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# **Community-based land tenure management**

Questions and answers  
about Tanzania's new  
Village Land Act, 1999

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**Liz Alden Wily**

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**About the author**

Liz Alden Wily is an independent land tenure and natural resources management adviser and can be contacted at [lizaldenwily@clara.co.uk](mailto:lizaldenwily@clara.co.uk)

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# Preface

In 1999, Tanzania enacted a basic new land law in the form of the Land Act and the Village Land Act. The latter lays out the legal framework and procedures for most of Tanzania's rural land to henceforth be governed through a community based land tenure management system. This devolves authority over land administration, land management and dispute resolution to the community level. The law came into effect in May 2001, along with gazettelement of 83 Regulations providing details on various points and procedures.

This paper aims to provide a very simple but comprehensive explanation of the intentions of the Village Land Act. It is purposely not an academic paper and eschews looking beyond, or citing sources other than the law itself. It comprises this introductory commentary and critique followed by a list of questions and answers about the new law. These were originally for several Tanzanian District Councils in November 2002 as base material upon which they will develop simple material aids and guidelines to villagers. District Councils have responsibility to help village communities within their jurisdictions to learn enough about the law to 1/ ensure their rights are protected, and 2/ to establish formal working community based tenure administration and management.

The level to which communities will do the latter will be up to their own discretion; registration activity as described in the law in particular is voluntary, and many of the norms proposed in the law already operate to one degree or another. Many communities will choose to refine and develop their administration and management systems along the lines laid out in the law, and regulate land holding accordingly, but stop short of full registration of rights, at least in the immediate two to five years. Some of the most important prescriptions in the law relate to ensuring that the land rights of those with a usually weaker voice in the society are protected, through improved procedures for land allocation and transfer. Other prescriptions give important new support to the right of the community to control its common properties. Learning about the kind of security provided by the law even without registration will be crucial information for districts to impart to villagers.

# 1. Localising land administration and management

Over 30 African states have begun land tenure and administration reform processes over the last decade. Over half of these have taken steps, or propose to take steps, towards localising land administration, management and dispute resolution.<sup>1</sup> Broadly this is both for reasons of efficiency and integral to democratization/empowerment of citizens to manage their own affairs. Often these developments go hand in hand with new phases of **decentralisation of governance** overall – particularly the case in Francophone Africa. They also interrelate closely to important changes being made in the state law **status of customary land rights**. There are exceptions. Cases exist where localisation of administration is taking place where customary rights are also being (or have been) deliberately weakened or annulled in law (Eritrea, Ethiopia, Burkina Faso, Zambia, Rwanda). There are contrary cases where customary rights are gaining new legal support but with limited or no development of formal localised mechanisms to support them (Mozambique).

Everywhere (save the well-established case of Botswana and where land administration is not devolved to community levels but to district and sub-district levels), devolved tenure administration and management is new and/or in flux or still in the planning stage. On the ground formal developments exist in Niger, Burkina Faso, Mali, Uganda and Tigray State in Ethiopia. Legal preparation has been made or policies proposed towards decentralised land administration in Eritrea, Kenya, Tanzania, Rwanda, Zimbabwe, Namibia, Lesotho, Swaziland, Ghana, South Africa and Angola. The proposals vary widely in the extent to which real devolution is intended and to which level of society. Most propose decentralisation mainly in respect of majority rural lands.

Frequently the outstanding constraint to be faced is the absence of viable institutional forms into which hands administration and management

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<sup>1</sup> Some details may be found in Alden Wily and Mbaya 2001 'Land, People and Forests at the Beginning of the 21st Century' (IUCN) and Alden Wily 'Getting the Process Right: Land Administration as Governance' in CD: Proceedings World Bank Regional Workshops on Land Issues 2002 available from The World Bank. A more detailed analysis of decentralising administration in a number of African states is under preparation and may in future be made available through IIED.

powers may be delivered. Few countries have the advantage of Mainland Tanzania in being able to use and build upon existing community level institutions. In principle at least this should make Tanzania's efforts easier, problems listed below notwithstanding.

Not only does the Village Land Act build upon existing institutional arrangements in rural areas, it builds upon the foundations for local land administration and land management that already exist. The founding element of this is the integrated social and spatial construct of discrete 'village areas', each community exercising jurisdiction over its own area, an area that generally includes not only settlement and farms but communal areas. Therefore, many of these village governments (**Village Councils**) have in fact already undertaken key first steps described later, such as 1/ defining the perimeter of their respective land administration areas – the Village Area; 2/ identifying the common property of the community members, and since 1994, in many cases actively demarcating and declaring community owned forest reserves out of these commons (some 500 or more have been so far declared); and 3/ establishing a village land committee to guide the Council on land matters. Some village and ward level dispute resolution bodies are also effectively in place.



## 2. The Village Council as future land manager

The nature of Village Councils is crucial to understanding how they will play their roles and with what degree of accountability to the rural community. Village Councils are local governments that were first elected by rural communities ('villages') in 1975. They were usually constructed out of existing related hamlets, the greater village boundary drawn around their combined areas. In several regions, entirely new villages were created. In some others, villages were forced until the 1980s to build their homes in specified aggregated areas, often far from their fields. Sub-villages remain very important political and social units of the modern Village, and there are often resource areas within the wider Village Area which are agreed as owned solely by the members of one or other adjacent sub-village.

All members of a village community of 18+ years comprise the **Village Assembly**, the constituency which elects the Council every five years. The only ex officio members of the Council are Chairpersons of Sub-Villages, elected by the membership of their respective Sub-Village only. At least one quarter of Councillors must be women. The Council governs under the terms of the *Local Government (District Authorities) Act No. 7/1982*, significantly amended in 1992 and 1999. The Village Council combines executive and judicial functions. It governs and it also legislates, in the form of Village Bye-Laws. To enter law which the District Magistrate and Primary Courts will uphold, these Bye-Laws require the consensus of the whole community and final approval by the District Council of the area. The most active area of village by-law formulation in recent years has been as instruments for community forestry management, laying out rules as to who may and may not use the village resource, and for what purposes. The right to exclude non-villagers from these group-owned resources has been a powerful instrument in Village Forest Reserve development. Given the high powers granted by the Village Land Act for community members to regulate many aspects of their land administration and management systems, it is anticipated that land administration and management bye-laws will also be many in coming years.

The Village Council governs on behalf of the Village Assembly, the 'supreme authority on all matters of general policy making in relation to

the affairs of the village' (No.7/1982; s.141) and to which it reports quarterly. The Council is a legal person, can sue and be sued.

Village Councils are imperfect institutions whose legal foundation and procedures have not kept up with their accruing roles and development as grassroots democratic institutions of governance. For example, whilst elected councillors no longer have to be a member of the ruling political party (CCM), they are required to be a registered member of a political party, a requirement considered inappropriate by many communities who complain they would prefer to elect individuals rather than party representatives, although others argue that multi-partyism must begin at the grassroots. The dissociation of the once Ruling Party with village government has sometimes been rocky where a non-CCM council has been elected and then been prevented from using the Village Council Building, constructed in decades past with CCM funds. The power of the Village Assembly and the accountability of the Village Council to the Assembly, are insufficiently defined in law as is their independence from the District Council, whose permission they need in order to fire their elected Village Chairman. The soundness of vesting legislative power (the making of Village Bye-Laws) in the Council rather than the popular Assembly has also often been questioned. The use of the Council's Executive Officer to collect District Council revenue as well as village revenue has at times proved problematic. Nonetheless, village governments are local, locally elected, locally accountable, and mismanagement by one village government does not directly affect the competence of its neighbours. The new phase of local government reform in Tanzania proposes to attend closely to village level requirements, with a new Village Government Act being mooted.

Today the rural area of Tanzania (excepting Parks, Reserves and some private estates) comprises largely a mosaic of around 11,000 **Village Areas**, each with its constituency (**Village Assembly**). This comprises all adults of 18 years and above in the community and elects the village council. By law the public Assembly must meet at least quarterly to make governance decisions, or in practice, to approve decisions which its government wishes to make. Village Councils generally meet monthly. Most Tanzanian villages comprise between 275 and 400 households (populations around 2,000 to 4,000 persons). These are in turn made up of sub-villages, which frequently have origins in hamlets existing prior to village formation in the early 1970s. The elected chairman of each sub-village is an ex-officio

member of the overall Village Council. In early elections (1970s-1980s) traditional leaders tended to be elected sub-village leaders and councilors. In some areas, chiefs were the first Village Council Chairmen. Recent elections show that communities increasingly elect younger and more educated persons, although elders are frequently also represented.

District Councils are also elected bodies which general supervisory and advisory powers over Village Councils. Particularly since the start of the local government reform programme some years ago, District Councils are held to be service providers to Village Councils, considered the front-line agency in rural Tanzania. Both levels of elected governments are fully autonomous of central government and in legal terms, of each other. Village and District Councils may raise their own revenue through village or district taxes. District Councils also receive grant aid from the central government and use this to hire technical advisers; district education officers, health officers, forestry officers, land officers, public works officers and so on and these officers report solely to their employer District Councils. Central government ministries are technical back-stoppers and advisers to District Officers (including the Land Officer). They also provide training, legal advisory services, coordination and sources of funds for district sectors to operate.

Villages vary widely. Many are highly self-reliant and well-organised socio-political entities. Most build their own schools, roads and clinics, organise marketing of crops, and make most decisions about life in the village. One of the main forms of assistance provided by the District Council, other than teachers and dispensers, is a Secretary or Village Executive Officer (VEO) for the Village Council. S/he acts as a Clerk and may not make decisions unless authorised to do so by the Village Council. Although some villages employ their own VEOs, most are sent a list of persons to interview and select. The Village Council may request the District to fire an incompetent or corrupt VEO. The VEO will have a special role in future land administration as the Act designates her/him as the Village Land Registrar (or Land Officer), responsible for record keeping.

### 3 Implementation and issues

The paper attached to this Preface is a simplified explanation of the Village Land Act. It was prepared in November 2002 to assist several District Councils in Tanzania to prepare plans and materials for helping villagers begin to use the law to their advantage. Although some guidance and interpretation is offered, it endeavours to stick to the terms of the law. It avoids critique. This is not to say that the law is not without problems, nor that implementation will be easy. A brief note on this follows.

#### Promise

On the positive side, as noted above, institutions required for community based land tenure management are already in place (or in the case of certain committees and dispute resolution forums, readily able to be put in place). Costs should not be excessive and will largely relate to facilitation; preparation of materials, holding of workshops with groups of village representatives, training of Village Executive Officers in record keeping, and general on-site facilitation. The tenure security the proposals give to majority land rights is substantial,<sup>2)</sup> and in ways that are notable for the equity they promote and the protection they give to traditionally weakly protected sectors (women, disabled, children and pastoralists in particular). The support the law gives to community based rights and specifically including the opportunity to secure as commons as privately owned community property is an important development and already being quite widely used by rural people. At the same time, the plan is imperfect and a range of problems may be predicted. How far these will be mere teething problems or grow in their dimensions will be largely determined by the quality of guidance which especially district authorities are able to give village authorities.

#### Problems

Such constraints include the following, in reverse order of importance:

- 1 The law is **not very accessible**, even in its recently gazetted Kiswahili translation, having originally been written in traditionally legal language, and with insufficient interpretation of terms for what is now

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2 And in fact for untenured poor in peri-urban areas, not addressed in this paper.

going to be a very large lay readership.<sup>3</sup> For example, villagers may well ask what does it mean when the law so frequently says we should *'have regard to'* this advice or that advice of the District Council or Lands Commissioner? Do we have to follow that advice or do we just need to take note of it?

- 2 There are **too many forms** (50) for the Village Executive Officer and Council to use (a list of these is appended). In principle the use of forms is appropriate; this should ensure that all needed points of information are covered, allow for standardization among villages and provide some order to often quite disorderly village level record-keeping. Especially given that forms are likely to be provided free (by District Land Offices), the tendency of village officers to use mismatched, reused or 'scraps' of paper will also be reduced. Moreover, the Regulations under the Act do make it clear that the form itself may be modified to suit circumstances (Regulations 79-80). Nonetheless the sheer number of forms prescribed does smack of the over-bureaucratic. Nor is the law entirely clear as to how legitimate will be records which are *not* recorded in the format prescribed.
- 3 The requirement that the District Land Officer sign and seal all certificates of customary occupancy may **seriously delay** the issue of entitlements. Other than checking for accuracy in their presentation (which could be helpful) District Land Officers do not have sufficient knowledge of the local land situation in every village to be able to add to the purpose. Conversely, submission of a copy of the certificate to the District with the express intention of establishing a back-up copy of the Village Land Register might have been useful.
- 4 Elements of the law are bizarrely **top-down** in among the general devolution of authority. An example of this is in respect of the new class of reserved land introduced by the Land Act 1999, 'Hazard Land' [LA section 7]. This includes mangroves, wetlands etc. and also river banks, lakeshores and steep slopes. The President may remove such

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<sup>3</sup> For example, it would have been helpful for these terms to have been defined: public purpose, customary law, general boundaries, assigned. Definition of 'local government' is poor given that it incorrectly includes only district not village governments. The use of the word 'reserved' as a class of village land is also confusing given its existing common usage not to mean spare land for agriculture but land designated for protection. Central and District adjudication are used apparently interchangeably. There are also editing problems (e.g. section 57 1h and 57 1i are the same) and reference is wrongly made to section 23 (2) when it should have been section 22 (2) in section 28.

lands from Village Land and place these under his own jurisdiction. Compensation is to be paid [section 7 (8)]. The spectre of patches of 'national property' existing within a host of villages (hundreds have steep slopes or river banks) bespeaks unnecessary bureaucracy and needless anathema to localised conservation management; it would have been preferable to direct village land managers to manage these. Many already do operate riverside and slope rules. Hopefully transfers in practice will be very rare.

- 5 There is insufficient required **accountability** of the Land Manager (the Village Council) to the community. Ideally every significant land management decision should be subject to public assembly approval. Conversely, there is rather too much accountability required of the Village Land Manager upwards to the District Council. Although the law is very careful not to require adherence necessarily [s.9] the Village is told to consult and listen to the District at least ten different times in the law.
- 6 It is not clear why a Village Assembly **only has power** to approve or reject removal of land from its domain by the State (President through Minister) that fall under 250 ha and not over land that is greater than 250 ha [section 4 (6)]. Approval or veto in those cases is up to the Minister.
- 7 The law is **overly prescriptive** and even police-like in many of its provisions. An inordinate number of clauses are devoted to restrictions; sections 37-43 for example are devoted to explaining how the Village Council may deal with breach of conditions to occupancy. Rather too little is left up to the common sense of the Village Council as Land Manager.
- 8 Related, there are possibly **too many aspects over which the Minister has control**. One is ceilings. The Regulations establish a general ceiling of 20 ha per holder [Regulation 75] but he is to regulate more precise ceilings later bearing local situations in virtually each village in mind. It would have been simpler and more logical to advise Village Councils to establish their own ceilings (as many currently do), through public consultation (the Village Assembly) as long as they do not exceed the general ceiling. Only those communities which wish to have higher ceilings need approach the District Council and Commissioner, as already provided for [Regulation 76].

9 **Defining the Village Area:** the law is generous in providing grounds upon which a community's land area (Village Area, or Village Land) may be defined – too generous, with confusion and conflict encouraged. The main source of conflict will be between boundaries defined in 1975 at the time of first registration of the village, or later when trying to secure a Village Title Deed (now not applicable) and the common sense routes – agreement between a village and its adjoining neighbours [s. 7]. Drafters of the law may not have appreciated just how frequently the boundary originally registered (or mapped in preparation of entitlement in the 1980s) only included settlement and farms, not the commonage. Villagers were given highly various instructions at both events as to what they could include as 'village land'. In more recent years, communities have been more determined (and assisted, through especially community forestry and pasture developments) to bring their commons more firmly under their aegis. There is in any event a pressing need for every village to redefine its perimeter boundary through agreement with neighbouring communities, as a way to be clear as to the sphere of their respective jurisdictions. The law would have more usefully simply established this as an essential step, setting aside the unclarity associated the earlier delineations.

10 Related to the above is a serious problem in **the definition of 'Village Land'** in respect to General Land. Broadly speaking General Land is Government Land in that it falls under the control of the Commissioner of Lands in the Ministry of Lands. The Village Land Act 1999 defines General Land as a residual category – *'all public land which is not reserved land or village land'* [s. 2]. In contrast, the Land Act 1999 defines General Land as *'all public land which is not reserved land or village land and includes unoccupied or unused village land'* [s.2, my emphasis]. The contradiction aside, should the latter be enforced, villages could expect a good deal of their valuable common property to be removed from their control, commons that are often deliberately unused (e.g. Protected Areas of Village Forest Reserves) and even more commonly deliberately unsettled (pasture, forests, marshes, hilltops, etc.). Unfortunately, in view of the evident desire of central Government to make large amounts of vacant land available to investors (see below); it is conceivable that the Land Act definition could be used as excuse. Villagers could of course contest this, right up to the High Court, but at cost. An important contributing clause to their case would be the wide definitions of Village Land provided for in the act (as above) and which include for example land used for grazing or stock passage [s. 7 1(e)].

**11 Insecure tenure over commons:** as conventionally the case, the State may compulsorily acquire land for public purpose. The procedure for this is substantial and designed to be fair, save the limitation noted above that communities have little say over large acquisitions or transfers [s. 4]. For example, compensation has to be agreed prior to transfer of the land. Public interest is not defined in either law, but in the Land Acquisition Act 1967 [s. 4]. This includes a purpose '*for use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development*' [s. 4 (1) (g)]. The Village Land Act adds that '*public interest shall include investments of national interest*' [s. 4 (2)]. Currently all investors and investments arising from foreign interests must seek clearance from the Investment Promotions Board (and non-citizens may only be allocated or granted land for an investment purpose; LA s.20). There is currently great interest among investors in the commercial agricultural potential of Tanzania and the Board has already approached a number of District Councils asking them to identify land for allocation to such interests. To fulfil this they would need to recommend to the President that these desirable estates be removed from village land, on payment of compensation. As noted above, there is not a great deal villagers can do to protect such lands, especially those of above 250 ha.

**12 Custom and customary law:** The new land law chooses to recognise existing rights as '*customary rights*'. In many African states this would not be problematic as by default or otherwise, customary norms continue up until to the present to shape both the character of majority land rights and how they are administered (allocated, disposed of, etc.). Only to some extent is this true in Tanzania. Since the 1970s village-making initiatives what is customary has been overlaid in rural areas by community based decision making and administration of land rights, with village governments not necessarily making decisions on the basis of custom. In many cases they have responded to directives from either central or local district Government. Often these directives and their own independent decisions have had much in common with traditional practice. Although strictly speaking '*customary practice*' may be interpreted as *prevailing* norms, it as often implies historical precedent. To direct modern communities to administer/manage land rights according to customary law could throw some communities into confusion: what *is* our custom, they might ask? How do we now know what is customary? What if our community norms conflict with what the elders say was/is customary? Who shall decide?



The law provides only some help in this. It does not define 'customary law' itself beyond referring users to the Interpretation of Laws and General Clauses Act 1972. That law describes customary law to mean '*any rule or body or rules whereby rights and duties are acquired or imposed, established by usage in an Tanganyika African community and accepted by such community as having the force of law*' [s. 3].

Section 20 (2) of the Village Land Act does provide that '*any rule of customary law shall have regard to the customs, traditions and practices of the community*' – but only to the extent that they conform with the *National Land Policy 1995* and so long as they '*do not deny women, children or persons with disabilities lawful access to ownership, occupation and use of lands*'.

Section 20 also says that customary law that was applicable prior to villagisation in the 1970s (Operation Vijiji) will apply [s. 20 (4)].<sup>4</sup> There is plenty of scope for a disgruntled sector in the village to use customary practice to dictate a land claim, against the more general or more modern decision-making of the community as a whole. Such cases have already arisen, often where an individual has used his continued residence within village common land such as forests, as a right he holds by custom. Whilst communities are used to sorting out such claims, it would have been more helpful of the law to be robustly clear that majority decision-making should have precedence; or, put another way that prevailing community accepted practices should have precedent over (past) customary norms. There will be quite enough battles over land rights for communities to manage without fuelling these with ambivalent guidance.

## **Presentation**

As noted above the main audience for the questions and answers that follow is district level officers and especially the elected councillors to whom they report. Accordingly, presentation is simpler or more detailed in its explanation than those more familiar with land law or the issues involved may require. In addition, some points are deliberately reiterated, for emphasis. In addition, although some interpretation and advice is given, critique is generally avoided.

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<sup>4</sup> The law also notes that no provisions under laws of the United Kingdom will apply to land held for a customary right [s. 20 (3)], an important point of liberation from English law and which goes hand in hand with the more general liberation from non-Tanzanian law provided by the Land Act s.180. This does not of course prevent courts drawing upon relevant precedents set in any commonwealth state [s. 180 (1)].

# 4 Questions and answers about the Village Land Act

## Part 1: About the law and its principles

### 1. What is the Village Land Act?

The Village Land Act 1999 is a land law that was passed by Parliament (*Bunge*) in 1999. It did not come into force until May 2001. **Regulations** under the Village Land Act were also published at that time. The Regulations provide additional guidance on some subjects in the main law. They also provide the format for 50 different forms that are to be used to manage land in an orderly way. Villages may produce their own forms or ask the District or other bodies to assist them with these. The Village Land Act and the Regulations go together. Both have been translated into Kiswahili. Both the English and the Kiswahili are official, gazetted versions and have exactly the same content.

### 2. How did the Village Land Act come into being?

From 1989 the Government of Tanzania started to develop new policies about land ownership. In 1995 Parliament passed a new **National Land Policy**. The Village Land Act and another law, the Land Act 1999, were developed to put this new Policy into law. The Policy was developed after a Presidential Commission went to all districts during 1991-1992 to find out what land ownership problems people were facing. Most of the Commission's recommendations found their way into the new Policy and new laws.

### 3. What is the difference between the Village Land Act and the Land Act?

Originally, the Village Land Act 1999 and the Land Act 1999 were drafted as one new land law but got split up because the law was so bulky. The laws are closely related and the Land Act has to be read for some subjects to do with village lands, such as land ownership between husband and wife and mortgages. Mostly the Village Land Act stands alone.

The main difference between the two laws is that the Land Act deals with land rights outside villages or reserved areas; such areas are called **General Land** (this may be taken to mean Government Land). It includes all urban areas and any land for which individuals have received leases

from Government. The Village Land Act deals only with land rights within village areas. Most of Tanzania is **Village Land**.

Because the two laws were once one and have been written with integrated objectives in mind, on some subjects **they need to be read together**. The Village Land Act tells the reader or the Land Manager when s/he should look at The Land Act.

#### **4. Are these the only land laws that need to be followed?**

Together the Land Act 1999 and the Village Land Act 1999 form basic new national land law. Since they were passed, Tanzania land law no longer has any reliance on English law. One or two old laws do still exist. One of these is the **Land Acquisition Act 1967**, which gives more detail on how the Government can acquire private land, including land held by villagers. A new law on land dispute resolution was passed in 2002; the **Courts (Land Disputes Settlements) Act, 2002**.

A number of other laws have bearing on the Village Land Act and the Land Act. The **Forest Act 2002**, for example, takes full advantage of the new provisions in the Village Land Act to enable villagers to declare their own Village Forest Reserves on land within their Village Area. Because elected village governments are made Land Managers, the **Local Government (District Authorities) Act 1982**, is very important. This allows village governments to govern, and to make bye-laws. The Village Land Act permits village governments to make bye-laws relating to land ownership management in their capacity as Land Managers.

#### **5. To whom does the Village Land Act apply?**

The Village Land Act applies to all villagers and others who are seeking the right to use or occupy land within the area that is under the authority of a village ('village area' or 'village land').

The law only applies to Mainland Tanzania. Zanzibar makes its own land and other natural resource management laws (e.g. The Zanzibar Land Tenure Act 1992).

#### **6. What is the purpose of the Village Land Act?**

The main purpose of the Village Land Act is to set up a **community-based system for managing land ownership** in rural areas. This includes a system through which every villager may get his/her land right formally recorded as existing (**registration**). A certificate of ownership may be issued once the right is formally registered (**a title deed**).

### **Box 1. Evolution of new basic land law in Tanzania**

- 1989 Attempts by Land Ministry to draft a new urban development policy find the land laws restrictive. Technical Committee established to develop a new national land policy.
- 1990 Minister for Lands decides this should be a national and consultative process.
- 1991 Presidential Commission of Inquiry into Land Matters launched January 1991.
- 1992 Commission travels to all but two districts, holds 227 meetings with 80,000+ persons; hears and reads 4,100 complaints, meets with 150 officials, travels internationally.
- 1993 January 1993 Commission submits final report.
- 1994 Commission Report published. Provisional position paper produced by Ministry and approved by Cabinet December 1994.
- 1995 National Workshop on Land Policy held in Arusha in January 1995, attended mainly by civil servants and politicians. Policy finalised and approved by Parliament in August 1995.
- 1996 Drafting of a new land law began in March 1996 and distributed November 1996.
- 1997 Mainly central government officials read the draft and comment.
- 1998 Draft revised and divided into two draft laws ('bills') because so lengthy.
- 1999 Bills approved by Parliament May 1999 as The Land Act No. 6 of 1999 and The Village Land Act No. 7 of 1999 but no date set for commencing the laws.
- 2000 Ministry plans dissemination programme but not implemented.
- 2001 Fifteen different Regulations under The Land Act 1999 published and one Regulation under the Village Land Act 1999 published together on 4 May 2001. On that date, the two laws also come into force as the land law of mainland Tanzania.
- 2002 Courts (Land Disputes Settlements) Act 2002 passed. Ministry produces and disseminates posters and a short guideline.
- 2003 Some District Councils beginning to promote implementation

## **Box 2. The land law in Tanzania**

### **Main Laws**

1. The Land Act, 1999

+ 15 sets of Regulations under the Act, 2001

2. The Village Land Act, 1999

+ 1 set of Regulations under the Act, 2001

### **Other land laws**

1. The Land Acquisition Act, 1967

2. Land Registration Ordinance Cap 334

3. Town and Country Planning Ordinance Cap 378

4. Public Lands (Preserved Areas) Ordinance Cap 338

5. Customary Leaseholds (Enfranchisement) Act 1968

6. The Courts (Land Disputes Settlements) Act, 2002

## **Box 3. Land management classes**

### **Village land**

- Includes all land within 11,000 village areas
- Governed by The Village Land Act
- Village Councils are made the Land Managers of their respective areas
- As Land Managers, they are trustees only; they may not see themselves or behave as if they are the land owners

### **General land**

- Includes urban area and lands that have been allocated by Government under entitlements
- Governed by The Land Act
- The Commissioner of Lands is made the Land Manager of these lands

### **Reserved land**

- Areas governed by 9 listed laws (e.g. Forest Act 2002, Highway Act)
- New class of reserved land: Hazard land; includes mangrove swamps, reefs, wetlands, land within 60 metres of a river bank, land on steep slopes, etc.

#### **Box 4. The contents of The Village Land Act, 1999**

The law is made up of 66 sections in six parts:

Part I provides meanings of 57 different terms used in the law such as 'adjudication officer', 'land sharing arrangement', 'assigned'

Part II lists 16 policy principles to be observed by Land Managers

Part III sets out how the President may move land into or out of village land

Part IV is the main part of the law. It describes –

- How a community may identify which land is under its control ('village area')
- The issue of a Certificate of Village Land to each Village Council and what this means
- The designation of the Village Council as Land Manager and how it should operate
- How two or more villages can manage some lands jointly
- How land in the village can be divided into communal village land, individual land and spare land for future allocation
- How a villager may obtain a customary right of land
- How such rights may be registered
- What is meant by a customary right of occupancy
- The conditions that apply to rights
- How citizens who are not members of the village may apply for land
- How the village land register is to be set up
- How land may be surrendered
- When land is considered abandoned and how it may be reallocated
- How land is to be adjudicated if the boundaries and ownership are not fully agreed by concerned parties.

Part V provides for a dispute resolution body to be set up within the village

Part VI lists what is an offence against the law and lists the matters on which the Commissioner may issue regulations.

## Box 5. Purposes of the Village Land Act

### General purposes

To foster a decentralised and democratic system for majority land rights

To protect the existing land rights of the majority and to assist in clarifying and securing these in law

### Specific purposes

1. To empower villagers to MANAGE their land
2. To set up the PROCEDURES and make them fair, transparent and inclusive
3. To RESTRUCTURE the role of government and district councils as advisers and watchdogs
4. To give FULL LEGAL WEIGHT to customary land rights
5. To help communities to SECURE their Village Area as their own property
6. To enable land rights to be REGISTERED and TITLED
7. To enable land rights to be SOLD
8. To LIMIT the power of Government to take village land
9. To include COMMON PROPERTIES as legal land right
10. To set up community level LAND DISPUTE services

## 7. When will the Village Land Act be implemented?

Laws are usually not so much implemented as *applied* – usually when a relevant case comes up and a judge has to make a decision. The Village Land Act is already the **operating law** for village land rights even if villagers do not know much about it. This means that since May 2001, judges should have been using the Act to guide decisions. It means that all the rights recognised in the law are already legally supported, whether the holders know this or not. It means that those that have been annulled by the law already do not legally exist – a good example of this is where a Village Council is holding a Village Title Deed; this Deed has already in law been converted to a Certificate which reduces the rights of the Council from land owner to land *manager* (see later).

Implementing the Village Land Act means helping villagers to understand the law and to be able to use it to secure their land rights more firmly. Because The Village Land Act hands over important management roles from central Government to village governments, these governments (Village Councils) also need help to know **how to be Land Managers**. There is however very little in the law that is compulsory; many commu-

nities will not consider it necessary to pursue registration of rights immediately. Others may choose to make quick and full use of some opportunities.

In the meantime, the most important message for villagers is that the Act protects their land rights. Their existing rights cannot be taken or disturbed in any way that is not laid out in the Act.<sup>5</sup> The Act also makes the *de facto* role of the Village Council as decision-maker on land matters, a legal role (*de jure*). Later some suggestions on implementation are given.

#### **Box 6. The principles of the Act**

- Land dispute systems to be independent
- Distinction made between owning the land and owning rights over land
- President owns the soil, on behalf of the nation. People can own land rights: the right to occupy and use land
- As a trustee landowner only, President cannot behave like landlord. He may only take land in public interest and must pay full compensation
- Customary rights are considered private property rights, made registrable
- Law protects existing and unregistered rights
- Main purpose of law is to help people register their land rights
- Customary rights and granted rights have same legal status and effect
- Spouses, families, clans, groups, villages may own land and be registered as owners
- Common properties given new respect in the law
- Management of land is devolved for most of the land ["Village Land"]
- Village Councils now managers, NOT owners
- High respect for women's rights, pastoralist rights, disabled, landless and rights of urban poor
- Equal access to land encouraged: ceilings, condition of occupation and use
- Land right may be sold, and at open market values
- Villages to manage land in accordance with customary law
- Customary law is the accepted majority local norms, can be modern norms.

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<sup>5</sup> Section 4(3) of the Land Act 1999.



## 8. What are the basic principles of the Land Law?

Basic policy principles to which land administrators must pay attention are listed in Part II of both the Village Land Act and the Land Act [s. 3 of both laws]. These are laid out in exactly the same way. Other principles emerge in the course of the law. Taking these together, the following basic principles may be listed. Details on each follow later.

### Land disputes

- Land dispute resolution systems are to be **independent** of government (including district and village governments) and are to settle disputes swiftly and fairly [s. 3 (1) (a), s. 60-62].

### Land ownership

- Ownership of land is divided into **owning the land itself** and **owning rights to occupy and use the land**. Ownership of the soil (the land) is still in the hands of the nation (in fact the President) whilst citizens may **own rights over the land** ('land rights' or 'land interests'). The most accurate description is to refer to those with these rights as '**land holders**' or '**right holders**' and to refer to land holding rather than land ownership. However, it is often the case that 'land owner' is used for short. This is acceptable practice.
- The President does not own the land in his own right, but strictly on behalf of all citizens who are the real owners of the land. That is why *all* land in Tanzania is referred to as '**public land**' [s. 3(1) (b)].
- Because he serves only as a **legal trustee** for others, the President cannot act like an ordinary landowner [s. 3 (1) (b)]. The actions he may take are limited to those that are **in the public interest**. Citizens may challenge the President or his Minister and Government, when they think he is not acting properly on their behalf.
- Public interest (or 'public purpose') is self-explanatory; something that helps the nation. The Village Land Act does point out that various private investments in land may be in the interest of the nation and land could be taken for that purpose [s. 4 (2)].
- The procedures for taking land away from a village or villager are laid out in the law [s. 4]. Compared to old law, these have been tightened up to make them fairer and more transparent. Villagers may protest

proposals and transfer of the land may not go ahead until the type and amount of compensation has been agreed with them [s. 4 (8)].

- A main objective of the law is to protect **existing rights, even if they are not registered**. This means that a villager's land interest is secure today, even if s/he has no certificate for the land [s. 4(3) of The Land Act]. A main purpose of the law is however to help citizens increase this security (or at least the sense of security) further by providing a way for them to locally register these rights and to get certificates of ownership.
- There is only one form of land ownership that may be registered and titled in Tanzania. This is called a **Right of Occupancy**. When the right is allocated in General Land, it is known as a **Granted Right of Occupancy** (this is fully described in The Land Act). When it is issued in Village Land, it is known as a **Customary Right of Occupancy** (fully described in The Village Land Act). In general, Granted Rights are allocated in towns and Customary Rights in rural areas (Village Land). Derivative rights, or leases, licences, etc. may also be registered but the holder is not the primary land right holder. Granted and Customary Rights (and their derivatives) may both be issued in Reserved Land. Just because an area is 'reserved' does not mean it is automatically owned by Government. Villages already are owners of Village Forest Reserves for example.
- There are several **differences** between Granted and Customary rights [s. 22 of The land Act and s. 19 of The Village Land Act]. One is that a Customary Right of Occupancy may be owned for an indefinite period whereas a Granted Right of Occupancy issued in General Land (including towns) may only last for up to 99 years. In practice they are usually issued for shorter periods (e.g. 33 years). This means that rural people generally have *longer* land security than urban people.
- The law is quite clear that a Customary Right of Occupancy and a Granted Right of Occupancy are **equal in the security** they give the holder [s. 18 (1)]. Even if a Customary Right of Occupancy has not been formally recorded and a certificate issued, if a case arises, a court is bound to honour that interest as a private property right. Another effect is that if the Government wants to take land belonging to a villager or the village as a whole, it must **pay the same levels of**

**compensation** for the land it would have to pay if the land were under a Granted Right of Occupancy or the person had a title deed. It is no longer legal for Government to reimburse the farmer just for the value of the crops or buildings [Regulations. 8-25].

- Although informal or **customary rights** have always been recognised in law as existing, until the new land laws, **they could not be registered** or certificates of title issued as evidence of that ownership. When they were registered, their nature as a customary right changed. Now the right can be registered **'as is'**, that is, without its nature changing [s. 18 and 20].
- In addition, previously villagers would in practice only be given a land title as individuals. Now they may be readily accepted and registered as land right holders as **spouses, a family unit, a group** of two or more persons or as a whole **community**, as well as individually [s. 22].
- The new law pays new attention to **common property**. One of the first tasks of management is for the Village Assembly to agree exactly which land within the village area is owned communally (by all members of the community) and to register this as **Communal Village Land** [s. 12-13]. If Government wanted any part of this land for a public purpose, it would have to pay for this as if it were the private property of the community [Regulation 8].

### Land management

- It will be clear from the above that land in Tanzania is divided into three **land management classes**. Each has its own governing law and its own manager [The Land Act Part III].
  - The largest class is **Village Land**, governed by the **Village Land Act**. Each **Village Council** is made the Land Manager of its respective 'village area' or 'village land'. Although Councils in the past have acted as managers of sorts, this is now a formal and legal responsibility and power.
  - The next class is **General Land** which is governed by the **Land Act** and under the control of the **Commissioner of Lands** in the Ministry of Land and Settlements. The Commissioner has delegated many of his powers over General Land (but not Village Land) to District Land Officers.

- The third class is **Reserved Land**, which is governed by nine different laws depending on the purpose for which the land was reserved. Forest Reserves, for example, are governed by the Forest Act 2002; this provides for different kinds of Forest Reserves to have different managers. (As noted earlier, Reserves may also have different owners).
- In the past Village Councils could be recognised as the owners of village land through the issue of Village Title Deeds. In 1984 the plan was that they would receive a 99 year lease from Government (in fact a Granted Right) and then sub-lease plots to village members. The Village Land Act stops this and makes Village Council **managers** of land only. **Village Councils may no longer consider themselves the owners of village land, even communal land. Even as managers, the law makes it quite clear that Village Councils operate as trustees, on behalf of village members and are fully accountable to these beneficiaries [s. 8].**
- The system of land administration that each Village Council is to set up must be **efficient, transparent and participatory** [s. 3 (1) (i) and s. 8]. As Land Manager the Council must report to village members in the same way it already does for other matters [s. 8 (6)]. Villagers may sue the Council for bad land management [s. 8(12)]. Rules and law about land have to be laid out in such a way that every citizen may easily understand them [s. 3 (1) (m)]. Dissemination programmes to explain the law are encouraged [s. 3 (1) (o)].
- The approach to land management in Village Lands follows the modern **decentralization policy**. District Councils are to act only as helpers and advisers to Village Councils. Whilst Village Councils have to pay attention to what the District Council or its Officers say, they are not bound in the law to follow that advice [s. 9 (1)]. The District Council may however intervene in land management, when 100 or more villagers ask it to [s. 8 (8)].
- Village Councils are to administer land in accordance with **customary law** [s. 20]. Customary law means any rule that is established by usage and accepted as having the force of law by the community – in short, **the prevailing custom of the day**. There is some limitation on these customs: customary rules that are inconsistent with the National Land

Policy 1995, any other statutes or which deny women, children or persons with disabilities lawful access to ownership, occupation and use of lands are not allowed to be applied [s. 20 (2)].

- Although customary rights are found mainly in village lands, people who are living legally in forest reserves, national parks, the Ngorongoro Conservation Area, or in urban and peri-urban areas as customary occupants, will also be recognised as holding customary rights. When it comes to registration outside village land, these might be made Granted Rights, not Customary Rights of Occupancy [s. 14].
- Although Land Managers may charge prices for the right to access land and order people to pay rent, this is mainly for non-village members or organizations. The Act allows Councils to charge fees from village members to cover the costs of land administration procedures [s. 24].
- In order for a land interest to be registered, the land has to be **adjudicated** [Part IV C]. This means that the ownership of the plot is investigated and confirmed as belonging to the person who is claiming it. The law does **not** require land holdings to be formally surveyed, measured or mapped. Description of boundaries and sketch mapping, are enough for a right to be registered and a certificate of ownership issued.

### Equity

- As in the past, **equal access and distribution** of rights to land are to be encouraged [s. 3 (1) (d)]. Each District will set up a Commission to decide the maximum land a person may hold and advise the Minister. In the meantime, the Regulations under the Act have set a limit of 20 ha. Any allocation between 20-50 ha has to be first approved by the District Council. An allocation of more than 50 ha has to be approved by the Commissioner of Lands [Regulation 75].
- Land rights are also still to be conditional upon **occupation and/or use** [s.29]. Land that is not occupied or used for five or more years is to be considered abandoned land and the Village Council may reallocate this land [s.45]. However, the Council has to consider factors like weather and customary practices that may have resulted in the land not being used. Also, the Council cannot declare land abandoned if the spouse or dependents rely on the land [s. 35 (2), s. 36].

- Even though land itself cannot be bought or sold, the **right to land** (i.e. the right to use and occupy land or 'the land interest') may now be bought and sold [s. 3 (1) (g) (k)]. If sales are conducted in such a way that they **unfairly disadvantage smallholders or pastoralists**, they may be revoked as illegal.
- In each procedure to do with land transfer, Land Managers are reminded to consider the land rights of **women** carefully [s. 3 (2), s.23, s. 30]. The land needs of **landless** and **disabled persons** are also to be consciously accounted for [s. 23, s.30]. The law also provides mechanisms for agriculturalists and pastoralists to hold different rights in the same land ('land sharing agreement') [s.11]. It also makes it possible for **pastoralists** to own land rights together as several villages or a clan. Grazing land is given equal status in the law as farming [s. 7(1), s. 7 (7) (d)].

## Part II: Managing the village land area

### 9. How are villages supposed to manage their land?

As now officially the Land Manager [s.8], the Village Council is instructed by the law to –

- 'manage the land in accordance with customary law of the area;
- protect the environment;
- protect rights of way;
- maintain the perimeter boundary of the village area;
- keep secure the certificate of village land which is given when it is made Land Manager;
- report alterations in the boundary to the Commissioner for endorsement on the certificate;
- issue certificates of customary title, and –
- maintain a register of communal land' [Regulations, Form for Certificate of Title].

### 10. How may the community define its Village Land?

Village Land is the 'village area' over which each Village Land Manager (the Village Council) has jurisdiction. Some communities already know their area and some have documents that describe the area. Section 7 of the law offers communities a variety of means through which they may define (or redefine) the limits of their village area/village land; this may be based upon –

- The area described when the village was first registered;
- The area designated as village land under the Land Tenure (Village Settlements) Act 1965;
- The area demarcated under any procedure or programme since then and irrespective of whether or not this has been formally approved or gazetted or not ;
- The area as agreed between the village council and neighbouring village councils;
- The area as agreed by the village council with the Commissioner of Lands, the District Council, the Town Council or Forestry or Wildlife Department or any other body in charge of land which borders the village's land.

In addition, the law makes the point that the community should include land which the villagers **have been occupying or using as village land since 1987**. This could include woodland, fallow land, rangeland or other land through which stock customarily passes [s.7 (1) (e)]. It will be important for District Councils to advise communities of this, for many areas that were originally registered only included the settled areas of villages (farms, homes).

The law specifically does not require the perimeter boundary or village area to be surveyed or mapped (as was previously the case when ownership deeds were being issued to Village Councils). 'General boundaries' are to be used; this means a description of the area and its boundary, using permanent features like paths, rivers, gullies, rocky outcrops, boundary markers, etc [Regulation 37 (1)].

The ***easiest and most lasting way*** for a community to be sure of its Village Area is to re-examine the boundaries and agree exactly where these run with neighbouring villages. They may then describe this boundary and jointly sign Minutes with this description in them.

When boundaries cannot be agreed, the Minister (or in practice, the District Land Officer authorised to act on his behalf) may appoint a Mediator. If the Mediator is unable to get the two villages to agree, then the Minister may appoint an official inquiry and he will make a decision based upon its recommendations [s.7 (2) (3)].

### **Box 7. What is the Village Area?**

- The land area over which the elected Village Council is made Manager
- The Council does NOT own the land; it MANAGES it
- The Council manages as a TRUSTEE for the community.

#### **What is CVL?**

- A CVL is the Certificate of Village Land
- The CVL is NOT a title deed
- The CVL merely confirms which Village Council is Manager of which Village Area.

#### **Routes to defining the perimeter of the Village Area**

- The area described when village first registered
- The area designated under Land Tenure Act 1965
- The area demarcated since, even if not approved
- The area agreed between VC and neighbouring VC
- The area agreed by VC with Commissioner, District Council or Forestry or Wildlife Depts.

## **11. How is the Village Area made official?**

A Certificate of Village Land (CVL) will be issued to each village and this will describe the Village Land [Section 7]. The CVL will be issued in the name of the President. The CVL is not a land ownership title. It is a management document. Its purpose is to formalise the role of the Village Council as **Land Manager** of the area of land described in the CVL. It will also state that the people occupying and using the land do so in accordance the customary law applicable in the area.

The Commissioner will set up a National Register of Village Land and any changes to the boundaries of a community's Village Land will be recorded there. When the Village receives the CVL, it will keep this as **Part A** of the Village Land Register (see later).

Village Councils do not need to wait for the issue of a CVL in order to start managing land. Any village that already has agreed boundaries with its neighbours or has a document like a Village Title Deed which describes the boundary, may be regarded as having already received a CVL.



## 12. How are Land Managers to categorise land in the village?

The law [Section 12] requires each Village Land Manager to divide the village area into three classes:

- **Communal village land**, not to be available for individual occupation and use;
- **Individual and family land**, and over which land ownership titles may be issued;
- **Reserved land**, land to be set aside for future individual or communal use.<sup>6</sup>

Section 13 of the law requires that communal village land is first identified, approved by the Village Assembly and recorded in a 'Register of Communal Village Land'. This will be placed in Part C of the Village Land Register (see below).

Communal village land will automatically include –

- Any land that is already set aside for community or public use or has in practice been used as common land;
- Any land which is entirely free of occupation or use or any individual rights, and –
- Any other land that the Village Assembly agrees should be earmarked as their common property for one use or another (forest, school area, future place for churches, mosques to be built, shopping centre, roads, protected river banks, grazing areas etc.).

The law advises Councils to take this opportunity to **prepare management plans** for each tract of communal village land. This is a good opportunity for communities to establish Village Forest Reserves where they have forests/woodlands that they want to keep as forests/woodlands. The new Forest Act 2002 sets out very simple step by step procedures for this and how to zone, guard, manage and regulate the use of these properties. New Regulations 2002 have also been issued under the Wildlife Conservation Act 1974 to enable communities to declare Wildlife Management Areas. These two actions are important ways through which communities may help entrench their rights to these unsettled areas.

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<sup>6</sup> The Village Land Act was written before drafters were aware of Village Forest Reserves, now fully provided for in the Forest Act 2002. If this had not been the case, the Village Land Act may have decided to call reserved land within the village 'spare land' to avoid confusion. A Village Forest Reserve will fall within Village Communal Land, not the 'spare land' referred to as Reserved land.

### 13. What institutions for land management need to be set up?

The Village Land Act makes the Village Council the **Village Land Manager** [Section 8]. If it wishes to, the Land Manager may create a **Village Land Committee**. These may be members of the Council and/or non-Council members. The Committee may advise the Land Manager but not make decisions itself [s.8 (4)].

The law requires the Land Manager to establish a **Village Land Register** in which to keep all land records (see below) [s.21]. It makes the Village Executive Officer the officer in charge of the Register. He will be known as the **Village Land Officer** (or Village Registrar) [section 21]. In addition, the community is to elect an **Adjudication Committee**, to investigate owners and boundaries and to recommend on registration of these rights. A respected person is to be appointed as an **Adjudication Officer** to advise the committee and to serve as its secretary. Finally, a **Village Land Council** is to be established to help villagers resolve land disputes.

#### Box 8. Village land management institutions

<b>Village Land Manager [VC]</b>	elected directly by the village assembly
<b>Village Land Officer (Village Registrar)</b>	appointed by the elected Village Council, on the basis of nominations from the District Council
<b>Village Land Committee</b>	appointed by the elected Village Council
<b>Adjudication Committee</b>	elected directly by the Village Assembly
<b>Adjudication Officer</b>	appointed by the elected Village Council
<b>Village Land Council</b>	nominated by the elected Village Council for Village Assembly approval

### 14. What is the Village Land Register?

The Village Land Register comprises three books or parts and is the place where all records to do with land rights are to be filed [this is described in detail in the Part V of the Regulations]. In practice the Register could be a series of large files into which documents may be deposited. The Village Land Manager may create its own Register.

- **Part A** contains only the *Certificate of Village Land* [CVL]. This is the document issued by the Commissioner to a Village Council and which

describes or maps the boundaries of the Village Area over which it is the Land Manager. If a village has received a Village Title Deed, then this is taken as a Certificate of Village Land although the Council is hereafter known as the manager, *not* the owner or title holder of the Village Area described.

- **Part B** is the *Titles Register*, into which all records are deposited that are to do with the issue of Customary Rights of Occupancy or leases or licences issued by those right holders. When a land right is sold, this must be recorded in the Titles Register.
- **Part C** is the *Public Charges Register*, into which are filed all documents relating to the surrender of rights, information concerning the payment of rent, taxes, rates etc. required mainly by non-village organizations which are renting or otherwise accessing land in the village. If several villages have agreed to share the management of a certain area of land, then information about this is also to go into this part of the Register.

In addition it is into this part of the register that the *Register of Communal Land* is found. This records the boundaries and decisions made by the Village Assembly as to land set aside as communal property to be conserved or otherwise used. Information about Village Forest Reserves will be included here.

The Register is to be open to the public on specified days and times and may be searched and examined by an applicant. Copies of documents may be made, signed by the Village Land Officer, who must follow the procedure for this laid down in the Regulations [52-59].

Each Village Land Register is considered one branch of a District Land Register [s. 21 (3)]. Each Village Land Officer reports to the District Land Officer who is to supervise their performance. The District Land Officer may be expected to keep copies of all records that he certifies, such as Certificates of Customary Rights of Occupancy. This is however not specifically required by the law. That is, the main and original source of registration is The Village Land Register, not any copies kept at the District.

‘Registration’ is the action of filing documents and handing over copies, signed by the Village Land Officer.

## 15. What is the role of the Village Land Officer?

The Village Land Officer only deals with the Village Land Register. S/he may not make decisions about who may or may not hold land or be registered as holding land. In her/his work, the Regulations instructs the VLO to –

- use the 50 various forms provided for maintaining land administration and the Village Land Register or to design similar forms as needed<sup>7</sup>;
- register documents in the way laid out in the Regulations;
- permit the Register to be freely examined by an applicant during office hours but not to allow documents to be taken out of it. The Registry is to be open to the public at hours determined by the Village Council;
- be satisfied as to the identity of the person presenting documents for registration;
- number and file every document consecutively and make sure each is dated;
- attach a note signed by himself to each registered document, recording particulars;
- keep a book for each of the three registers and into which he enters the registered number of every certificate registered, the name of the holder/s, the date of the certificate, the date of registration. Each certificate shall have its own page;
- give applicants two months to bring documents evidencing the transfer of land;
- ensure that when the consent of a spouse/s is required, that written evidence of this is provided;
- Take no action to register documents presented to her/him by persons other than the original owner until he is fully satisfied that the transaction was undertaken freely and with full knowledge by the owner [Regulations 40-60].

## 16. How accountable is the Village Council to the community?

This is mixed. On the one hand, as Land Manager, the Village Council is given considerable power to make decisions about land. On the other hand, the law requires that the Village Council report to the Village Assembly (community) on land matters quarterly and brings all decision-

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<sup>7</sup> This is because the forms list all the information that should be considered in the procedure. They also help save the village the costs of paper as these forms will be issues free or the VLO could himself design similar forms, following the format of each form attached to the Regulations; see Annex for a list of these forms.

making matters to its attention, although it is not always clear that it may overturn those decisions [s. 8 (6)].

There are exceptions; the law is clear for example that the Village Council may not grant a Right of Occupancy without Assembly approval [s. 8 (5)]. Nor may it overrule the advice of the Village Assembly relating to requests for land to be transferred out of the village into land to be administered by the Commissioner (General Land) such as when an investor has requested land in the area [s. 4 (6)]. Nor may it agree any land sharing agreement with a neighbouring village or group of persons unless the Village Assembly has formally approved the request [s. 11 (2)].

It should also be remembered that the Village Council is elected by the Village Assembly and accountable in general to it; that under the terms of the Local Authorities law, the Assembly, not the Council, is the supreme authority on policy matters.<sup>8</sup> Specifically, the Village Council is *not* permitted to allocate land or grant a customary right of occupancy without the prior approval of the assembly [s. 8 (5)]. When Village By-laws are drafted, the Council has to consult and consider the proposals of the Village Assembly but need not necessarily follow its advice.<sup>9</sup>

As outlined later, the Village Assembly *approves nominations* made by the Village Council for both the Village Land Committee and the Village Land Council, charged with helping villagers resolve land disputes. The Assembly *directly elects* the members of the Adjudication Committee. Any decision to start adjudication also has to be *approved* by the Village Assembly.

The Village Assembly also has the right to appeal against its own Village Council/Land Manager if it finds fault with its work [s.8 (8)]. This may occur only where not less than 100 villagers lodge a complaint with the District Council. The Council may try to solve the dispute or it may request the Commissioner to issue a directive to the Village Council, or ask him to appoint an inquiry. The Commissioner is able to remove authority over land administration from the Village Council to the District Council or to himself, as necessary [s. 7 (9)]. The law also permits any villager to directly sue the Village Council in respect of its management of village land [s. 8 (12)].

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8 Local Authorities (District Councils) Act 1982 section 141.

9 Local Authorities (District Councils) Act 1982 section 164.

Transparency is also encouraged in the law. A member of the Village Council who has an interest in land or where a relative has an interest in the land is not permitted to be party to any decision about that land [s.10].

### **17. What is the role of the District Council in Village Land Management?**

The District Council will play a large role when it acts on behalf of the Commissioner of Lands in respect of General Land (Government Land). Already each District has been instructed to establish a Land Allocation Committee, and Authorised Officers given 36 specific tasks to undertake on behalf of the Commissioner [Regulations under The Land Act 2001]. The District Land Officer is usually designated as the Authorised Officer.

The role of District Council in respect of Village Land is quite different. The Village Land Act is very careful to make District helpers and advisers to Village Land Managers, not implementers or controllers [s. 9]. They also have monitoring functions and may, as noted above, intervene when a substantial number of villagers ask them to (or when 20 or more villages are dissatisfied with the way the village is conducting adjudication).

Districts may also exert influence through the fact that Village Executive Officers report to the District Land Officer when they are operating as in their capacity as Village Registrars. In addition, no certificate of Customary Right of Occupancy may be issued by a Village Council without it being also signed, sealed and registered by the District Land Officer [s. 25 (2)].

In the beginning the main role of District Land Officers will be to help Village Councils to understand and implement their own roles. District Councils may find it useful to start with a group of villages, involving selected village councillors and Village Executive Officers in training (see later). As an adviser, the District Council must perform in ways that are rigorously neutral and fair.

### **18. What is the role of the Commissioner of lands?**

The powers of Village Councils over land administration are high. However, the Commissioner has ultimately authority. This occurs in four ways –

- The Commissioner may advise the Minister to issue Regulations to which each Village Council in the country must follow (or one or

several villages follow, depending on the order) [s. 7 (11)]; the subjects upon which the Minister may **regulate** are wide;

- The Commissioner may **intervene** when villagers complain as to how the Council is managing land [s. 7 (8)] or where there is a dispute between a villager/s and the Council in respect of how communal land is defined [s. 13 (8)];
- Certain actions and decisions **have to be reported** to the Commissioner, such as when sales of land rights are made [s. 30 (7)];
- The Commissioner may advise a Village Land Manager/s on almost any matter that she considers important [s. 7 (7)].

### **19. What is the role of the Ward Development Committee?**

Wards usually include 3-6 villages, each headed by an elected Village Chairman (Chairman of the Village Council). The Ward Development Committee [WDC] comprises all these heads. The WDC has no role in land management. However the law asks that Village Councils keep the WDC informed on progress [s. 7 (6)]. Also, the WDC is an excellent forum for village chairmen to discuss their land management problems and to advise and support each other.

### **20. May two or more villages share or manage land together?**

The law makes room for two or more villages to share the management of a certain area of land if they wish [s. 11]. They must have the approval of their Village Assemblies to do this and need to draw up a detailed plan of action, known as a **Joint Village Land Use Agreement**. They could include arrangements to jointly own the land area. In this case, this will be known as a **Land Sharing Arrangement** and can be registered in the Register of both villages.

## **Part III: Land rights in the village: What are they? And how to get them registered**

### **21. What land rights may be obtained in village land?**

The only form of land right obtainable in village land is a Customary Right of Occupancy. These may be registered and certificates issued to owners of these rights. These are the attributes of a customary right of occupancy [sections 18, 19, 27. 29] –

- Only the Village Council may issue this land right;
- The right may be allocated in Village Land or Reserved Land (and recognised in General Land under certain circumstances);
- The right may be held by one person, a family unit or a group of persons;
- Although customary rights can exist in General Land, at the time of registration these will be converted to granted rights of occupancy;
- A customary right of occupancy has the same legal status and effect as a granted right of occupancy; that is, the law/courts have to respect them as of equal weight;
- A customary right of occupancy is capable of being held indefinitely
- Customary rights of occupancy are governed by the customary law of the area;
- The right is subject to conditions laid out in the law and to any other conditions which the relevant Land Manager (Village Council) may impose;
- A premium (price) or rent may charged for this right - but the law advises that only non-village organizations (see later) should be required to pay for the land or to pay rent;
- The customary land right may be freely gifted, sold or otherwise transferred to other citizens resident in the village or to a non-village body which has made the village a main place of business;
- Land under the right can be leased out by a customary lease and sub-lease;
- The right can be willed to heirs or inherited;
- The right is a fully private land right and should Government want to take that land for a public purpose then it must pay the owner full compensation for the value of the land and for benefits that are lost when the land is removed from the right holder.



### **Box 9. Customary rights in land: *where* may they apply?**

Customary rights of occupancy may exist in –

- Village land – and including those who do not live there customarily but who were moved there between January 1 1970 and 31 December 1977 and all allocations made to persons within a registered village from January 1 1978 until the commencement of the law
- General land, by persons who in 1999 were living on the land in accordance with a deemed right of occupancy
- Living in urban or peri-urban areas as customary occupants
- Living in the Ngorongoro Conservation Area as deemed customary occupants
- Living in national parks with permission of the Director of National Parks as customary occupants
- Living in areas under provisions of the Public Lands (Preserved Areas) Act Cap. 338 as customary occupants
- In addition those who hold rights in forest reserves which arise from customary rights of occupancy shall continue to hold these.

[sections 14 and 16].

## **22. Who is eligible to hold a customary right of occupancy?**

The law gives priority to village members resident in the village, then non-resident persons, such as those absent, working away from their home in the village. Applications from non-village organizations like Government offices, churches and businesses are lower priority.

### **Village Residents**

All members of the village who have held land without disturbance since 1970, or been allocated land by a Village Council since, **are considered to be holding customary rights of occupancy to that land** [s. 15]. These people may freely apply to have these rights **registered**.

Eligible applicants for registration have to be citizens and resident in the village [s. 22]. They may apply as an individual, a family unit, an association, a primary cooperative society or any other body recognised in law.

### **Non-Village Residents**

There are exceptions. For example, where a person or group of per-

sons is **not resident** in the village, they may apply for a land right, but must have the written and signed support of at least five persons to whom they are not related [s. 22 (3)]. They also have to put in writing that they intend to make the village their principal residence and will commence to build a residence within three months.

### **Non-Village Organizations**

Non-village organizations [NVO] are –

- Government departments of their offices
- Public corporations or other parastatal bodies
- Corporate or other bodies where the majority of members or shareholders are citizens (churches, NGOs, businesses, etc.) [s. 17].

They may be granted a customary right, but only after the Council has sought and received guidance from the Commissioner [s. 23 (2) (d)]. Before giving his approval, the Commissioner is required to take advice from the District Council as to the contribution the organization will make to the national economy and well-being by receiving the land [section 23]. He must also be assured that the amount of land being applied for will not limit current or future land interests of villagers. An NVO may also lease land [see later].

Acting on behalf of the President, the Commissioner may revoke a right of occupancy that has been given to a non-village organization or a group of persons who are not villagers, if they fail to pay the required rent, break conditions of the occupancy etc. [section 44].

### **Non-Citizens**

Non-citizens may **not** acquire a Customary Right of Occupancy [s. 22]. They may however access village land indirectly, through being a member of a non-village organization where the majority of members of shareholders are citizens. Or, they could create a NVO with that objective in mind, mindful of ensuring that the majority of its members/shareholders are citizens.

### **Box 10. Comparing a granted and customary land right**

#### **Granted right of occupancy from central government**

Provided for in Land Act

Governed by Land Act

General and Reserved Lands

Allocated by Commissioner of Lands

Any individual citizen

May be acquired by a non-citizen

Requires formal survey

Must be registered to be indefeasible

Term limited to 99 years

Subject to a premium (fee) at acquisition

Subject to annual rent

Subject to prescribed conditions and revocation if conditions not met

Subject to land ceiling

May be sold

May be willed or inherited

May be leased and in turn sub-let

May be mortgaged

Full compensation if state acquires

Excludes water, foreshore and mineral rights

Has same legal weight as customary right of occupancy

#### **Customary right of occupancy from Village Council**

Provided for in Village Land Act

Governed by Village Land Act and customary law

General, Reserved and Village Lands

Allocated by Village Council

Villager, family, group resident in village, or committed to make village their main home or work place

May not be acquired by a non-citizen (but may lease)

Does not require formal survey

Need not be registered to be indefeasible

Term potentially in perpetuity

*May* be subject to a premium usually if NVO

*May* be subject to annual rent if NVO

Subject to conditions set out in law, regulations and any other conditions established by the Village Council

Subject to land ceiling currently 20 ha

May be sold to other village members. May be sold to not-ordinarily resident persons only with agreement of Council, and if make village home

May be willed or inherited

May be leased and in turn sub-let in accordance with customary norms

May be mortgaged under a Small Mortgage

Full compensation if state acquires

Excludes water, foreshore and mineral rights

Has same legal weight as a granted right of occupancy

### **23. Is registration of customary rights compulsory?**

NO. The law secures existing rights where they apply (see above) even if they are not registered. However, a main purpose of the law is to encourage and guide recording of rights. This is considered important mainly for people's sense of security and as a way of clarifying and bringing order to existing rights. Registration activity tends to bring forth disputes over boundaries but also provides a framework through which these may be resolved. This is especially helpful where disputes have been bubbling for many years. The process of registering a right may also help ensure that certain rights are more explicitly accounted for. This will be especially useful for women, who will find out that they may have their names put on the certificate as well as their husband's name [see later].

### **24. What is the procedure for obtaining a certificate of customary occupancy?**

This is set out in sections 22-29. The procedure is –

- The applicant fills in the appropriate form, together with whatever information is required by the Land Manager and the prescribed application fee;
- The Land Manager has to respond within 90 days;
- In responding, the Land Manager has to comply with the recommendations of the Adjudication Committee as to the boundaries and ownership of the land;
- If it approves the application, it submits an offer in writing; this will list both standard and additional conditions;
- The applicant must reply in writing within 90 days, accepting or refusing the offer;
- When all fees or other specified costs have been paid, the Land Manager will issue the Certificate of Customary Right of Occupancy within 90 days (payment of a price, rent, etc. is likely only to be charged to non-village organizations). The Certificate will be signed by Chairman and Secretary of the Village Council (the Land Manager) and will also be signed, sealed and registered by the District Land Officer;
- The issue of the Certificate will be registered in Part B of the Register.

### **25. How does the Land Manager deal with occupants who already have received a Granted Right of Occupancy from government?**

Some persons have already applied for and received Granted Rights of Occupancy over their property in the village. If the holders are resident in the village, then the right is now considered a Customary Right [s. 15 (2),

(4)]. This is to the advantage of the holder, given that a Customary Right has longer term than a Granted Right, and rent conditions will be different.

If the Granted Right is held by a non-village resident, then it will remain as a Granted Right and be supervised by the Commissioner of Lands for the remainder of its term. However, he is likely to delegate this role to the Village Land Manager.

## 2. What is adjudication?

Adjudication is the process of investigating and determining the boundaries and owner of a parcel or plot of land. This is necessary as a basis for registration where there is not enough sure information upon which to register the landholding. Where the boundaries of a plot and the owner is fully accepted by all persons involved including neighbours, adjudication does not have to be carried out [s. 48]. In most cases, a simple form of adjudication will be required, if only to describe the property properly for registration.

The Village Land Act provides for adjudication to be carried out either by villagers or by the District Council [s. 50]. Either spot adjudication or normal adjudication can be carried out [s. 49].

- **Spot adjudication** is where only one land parcel is adjudicated. Any villager can apply to have his plot adjudicated, although the Council has the right to refuse this. In this case, the applicant may complain to the District Council and if it sees no reason for not adjudicating the plot, then it may order the Council to go ahead and adjudicate the land. This will cost the applicant 1,500/- [\$1.50]. One reason why the Council might refuse is that it does not think it would be fair to adjudicate one person's land, especially if this might have ill-effect upon the rights of the neighbours. Or, the Council may not want to encourage a situation in which only richer villagers, who can pay adjudication fees, are able to get their plots registered. It may prefer to wait until **normal adjudication** of all plots within a sub-village can be adjudicated (and for which no fees are charged).
- **District adjudication** may be launched when 20 or more villagers complain that village adjudication is being carried out improperly or unfairly and where investigation by the District finds this to be the case [s. 50 (4)].

- Usually, **village adjudication** will apply. However, this cannot go ahead without the full approval of the Village Assembly. The Village Council may put a plan for adjudication forward to the Village Assembly [s. 51 (1)]. It must do this if 50 or more villagers request adjudication. Two weeks before the Assembly meeting it must post in a public place the procedures that will be followed. If the Assembly decides to go ahead with adjudication, then it will elect an Adjudication Committee [s. 53]. The Village Councils will identify and appoint a person to advise them [s. 52].

### **Box 11. The Adjudicators**

#### **The Adjudication Committee**

- Made up of no more than nine villagers
- At least four must be women
- Elected by the Village Assembly for a 3 year term
- May be elected for one further term
- The committee has power to hear evidence
- May issue summonses, notices and orders requiring attendance or production of documents

#### **The Adjudication Adviser**

- Is appointed by the Village Council
- Is a respected and competent person
- Need not be a villager (could be an official, magistrate etc.)
- Is directly responsible to the Adjudication Committee as its adviser
- Serves as its Executive Officer, keeping records
- Carries out investigations relating to rights as directed by the Committee

## **27. What is the procedure for adjudication?**

The procedure for adjudication [section 54 and section 61-74 of Village Land Regulations] is as follows –

- A notice shall be posted in a prominent place and on the land which is to be adjudicated, stating which land will be subject to adjudication, requesting all persons with an interest in the land to attend the specified meeting, and asking all persons with claims to mark or indicate their boundaries prior to the meeting;

- On the day of the meeting, the Village Adjudication Committee hears and determines all claims;
- To do this the Committee walks around the land, ascertaining, verifying and determining and marking the boundary;
- To mark and describe the boundary it uses markers commonly used in the area (tracks, ditches, fences, sisal, stones, etc);
- The Committee pays special attention to turning points, corners and other changes in direction;
- The Committee, the applicant and at least two other village residents certify and witness the boundaries by signing a form;
- Three sketch maps are prepared, one of which will be given to the applicant, one to the Village Council and one to be retained by the Committee; these will show approximate north, indicate name of occupiers of all adjacent parcels, mark prominent reference features such as paths, roads, rivers, buildings, rocks, trees; the map does not need to be to scale;
- The area is measured, using a metre measure (the occupant may hire a land surveyor if s/he wishes, at his own cost, but this is not necessary);
- As necessary, the Committee may direct the Adjudication Adviser to investigate further;
- The Committee must do its best to reconcile parties having conflicting claims;
- On completion, the Committee prepares a provisional adjudication record; this comprises the names of claimants, the nature of interests in land, amount of land, length of time claimant/s have had land, location and boundaries of plot, any rights of way or other way leaves in the land, determination of the committee; the record is signed by the Chairman of the Committee, the Adviser and by each person whose interest has been adjudicated;
- The record is posted in a public place;
- Appeals against its contents may be made within 30 days to the Village Land Council;
- The record becomes the final adjudication record 30 days later, if no appeals against its contents have been made, or 30 days after the last appeal is resolved;
- If the record is approved, then the plot will be given a Land Parcel Identification Number (LPIN) and this will be recorded in the Register [any sub-division of the plot will result in new LPINs];
- The adjudication record must be approved by the Village Assembly prior to any allocation of land or granting of a customary right of occupancy [section 8].

## **28. What principles will guide those carrying out adjudication?**

The principles of adjudication [section 57] are that –

- A person will be entitled to a customary right of occupancy if s/he or they are found to have occupied or used the land in a peaceful, open and uninterrupted way for not less than 12 years, either by custom, allocation or transaction under customary law or by a written law and for which there is documentary proof;
- Continuous occupation is not necessary if the land has not been occupied by another person or group claiming the same peaceable open and uninterrupted occupation;
- Person/s or non-village organization without any right or interest as above will be determined as unauthorised occupiers and permitted to remain on the land temporarily as licensees;
- In making determination of rights, the Committee must treat the rights of women and pastoralists no less favourably than the rights of men or agriculturalists;
- The customary rights of people in urban and per-urban areas have to be respected and even orders under Town and Country Planning Ordinance cannot deprive them of these rights;
- Record may be made of co-occupation and the Committee may determine whether the occupants are joint occupiers or occupiers in common;
- Peaceable dual use of land by pastoralists and agriculturalists may be recorded and if it is needed in order to reduce disputes between them, then a land sharing arrangement may be drafted in which rights are specified and the procedure for dispute resolution laid out; if the parties agree to this, the Land Sharing Arrangement may be registered in the Village Land Registry and District Land Registry [section 58].

## **29. How expensive will it be for villagers to register their land rights?**

It is likely that the Village Land Manager (Council) will levy fees for adjudication [charges for this are not specified in the Regulations]. Costs for registration include –

- Application for customary right of occupancy by a person or family: 500/- [\$50c];
- Entry of a record of a customary right of occupancy into the Register: 750/- [\$75c].



### **30. Will villagers have to pay for future allocations?**

No. Only persons not ordinarily resident in the village or non-village organizations may be charged premia and/or rent for land [section 28].

The Council may **charge fees** for certain services, in accordance with amounts set out in the Regulations [Second Schedule]. It will cost a person 500/- for example to search the Register [\$50c]. To get a fresh copy of a document that is in the Register, this will cost 500/- per page [\$1]. It will cost 750/- for a successor to register his or her inheritance of a land right [\$75c.]. To record purchase of land from one villager to another, a fee of 750/- will be charged [\$75c.]. 1,200/- [\$1.20] will be charged for assistance by an officer of the Village Registry with the preparation of any document in connection with any action or transaction.

The Village Council may also levy **finer** on persons who breach conditions. A fine of 250/- per acre will be charged on persons who fail to farm in accordance with the practices of good husbandry customary to the area [\$25c per acre] or 500/- [\$50c] for failing to maintain the boundary marks.

### **31. What conditions will apply?**

The Village Land Regulations also place a limit on how much land each villager may hold at 20 hectares. Each Village Council may impose its own conditions. General conditions laid out in the law [section 29] include –

- The occupant will farm or use pasture in accordance with good husbandry customary in the area;
- The occupant will not build on land unless has appropriate permissions
- The occupant will pay rent, fees, charges and taxes as required;
- The occupant will comply will all rules, including customary law and bye-laws in village;
- The occupant is responsible for retaining and maintaining boundary marks whether natural or otherwise;
- The occupant will reside in the village and if temporarily absent, will make arrangements for the above conditions to be met.

### **32. What action may the Council take when conditions are not met?**

The Council may issue warnings, levy a fine, issue a supervision order which places the management of the property under another person [section 37].

### **33. May a villager sell his/her land?**

No. No land in Tanzania may be sold.

### **34. May a villager sell his/her *right* to land?**

Yes. These are tradable. The holding right may be sold or otherwise assigned (e.g. gifted) to another villager, a group of villagers, or to the Village Council [s. 30 (1)]. The Village Council must be notified of the proposed sale 60 days prior to it taking effect and the Council may disallow a sale that will result –

- in the purchaser acquiring more land than permitted in the village;
- in defeating the right of any woman to the land;
- in leaving the owner with insufficient land to live on;
- in the land being given to a person who is in breach of conditions on his existing land [s. 30 (3)].

Land may also be sold to a citizen who is not ordinarily resident in the village but only with the formal approval of the Village Council [s. 30 (2)]. The purchaser must sign a deposition to say that s/he will make the village his/her principal place of residence or work within six months. The Council must also be convinced that the presence of the person and/or his business will benefit villagers. If the Council has evidence to believe that the purchaser will not honour his deposition, it may refuse to approve the sale.

### **35. May a Right Holder lease out his land?**

Yes. A villager does not need permission to rent out or lease his land if the lease, licence or usufruct is for a year or less and leased to another person in the village [s. 31-33].

If the lessee is to be a citizen who is not ordinarily resident in the village or to a non-village organization, then the approval the Village Council is needed. In this case, if the area involved is between five and 30 hectares, then the approval of both the Village Council and Assembly is required. If the land is more than 50 hectares, then the advice of the Commissioner must also be sought. In all cases, the Village Council must be convinced that –

- the application is in accordance with any land use plan that has been prepared by or for the village;
- that approval will yield benefits to the village;
- that it will not ill-effect maintenance of a sufficient reserve of land for villagers or for public use;

- that approval will not jeopardize meeting the land needs of women, the disabled, or landless people in the community [s. 33 (1)].

As Land Manager, the Council may also set any conditions to approval of the lease, and may charge a price, rent and fees.

When a person leases out land or issues a usufruct right or other 'derivative right', s/he may, with the grantee, agree that customary law will *not* apply to that land but that the terms for leases under The Land Act 1999 will apply [s. 20 (5)].

### 36. May a Right Holder mortgage land?

Yes. This may occur through a small mortgage or a customary mortgage, also referred to as an informal mortgage. The procedures are not set out in The Village Land Act but found in The Land Act sections 113-116.

- A **small mortgage** may not exceed three years or half a million shillings. The permission of spouses to the taking out of any mortgage is required. Mortgages must be registered in the Village Land Register. If the borrower defaults on repaying the loan, the lender may, in the last resort, approach the courts to enforce the sale of the land and from which the lender may receive his due share of money and interest that was not already repaid on the loan. **He may not enter and take over the house or farm himself.**
- In the case of a **customary mortgage**, the borrower is required to use the services of the Village Land Council to mediate on remedies when the borrower fails to repay the loan and/or interest on the loan due [Land Act s. 113]. If this fails, then the borrower must also turn to the court for help and follow the directives of the Land Act [Land Act s.127-133].

## Part IV: Are vulnerable land rights protected?

### 37. Are children's right protected?

Yes.

- Section 20(2) makes it illegal for an action in land administration to deny children lawful access to ownership, occupation or use of land.
- In the event of a land sale, the Village Council is to ensure that this will not leave the children bereft of support.
- When an applicant applies for land as an individual, rather than as a family, the Village Council find out how that individual intends to pro-

vide for his/her dependants out of that land, should s/he die [s. 23 (2) (e) (iv)]. This is designed to encourage the applicant to apply with his/her spouses or family.

- The Council is to disallow a transfer of land where this will result in insufficient land to provide for the livelihood of the family [s.30 (3) (c)].
- When decided whether to approve an application by a non-village organisation to lease land in the village, the village assembly is advised to consider carefully whether the future land needs of the village population [s. 33 (1) (c)].

However, there is no clear clause protecting the land rights of orphans. District Councils may wish to guide Village Councils on this matter.

### **38. Are women's land rights protected?**

Yes. Women gain quite considerable support for their rights, through reiterated statements of principle, through cautions listed in a number of procedures and through their participation in decision-making. Some of the critical statements are however found in the Land Act, not the Village Land Act. This is because some subjects (e.g. co-ownership, mortgages) are dealt with under the general former law.

#### **Box 12. Provisions helping women secure land rights**

##### **Principles:**

- The equal right of women and men to hold and deal with land is made a main policy of the law (VLA s.3 (2)).
- Women may apply for land individually, with their spouse, or in groups. A divorcee from the village may apply for land in that village (s.22 (1)).
- Customary rules are rendered void if they deny women access to ownership, occupation or use of land (VLA s.20 (2)).
- The law presumes that unless an ownership certificate explicitly states that only one spouse is owner, both or all spouses will be presumed to be joint owners. Even where the land is the name of one spouse only, if the other spouse(s) contributes by her labour to the productivity and upkeep of the land, she shall be deemed to be a joint owner (Land Act s.161 (2)).
- Purchasers, mortgagors, lessees of land are obliged by law to enquire if the consent of the spouses has been given and if they have been misled, the disposition will be void (Land Act s.85, s.112).

**Procedures:**

- When determining whether to grant a customary right, the Village Land Manager (Village Council) is required to *'treat an application from a woman, or a group of women not less favourably'* than those of men (VLA s.23 (2) c (i)).
- Nor may the Council adopt or apply any adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy' [VLA s. 23 (2) c (ii)].
- The Village Land Manager is forbidden to *allow assignments that would operate to defeat a right of a woman to occupy land under a customary right of occupancy* (VLA s.30 (4) (b)).
- During adjudication the Village Adjudication Committee is to *'safeguard the interests of women, absent persons, minors and persons under a disability'* (VLA s.53 (3) (e)).
- In cases where a spouse has failed to maintain an allocation like a farm or responded to fines, etc. or where the land has been surrendered, then the Village Council will first temporarily assign the land to his spouse or jointly to all spouses ahead of other applicants (VLA s. 36 (2) (a), s. 43 (9)).
- When considering an application from a non-village organization for a lease of land the Village Assembly is to make sure that awarding the grant will not limit meeting the land needs of women, at the time and in the future (VLA s. 33 (1) (d)).

**Representation:**

- The Village Council which serves as Land Manager must include at least one quarter of female members under the terms of the local government law (1982).

Women are to comprise at least 4 of 9 members of the elected Village Adjudication Committee (VLA s.53 (2,5)).

Women are to comprise at least 3 of 7 members of the Village Land Council (dispute settlements) (VLA s.60 (2)).

**39. Are pastoralists' rights protected?**

Yes.

- A customary right may be issued for pastoral purposes [s. 29 (2) (a) (iii)];
- Land markets are to be regulated to ensure that pastoralists are not disadvantaged [s. 3 (1) (l)];
- Definition of the area of the village's land may include grazing land and land used for stock passage [s. 7 (1)];
- Where the villagers are pastoralists, the Certificate of Village Land will not only affirm the village area but related areas customarily used by those persons [s. 8 (8) (d)];

- The law makes provision for two or more villages to decide to jointly share the management of a certain area [s. 11]; this may be useful for pastoralists in respect of seasonal shared grazing areas;
- Plenty of provision is made for communal village land to be identified and earmarked solely for communal use; this will help protect agricultural encroachment into pastures [s. 12 (1)];
- Definition of communal village land must include all existing properties used as community or public village land [s. 13 (7)];
- A group of citizens are eligible to be allocated a customary right of occupancy, not just individuals or families [s. 18 (1)]; this is helpful to clans of pastoralists.

#### 40. May a Village Council take away a person's land?

Only in certain conditions; these are –

- If the owner **has not met conditions**, not paid due fines, not responded to warnings and requests to act, and the land may only be taken over with the explicit approval of the Commissioner [s. 39];
- If the land is **shown to be abandoned**; this will occur if it is not occupied or used for at least five years, or where due rent and taxes have not been paid for two years, or where the owner has left the country without making arrangement for another to be responsible for the land and conditions [s. 45]. However the Council must consider weather, customary practices, etc. which may have led to the land being not used. If a spouse or dependents live on or rely on the land, it may not be taken;
- If the property is **voluntarily surrendered** for reasons of age, infirmity, poverty or other grounds, although this does not relieve the owner of liabilities associated with the land such as debts and taxes [s. 35]. The land must first be offered to the spouse (or spouses in order of seniority), and to dependents;
- If the owner possesses more than the current **ceiling** of 20 ha (or whatever ceiling the Council may later place upon landholding); however the owner may select which area he surrenders and he may either be permitted to sell that land or will receive compensation for it from the Council [s. 15];
- If a grant of a right of occupancy is shown to have been **corruptly** done, it is voided and may result in loss of the land [s. 24].

#### 41. May a District Council take land from a village?

In cases where a Village Council is shown to be failing as a Land Manager and where no other remedy is working, the Commissioner may direct a

District Council to take over the **management** of the village land for a fixed or indeterminate period [s. 8]. The District Council does not possess any right to take over the **ownership** of any village land. If it did so, it could be easily challenged in a court, where a village community is able to demonstrate that the village land is customarily owned by themselves and/or within the boundaries agreed by themselves and their neighbours as being their village land. This includes communal village land, not just land under customary rights of occupancy.

#### **42. May central government take village land?**

The only reason for which any part of village land may be taken is when the property is required for a **public purpose**. This may be undertaken only on the order of the President [s. 4-5]. This may be implemented through a process that transfers village land into general or reserved land.

**Public purpose** is not defined in either the Village Land Act or the Land Act. It is defined in The Land Acquisition Act 1967. It is broadly defined, including land needed for *'use by any person or group of persons who in the opinion of the President should be granted such land for agricultural development'* [s. 4].

The Village Land Act does note that *'public interest shall include investments of national interest'* [s. 4]. Investments are controlled by the Tanzania Investment Centre and often consider applications for access to farmland for commercial developments. Villagers are therefore vulnerable to losing land through this means.

#### **43. What is the procedure for taking away land from a village?**

However, the procedure laid out for acquiring village land is designed to discourage *wanton* appropriation [s. 4]. The procedure is as follows –

- Publishing in the Gazette and sending a notice to the Village Council describing the land sought and for what purpose;
- 90 days must be provided to allow for responses from the village;
- The Council must be asked to inform all persons who will be affected;
- All of those who may be affected, must be assisted to make representations to the Commissioner;
- The Commissioner must take these representations into account;
- The Commissioner or his representative must attend a meeting of the Village Council or Village Assembly to explain the proposal and to answer questions;

- The Village Council and/or Assembly may also demand that the person or organization which is proposing to use the land to appear before it and answer questions;
- When the area affected is 250 ha or less the Council must call a Village Assembly meeting to discuss and decide to approve or refuse the proposed transfer;
- (Curiously) when the area is more than 250 ha, the Minister may overrule the opinion of the Council and Assembly;
- The land may not be transferred until the type, amount, method and timing of the compensation has been agreed;
- Claims must be submitted within 60 days, using forms provided and an Authorised Office is obliged to assist villagers and/or the Village Council as appropriate to prepare the claims;
- Provision for mediation is provided to assist in coming to agreement;
- If agreement cannot be reached, the Commissioner may make an interim payment until the High Court considers the matter.

#### **44. What compensation would be paid?**

The Village Land Regulations [Part III] lay out how compensation will be calculated and paid. Important points include –

- Land for which compensation must be paid includes not only property owned by individual occupants but communal land in the village;
- The basis of compensation is to be value of the land itself together with unexhausted improvements, as determined by its current open market value, assessment of lost income, or by replacement costs, and this valuation is to be prepared by a qualified surveyor;
- Compensation must also include payment of a disturbance allowance, transport allowance, accommodation allowance and loss of profits to all those directly affected; to arrive at amount of accommodation allowance payable, the surveyor will calculate 36 times the rent value of the property. To arrive at the loss of profits payable, the surveyor will calculate 36 times the net monthly profit of the business. The disturbance allowance will be arrived at through calculating average percentage rate of interest on fixed deposits for 12 months. Transport allowance will be based upon actual costs of transporting 12 tons of luggage by rail or road whichever cheaper 20 km. These allowances will not be payable if the land is unoccupied at time of loss of interest in the land;
- Where payment is not made within six months after land acquired, Government will pay interests on the amount.



## Part V: Resolving land disputes. What can the village do for itself?

### 45. How will land disputes be resolved?

Section 60 requires each community to create a **Village Land Council** to help villagers resolve land disputes.<sup>10</sup>

The Village Land Council is –

- a body to be set up to deal with land disputes in the village;
- a body made up of seven members, three of whom must be women;
- approved by the Village Assembly, based upon nominations by the Village Council;
- must be the body to which disputes arising from adjudication are heard [s. 15 and 55];
- may hear any other land disputes;
- not the only place where villagers may bring their disputes; they may take these straight to the Ward Tribunal and thence to the District Land and Housing Tribunal and to the Land Division of the High Court [s. 61].

Where a village has a dispute **against the Village Council**, it may take this to the District Council, or further to the Commissioner or to a Court [s. 47]. The District Council is bound to investigate any complaint lodged by a Village Assembly or 100+ members of the village as to the management by its Council [s. 8]. This could result in temporary suspension of the functions of the Council by the Commissioner of Lands, pending inquiry. Any villager also has the right to sue the Village Council in respect of management of village land [s. 8].

## Part VI: Implementing the Village Land Act: Some ideas to get started

Responsibility for using the law lies with the Village Council. It will need to do the following towards this –

### Step One: Understanding the law

With help from the District Council, Village Councils will need to make sure that all village members understand what the new law means and the opportunities it provides for communities to (a) manage their own

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<sup>10</sup> The Courts (Land Disputes Settlement) Act, 2002 does not alter any provisions of The Village Land Act, 1999. Nor does it add much to the Village Land Council; its main objective is to provide for the District Land and Housing Tribunal.

land ownership and (b) to secure their common and individual land rights.

### **Step Two: Confirming the village area**

This is a crucial first step. Some communities already have clear village area perimeter boundaries. Others need to negotiate or re-negotiate these with neighbouring villages. Often in the past the village area did not fully include common properties like woodlands, and these need to be included now in the definition of what constitutes the 'Village Area' (or Village Land). When the Village Council is satisfied it has an undisputed perimeter boundary then it may apply for a **Certificate of Village Land** from the Commissioner, through the District Land Officer. Where the village already has an applicable document, it need not do this. However even then, it may be as well to advise villagers to take this opportunity to reconfirm their perimeter boundaries with their neighbours. Even where villages have received maps of their areas, they often do not know where the boundary is on the ground.

### **Step Three: Identifying communal property within the village area**

This is very important. No individual land rights may be registered until each and every parcel of land which is owned jointly by the villagers has been registered as Communal Village Land. The law encourages Village Councils and Assemblies to plan how each communal area will be used and managed. Villagers may wish to establish Village Forest Reserves or Wildlife Management Areas at this point.

### **Step Four: Setting up the Land Administration System**

As Land Manager, the Village Council needs to set up the committees mentioned earlier and also establish the Village Land Register – even if this is going to be used at first just to register the common properties of the community and transactions made among individual villagers. The Village Executive Officer will be the person responsible for the Register and he will need some simple training from the District Land Officer for this. The forms prescribed in the law will be an important tool for this. The District Council could make a set of these based upon the format laid out in the Regulations, or help the VEOs make their own.

### **Step Five: Recording transactions**

The law gives clear guidance on how each transaction (e.g. inheritance of land, sale of a plot to another villager, renting out a plot) is to be recorded in the **Village Land Register**. Starting off a transactions register, even where the house or farm has not been registered, may be a good way for the

Registrar (VEO) to get used to record keeping, get used to using the relevant forms provided related to transactions, and to set up his system. This will also help make sure that transaction recording does not get forgotten, as sometimes happens when all the emphasis goes on first registration.

### **Step Six: Testing land registration**

The law already protects whatever land allocations have been made in the village, whether they are registered or not. If most village members want to have their land interests registered, then the Council is obliged to provide this service. To do this properly it will be advisable for villager to not attempt to register all landholdings at once, but to test out the process in one sub-village. Even then, it must by law make a plan of action and put this to the Assembly for its approval. The Village Assembly will need to elect an **Adjudication Committee** to investigate each plot and to make recommendations. The Village Council will need to appoint an **Adjudication Officer** to advise the Committee. The **Village Executive Officer** will need to make sure records are kept as instructed by the law. Using the right forms will help.

### **Step Seven: Setting up a dispute resolution service**

This step could be taken at any time and could even be the first step if the village is facing many land disputes. This is to be in the form of an approved **Village Land Council** made up of villagers. Given that these members must be familiar with customary land tenure, villagers may like to include at least one or two respected elders. Whilst the Village Council must refer problems first to this Council, and adjudication matters are to go first to this Council, individual villagers do not have to use this service and may take their complaints outside the village to the Ward or District Land and Housing Tribunals. This could provide for confusion, but is a legal option guaranteed by the law. In practice, Village Assemblies might be usefully encouraged to at least start off at the Village Land Council. Probably Ward Tribunals and District Tribunals will advise complainants of the same, and redirect them back to the village. The District could request the head of the District Tribunal who will be a qualified lawyer, to prepare some simple guidelines for the Village Land Councils (and Ward Tribunals).

### **Step Eight: Assessing problems and progress**

It is always difficult to start new governance tasks. It will take time for Village Councils to do this task efficiently, transparently, and with the proper level of participation of the Village Assembly. Although training

will help, the best means will be through practice, learning by doing. Therefore it is will be useful if each Village Council can take stock each year to see how it is getting along and what it needs to do to make things work better. District Councils could plan for this.

**Box 13. Suggested steps to use the Village Land Act**

<b>Steps in stage I</b>	<b>Responsible body</b>
1 Key actors understand the law	District Council
2 Villages understand the law	Land Manager [VC]
3 Confirm the Village Area to get CVL	Land Manager [VC]
4 Draft and make copies of forms and develop model register files	District Council
5 Train Registrar [VEO]	District Council
6 Set up Register	VEO
7 Form Land Committee	Land Manager [VC] Village Assembly approval
8 Elect Land Council [disputes]	Village Assembly
9 Zone Village Area and identify communal property and register	Land Manager [VC] and Village Assembly approval
10 Manage land ownership matters	Land Manager [VC]
<b>Steps in stage II</b>	<b>Responsible body</b>
1 Adjudication Officer appointed	Land Manager
2 Adjudication Committee elected	Village Assembly
3 Plan adjudication, public notice	Land Manager
4 Plan approved	Village Assembly
5 Adjudicate	Adjudication Committee and Officer
6 Post decisions	Adjudication Committee
7 Hear appeals if any	Village Land Council
8 Approve final record	Village Assembly
9 Register parcel details with L-PIN number	Registrar [VEO]
10 Owner may apply for Title Deed	Fills form, pays fee, must get response in 90 days
11 Title Deed issued	Land Manager
12 Title Deed AND Owner of L-PIN registered	Registrar [VEO]

## Annex

<b>Key tenure used in the Tanzanian law</b>	
Land tenure	the ownership of land, or ownership of rights in land
Act	a law which is passed by parliament
Bill	a draft law to be considered by parliament
Ordinance	a law made by an executive authority such as the colonial rulers of Tanganyika (and not passed by the British parliament)
Customary law	<i>prevailing</i> norms; local rules which are considered to have the force of law by members of the communities where they are applied. Customary laws need not be traditional; they can be modern community laws
Non-village organization	government departments, public corporations, churches or other bodies where most members are citizens
Assignment	transfer of a land right
Derivative right	a secondary right in land e.g. lease, licence, usufruct interest, mortgage
Mortgage	giving a land interest to a lender of money as security against repayment of loan
Mortgagor	the borrower of the money
Mortgagee	the lender of the money
Lessor	the person granting a lease
Lessee	the person taking out the lease
Public land	all land in Tanzania, irrespective of who owns it or how
Adjudication	the process of investigating and determining the owner of a parcel of land
Right of occupancy	the only form of land ownership provided for in Tanzania and meaning ownership of the right to occupy and use land, not ownership of the land itself
Register	the record of land rights ownership
Registration	the process of formally recording land interests
Certificate	the document that may be issued by a Village Council as evidence of ownership
Co-occupancy	where two or more people own a parcel of land together
Joint occupancy	a form of co-occupancy in which the owners cannot subdivide the land or pass their share on to any person other than the other co-occupants; only spouses can be joint occupants
Occupancy in common	a form of co-occupancy in which each co-occupant owns a share in the land and that may be sold or transferred independently of other shares in the land

## **Forms which may be used to make Village Land Administration Systematic**

1. Adjudication Record
2. Order to Attend Hearing by Village Adjudication Committee
3. Order to Produce Documents at a Hearing by Village Adjudication Committee
4. Summons to Attend a Hearing by Village Adjudication Committee
5. Summons to Attend a Hearing by the Village Land Council
6. Witness Oath
7. Notice of Intention to Declare Hazard Land
8. Notice of Declaration of Hazard Land
9. Notice of Intention to Transfer Village Land to General or Reserve Land
10. Notice of Transfer of Village Land
11. Declaration of Interest
12. Notice to Village Council to Apply for Compensation
13. Application for Compensation by Village Council
14. Approval of Compensation
15. Notice to Land Occupier to Apply for Compensation
16. Application for Compensation by Land Occupier
17. Certificate of Village Land
18. Seal
19. Abstract Book
20. Application for Customary Right of Occupancy
21. Offer of a Customary Right of Occupancy
22. Acceptance of Offer of Customary Right of Occupancy
23. Certificate of Customary Right of Occupancy
24. Notice to Pay Rent
25. Notification of Assignment of Customary Right of Occupancy
26. Approval/Disallowance of Assignment of Customary Right of Occupancy
27. Application for Approval to Create a Derivative Right
28. Certificate of Approval to a Derivative Right (Lease/Licence/Usufructuary Interest/Mortgage/Small Mortgage/Pledge)
29. Application for Grant of a Derivative Right in Village Land
30. Grant of a Derivative Right in Village Land (Lease/Licence/Usufructuary Interest/Mortgage/Small Mortgage/Pledge)
31. Surrender of Customary Right of Occupancy
32. Warning Letter
33. Assent to Action by Village Council
34. Notice to Show Cause
35. Notice to Pay Fine

36. Notice to Remedy Breach of Condition
37. Supervision Order
38. Request for Authorization for Temporary Assignment
39. Notice for Temporary Assignment of Customary Right of Occupancy
40. Conditional Order of Temporary Assignment
41. Residential Licence
42. Notice to Establish Abandonment of Land
43. Order of Abandonment of Land
44. Application for Consent to a Transaction for an Amount of Land Which Exceeds the Ceiling
45. Application for Spot Adjudication
46. Recommendation to Apply Village Adjudication
47. Notice of a Hearing by the Village Adjudication Committee into Land Adjudication Matters
48. Certification of Boundaries for Adjudicated Customary Right of Occupancy
49. Notification of Survey of Customary Right of Occupancy
50. Subdivision Customary Right of Occupancy

## **The current body of Land Law in Tanzania**

### **Main laws**

**The Land Act**, No. 6 of 1999 published in Gazette No. 27 Volume 80 21 May 1999

With Regulations published by Government Notice No. 71 on 4 May 2001, including:

- *The Land (Forms) Regulations, 2001*
- *The Land (Allocation Committees) Regulations, 2001*
- *The Land (Conduct of Auctions and Tenders) Regulations, 2001*
- *The Land (Disposition of Rights of Occupancy) Regulations, 2001*
- *The Land (Small Mortgages) Regulations, 2001*
- *The Land (Functions of Authorised Officers) Regulations, 2001*
- *The Land (Conditions of Rights of Occupancy) Regulations, 2001*
- *The Land (Assessment of the Value of Land for Compensation) Regulations, 2001*
- *The Land (Compensation Claims) Regulations, 2001*
- *The Land (Ceilings on Land Occupancy) Regulations, 2001*
- *The Land (Composition and Procedures of the National Land Advisory Council) Regulations, 2001*
- *The Land (Management of the Land Compensation Fund) Regulations, 2001*
- *The Land (Fees) Regulations, 2001*

- *The Land (Fines) Regulations, 2001*
- *The Land (Schemes of Regularization) Regulations, 2001.*

**The Village Land Act** No.7 of 1999 published in Gazette No. 27 Volume 80 21 May 1999

With The Village Land Regulations, 2001 published by Government Notice No. 86 of 4 May 2001

#### **Other land laws**

- The Land Acquisition Act No. 47 of 1967
- Land Registration Ordinance Chapter 334
- Town and Country Planning Ordinance Chapter 378 [under review]
- Public Lands (Preserved Areas) Ordinance Chapter 338
- Customary Leaseholds (Enfranchisement) Act No. 47 of 1968
- The Land Disputes Courts Act 2002

#### **Other directly relevant laws**

- Forest Act 2002
- National Parks Ordinance Chapter 412
- Ngorongoro Conservation Area Ordinance Chapter 413
- Wildlife Conservation Act No. 12 of 1974
- The Marine Parks and Reserves Act No. 29 of 1994
- Highway Ordinance Chapter 167
- Public Recreation Grounds Ordinance Chapter 320
- Interpretation of Laws and General Clauses Act No. 30 of 1972
- Trustees Incorporation Ordinance Chapter 375
- Local Government (District Authorities) Act No. 7 of 1982





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**International Institute for  
Environment and Development  
3 Endsleigh Street  
London WC1H 0DD  
UK**

**Tel: (+44 20) 7388 2117  
Fax: (+44 20) 7388 2826  
E-mail: [drylands@iied.org](mailto:drylands@iied.org)  
Website: [www.iied.org](http://www.iied.org)**

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