The team visited different areas around the country and settled on the Iringa district in central Tanzania. The decision reflected technical as well as practical considerations. The Iringa district land office was located in a large town with good road access. “The office also had Internet and a local [geographic information system] expert, and they were enthusiastic about the project, so in Iringa we had buy-in from both the national and district levels,” Boudreaux said.

Together with district officials, the MAST team selected three medium-size villages of 1,000 to 2,000 plots each where there were few land disputes. “We purposefully chose villages with low levels of conflict—including no conflicts between farmers and pastoralists—because our number one priority was to prove the concept,” Boudreaux explained.

The project paid for a computer and a printer for the Iringa district office and provided the three villages with locks and other upgrades to their council offices so as to ensure that the district could store occupancy certificates safely. The team also met with the three villages’ councils and local adjudication committees to explain the land laws and the process.

During the information sessions, “we were struck that both men and women were still under the impression that women weren’t permitted to hold [occupancy certificates],” Panfil said. As a result, the MAST team strongly emphasized during the sessions the importance of women’s land rights.

In consultation with a village’s council, the team then selected and trained 12 young people to carry out the surveys. Boudreaux said, “It was really important to select people from the village itself to help raise the level of trust around the process.” Other important qualifications included the ability to read and familiarity with smartphones.

Armed with their smartphones, the survey teams—called *trusted intermediaries* under MAST—started mapping parcels in their villages. Boudreaux noted that Tanzanian members of the MAST team were responsible for supervising the surveys and drawing up schedules. After spreading the word about the process, the survey teams would meet with residents and walk the boundaries of every parcel. In addition to mapping the boundaries, they also took photos of the owners and recorded owners’ personal information such as name, age, and date of birth. The teams mapped an average of 55 parcels per day.

Because many Tanzanian villages lacked cell phone service, the app designers had programmed each phone to wait until it detected an Internet connection before automatically pushing the survey and personal data to a secure cloud server. The district office in Iringa could then download the data immediately.

A key feature of the system was its design for meeting the specific requirements of occupancy certificate application documents. MAST survey teams uploaded all of the necessary information in digital form directly to a single application document. That improvement eliminated the need for district land officers to compile information from different paper sources into a single document.

The three-month project issued about 4,000 occupancy certificates covering 6,000 hectares. In contrast to projects like Mbozi, wherein very few certificates were issued to women, of the 4,000 MAST certificates, 49% were issued either jointly to men and women or only in the names of women.

In its pilot villages, MAST significantly shortened processing time. The national land ministry and Mkurabita’s titling projects sometimes needed more than eight days to process application documents, but the MAST project accomplished the process in less than five hours. The new procedure was also cheaper. Whereas other titling projects cost US\$14.80 to US\$47.70 per certificate, MAST cost US\$9 to US\$35.70.

The MAST project also showed that young people from rural villages could carry out the survey work effectively. With many of the country’s 18 million people aged 15 to 35 years who were unemployed, the project was a potentially valuable job creator.

In a reflection of the ministry's enthusiasm about the results of the MAST pilot conducted in Iringa, the government agreed to issue occupancy certificates by using the smartphone application in another 41 villages across two districts. Mpelembe said that through use of the new technology, "we aim to map another 15,000 parcels in 2017, and 50,000 altogether during the next four years." Nindi of the land-use planning commission described MAST "as one of the best options we have because you don't need expensive equipment or technicians."

But Mtamakaya, head of rural surveying at the ministry, cautioned that although the method worked well in areas without much conflict, "greater accuracy is required in conflict hot spots." He also pointed out that the current land policy did not yet specify that occupancy certificates could be mapped by using the mobile application. "In a case when something goes wrong, it could lead to problems. It would be an important next step to consider incorporating the technology into the land law."

ASSESSING RESULTS

By early 2017, Tanzania's land ministry had mapped and issued certificates of village land to about 11,000 of the country's 12,500 villages. From 2008 to 2017, about 13% (1,640) of Tanzania's villages also adopted land-use plans and bylaws for managing shared resources. When properly implemented, the plans were valuable assets to "protect communal resources and fight land degradation through overuse," Nindi said. "They also helped residents see the whole picture of their village and understand the potential value of their resources."

During the same period, about 400,000 of the country's estimated 6 million rural households¹⁶ received occupancy certificates. Of that total, Mkurabita accounted for about 28% (approximately 110,000 certificates in 53 districts), and projects driven by the land ministry and NGOs made up the balance. It is important that the overall total included 36 communal certificates issued to pastoral, livestock-farming communities in northern Tanzania, thereby safeguarding more than 400,000 hectares of grazing land. Pedersen said, though, that the numbers did not tell the full story: "You shouldn't only evaluate implementation of the Village Land Act by whether everyone has received a title or not," he said. "That can be one outcome, but it doesn't have to be." Since the land law automatically recognized the use rights of rural people who have occupied a plot of land for longer than 12 years, it did not legally *compel* everyone to obtain a paper document, he added. Yes, certificates were especially important in areas of intense conflict over land, but "if people are aware of their rights and feel secure in their tenure, then it's not clear why they should necessarily *have* to obtain formal certificates, because the law doesn't legally require it," Pedersen said.

There were other measures of success too. During his 2016/17 budget speech, William Lukuvi, Tanzania's minister of lands, housing, and human

settlements development, revealed that improved capacity had reduced the average time it took to process an occupancy certificate application to 30 days from 90 days.¹⁷ Lukuvi additionally announced that the ministry was setting up an integrated land information management system that would incorporate all title documents—including customary occupancy certificates—into a single national register. With an eye toward further enhancing the land administration system, Lukuvi said, the government was reviewing its national land policy, first adopted in 1995.

Local capacity also increased. Mkurabita's work on building the capacity of local-level officials and villagers earned the program second place at the United Nations 2010 public service awards for Africa.

Lack of data was frustrating attempts to assess other aspects of the program. According to Mgembe, no meaningful data were available to indicate whether village and district registries regularly updated their records. In theory, whenever an occupancy certificate was sold or transferred, the buyer had to update the village register. And village executive officers had to update the district registry on a quarterly basis.

Mgembe said Mkurabita also planned to launch a countrywide study so as to determine the impact of land titling. In addition to finding out how many people update their local registries when transferring occupancy certificates, “we also want to know how much capital formation there has been as a result of titling,” she said. Although Mkurabita had only incomplete information, its numbers showed that at least US\$2.2 million had been loaned to some of the 110,000 villagers who obtained occupancy certificates under Mkurabita—an average of about US\$20 per rights holder. But Mgembe emphasized that “our statistics are incomplete, so we need to do a study that gives us the complete picture.”

Data from the Mbozi pilot project offered an additional insight: According to Mwalugaja, by April 2017, 702 Mbozi residents had used their occupancy certificates to obtain credit totaling US\$21,000 from eight different banks and other financial institutions. That number suggested that the average loan obtained by using a certificate as collateral was about US\$30—a fairly significant amount in a country where almost half of the population earned less than US\$1.90 per day.¹⁸ But the figure was still a long way from meeting the lofty goals of de Soto's theory, which had promised that titling could unlock billions of dollars in dead capital. Nonetheless, though the totals were relatively small, Mkurabita's approach of providing information and support for beneficiaries who wanted to use their titles to obtain credit was an innovative effort to translate an occupancy certificate into a usable asset.

One of the biggest remaining challenges for the survey and mapping department, which was responsible for the program, was to keep up with demand from newly created villages. According to Mtamakaya, hundreds of new villages emerged every year across the country. And as populations grew

in subvillages or hamlets that were parts of a single village council, “leaders in a subvillage eventually want to split from the main village and form their own government,” Mtamakaya said.

The department usually upgraded a hamlet to village status—with its own council—after the hamlet contained more than 500 households. But when that happened, “the boundaries of both the main village and the former subvillage would have changed, so both of them needed a new certificate of village land,” Mtamakaya pointed out. Surveyors had to scramble to keep up.

By 2017, it was clear that the issuance of occupancy certificates had become a top priority. Shortly after assuming office in 2015, President John Magufuli pledged that his government would issue 2.5 million new titles by 2020. For the 2016/17 financial year alone, the land ministry aimed to register 450,000 new parcels.¹⁹ Nindi added that as part of the same push, the government had undertaken to draw up land-use plans for an additional 7,500 villages by 2020.

REFLECTIONS

Important design issues remained: First, the highly decentralized Tanzanian model traded economies of scale for high levels of community responsibility. Other countries, such as neighboring Mozambique, were experimenting with a more centralized approach that enabled surveyors and district land offices to put expertise at the service of communities instead of training new teams for each village.

Second, for cooperation between different agencies and levels of government to proceed smoothly, the lands ministry had to address the lack of central coordination that characterized the country’s approach to titling. The way the land ministry initially interpreted its role—as being limited largely to policy making—had exacerbated coordination problems. For example, in isolated cases, landowners received occupancy certificates that did not contain all of the required personal information. More effective information sharing with village councils and nongovernmental organization (NGO) partners with regard to the technical requirements for property surveys could also speed up the process.

Thabit Masoud, program director of land management at Care International, who worked on the Mobile Application to Secure Tenure project, said the lack of coordination “is an issue because the government loses track. But since it doesn’t have the funds to do it all by itself, [it needs] outside help.” Although NGOs and other partners often arranged ad hoc meetings with national officials to discuss their projects, no national coordinating body existed to track implementation. “We want to see that there is national coordination,” Masoud added. “The Land-use Planning Act provides for the establishment of a task force, but that was never implemented before.”

Steps to improve coordination began in August 2016, when the lands minister established a national land-use planning task force. “The minister has now begun emphasizing that coordination is critical,” said Masoud. “In any area where you have a land-use planning process, all of the key actors should be together. There is now a national-level task force that is getting off the ground. One of the group’s key functions is to keep track of who is doing what.

A third persistent challenge was the need for achievement of gender equity in landownership. Ruth Kihui, head of the Pastoral Women’s Council, said that despite the Village Land Act’s requirement to include women on adjudication committees and tribunals, “we still face massive cultural barriers. The law says one thing, but the reality is that women often still don’t own [occupancy certificates] or get a say in land-use management decisions.”

It was high time, Kihui said, that the government “put women at the heart of the process and make sure women have 50% representation on bodies like adjudication committees. Land rights issues are also women’s rights issues.”

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