



The 1999 Tanzania land acts as a community lands approach: A review of research into their implementation

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ABSTRACT

In sub-Saharan Africa, securing community lands has often been proposed as an alternative to programmes of individualisation, titling and registration (ITR). Recently, community lands proponents have advocated a hybrid approach incorporating statutory recognition of individualised tenure within community lands. Whether the ideological and practical tensions between communal and individualised approaches can be resolved in a coherent implementable programme remains open to question. The 1999 Land Acts in Tanzania prefigure the hybrid communal lands approach. This article reviews research on their implementation to draw lessons for the approach.

The studies reviewed find that implementation has not been resourced as a national programme. The piecemeal efforts of donors and government have prioritised individualised titling and have paid limited attention to community institutions and community management. Titling has been promoted with unrealistic promises of increased access to credit, often leading to disenchantment once titles are delivered. Dispute resolution mechanisms, requiring less external resources than titling, have proven somewhat effective as hybrid mechanisms.

I argue that by prioritizing individualised titling, donors and government are fruitlessly chasing a *de Soto* inspired chimera. Tanzania thus represents a missed opportunity to find out whether a hybrid approach implemented through village institutions could effectively strengthen both local property relations and state legitimacy at the village level. For the Village Land Act to realise its potential, there is a need for state-led investment in a genuinely hybrid approach. At this juncture research could usefully focus on the existing ways that village institutions mediate social relations around land.

1. Introduction: the community lands approach

Advocates seeking to protect the land rights of indigenous peoples and local communities have recently broadened their scope and their territorial ambitions, by addressing not only communal rights to common lands but also individual rights within communities. This approach, known as a community lands (Alden Wily, 2013) or shell (Knight, 2010) approach is appealing in its scope and flexibility but raises questions regarding both the practicalities of implementing such a flexible, hybrid model, and about the compatibility of two approaches with radically different theoretical and ideological underpinnings.

Conventional land titling programmes focus on the provision of individualized, exclusive, transferable rights (usually ownership) recorded on a national register and supported by a land title. The implementation of these individualisation titling and registration (ITR) programmes has largely been seen, even by their promoters, as disappointing: “the history of land titling in Africa is one of failure rather than success” (Deininger et al., 2011, p. 312). Advocates have

responded to such failure by pursuing the ITR agenda but with improved technology and efficiency, as for example in Ethiopia (Deininger et al., 2011, 2008) and Rwanda (Ali et al., 2014).

Community-based approaches have constituted an alternative. Proponents have sought to build on existing local knowledge and institutions, conceptualised in terms of commons and custom. With respect to commons, rural livelihoods in sub-Saharan Africa are characterised as dependent on lands which are *de facto* commons but *de jure* state land, and it is held that people’s rights to these lands are overlooked under ITR approaches which focus unduly on land under permanent cultivation (Alden Wily, 2008; Cousins, 2000). With respect to custom, these lands are argued to be under ‘customary’ tenure, which, notwithstanding limitations, is held to have important advantages in terms of legitimacy, negotiability, social embeddedness and the ability to cope with complex and varying land use arrangements (Berry, 1993; Chimhowu and Woodhouse, 2006; Krantz, 2015).

Over the past two decades there have been calls for a more hybrid approach (Cotula et al., 2006; Toulmin and Quan, 2000; Ubink et al.,

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2009). This builds on an understanding that existing ‘customary’ practice often includes individualised ownership (see [Chimhowu and Woodhouse, 2006](#); [Peters, 2013](#)). Advocates of a community lands approach have therefore adopted a two-stage prescription comprising a (necessary) demarcating and registration of the outer boundaries of a community’s land as community property, followed by an (optional) registration of individual parcels within that community land.

This hybridised approach involves not only combining communal and ITR approaches, but also attempting to reform the ‘customary’ practices upon which community-based approaches are said to be based. Best practice texts have therefore suggested that systems that recognise customary approaches should also include, for example, safeguards for women’s land rights and accountability mechanisms to prevent local leaders from abusing their positions ([Fitzpatrick, 2005](#); [Knight, 2010](#); [Pritchard et al., 2013](#)).

This hybridisation of community and individualised approaches raises questions at theoretical, policy and implementation levels. *Theoretically*, ITR is underpinned by a belief in modernization, with integration into a market economy seen as central to development, and stimulation of investment, increased access to credit and a busier land market seen as crucial for the development of a dynamic, wealth-creating capitalist economy. Community-based approaches by contrast are underpinned by a belief that markets will dispossess, exploit and exclude, and that rural people therefore need to be protected from the negative effects of modernisation and capitalist integration. Hence, ITR proponents see “investment gaps” in sub-Saharan African agriculture ([Ali et al., 2014](#), p. 262), whilst community lands proponents are concerned that investments may deny communities access to land on which they depend ([Alden Wily, 2008](#), p. 24; [Benjaminsen and Bryceson, 2012](#)). Obviously, mixed economies and mixed landscapes are possible, but there are clear risks in combining two approaches that have often been justified in direct opposition to each other.

Relatedly, *policy* discourses usually generate one simple narrative (c.f. [Adger et al., 2001](#); [Koning and Smaling, 2005](#)). Typically, this will either be a managerialist narrative valuing centralised knowledge, like ITR, or a grass-roots oriented narrative valuing local knowledge as exemplified by many community-based approaches. This suggests that policy-makers may be unable to sustain a double-narrative and that one of the discourses will take precedence at the expense of the other. This risk is also informed by colonial experience, as customary arrangements were often mobilised to provide low-cost administration in what the state considered low priority regions rather than being championed for the sake of protecting or advancing the interests of local communities (e.g. [Cousins, 2007](#)).

Meanwhile, from an *implementation* viewpoint, the skills and approach required for ITR are quite different to those for a community-based approach. An ITR approach essentially relies on standardised procedures and training, and an emphasis on mass production and efficiency. This contrasts with community management approaches, which are based on flexibility and negotiability and rely on officials having the ability and willingness to recognise and adapt to existing local ways of doing things that are not centrally prescribed by the state.

Whilst the rise of the community lands approach as a global advocacy campaign is rather new, it has older precedents ([Krantz, 2015](#)). One of these is Tanzania where the 1999 Village Land Act provides for rural land, classified as Village Land, to be registered to the village, and within that village land, for individuals or groups to obtain individual, state-certified, transferable titles known as Certificates of Customary Rights of Occupancy (CCRO).

Implementation in Tanzania was initially slow and piecemeal, but sufficient progress has now been made for researchers to begin examining it. This article therefore reviews the emerging research literature on the implementation of the Tanzanian Land Acts and discusses it in the light of other land-related research in Tanzania. It asks what lessons can be learned from Tanzanian experience about the prospects for community lands approaches which combine communal

Table 1
Tanzanian land reform.

1895	Imperial Decree issued by German colonial authorities
1923	Land Ordinance issued by British colonial authorities
1992	National Commission on Land under Professor Issa Shivji reported
1995	National Land Policy issued
1999	Land Act (No. 4) covering General Land and Reserve Land and Village Land Act (No. 5) covering Village Land are passed
2001	1999 Land Acts, complemented with detailed forms and guidelines, are enacted
2005	1 st Strategic Plan for Implementation of the Land Laws - SPILL (2005)
2007	Land Use Planning Act
2013	2 nd Strategic Plan for Implementation of the Land Laws - SPILL (2013)

management with the possibility of individual titling and registration. Section 2 describes the scope of the review, Section 3 provides specific characteristics of the Tanzanian case, Section 4 then describes the results of the review and section 5.0 draws conclusions.

2. Material and methods: the scope of the review

The intention of this review is to draw lessons about recent experiences of the implementation of the land reform in Tanzania. It was two years after the laws were passed before they were enacted (see [Table 1](#) for a fuller time-line), and slow progress with implementation meant that it was nearly a decade before substantial fieldwork could be conducted examining that implementation. Through searches of the academic literature I have identified 7 studies. Fieldwork for these was conducted during 2008–15 (see [Tables 2 and 3](#)). Three of the seven studies are derived from dissertation research at the PhD ([Fairley, 2013](#); [Pedersen, 2013](#)) and Masters ([Wallin Fernqvist, 2015](#)) levels. All three of these have a general interest in the implementation of the reforms, with [Fairley \(2013\)](#) in particular interested in the reform as a case of a hybrid approach. Two of the studies are more specifically focused on the effects of the individual titling ([García Hombrados et al., 2015](#); [Stein et al., 2016](#)), whilst the other two both use a case study approach to analyse the impact of the reforms on improving support to dispute resolution ([Askew et al., 2013](#); [Boone and Nyeme, 2015](#)).

These studies, of course, represent only a small fragment of recent land-related research that has been conducted in Tanzania in recent years, which has included studies of: the relationships between protected lands and community wellbeing (e.g. [Bartels, 2016](#); [Bartels et al.,](#)

Table 2
Recent research on implementation of the Tanzanian land reforms.

• ASKEW, K., MAGANGA, F. & ODGAARD, R. 2013. Of Land and Legitimacy: a tale of two lawsuits. <i>Africa</i> , 83, 120–141.
• BOONE, C. & NYEME, L. 2015. Land Institutions and Political Ethnicity in Africa: Evidence from Tanzania. <i>Comparative Politics</i> , 48, 67–86.
• FAIRLEY, E. 2013. <i>Upholding Customary Land Rights through Formalization? Evidence from Tanzania's Program of Land Reform</i> . PhD, University of Minnesota.
• GARCÍA HOMBRADOS, J., et al. (2015). The Impact of land titling on agricultural production and agricultural investments in Tanzania: a theory-based approach. <i>Journal of Development Effectiveness</i> 7(4): 530–544.
• PEDERSEN, R. H. 2013. Access, Decentralisation and Local Governance of Land in Africa: The Implementation of Tanzania's New Wave Land Reform. International Development Studies, Roskilde University. ^a
• STEIN, H., MAGANGA, F. P., ODGAARD, R., ASKEW, K. & CUNNINGHAM, S. 2016. The Formal Divide: Customary Rights and the Allocation of Credit to Agriculture in Tanzania. <i>The Journal of Development Studies</i> , 52, 1306–1319.
• WALLIN FERNQVIST, K. 2015. <i>The ideological symptom of tenure insecurity: Peasant experience of formalisation between dispossession and neoliberal discourse in rural Tanzania</i> . MSc, Swedish University of Agricultural Sciences.

^a [Pedersen's \(2013\)](#) dissertation is a compilation thesis. [Pedersen \(2012\)](#) presents his main findings and is most frequently referred to in this review, although [Pedersen \(2015\)](#) which analyses implementation of the reforms from a gender perspective, and [Pedersen \(2016\)](#) which adopts a multi-level governance perspective are also consulted.

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