



**DISTRICT MULTI-STAKEHOLDER FORUMS: AN UNEXHAUSTED OPPORTUNITY
FOR SECURING LAND RIGHTS; THE TANZANIAN EXPERIENCE**

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Responsible Land Governance: Towards an Evidence Based Approach

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Abstract

Administration of land in Tanzania is more decentralized from the president to the village level. The law gives power to village councils and village assemblies to administer village land. The District authorities are given advisory and supervisory mandates over villages and represent the commissioner who takes overall administrative powers. Despite decentralization, institutions responsible for land administration, land have continued to be cause of many conflicts for years. Conflicts have been escalating and lead loss of lives and property. Lack of coordination among land administrative institutions has been the main route cause of land conflicts and ineffective systems of handling land conflicts administratively.

Civil society organisations, government institutions and development partners have been working to address and enhance coordination and communication among responsible institutions responsible for tenure security. TNRF is one of the three implementing partners of the “Ardhi Yetu Project” that focuses on, among other things, strengthening platforms at the local level. The platforms aim at multi-stakeholder policy dialogue on sustainable land-based businesses and investment solutions in ways that build upon active citizen participation. Therefore this paper presents multi-stakeholders forums as best model to address institutional coordination for land tenure security.

Key Words: District multi-stakeholders forum, Land administration, policy dialogue, security of tenure, Tanzania



1.0 INTRODUCTION

Like many other sub-Saharan African countries, Tanzania was affected by a new wave of reforms during the last couple of decades in which land reform was among them (Wily 2003b; Lipton 2009). This reform was primarily a response to an increasing number of conflicts over land that were difficult to manage (Pedersen, 2010) on the one hand and a response to neo-liberal policies imposed on developing countries through the Structural Adjustment Program(SAP) (Tsikata, 2003) on the other. The process took off with the 1991 formation of a Presidential Commission of Inquiry to look into the land tenure policy and system, which promulgated the formation of the National Land Policy by 1995 and subsequent enactment of two pieces of legislation, namely the Land Act and the Village Land Act, both of 1999 (Sundet, 2005).

The new wave of land reform in Tanzania, as in other parts of the sub-Saharan Africa, had three major features. First is its recognition of existing rights, including customary rights. Second is the decentralization of responsibilities for land administration and dispute settlement to the local level. Third and more controversially, it is to facilitate the registration and titling of land rights with the dual goal of enhancing tenure security and promoting markets in land (Fimbo, 2004; Pedersen, 2013).

Although decentralization is in the letter and spirit of the land law regime, its implementation is to a large extent left to village and district authorities (Wily 2003a). It is argued in this paper that, even at the village and district levels, in practice there has not been effective decentralization. District authorities have maintained a dominant role over village authorities. Using the experience from the work of the Tanzania Natural Resource Forum (TNRF) in two districts in Tanzania, we propose a “district multi-stakeholder forum” mechanism that offers solutions to two major issues. First is the lack of coordination among responsible institutions; and second, is the effective decentralization of power and inefficient way to deal with land conflicts administratively.

This paper is divided into six parts. The first part is the introduction which provides background information and a framework of the paper. The second part delves into methodology and highlights the tools used to collect data for this paper. The third part is on the land administration system describing the different organs responsible for land governance and how they lack coordination at the local level. The paper also explores dispute resolution and inherent weaknesses which forms the fourth part. The fifth part is the proposed model, including how it was implemented in two districts of Tanzania and featuring some of the results. The final part is the conclusion which sums up and presents some recommendations.



2.0 METHODOLOGY

The study selected two districts of Chemba and Iringa in Tanzania as case studies. These are project sites that the TNRF has been working on for three years since 2014. The areas have many land use conflicts between farmers and pastoralists, villagers and with Game reserve, National Park and Wildlife Management Areas. In these two districts, the TNRF formed multi-stakeholder district forums to address land issues and improve the coordination and effective decentralization of administration to the local level. The study employed both primary and secondary data sources. Focus group discussions (FGDs) and interviews were used to gather information from stakeholders. Reference was also made to secondary information including relevant literature.

3.0 LAND ADMINISTRATION AND THE DEVOLUTION OF POWER

All land in Tanzania is public, vested in the President as its trustee. For administrative and management purposes several institutions were established in line with different categories of land. Land in Tanzania is categorized into three types: reserved, village and general land.

Reserved land refers to all land set aside for special purposes including forest reserves, game parks, game reserves, land reserved for public utilities and highways, hazardous land and land designated under the Town and Country Planning Ordinance. Legislation has established administrative institutions/organs to govern each type of reserved lands. For instance, the Wildlife Management Act of 2009, which establishes wildlife management areas across the country, gives the administrative role to the Wildlife Division of the Ministry of Natural Resources and Tourism.

General Land denotes all land that is neither reserved land nor village land; all urban areas fall into this category. These lands are under the administration of the commissioner for lands who is assisted, at the district level, by the district land officers. The commissioner for land is also the overall administrator of all land in Tanzania.

Village Land is land falling under the jurisdiction and management of a registered village. Land determined to be "village land" in Tanzania is comprised of 12,788 registered villages as of December 2013 (URT, 2013). The basic units of governance and administration of land at the village level are, firstly, the Village Assembly, which includes every man and woman above the age of 18 living in the village, as set out in the Local Government (District Authorities) Act of 1982, and secondly, an elected Village Council, which governs on behalf of and is answerable and accountable to the village assembly.



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The Village Council is "the supreme authority on all matters of general policymaking in relation to the affairs of the village" (District Authorities Act, art. 141). The council meets monthly, and must convene and report to the Village Assembly on a quarterly basis. At least one-quarter of the council members must be women. Under the terms of the Local Government (District Authorities) Act, Village Councils may propose village by-laws (whose enactment must be approved by consensus of the entire village assembly as well as by the district council of the area) and take steps to ensure that these laws are implemented and adhered to (Alden Wily,2003). Village Councils are autonomous from both the central government and the next highest tier of local government authority, the District Council. However, the autonomous power of the village council is limited to the advice by the district council and the Commissioner for Lands.

The Village Councils operate as trustees on behalf of villagers. In the course of performing its duties the village council is accountable to the village assembly and to other local authorities. For example, before it considers and approves (or rejects) an application for the grant of a customary right of occupancy, the decision is forwarded to the Village Assembly for approval. In addition, at every ordinary meeting of the village assembly it has to report to and take account of the views of the Village Assembly on the management and administration of village land.

Importantly, in the process of managing village lands, the village council is obliged to consult with and take account of the views and, where so provided, comply with any decisions or orders of any public officer or public authority having jurisdiction over any matter in the area where the village land is. This includes briefing the Ward Development Committee (WDC), the District Council having jurisdiction where the village is situated on the management of the village land, and taking into account any advice given either generally or specifically by the commissioner on the management of village land which he or she considers necessary or desirable.

In the above analysis, there is a clear decentralization of the powers of land administration from the President to the commissioner to the district council and to the village council and village assembly. In practice, this is not the case especially between the village and district level authorities. Land officers seldom go to the villages and neither do village leaders go to the land officer to discuss land related matters. As such, at the village level land governance has been very weak and often manipulated by local elites. Village leaders rarely know their powers over management and the administration of village lands and natural resources. This has been the main source of conflict over land in many of the villages and persistence of discrimination against women and the denial of rights in respect of interests in land.



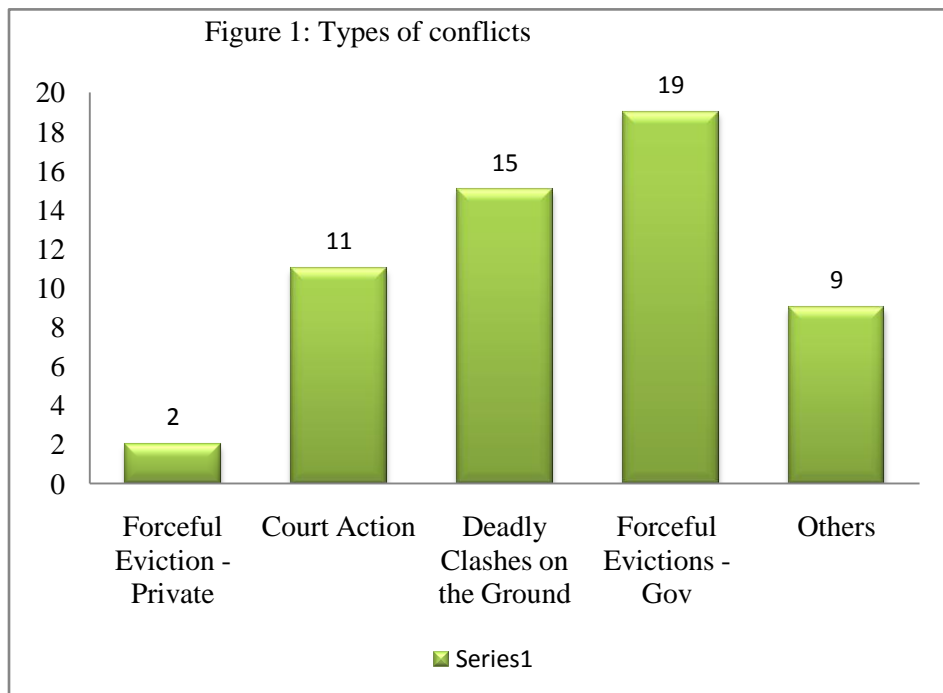
4.0 LAND CONFLICTS DYNAMISM

4.1 Land conflicts trends and causes.

Sources of literature demonstrate a dramatic rise of land-related conflicts in Tanzania. This includes but is not limited to conflicts between farmers and pastoralists, investors and villagers, and villagers and the government. However, more focus will be given here to conflicts between farmers and pastoralists. This is due to the fact that these conflicts are misconceived as to the root causes. They have created a great enmity between farmers and pastoralists that has led to killings and the destruction of property.

Some of the reasons for these conflicts include the forceful eviction of pastoralists from their original grazing areas. The Vilima vitatu case centered on wildlife conservation and tourism investment reasons. Another case of the operation to save the Kilombero valley included some of the famous evictions in the country. Where economic policies give greater priority to large-scale investment over the equitable development of the rural populations, corruption is cited where political leaders, police and village leaders are blamed.

The figure below presents records and types of land related conflicts from 2005 to February, 2016)

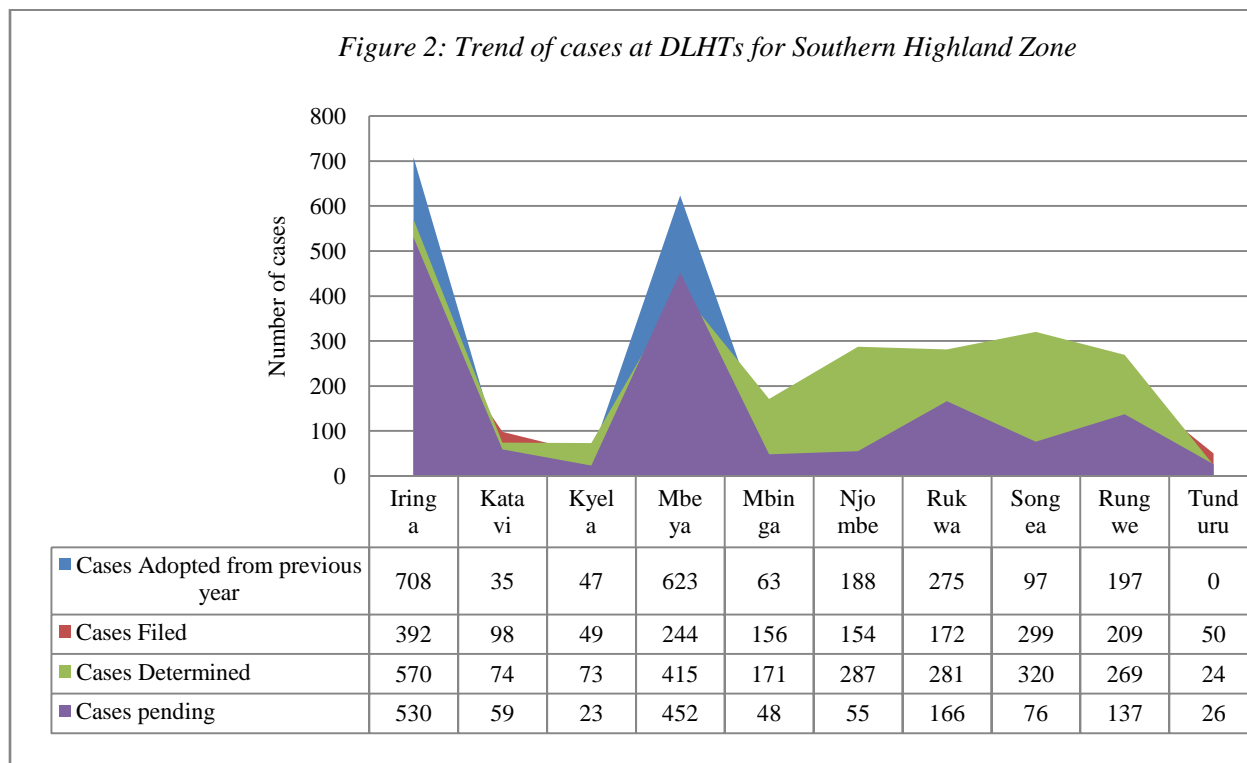


Source: Care Tanzania, 2016 situational & trends analysis land based conflicts in Tanzania



4.1.1 Judicial Land Conflicts Resolution Mechanisms:

The law establishes land tribunals and courts to hear land cases. Initially all cases regardless of their nature were determined by the ordinary courts until 2002 when the Land Dispute Courts Act was enacted by the Tanzanian parliament. This responded to the argument that land cases overwhelmed the resources of the normal courts and hence needed a special solution. The law established the village land council, ward tribunal, district land and housing tribunal, High Court and the Court of Appeal as the respective courts for the resolution of land disputes. Despite their establishment, almost 15 years has now passed since they become operational yet the problem has not been solved. Taking the example of the District Land and Housing Tribunal (DLHT) from the southern highlands region, as presented in the Ministry of Lands budgetary speech, highlights the backlog that courts face in deciding cases. Of all regions, Iringa takes the lead with the highest rate of cases resolved.



Source: Ministry of lands budget speech, 2015/2016



4.1.2 Administrative systems of land disputes resolution.

Notwithstanding the existence of the judiciary, the law establishes separate authorities to deal with land conflicts administratively. The Land Act establishes land administrative bodies to deal with land matters from the level of the President, ministry of lands (where there is a commissioner for lands and the minister), district councils, village council and the village assembly. The challenge facing these bodies has been a lack of coordination; information flows poorly from the grass root to the district level and to the national level. This has led to an ineffective handling of land conflicts administratively.

The following section draws attention to the best alternatives of ensuring coordination among established institutions as a way to deal with land conflicts administratively. The force behind this is that machineries of civil justice are supposed to sustain social stability and economic growth by providing public processes for peacefully resolving disputes. The civil justice systems provide the legal architecture for the economy to operate effectively (Genn, 2009). In fact this protects rights and leaves the party that has lost the case unsatisfied. It is also unlikely to amicably resolve the conflict because some causes are historical with no relation to the dispute litigated in courts of law. However, it cannot be understated here that the existing system has failed but there is a need for them to be complemented. Thus two case studies are selected to show the relevance of District Multi-stakeholders Forums as the best alternative to strengthen coordination among land administration institutions.

5.0 CASE STUDIES

Civil society organisations, government institutions and development partners have been working day and night to find ways to address and enhance coordination and communication among institutions responsible for land administration. TNRF is one of three implementing partners of the “Ardhi Yetu Project” under the auspices of Care Denmark focused on, among other things, strengthening platforms at the local level. The platforms aim at multi-stakeholder policy dialogue on sustainable land-based businesses and investment solutions in ways that build upon active citizen participation. The project selected Iringa and Chemba districts as pilot areas where District Multi-stakeholders were established as a platform for resolving land disputes amicably and inclusively of all with sustainability. The sections below dig more on the case studies on its potentialities



5.1 Forums establishment

5.1.1 Iringa District Multi-stakeholders forum

For the aim of bringing together stakeholders on land issues pertaining to Iringa District and in particular its Pawaga division, on 7th October 2015 the TNRF established the Iringa district multi-stakeholders forum (TNRF, 2015). This brought on board 38 participants of which 12 were women. Stakeholders ranged from the District Executive Director's office (two participants) and the district commissioner's offices (one participant), the MBOMIPA Wildlife Management Area representative (the chairperson), representatives from the police force, from religious organisations, from land rights monitors (two villagers, a man and a woman trained in land rights), village leaders (14 representatives), the Pawaga loose coalition of farmers and pastoralists (six representatives) and the media (four participants). Each participant had a role to play according to his or her position, powers and influence on bringing changes. For instance, the district executive officer has the power to decide for the villages together with the district commissioner, the looser coalition members representing the interests of both farmers and pastoralists as direct victims of land conflicts, the land rights monitors as representatives of villagers who enhance accountability at the village level. The forum addressed land issues facing the Iringa district, in particular its Pawaga division, and passed a number of resolutions.

5.1.2 Chemba District Multi-stakeholders forum

For the same reason that the Iringa District Multi-stakeholders forum was formed, a forum was also formed for the Chemba district. On 10th October 2015 the TNRF facilitated the first meeting of district stakeholders in Kondoa (TNRF, 2015). Chemba district was a newly-established district after the Kondoa district was subdivided; the new district's offices were still in Kondoa and the meeting was held in Kondoa. Participants came from public and private sectors including village leaders, land rights monitors, police officers, representatives of the district executive director for Chemba district and the management of Swagaswaga game reserve, representatives of pastoralists and farmers for Kwamtoro division, representatives from UMAKWA (a CBO based in Kwamtoro division), representatives from the district commissioner's office, and the media.



5.2 Model sustainability

Through district multi-stakeholder forum, villagers have the unique opportunity to meet District official and directly address their problems. In addition, the forums present a distinctive multi-stakeholder direct conversation between and among different governmental and non-governmental institutions. This would otherwise cost villagers money and time; forward and backward discussion between and among convening land stakeholders. It is evident that Villagers would under the district supervision want to maintain the multi-stakeholder platform for its incentives. This illustrates that, the Multi-stakeholder is demand driven and sustainable if there is a political willing.

Moreover, the land laws provide supervisory mandate to district councils over the villagers. The challenge has always been the right platform to perform this administrative function. District multi-stakeholder forums would therefore provide a perfect fit of the platform for the district to administer the function. After establishment of the platform by development partners, the district would only need to set the appropriate forum budget and execute it. It is therefore important that stakeholder initiating such forum lobby for mainstreaming forum activities during the district planning.

5.3 Achievements and lessons learnt

The forums improved communication among institutions that administer land at different levels ranging from village to national. Some of the achievements are presented below.

❖ Resolution of conflict between Ndoroboni village and an investor.

The TNRF addressed land conflict between Ndoroboni village and a local investor. In Chemba district at Ndoroboni village, villagers gave 500 acres of land to a local investor on conditions including the provision of support to the village in farming, the construction of social services, and the provision of employment and developing the land within three years. None of the promises were fulfilled within three years of the agreement. Villagers through their village assembly revoked land ownership and reclaimed their land. Aggrieved by the decision, they decided to process the land title through the commissioner for lands without involving the village Council.

Before making his decision to issue title the land commissioner made an inquiry with the Chemba district council. The district council made further inquiry to the village council and was informed of the details of the matter but could not take any substantial measures. The matter was discussed during the forum



meeting in Kondo. The district council thereafter as a matter of forum resolution promised to ensure that the land was taken back to the village as appropriate procedures of its acquisition were not followed. The district council recommended to the commissioner for not issuing title granted right of occupancy for the reason that procedures were avoided by the investor for not getting consent of the district council due to the fact that the size of land was over and above the mandate of the village to allocate. Finally the land reverted back to the village and currently used for farming by groups of villagers.

❖ Conflict between Swagaswaga game reserve and neighbouring villages.

The game reserve has been in struggle with neighbouring villages for many years since it was established in 1997. In one of the villages three hamlets out of five are regarded to have encroached upon game reserve boundaries. This conflict has caused loss of life and misery for villagers. The matter was also put to stakeholders during the District Multi-stakeholders forum and the representative of the director for the game reserve promised to present the matter to the appropriate authority for action. The district also committed to prioritise the problem for resolution. This prompted a visit of the district commissioner and the minister for natural resource and tourism in response to the villagers. As of January 2017, the district had officially started to verify game reserve boundaries to identify villagers living within its boundaries eligible for compensation.

❖ Conflict between the Anglican Church and Mkombilenga village.

The village was allocated 20 acres of village land to the diocese for its use. However, the diocese took more land than allocated up to 84.12 acres. The matter was reported during the District Multi-stakeholders forum for Chemba district. The village and the diocese via secretary agreed to resolve the matter amicably. The discussion continued until December 2016 where the land was resurveyed and the village vacated 28 acres for the diocese with the rest returned to the village.

❖ Enhanced relationship between the villages and the district's office as advisers of the villages, relationship between villagers.

The forums brought together village leaders and district officers. This gave an avenue of interaction between the two offices where villages built strong ties with the district. For instance some villages had claims of delay of issuance of certificates of customary rights of occupancy and others needed land use planning but they had limited access to reach the district.



6.0 CONCLUSION AND RECOMMENDATION

The study observes that the existing system does not ensure effective policy dialogues and has an information flow gap between the village and district levels on natural resource management and their administration due to a diversity of interests in land matters. To ensure the security of land tenure, open and transparent dialogues platforms are essential. Many land issues start in the villages. This is influenced by the poor management of resources coupled with an insufficient information flow to supervisory authorities and a lack of local policy dialogues. It is therefore, important to strengthen dialogue forum for effective participation of citizens in management of natural resources and decent land tenure security for equity and sustainability.

Therefore the study recommends as follows:

- ❖ As Tanzania is taking part in the National Land Review process this is a useful opportunity to consider formalization and upscale of this program.
- ❖ There is a need to consider undertaking further study to better link the gender component with the establishment of the forums. There is need to embrace gender issues in dialogues.
- ❖ The government needs to embrace this initiative and allocate funds to upscale. This will help the government to get resolution of land problems from the ground up.
- ❖ The initiative still needs greater replication by civil society organizations, government and other development partners to realize more impact as it has so far been applied in only a very few areas. The study present lessons for the regional initiatives on security of land tenure
- ❖ There is a need for research on the subject so that the root causes of land problems in the respective areas are properly identified to enrich discussions in the forums.



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FIGURES:

Figure 1. Types of land conflicts (refer page No. 8)

Figure 2: Trends of cases at the District Land and Housing Tribunal for Southern Highland zone. (Refer pg. No. 9)