

# COMMUNITY NATURAL RESOURCES MANAGEMENT IN TANZANIA



December 1, 2017

Author: Andrew Williams



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Africa Biodiversity Collaborative  
Group

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MANAGEMENT IN  
TANZANIA

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### III. ACRONYMS

ABCG	Africa Biodiversity Collaborative Group
CBFM	Community-based forest management
CBO	Community-based Organisation
GCCRO	Group Certificates of Customary Rights of Occupancy
INDC	Nationally Determined Contribution
MCDI	Mpingo Conservation & Development Initiative
NGO	Non-governmental Organization
NLUPC	National Land Use Planning Commission
UCRT	Ujamaa Community Resources Team
UNFCCC	United Nations Framework Convention on Climate Change
USAID	United States Agency for International Development
WMA	Wildlife Management Area

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## II. EXECUTIVE SUMMARY

Tanzania has progressive land and natural resource management policies and laws, which provide a comprehensive framework for enabling local communities to varyingly administer, manage and sustainably utilize their land and natural resources.

This paper provides an overview of these laws and analyses how effective these laws have been, particularly over the last 15-20 years when most were promulgated, in enabling communities to secure tenure over and sustainably manage their common property resources – principally grazing, forests and wildlife.

### ***Tanzania's community land and natural resource laws***

These laws can be conceptually divided into (i) Foundational laws which provide the legal framework for village governance and land administration upon which (ii) Sectoral laws regulate the management of forest, grazing and wildlife resources and which variably endow communities with user rights over these resources. Although the Village Land Act (1999), can be criticised for being overly complex and inaccessible, it nevertheless provides a sound legal basis for enabling villages to administer and secure their common property resources and is widely regarded as among the best law in Africa for securing collectively managed community land. Unfortunately, both the Village Land Act, and the Land Use Planning Act (2007), have only been implemented in a very limited way, and often not very well. A substantial under-investment by the government in the country's land administration and land-use planning over the last fifteen years has resulted in a system that while arguably of sound underlying design, is largely dysfunctional. The ineffective implementation of the land laws, at least until recently, has been brought about as a result of the low budgetary priority accorded to land administration by the government. As a result, rural Tanzanians have had to contend with increasing levels of insecurity over their commons, and with rapidly escalating levels of land-based conflict.

The sectoral laws were designed with differing approaches as to how communities should be endowed with user rights over their land-based natural resources. The forest law extensively devolved management and benefit rights to communities from the outset whereas the wildlife law adopted a much more cautious and conservative approach, and only through repeated advocacy has the law devolved improved levels of management and economic rights to communities. Even so today, the law still does not allow communities to fully manage and benefit from wildlife resources on their land, and the central government maintains a bureaucratic grip on how community wildlife management operates.

### ***The state of community natural resource management in Tanzania***

Currently many Wildlife Management Areas (the designated legal form for community wildlife management) are barely functioning, as they have struggled to attract the necessary partnerships with the private sector to generate the revenues needed to cover their operating costs and deliver on the revenue expectations of their constituent communities. Many of these Wildlife Management Areas have low levels of wildlife and varying levels of unplanned settlement and conversion to agriculture. In comparison, although not without its challenges, community forestry has arguably been more successful, with an increasing number of

communities deriving growing levels of benefits from sustainable forest management. However, in the longer-term, community forestry faces significant challenges: the area of forests under community management on village lands is small in relation to the overall area of forest estate on village lands which is being rapidly degraded and/or converted to agriculture. While planned forest conversion is necessary as Tanzania's population continues to rapidly grow, a more strategic approach to reducing unplanned forest conversion needs to be taken and to further expanding the area of forest under community-based sustainable forest management. This is because the current area of forest under community-management is unable to sustainably supply existing non-plantation timber and wood-based fuel demand, and the forest commons, particularly forest areas not under formal community management, are increasingly being degraded and lost as a result.

In summary, **the future of community-based forestry in Tanzania is beginning to hang in the balance**, and as the opportunity cost of managing common property forest resources continues to increase, and without further investment, the progress achieved to date can be expected to suffer from reversals. And it is becoming increasingly clear, that **Tanzania's community wildlife management initiative, outside of the prime photographic tourism areas of northern Tanzania, is generally in dis-array and terminal decline.**

The law regulating grazing seeks to safeguard grazing areas and their sustainable management. In reality it depends heavily on the Village Land and the Land Use Planning laws to achieve its objectives. As a result, grazing lands throughout the country continue to be encroached upon, degraded and have become a source of conflict. This is because of the lack of budgetary resourcing allocated by the government for the implementation of both the Village Land and Land Use Planning laws in terms of strengthening village institutions and local government capacity to implement these laws. This has not been helped by the long-term marginalisation of pastoralist and agro-pastoralist communities, their livelihoods and land management practices.

### ***An innovation to enhance collective community security of land tenure***

**A recent innovation, a collective land title called a Group Certificate of Customary Right of Occupancy is now being increasingly used to successfully secure the grazing lands of pastoralist communities.** The

first Group Certificate of Customary of Right of Occupancy was piloted in northern Tanzania in 2012 initially to safeguard the commons of the hunter-gatherer Hadzabe. Its significance lies in the tendency for land titles to be better respected at local level, and crucially, they are strongly defensible in a court of law. Furthermore, the group certificate is well suited to being adapted for a wide range of contexts in relation to collective customary natural resource management practices, and can be implemented in concert with supporting and locally created bylaws. This builds local buy-in and if well-facilitated by third parties (e.g. NGOs), stands to empower communities to adapt and develop their customary natural resource management practices to respond to what are often very challenging contemporary pressures and threats to their commons. The instrument is becoming increasingly widely recognised and supported by local government authorities.

However, it is important to note that a Group Certificate of Customary of Right of Occupancy does not ordinarily endow its holders with user rights to key natural resources on their land – specifically in this context,

forests and wildlife. These formal user rights comprise separate bundles of rights which are only securable through pursuing the specific procedures laid out in the respective sectoral forestry and wildlife laws:

- **For wildlife user rights, this means that communities must proceed with developing a Wildlife Management Area, and**
- **For forest user rights, the land holders must either proceed with developing a Village Land Forest Reserve, a Community Forest Reserve or a Private Forest Reserve.**

This in turn results in an important dichotomy / distinction:

- **Where the commons are to be primarily and solely used for subsistence livelihoods** without any aspiration or expectation by the community of generating commercially/business-oriented revenues from forests and wildlife, Group Certificates of Customary Right of Occupancy are likely to be sufficient for securing local common property resources, particularly when supported and governed by locally developed by-laws;
- **Where the commons are to be additionally used at the behest of a community for commercial/business-oriented purposes**, for example, wildlife tourism and developing sustainable forest value chains (timber / charcoal), then there may be clear justification for moving to secure formal user rights. This is particularly the case for forestry (and more rarely for wildlife) where the benefits of securing formal user rights potentially stand to be significant – dependent on the quality and extent of the natural resource base.

### **Recommendations for continued work**

Tanzania's common property resources are likely to be further endangered in the coming years given a rapidly expanding population having to contend with a shortage of fertile land as well as the impacts of climate variability and climate change. Up to a point, the more layers of formalisation a community or user group is able to secure for their land, the more defensible and secure it becomes, so long as the formalisation process does not diminish their control over their land and natural resources. To an extent this is place and context specific. Some recommendations therefore towards supporting communities to safeguard their commons in increasingly challenging circumstances are:

- i. **Review the new (draft) National Land Policy and its accompanying implementation strategy** – identifying key areas of concern and missed opportunities for improving the policy and legal framework underpinning village-based land and natural resource management.
- ii. **Review the existing Village Land Act and its associated regulations and laws** – a longer-term undertaking in relation to the new National Land Policy and its implementation strategy, is to carry out a review of the Village Land Act as a pro-active step towards ensuring that its key strengths are safeguarded, and that recommendations for improving its shortcomings are readied in advance of the amendments to the Land Laws that will surely be tabled in Parliament in due course. A related area of inquiry is better understanding the implications of new technologies for improving people's access to land administration services and to collective land and natural resource management arrangements.
- iii. **Review and strengthen the legal safeguards for using Group Certificates of Customary Rights of Occupancy (GCCRO) to secure pastoralist and hunter-gatherer commons** – the 'legal light touch' approach that has thus far been taken should be thoroughly reviewed to address a

number of risks around addressing the lack of a sufficiently strong legal relationship between the ‘trustees’ who hold the customary right of occupancy certificate on behalf of the community in terms of:

- What the limit of their legal rights and responsibilities are - to each other, the village and third parties – for example, restrictions on the disposal of the land, or protections in the event of them being sued or needing to sue.
- What happens when they die or want to relinquish their ‘trusteeship’?
- What happens in the event that the land under CCRO title is divided as a result of a sub-division of the village (currently quite a common occurrence)?
- What the ideal balance is between informal and formal institutional and legal arrangements – for example, does registering a trust lead to too high a transaction cost and therefore a less effective means for scaling up the use of Group Certificates of Customary Rights of Occupancy?

It would be useful to develop a guide for practitioners, villages and user groups that sets out best practices for developing and managing a Group Certificate for an area of grazing land, including the types of issues that need to be considered in the accompanying village by-laws and in the actual certificate and any other accompanying documents

- iv. ***Pilot the use of group certificates to secure and better manage grazing in other contexts*** - to date GCCROs have been used in the northern Tanzanian rangelands to increasingly good effect amongst pastoral and hunter-gatherer groups but not yet much elsewhere. What about their suitability, for example, in the Miombo woodlands with mixed farming and socio-culturally different agro-pastoralist communities?
- v. ***Review and document the emergence of more innovative and entrepreneurial models for scaling up community-based forest management (CBFM)*** – there are parallel ongoing initiatives which have adopted different business models in developing and scaling up sustainable forest management (i.e. timber and charcoal harvesting) across the country, mostly facilitated by NGOs. What are the emerging lessons from these initiatives, and what is required to enable the most promising models go to further scale?

Key issues include:

- How the costs of scaling up CBFM can be sustainably financed within one or more innovative service provision models?
- Linked to this, what are the most effective institutional arrangements for enabling communities to profitably engage in long-term sustainable forest management – for example, should more straightforward village-based timber sales to private sector customers be promoted or should community forest cooperatives be promoted that begin to invest in product value addition as well? What lessons can be drawn from elsewhere?
- Better understanding local market dynamics and linkages – can all communities with varying levels of forest resources look to being able to benefit from sustainable forest

management or what are the market constraints based on their location and the nature of their forest resource-base?

vi. ***Review best practice business relationships between the wildlife tourism private-sector and communities*** - in terms of structuring long-term performance-based partnerships for both photographic and tourism sport hunting, for which extensive knowledge and expertise exists from, for example, Namibia and Kenya. While there are a growing number of reasonably successful partnerships between communities and photographic-orientated tourism ventures, especially in northern Tanzania, there is a need to collectively define best practices and to promote them within the industry in partnership with communities and civil society organisations. However, while the most successful Wildlife Management Areas have been able to capitalize on photographic tourism, the majority are largely unsuitable for photographic operations for varying reasons and need to rely instead on sport hunting for their revenues. Unfortunately, many Wildlife Management Areas in Tanzania are becoming increasingly marginal areas for hunting and unattractive for most hunting companies. There are three choices that communities can make in terms of what to do with Wildlife Management Areas that are failing:

- Re-invest in their Wildlife Management Area to rejuvenate them because they could become viable wildlife hunting areas due to the types of wildlife they stand to offer and given their socio-ecological context;
- Degazette and/or convert forest rich parts of their Wildlife Management Area to community-based forests which they may be able to sustainably harvest and better benefit from;
- Degazette the Wildlife Management Area and return them to village lands, potentially with alternative low cost options (such as land easements and/or group certificates of customary rights of occupancy) for maintaining some degree of wildlife-compatible land-use for ecosystem functionality where required.

**In many cases, the simplest option is likely to be the development of Village Land Forest Reserves to replace at least part of the existing non-functional Wildlife Management Area.**

But where there is some realistic economic prospect and explicit support from local communities for maintaining an existing but poorly performing WMA, new ideas and approaches are required that address:

- How long-term well-structured performance-based partnerships between mission-driven private sector partners and currently marginal Wildlife Management Areas can be developed;
- The requisite changes in the law and other support and incentives that local and central government need to provide – such as ending the punitive 35% tax on gross community wildlife revenues;

- What can be applied from relevant models, best practices and lessons from other parts of Africa – such as Namibia and Kenya.

vii. ***Investigate arrangements for integrating all natural resource management at village level*** – the sectoral approach adopted by government has limited the options available for communities in terms of how they manage their common property resources. Some Wildlife Management Areas have significant volumes of exploitable timber, and some community-based forests potentially have exploitable wildlife. Both forestry and wildlife laws generally permit joint community wildlife and forestry management, but this has yet to be explored or implemented. How can the strong institutional and economic case for integrating forestry and wildlife management at community level to improve the effectiveness and financial viability of their management be moved towards? What would these institutional arrangements look like? What limitations would there be? How might they be piloted? As elusive as this integrated approach to community-based natural resource management has been to date, and not only in Tanzania, it is important that it continues to be advocated for.

viii. ***Investigate the significance of the contribution by Tanzania’s village-based forest and wildlife areas to Tanzania’s UNFCCC INDC and how this contribution might be financed*** – forests on village land account for 51.4% of Tanzania’s total forest area (NAFORMA 2015), and these forests are the most at risk from loss. Given that the forest sector is one of four sectors identified for delivering the country’s Intended Nationally Determined Contribution (INDC), and that the INDC explicitly recognises the importance of participatory forestry, it stands to reason that community-based forestry together with enhanced village land use planning and management should be receiving a significant level of finance to deliver the emission reductions from reduced deforestation and forest degradation. What options exist for government and/or accredited NGOs to access financing (for example, from the Global Climate Fund) to invest in the country’s village land forests? What institutional arrangements and steps would ensure that as much of this finance is efficiently and effectively used to expand and improve common property forest resource management at village level, and accompanying land use planning and management?

A derivative piece of work would be to quantify the potential for forest-based emissions reductions that established and scaling models of CBFM could deliver for Tanzania’s INDC, and the most straight-forward way for achieving this through existing CBFM modalities.

# I. Introduction

Tanzania has some of the most progressive land and natural resource management policies and laws on the African continent which provide a comprehensive framework for enabling local communities to varyingly administer, manage and sustainably utilize their land and natural resources. However, not all of Tanzania's land and natural resource policies and laws are as straight-forward and effective as others, because of their varying approach, the different extent to which they empower local communities, and also because of the varying socio-ecological and other circumstances that exist across the country. Additionally, many laws are not well implemented or enforced, or only selectively so, in certain circumstances. This paper seeks to provide a helpful overview of the framework of laws and regulations that establish various mechanisms and approaches that communities can use to manage their land and natural resources by:

- Identifying the pros and cons of each approach from the perspective of securing and protecting common property (see Box 1) on Village Land;
- Documenting some of the experiences and outcomes of each approach; and
- Identifying the conditions/circumstances when each particular approach is likely to be the best choice for protecting and securing common property

This overview is not designed to be a definitive guide, but rather a means for highlighting and discussing experiences and future possibilities for supporting local communities to better secure and manage their land and natural resources in an equitable, beneficial and sustainable manner in Tanzania.

Following this introduction, this paper is divided into three parts: the first provides an overview and a context for how, at the local level, land tenure as well as land use and natural resource planning and management are designed and structured in Tanzania, and how its various components varyingly inter-link. Building on this foundational description, the second section provides an overview of experiences to date, highlighting from a practitioner perspective what has worked well and not, with a discussion of some of the key challenges encountered by government, communities and NGOs working to implement village-level land and natural resource management. The third and final section highlights some emerging opportunities for enhancing the socio-ecological and economic performance of community-based land and natural resource management in Tanzania.

## Box 2 | IDENTIFYING KEY DRIVERS IN TANZANIAN COMMON PROPERTY RESOURCE MANAGEMENT OUTCOMES

Common Property Resources are shared resources that are collectively managed through social arrangements and local institutions to regulate their preservation, maintenance, and consumption. Examples of common-pool resources include irrigation systems, fishing grounds, pastures, forests, water or the atmosphere. Common Property Resources are frequently part of complex social-ecological systems (SES). The arrangements and institutions governing and regulating their management and use may have long histories associated with traditional, indigenous and customary practices or they may be a result of more recent contemporary developments in response to local resource management and conservation needs.

A key conceptual framework<sup>§</sup> for common property and complex social-ecological systems is provided by Ostrom (2007; 2009) which comprises: (i) The resource system (e.g. grazing area), (ii) The resource units generated by that system (e.g. fodder), (iii) The users of that system, and (iv) The governance system. These variables jointly affect and are indirectly affected by each other. Two variable sets appear to be particularly driving the country's current common property resource management outcomes at present:

- *Governance systems* – remain a recurring constraint in land, natural resource and related government institutions at all levels in Tanzania. For example, the repeated outbreaks of land use-based conflict are ultimately a symptom of failed governance. Building locally meaningful, equitable and effective common property resource management institutions is a long-term process. Experience has shown that when quality long-term support by local government and civil society organisations occurs<sup>¶</sup>, and despite the expectation of setbacks, communities are able to make progress in strengthening their institutions. Engendering political will and support is key, and where this is lacking, making progress can be very difficult. Many local civil society organisations working in this space are constantly struggling to secure the resources needed to maintain this long-term support to communities in an adaptive, responsible and sustained manner.
- *Users* – are significantly impacted in this context by the rate of population growth. This is often an issue that neither practitioners, government administrators, politicians nor community leaders and members are comfortable openly talking about. Commonly, people's awareness and understanding of current population projections is low, although clearly communities are having to contend with the related impacts on their common property resource systems. Tanzania's current population is 55 million people and it is set to reach 100 million by 2037, with fertility rates only slowly declining through the rest of the century<sup>‡</sup>. There is a pressing need to proactively encourage and support local communities to discuss population issues in an open, holistic and visionary manner, as a means to enabling them to collectively and individually make their own informed choices about how they manage their common property resources. Promoting women's rights and development entitlements is central to creating these free and informed choices.

<sup>§</sup> Hummel et al. (2012) provide a useful review of different analytical frameworks for environment and population.

<sup>¶</sup> See the accompanying boxes on community forestry and innovative rangeland management.

<sup>‡</sup> Fertility rates have declined slowly over the last 50 years from 6.8 at independence (1961) to about 5.0 today, and are projected to decrease slightly more rapidly over the next 50 years to about 3.0 by 2060 (UN DESA-PD 2015). The proportion of the population living in urban areas has steadily risen at about 5.2% per year, from 6.4% in 1961 to about 30% of the country's population in 2014 (Agwanda & Amani 2014).

## 2. Tanzania's Community-Based Land and Natural Resource Management Framework

About 80% Tanzanians live on rural community lands<sup>1</sup> – formally referred to as Village Lands, which comprise about 70% of Tanzania's overall landmass. Village lands in turn form the basis upon which rural communities can secure rights to formally manage their land, and utilize the forests and wildlife on their land, in addition to carrying out their farming and herding livelihoods. It is important to note that the country's land-use planning legal framework is built on the existence of foundational land and local government laws, as well as supplementary forestry, wildlife and grazing laws<sup>2</sup>. This section explains how Tanzania's village-level land and natural resource management and administration framework is designed to work, including how village members, either as individuals or groups, derive their management and use rights to these resources. The aim is not to provide a definitive and comprehensive explanation of the legal framework, but rather to provide a description of its key underpinnings, as a prologue to and basis for the subsequent discussion about the experiences, pros and cons of each approach to securing common property.

### 2.1 VILLAGE-BASED LAND AND NATURAL RESOURCE MANAGEMENT

Tanzania's community-based land and natural resource framework is foundationally based on two key laws, the Local Government Act (1982) and the Village Land Act (1999). The Local Government Act<sup>3</sup> provides the legal framework for Tanzania's system of local government which is comprised of villages administered by districts. Elected village and district government is rooted in the institution of the Village Assembly (all the adult members of a village) which elects representatives to both their village and District Councils. District Councillors, while elected by individual village members, represent wards comprised usually of two to four villages. Importantly the Local Government Act recognises the Village Council as a body corporate, with the ability to create its own committees, and to make and implement its own by-laws subject to the approval of the District Council. The village is the locus at which community land and natural resource management is situated, although multi- or joint-village land and natural resource management arrangements are allowed in the law<sup>4</sup> and are increasingly being developed (often by pastoralist communities) or are sometimes the norm

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<sup>1</sup> Draft National Land Use Policy, November 2016

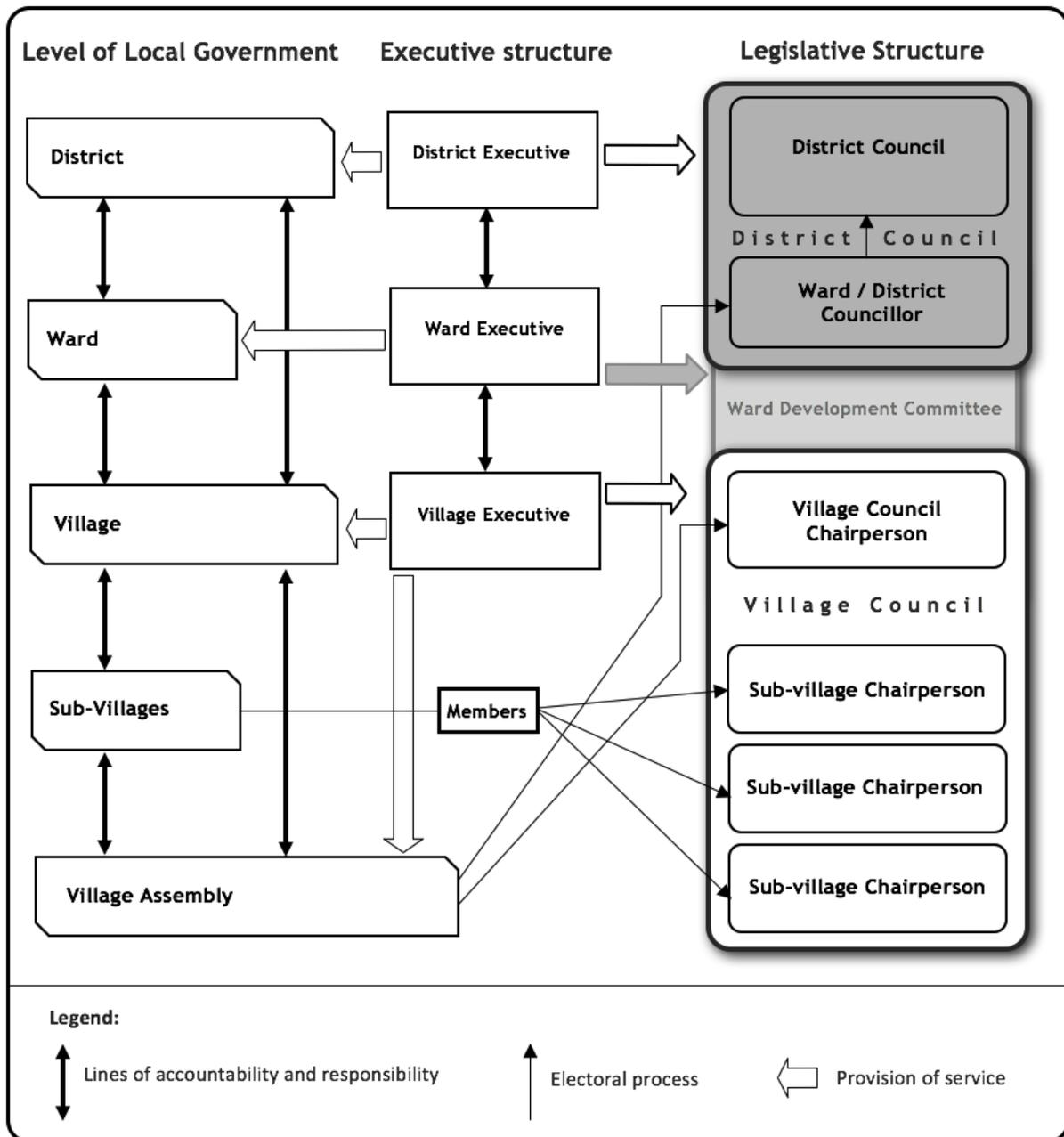
<sup>2</sup> The Environmental Management Act 2004 is an important law, but because it has not had a significant impact on land tenure and land use outcomes within the context of village level common property resource management, it is not referred to further.

<sup>3</sup> And subsequent amendments

<sup>4</sup> For example, the Village Land Act (1999), Forest Act (2003), Wildlife Conservation Act (Wildlife Management Regulations) 2012.

(as is the case for community-wildlife management). In this regard, the Village Land Act creates the basis for the administration and management of land at village level, and creates a framework upon which individual and collective land holding and management can occur. The district administration, ostensibly<sup>5</sup> accountable to the District Council(lors), is varyingly responsible for providing support services to the villages in its jurisdiction in helping them manage their land and natural resources, and in overseeing and making interventions when necessary and according to applicable laws and guidelines.

Figure 1: The normative structure and functioning of local government in the Tanzanian mainland. (Adapted from Shivji and Maina Peter 2000)



<sup>5</sup> In reality, district administrations and their directors are as much accountable to line ministries in implementing policy and directives as they are to villages and their District Councils in providing the services they need, and this can lead to conflicts of interest. In addition, district administrations have their own interests, which may not always be aligned with those of villages'.

## 2.2 THE LAND LAWS

Tanzania's land laws implement its National Land Policy (1995)<sup>6</sup> and are underpinned by two key pieces of legislation, the Land Act (1999) and the Village Land Act (1999), together with their subsidiary regulations and other supplementary laws (see Annex). The Village Land Act is designed to democratize the administration of land at village level, by empowering village members to own land and for village assemblies to administer village land through their Village Councils. The law is designed to relegate district and central government to advisory and safeguard roles. A key objective of the Village Land Act is to automatically recognise customary<sup>7</sup> land ownership, regardless of whether it has been registered and titled, and to provide the means for registration and titling in an accessible and affordable manner. As will become evident later in this report, this is often far from the case. Another important objective is that the Village Land Act recognises common property as a legal land category (in the form of communal land), and this recognition forms the basis for community-based natural resource management in Tanzania. In understanding this further, it is first important to clarify how the land laws provide the basis for village-based land natural resource management, and the opportunities for communities arising from this framework<sup>8</sup>.

### ***Understanding the distinction between land 'ownership' and 'management' categories***

The Village Land Act (1999) provides a comprehensive basis for Village Assemblies, through their Village Councils to administer 'Village' land. Village land forms one of three 'land management' categories set out in the Land Act (1999), the others being 'General' and 'Reserved' lands. It is important to note that these management categories are not 'land ownership'<sup>9</sup> categories, rather they comprise different systems of land administration designed for different purposes (Wily 2003). Thus villages may have management rights over reserved land which they own – for example, Village Land Forest Reserves (see Section 2.4.1). Any land which has resources on or under it which falls under the jurisdiction of other laws – such as forestry, fisheries and wildlife (there are nine such instances overall) – is designated as reserved land. These resources are then administered according to the sectoral laws. So, for example, in the forestry and wildlife acts and their subsidiary regulations, procedures are set out for how villages and other interests (such as private entities) can obtain access – management – rights to these resources. These resources are owned by the state, but may be managed by any entity so authorized as set out in the corresponding legislation for that resource. The distinction can, at times be seemingly confusing, when for example, villages apply for the right to manage and benefit from the forest and wildlife resources on their land, this land is then technically transferred from village land to reserved land, even though the village continues to own the land. The underlying rationale of this arrangement is that this technically empowers villages and other entities to apply for management rights

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<sup>6</sup> The National Land Policy is under review, and a draft will be publically released in late 2016.

<sup>7</sup> Although not explicitly defined in the Land Laws, customary law can be taken as any law that has, '... regard to the customs, traditions and practices of the community ... so long as they do not deny women, children or persons with disabilities lawful access to ownership, occupation and use of lands' – see Wily (2003) for a more extended discussion.

<sup>8</sup> This section draws substantially on correspondence with and the previous work of Liz Alden Wily (e.g. 2003, 2011) together with a close reading of the corresponding pieces of legislation.

<sup>9</sup> Technically all land is vested in the President, on behalf of the nation, and Village Councils are only ever given administration rights to village land, with individuals, families and groups being allocated customary occupancy rights, usually without time limit in the case of families. In reality therefore, these occupancy rights, whether registered or not, are *de facto* equivalent to land ownership rights.

over resources which they technically do not own – such as local authority or national forest reserves and game reserves. To date the biggest initiative to share (not wholly transfer) management of a government-owned resource lies with national forest reserves managed by government, through a process called Joint Forest Management.<sup>10</sup>

### **Village boundaries and the different categories of village land**

The Village Land Act provides a flexible basis and set of conditions for villages to delineate their boundaries especially in order to accommodate the legacy of Tanzania’s post-independence socialist past which resulted in large numbers of people being resettled in varying circumstances. Ultimately each village’s boundaries must be agreed with its neighbouring villages and other land owners before they can be gazetted.<sup>11</sup> It is important to note that a Certificate of Village Land is not a pre-requisite for a village having the right to administer its land, but it is an important step for a Village Assembly or village group being able to obtain management rights to the forest and wildlife resources on its lands, and for a Village Council together with its assembly being empowered to formally plan the use of its village land area (see Section 2.3.1). Finally, the Village Land Act encourages villages working to delineate their boundaries to include all the forested and other lands they have customarily used to date, and which are not part of another village’s or party’s land<sup>12</sup>, within the boundaries of their village.

The Village Land law divides village land into three categories:

- a) ‘*Communal Land*’ – which is designated for public and community use and benefit, and which may not be allocated to individuals to occupy;
- b) ‘*Customary Land*’ – which is already occupied and used by individuals, groups and families under customary law;
- c) ‘*Reserve (Set Aside)<sup>23</sup> Land*’ – which can be made available in the future for use either as ‘*Communal Land*’ or as ‘*Customary Land*’ through the allocation of a certificate of title or derivative right (lease).

It should be noted that the Village Council does not own land itself, and that ‘*Communal*’ and ‘*Set Aside*’ land is *de facto* regarded by the Village Assembly as a collective as their land which is administered by the Village Council on their behalf. *De jure*, the President of Tanzania owns all land in the country on behalf of the nation, and Village Land is managed by Village Councils. Village Councils are bound to bear in mind the advice of their District Council when administering Village Land, but they retain the authority to decide how Village Land

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<sup>10</sup> The Government was slow to agree the necessary revenue sharing agreements to cover the costs of participating communities but these were finally released in the Joint Forest Management Guidelines (Tanzania Forest Service 2013). Arguably the revenue sharing arrangements for each forest type do not provide enough benefits to participating communities, and there is limited buy-in from both communities and government. Nevertheless, official statistics show that 5.4 million hectares of forest are under joint forest management arrangements (TFS 2012).

<sup>11</sup> The law sets out procedures for mediating and adjudicating boundary disputes.

<sup>12</sup> There is a contradiction between the Land Act and Village Land Act in the definition of General Land – with the former defining Village Land as, ‘all public land which is not Reserved Land or Village Land and includes unoccupied or unused village land’ whereas the latter defines General Land as ‘all public land which is not reserved land or village land’. This has led to conflicts of interest – for example, between the Tanzania Forest Service and villages in relation to access to forest products with the former taking the Land Act definition as rote, and the latter taking the Village Land Act as their definition – see Section 3.3.

<sup>13</sup> Wily (2011) suggests this is a more useful and accurate moniker.

should be administered according to the law. A District Council may only intervene in the Village Council's administration of land for a prescribed period of time when one hundred or more villagers request it, or when it is clear that the Village Council is incompetent, as declared by the Commissioner for Lands, and there is no other recourse.

In theory, communal and customary lands may, as desired by the Village Assembly for Communal Lands, or the owner(s) in the case of Customary Lands, be designated as Reserved Land (as per the Land Act and corresponding laws) if either wish to use that land for forestry or wildlife management activities<sup>14</sup>. In reality, it is Communal Land which is allocated by village assemblies for designation as Reserved Land for community forestry and wildlife management, because individual, family and group access on Customary Lands (e.g. for private forest reserves) simply has not been facilitated because in general there has been little or no substantive cause or demand for doing so.

### ***Individual, family and group land ownership and lease rights***

The single means for owning land in Tanzania is a 'Right of Occupancy'. A right of occupancy issued under the Land Act is called a 'Granted Right of Occupancy', while a right issued under the Village Land Act is called a 'Customary Right of Occupancy'. Both hold equal weight under the law. However, a Customary Right of Occupancy is issued by the Village Council, and is different to a Granted Right of Occupancy in that it does not usually have term limits. This is particularly the case when a customary right of occupancy is issued to an individual or family (wife and husband) without expiry.

Any citizen individual, family unit, group, association or cooperative<sup>15</sup> whether initially resident in a village or not, may apply for a customary right of occupancy on a prescribed form so long as their existing land holding in the village together with the land they are applying for does not exceed 20 hectares. If a larger amount of land is sought, then the District Council and the Commissioner of Lands must approve the request.<sup>16</sup> The village can set any reasonable conditions and criteria it wishes including the payment of a premium as part of the application – so long as these do not contravene the law. The Village Council then considers the application and if it approves it, provides a letter of offer to the applicant for a particular piece of land which the applicant may reject if they so wish.<sup>17</sup> Upon the applicant accepting the offer, the village<sup>18</sup> then prepares a triplicate 'certificate of customary rights of occupancy' which is signed by an Authorized District Land

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<sup>14</sup> It follows that the use of 'Set Aside' Village Land for securing formal natural resource use rights is not logical, because the land either must be first allocated as communal or customary land, in the latter case with specific occupancy rights, before being designated as Reserved Land, or the fact of designating the land as Reserved Land largely precludes the land being used for Set-Aside Land in the future, as the land must be subsequently re-transferred back to village land by ministerial authority, if it is to be reallocated to individual, family or group ownership or for use by the Village Council (see Section 5(2) of the Land Act 1999).

<sup>15</sup> Although not explicitly set out in the Village Land Law, in practice, these organizations must have a wholly Tanzanian identity and ownership: foreign organizations have to apply for a Certificate of Rights of Occupancy (CRO) for General Land, and if this land is Village Land, and the Village Council and Assembly agree, it must be transferred to General Land.

<sup>16</sup> Set out in the accompanying Land Regulations (2001).

<sup>17</sup> Because, for example, the offer does not provide the land they seek, does not reflect the boundaries agreed, or the applicant finds the accompanying conditions unworkable.

<sup>18</sup> In reality, the district prepares this certificate, because villages usually do not have the wherewithal (official paper, computer, printer etc.), and because official certificate paper must be ordered in bulk from the Ministry.

Officer<sup>19</sup>, with one copy provided to the land holder, and the remaining copies lodged in the district and village land registries. The Village Council may decide whether the occupancy will have no time limit, have a time limit renewable up to no more than 99 years, or have a renewable time limit of a shorter duration (for example, year to year). Finally, the Village Council may specify and charge an annual rent (as guided by the Commissioner)<sup>20</sup>.

The law specifies that the land holder must steward the land appropriately, maintain its boundary markers intact and respect the prevailing customary rules and bylaws of the Village Council (as sanctioned by the Village Assembly). The right of occupancy allows the land holder to assign, dispose, lend, lease, sell or mortgage the land, with the approval of the Village Council. There is an expectancy that the right holder will ordinarily remain resident in the village, subject to their forfeiture of their right of occupancy unless otherwise assigned or disposed of with the approval of the Village Council.

So long as they are a citizen, a party may similarly apply to the Village Council to rent an area of village land through a direct derivative right, which depending on the size of area applied for, may either be approved directly by the Village Council, or referred to the Village Assembly and Commissioner of Lands<sup>21</sup>, respecting the social and environmental safeguards set out in the Village Land Act, and as additionally determined in the course of the approval process.

The Village Land Act provides a detailed set of provisions for a Village Council taking escalating steps to remedy a breach in the conditions of a certificate of customary rights of occupancy, including an initial remedy order, then a fine, followed by a supervisory order, a temporary re-assignment of the rights of occupancy and finally a revocation of the certificate of occupancy. In addition, a piece of land held under a customary right of occupancy can be declared abandoned under certain conditions<sup>22</sup>. Finally, a right owner may appeal against the decisions of the Village Council and apply to a court for relief against any of the council's orders and sanctions.

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<sup>19</sup> An officer that has been invested with the power to sign certificates of rights of occupancy (General and Customary) on behalf of the Commissioner of Lands.

<sup>20</sup> In theory applying an affordable and equitable annual rent would help to pay for village-based administration of land: however, more often than not, locally collected taxes are remitted to District Councils which put them into their general expenditure funds instead.

<sup>21</sup> A lease of five hectares or less and up to a five-year term may be approved directly by the Village Council; for thirty hectares or less with a term of up to five years, additionally the village assembly; and for more than thirty hectares and up to a 10-year term, additionally the Commissioner of Lands.

<sup>22</sup> If the land has not been used for more than five years, the right holder has owed rent or taxes for more than two years, or has left the village without having made prior arrangements for the piece of land.

## **Adjudication of existing customary land holdings**

Two types of adjudication<sup>23</sup> are possible under the law:

- (i) *Spot adjudication* – an applicant can apply to the Village Council to have their land spot adjudicated. The Village Council may in turn determine whether the surrounding land should be also adjudicated. The decision about whether and how to carry out the spot adjudication is then referred to the Village Assembly and may be subsequently determined by the District Council in case of disagreement.
- (ii) *Systematic adjudication* – a Village Council can propose adjudication of the village’s land itself or at the request of at least fifty village members, both instances being referred to the Village Assembly for approval. The Village Assembly, if it agrees to the adjudication request, appoints a village adjudication adviser<sup>24</sup>, who works with an adjudication committee appointed by the Village Council, as its executive officer, to carry out the adjudication process<sup>25</sup>. The option for a small group to jointly hold a customary right of occupancy in trust for a larger interest group over an area of land greater than the 20-hectare village limit (for example, for pastoralists or hunter-gatherers) has been established by precedent and with the approval of the Commissioner of Lands (see Section 3.6.2). Finally, in the event that twenty or more village members notify the District Council of improper or unfair practices in the adjudication process, the district may provide remedial directives or decide to stop and/or take over the adjudication process, by appointing a public adjudication officer who shall supervise the village adjudication adviser and the village adjudication committee.

## **Land dispute resolution mechanism**

Land disputes within the village are initially brought before a Village Land Council, appointed by the Village Council and approved by the Village Assembly according to criteria set out in the Village Land Act, on the number, gender and standing of members. A Convener maintains the records of the Village Land Council which is chaired by a Chairperson. The Convener has an additional role of encouraging disputants to voluntarily use the services of the Village Land Council to mediate the dispute. If the dispute remains unresolved, disputants can refer it to the court system, which in order of increasing authority begins at the Village Council, and then proceeds to the Ward Tribunal, District Land and Housing Tribunal, Land Division of the High Court, and finally Court of Appeal in a process which is set out in the Courts (Land Disputes Settlements) Act of 2003. The management and resolution of conflict has become an increasingly important issue, particularly between growing populations of farmers and herders, as each group seeks to varyingly access and/or protect rights to land. Managing and resolving these challenging disputes is often made more challenging by widespread shortcomings in village and district governance, compounded by political interests.

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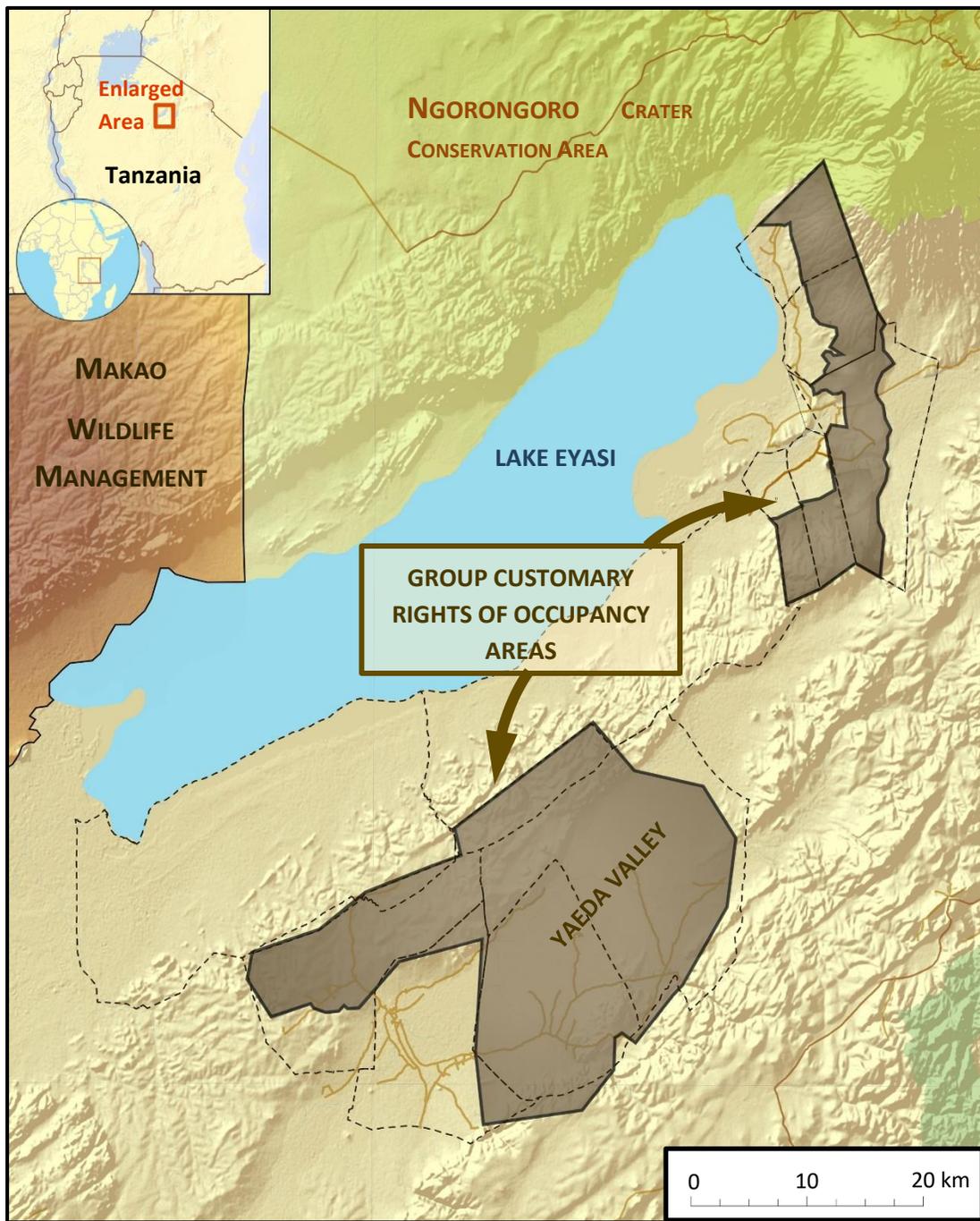
<sup>23</sup> Adjudication is the legal process by which an arbiter (in this case a village adjudication advisor and committee) reviews evidence and argumentation, including reasoning set forth by various parties to come to a decision which determines rights and obligations between the parties involved.

<sup>24</sup> Either a respected and professionally qualified villager, a district government official with responsibilities for land matters, a person appointed by the Land Commissioner at the request of the village, or a local magistrate.

<sup>25</sup> The committee then carries out the adjudication process through publically advertised hearings which proceed according to ‘natural justice’ and according to the principles and criteria set out in the law until such time as the committee has satisfied itself that it has fairly adjudicated each piece of land. Each decision becomes binding after a thirty-day notice period (see Section 2.3.1v), but can be subsequently subject to appeal before the Village Council. The adjudication committee can allow for co-occupation – both in terms of family units (husband and wife) and groups, particularly farmers and pastoralists, where in the latter case the committee satisfies itself that co-occupation has already peaceably existed and that it can continue to do so.

Land disputes certainly adversely impact the security of the commons and this issue is further discussed in Box 2.

Figure 2: GCCROs in northern Tanzania. (Credit: Northern Tanzania Rangelands Initiative)



## 2.3 LAND USE PLANNING

While the land laws provide the basis for defining and administering land tenure, the Land Use Planning Act (2007) provides the basis for the spatial planning and management of land. The law sets out four nested levels of planning – national, regional, district and village – which follow the country’s administrative levels. In addition, the law provides for a fifth planning type, referred to as a ‘Planning Zone’, which can be declared anywhere by the Minister to address special planning needs. The National Land-Use Planning Commission<sup>26</sup> is responsible for guiding, supervising and coordinating land-use planning and management at all levels<sup>27</sup>. To a large extent, land-use planning is carried out by land use planning authorities which are declared at district and village level as part of the land use planning process. The Commission has developed a National Land-Use Planning Framework Plan (2013-2033) which is a strategic document laying out the major land use areas (farming, grazing, protected areas, settlements, mining) and infrastructure corridors required to underpin national development plans. Regional administrations are tasked with the role of coordinating the integration of district land use plans in regional land use framework plans. District land use framework plans provide a more practicable level of planning as they can be used to underpin district development plans. If these are carried out as designed in a consultative manner as set out in the District Land Use Planning Framework Guidelines (2006) (see Box 2), they can support village level land-use planning. However, it is village land-use planning which most determines land, natural resource and livelihood outcomes, because this planning is carried out at the village level, ostensibly as a participatory process, and with the goal of being carried out across all the country’s villages which comprise 70 percent of its total area.

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<sup>26</sup> All land matters, including land use planning, fall under the jurisdiction of the Minister of Lands, Housing and Human Settlements Development, although the Ministry of Agriculture Food and Cooperatives also has a land use planning unit. In addition, land use plans may be subject to an environmental impact assessment process which falls under the jurisdiction of the National Environmental Management Council. In reality, this added layer of regulation is largely only applied to situations where the private sector is involved.

<sup>27</sup> The Land Use Planning Act sets out what was a very ambitious timeline for the completion of land-use planning: all village land use plans were supposed to have been completed within two years of the act coming to force, district land use plans within three years, regional plans within four years, and the national plan within five years.

## Village land use planning

The guidelines for Village Land Use Planning, Administration and Management in Tanzania (NLUPC 2013) provide six detailed steps for creating village land use plans<sup>28</sup>: the first of these four steps reflect the requirements of the Land Use Planning Act, while the last two are designed to help guide preparation for and execution of a village land adjudication process (see Section 2.2.4), and to develop more detailed land use management plans, focused on agriculture, grazing, wildlife, forestry, land and water management. A key activity is the development of a community action plan which provides a framework for the village land use planning authority (usually the village environment / natural resources committee) to address key land use needs and challenges as part of the land-use plan's implementation. Overall, the process is designed to be participatory, take into account the interests of different village stakeholders, promote the interests of women, consider local cultural values, institutions and knowledge systems, and focus on empowering household economies and livelihoods. Notably the guidelines explicitly state that district participatory land use management planning teams are to listen, learn and facilitate, not impose their ideas.

The six steps are as follows:

1. *District action planning and inception process* - creation of a multi-disciplinary participatory land use and management (Participatory land use and management) team, and a budgeted plan that prioritises villages for land-use planning based on the existence of land-use conflicts, environmental challenges, quality of village governance, logistical considerations (e.g. grouping similar villages together), extension staff availability, and support from existing NGO and other projects. The guidelines reflect the common reality that whereas villages have the option to

### Box 3 | DISTRICT LAND USE PLANNING

The district land-use planning process comprises of five steps which are not dis-similar to the village land-use planning process:

1. *Initiating the planning process* – that identifies land-use patterns, problems and options, forms a district land use planning team, develops an action plan and mobilizes the requisite resources.
2. *Establishing biophysical and socio-economic baseline data on land and natural resources* – data collection planning and execution, preparation of an inventory of land resources and land suitability assessment.
3. *Preparing the participatory district land use framework plan* – through a consultative process at sub-district and district level, with the plan's finalization and initiation of approval
4. *Implementing the district land use framework plan* – allocation as needed of three main categories of land and areas of land for agriculture and investment in the district, prioritization of villages for land-use planning.
5. *Monitoring and evaluation of the plan* – identification of shortcomings and ensuring that the plan is being appropriately implemented.

<sup>28</sup> The guidelines are based on a culmination and synthesis of about twenty years of land-use planning experiences, mostly through donor-funded land management projects in Tanzania, with a first edition released in 1998. The current edition has endeavored to simplify the process, and is complemented with a Swahili version for village use which is in its third edition (2010).

initiate their own land-use planning process under the Land Use Planning Act, any such initiative is frequently externally driven and reliant on the support of their district government and NGOs.

2. *Village level participatory rural appraisal for land-use management* – carrying out a four-day land use planning process which is comprised of introductory and awareness-raising meetings with the Village Council and subsequently with the village assembly, inception of a village land use management committee<sup>29</sup>, carrying out a participatory rural appraisal to collect relevant socio-economic and bio-physical data on the village, creating initial sketch maps of different land-use areas, and carrying out a participatory analysis of land-use management obstacles and opportunities which leads into the creation of a Community Action Plan that sets out how, with which partners and on what time frame the village will address the land use needs of different parts of its community in a balanced manner.
3. *Preparation of a village land-use base map* – over a three-day period, delineation of the village boundaries (if not already done) with a boundary negotiation team (see Section 2.2.2), and the development of a village map using a combination of sheet maps<sup>30</sup> and satellite photographs, depending on the size and complexity of the village, by carrying out GPS-based reconnaissance and ground truthing of key geographical features and land use issues. Any bio-physical and other data not collected in Step 2 can be addressed as part of this exercise.
4. *Participatory land use planning* – informed by the Community Action Plan, a process to plan current and future land-use needs in the village comprising of community facilities and infrastructure, settlement areas, agricultural land, livestock keeping and grazing areas<sup>31</sup>, forestry areas, water sources, wildlife management areas and other uses. Following the derivation of these different areas as appropriate, by-laws are participatorily drafted to underpin their management. A zero-draft of the village land use plan, report and bylaws are presented to a meeting of the Village Assembly for their review, and once approved, these documents together with the accompanying meeting minutes are put before the District Council for its approval. The guidelines suggest that ten days are need to reach the stage where the land use plans and bylaws are ready to submit to the village assembly.
5. *Implementation of village land administration* – if not already in place, establishing a District Land Registry, and similarly a Village Land Registry, in which to store cadastral records, copies of certificates of customary rights of occupancy and supporting documents / registers. While spot adjudication is mentioned, the guidelines indicate that systematic adjudication (see Section 2.2.4ii) is to be carried out by a least two Systematic Adjudication Teams in each village supported by the Village Executive Officer, Village Land Council (see Section 2.2.5), district GIS expert(s) and Authorized District Land Officer. A digital and hard copy cadastral map sets out the land parcels in the village, details of which are also entered into an attribute table which is to be displayed publically for 30 days for comment and appeal (see Section 2.2.4ii). Simultaneously land parcel owners are encouraged and facilitated to apply for their certificate of customary rights of

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<sup>29</sup> A terms of reference for the committee is provided in Appendix D of the Village Land Use Planning guidelines.

<sup>30</sup> The sheet maps currently available for Tanzania are heavily outdated as they are based on aerial photography from the late 1970s.

<sup>31</sup> The guidelines present an approach for calculating livestock carrying capacity which may not be particularly socio-ecologically appropriate for pastoralist contexts and/or consistently reliable / viable given different prevailing ecological regimes across the country.

occupancy to be issued after the 30-day period is complete. The overall aim is that this step registers all the communal and customary land parcels in the village, with each owner in possession of a certificate of customary rights of occupancy, and supported by functioning land registries at district and village level.

6. *Detailed land use management planning* – provides the opportunity for the village to develop and implement its land use plans for forestry, bee-keeping, wildlife, grazing, farming and water management. This process is supposed to distinguish what elements of this more advanced level of natural resource management the village can undertake on its own, and which elements it will need to rely on external support. In reality, the majority of villages will only be able to implement quite basic off-farm land-use management practices without external support, and the technocratic recommendations for farmland and grazing management and improvement are rarely implemented.

While it is not uncommon for steps one to four to be implemented in village land-use planning, step five is very often left for a later date and only occurs when dedicated funds and technical support, for example as part of a donor-funded land registration programme, are made available to carry out the process. Some parts of step six, depending on the resource base and interest of the village, may be selectively implemented – such as the development of a village land forest reserve (see Section 2.4.1), and / or wildlife management area, usually as part of a larger multi-village arrangement (see Section 2.5). In addition to these options, villages can embark on joint-village land-use planning which is a separate initiative built on top of single village land-use plans designed to enable villages to share contiguous resources – such as grazing – and which usually form a basis for the creation of wildlife management areas (see next section).

### **Joint village land use agreements**

Joint village land use planning is usually carried out as a basis for two or more villages sharing either forest, grazing or wildlife resources that stretch across their boundaries. Joint village land use agreements are created as an additional tool on top of village land use plans, which should be created first but with a goal of creating joint village management agreements for one or more land use areas. The Village Land Act (1999) and Land Regulations (2001) set out the criteria and procedure for creating a joint management land use agreement. The agreement process should be initiated and proposed by the Village Councils concerned, which should first form a joint management committee and undertake consultations with the user groups of the area(s) under consideration, before developing the management agreement. This should be put before the respective Village Assemblies, and if the assemblies agree, then the joint village land use management agreement comes into effect. Alternatively, the option exists for existing informal joint land-use agreements between individual village members to be recognised and formalised by the villages concerned.

Joint land-use agreements may be particularly useful for joint management of forests, wildlife and grazing, where individual village endowments of these resource are too small to manage either in an ecologically sustainable or economically viable manner, and larger scale arrangements are more appropriate. For community forests each collaborating village must first have their own gazetted forest reserve (see Section 2.4), before it can enter into a joint management agreement for the contiguous transboundary forest area with another village. The agreement is then overseen by a joint management committee drawn from each of the village's environment / natural resource management committees. With wildlife, communities must first agree a joint land-use agreement, and then develop a shared Resource Use Zone Management Plan for the

Wildlife Management Area under development (see Section 2.5). And for Village Grazing Land, the corresponding law (see Section 2.6) is not specific about the steps required to create joint-village Grazing Land, and it would seem that the requisite provisions of the Village Land Law and Land Regulations apply (as described above).

## 2.4 COMMUNITY-BASED FORESTRY AND BEEKEEPING

### Community forestry

CBFM is a key pillar of forest management in Tanzania and is strongly integrated into the Forest Policy (1998), Forest Act (2002) and subsidiary regulations and guidelines, with its roots stretching back to community forestry initiatives in the late 1980s<sup>32</sup>. Today there are four types of forestland that can exist on land administered by Village Councils:

- i. *Village Land Forest Reserves* – declared on communal land as agreed by the Village Council and Village Assembly and managed by the Village Environment / Natural Resources Committee, which through by-laws and a forest management plan, regulate and enforce planned legal sustainable use. The Village Council – through its Natural Resource or Environmental Management Committee is responsible for managing the Village Land Forest Reserve and any revenues derived from it. The Village Council may charge, collect and retain sales proceeds, fees and other revenues, confiscate forest illegal products, as well as ostensibly sell forest products independently of the royalty rates set by the government.
- ii. *Community Forest Reserves* – declared on communal land with the agreement of the Village Council and Village Assembly but managed instead by a small village-based ‘community forest management’ user group<sup>33</sup>, with the same rights as those provided for Village Councils in managing their Village Land Forest Reserves (see above).
- iii. *Private Forest Reserves* – which can be declared on customary land owned by an individual, family or group (including cooperative or association) with an area greater than 50 hectares to be managed by them. Alternatively, it may take the form of a concession<sup>34</sup> on any other reserved forest land on the basis of a contractual agreement with the forest manager<sup>35</sup>, and with the approval of the Director of Forestry, contingent on a range of possible conditions being applied.
- iv. *Unreserved forest on village land* – which has no other designation, and which if on communal or set aside land may be informally managed by the Village Council and/or used by the Village Assembly but

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<sup>32</sup> The HASHI project – which supported the restoration of 71,154ha of traditional community-based ‘Ngitili’ forests under the ownership of households, groups, institutions and villages.

<sup>33</sup> The group must be recognized by the Village Council and registered with the District Council;

<sup>34</sup> Not to be confused with Joint Forest Management (JFM), where a community or other stakeholder may enter into agreement with the government to jointly manage a forest reserve on government-owned land, sharing the costs and benefits in an agreed manner. JFM does not apply to forests on land administered by villages.

<sup>35</sup> In this context, either the Village Council or a Community Management Group. In reality such agreements are rare, in part because this area of the law has been little explored or implemented.

for which formal harvesting rights must be first attained from the Director of Forestry and the forest transferred to one of the preceding forest reserve types.

The Forest Law and the Forest Regulations of 2004 do not require that a land use planning process be first carried out before a community can acquire management and use rights to an area of forest on village land. The Community-based Forest Guidelines (FBD 2007) provide guidance on how Village Land and Community Forest Reserves are to be developed and managed, supported by the Participatory Forest Resource Assessment Guidelines (FBD 2004)<sup>36</sup> which are a key for developing forest management plans. In addition, sustainable forest management in community forests is guided by the Guidelines for Harvesting in Village Land Forest Reserves (TFS 2013). The Village Natural Resource Committee reports to the Village Council and also accounts to the Village Assembly which is supposed to meet quarterly as set out in the Local Government Authorities Act (1982). These village level forest reserves are to be recorded in a district register, and may be optionally gazetted after three years. It seems that this gazettelement process has little beneficial impact on the powers of the forest managers or on their tenure security, other than to allow them to enter into joint management agreements with adjacent villages if their Village Land Forest Reserves are contiguous (see Section 2.3.2). Lastly, gazettelement is likely to hold more cachet with district and central government if community forests come under threat in the future.

### **Beekeeping**

The Beekeeping Act (2002) similarly allows for the creation of both (i) Village Beekeeping Reserves on communal village land, and (ii) Private Beekeeping Reserves on customary land owned by parties with customary rights of occupancy. However, even though village beekeeping reserves are managed by a committee under the Village Council which develops its own bylaws, wider community access to beekeeping reserves other than for beekeeping activities may be heavily restricted as set out in the law. In addition, under the law the District Council has stronger discretionary powers of intervention<sup>37</sup>.

## **2.5 WILDLIFE MANAGEMENT AREAS**

While the policy and legal framework for community forestry and beekeeping is relatively straight-forward and clearly devolves forest management and access rights both to and below village level, the Wildlife Conservation Act (2013) and the Wildlife Management Area Regulations (2012) are more restrictive, although less so than preceding iterations of the law and regulations<sup>38</sup>. There is a single institutional arrangement

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<sup>36</sup> Some practitioners have suggested that one weakness of the guidelines is that they specify that all key forest resources should be assessed, and this makes the process more resource intensive. Some organizations, such as Mpingo Conservation and Development Initiative only focus on timber assessments, as this forms the major substantive use of the community managed forests in which they work (pers. comm. Makala).

<sup>37</sup> For further discussion on Beekeeping Reserves see the table on the laws and legal instruments underpinning common property resource management in Tanzania.

<sup>38</sup> The initial Wildlife Management Regulations (2002) placed an overriding level of control over wildlife management in Wildlife Management Areas with the Director of Wildlife, often leading communities, particularly in rangelands with higher wildlife potential, to view them as being a ploy by the government to take over their land.

possible for community-based wildlife management, which is the Wildlife Management Area (WMA), which is formed as follows:

- (i) Several villages<sup>39</sup> agree to form a Community-based Organisation (CBO) that operates independently of the Wildlife Management Area's constituent Village Councils to develop and manage the Wildlife Management Area.
- (ii) The CBO must first ensure that village land use plans have been developed for the constituent members of the Wildlife Management Area, which are then used to create a joint village land-use plan which sets out the boundaries of the Wildlife Management Area.
- (iii) The CBO then prepares a Resource Zone Management Plan<sup>40</sup> and subsequently applies to the Director of Wildlife to become an Authorised Association with wildlife user rights. The Resource Zone Management Plan sets out how the Wildlife Management Area is to be spatially managed, usually restricting multi-use access, particularly for livestock keepers<sup>41</sup>.
- (iv) The CBO is ostensibly accountable to the Village Councils on whose land the Wildlife Management Area exists, and is governed by a Board of Trustees drawn from constituent villages and advised by a District Natural Resource Advisory Committee.

Ostensibly a key focus of Wildlife Management Areas is the generation of revenue from either photographic and/or hunting tourism, both of which are subject to separate regulations.<sup>42</sup> All revenue generated from tourism in a Wildlife Management Area<sup>43</sup> is collected by, or must be directly remitted to, the Wildlife Division, which then applies revenue sharing formulas to different income streams, returning the Wildlife Management Area's share (on average about 65%) back to the Wildlife Management Area on an occasional basis. The Wildlife Management Area CBO is bound by law to share 50 percent of this revenue with its constituent villages. The Wildlife Management Area is able to control, with the approval of the Director of Wildlife, its own private sector tourism partnerships. However, the structure and types of investment partnerships, particularly for hunting tourism are restrictive, dis-incentivising long-term investment<sup>44</sup>. While the village members of a Wildlife Management Area ostensibly can hold the CBO to account, ultimately they relinquish their direct control over that part of their Village Land which falls within the boundaries of the Wildlife Management Area.

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<sup>39</sup> Although a single village may decide to embark on its own Wildlife Management Area development process.

<sup>40</sup> Which should be complemented by a General Management Plan when resources allow.

<sup>41</sup> Farming inside the Wildlife Management Area, as is the case with community forestry is prohibited.

<sup>42</sup> These are the Wildlife Conservation (Non-Consumptive Wildlife Utilization) Regulations (2008), and the Wildlife Conservation (Tourist Hunting) Regulations (2010).

<sup>43</sup> An exception exists in terms of voluntary contributions and donations by tourist operators and their clients to the Wildlife Management Area and/or its constituent communities.

<sup>44</sup> The terms upon which the Tanzania Wildlife Authority (previously the Wildlife Division) regulates the hunting industry, for example, with a restricted five-year cycle where performance-based and longer-term security is far from guaranteed for hunting operators, and where a lack of incentives for hunting operators to build and sustainably manage local wildlife resources in partnership with local communities (i.e. WMA CBOs) is largely lacking.

## 2.6 GRAZING LAND AREAS

While the village land use planning process provides villages with the option of delineating grazing areas, the Grazing Lands and Animal Feed Resources Act (2010) strengthens this process by requiring that livestock movement corridors be created, and that grazing land be solely used for the purposes of livestock grazing, marketing and infrastructure. The law states that grazing land must be managed in a sustainable manner as prescribed by the Minister in consultation with the Village Council. The District Council is instructed to develop a grazing land inventory, assess the trends in grazing conditions and devise a plan for sustainable grazing. In this regard the Minister may determine the appropriate stocking rate, and livestock owners in breach of this stocking rate will be given a three-year court-enforceable notice period to comply. The Grazing Land law attempts therefore to both help secure the security of grazing lands on village lands, but also to control stocking rates in a top-down manner<sup>45</sup>. It is not clear whether the law has ever been implemented as written, although the central government has in the past carried out large scale and controversial para-militarily enforced destocking operations of agro-pastoralist livestock in key wetland areas – such as the Usangu-Ihefu (2006-2007) and Kilombero wetlands (2011-2012) – ostensibly to protect these wetlands from further degradation.

# 3. The Strengths and Shortcomings of The Community-Based Land and Natural Resource Framework

The design of Tanzania's village land and natural resource framework has far many more strengths and desirable attributes than it does not. Generally, while the strengths of the village land and natural resource framework lie in its design, its weaknesses lie mostly in its implementation. In this section the framework's key design attributes and implementation experiences to date are analysed from the perspective of safeguarding the equitable functioning and security of common property regimes for community livelihood benefit and sustainable natural resource management outcomes, referring where possible to specific examples.

## 3.1 VILLAGE LAND ADMINISTRATION

The strength of the village land law is that it ostensibly endows communities with strong rights to their land and it attempts to balance the recognition of locally varying customary laws and norms with the ability of

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<sup>45</sup> The controlling of stocking rates on village land in this manner will in most instances be inappropriate for socio-ecological reasons and impracticable in terms of implementation. Note however, that this process is different to central-government-mediated large-scale de-stocking operations that have occurred in the recent past.

local communities to both individually, agnatically and collectively register their land. An additional strength is that the village land law is designed to provide secure land access for a wide variety of interests – farmers, pastoralists, hunter-gatherers, local community groups, associations and for the local public good at village level. In theory the design of the village land law sufficiently empowers Village Councils, on behalf of their Village Assemblies – to administer their land. It is fully integrated with the structure of local government and the village-based system of administration. In short, there is much to like about the Village Land Act.

However, in reality the Village Land Act has never functioned as it was designed, because of key shortcomings in its design which were identified early on in its implementation (e.g. see Wily 2003), and which have become all the more abundantly clear with time, and which will need to be addressed in the forthcoming cycle of land law reform. Key shortcomings which arguably most undermine the law’s functionality are:

- i. *Design Issue:* Lodging the power of approving certificates of customary rights of occupancy with the authorised district land officer instead of at village level.

*Impact:* This has effectively resulted in the locus of processing certificates being placed at district level often leading to major delays, and arguably cost increases for applicants. Instead of the registration process being straight-forward, widely accessible, efficient, low cost and village-based, it has generally become slow, inaccessible and outside the reach of the poorest and most land-vulnerable members of the community. The counter argument for district-level involvement is that the oversight of the District Land Officer provides an opportunity to ensure due diligence in the issuing of certificates of rights of occupancy, arguably an important safeguard.

A major challenge is that District Councils frequently do not have the resources, in terms of enough equipment, expendables and sufficiently trained staff, to issue enough Certificates of Rights of Occupancy to meet existing demand, added to the fact that certificates are not infrequently either misplaced or mixed-up. Moreover, in some instances, it is understood that Authorized District Land Officers are having to cover more than one region (let alone district). So, in summary, major challenges, primarily around resourcing the issue of Certificates of Rights of Occupancy exist across the country.

Between 2004 and 2016, a total of 364,120 certificates of customary rights of occupancy are reported as having been issued, while it is estimated that there are some 12 million customary land parcels in the country (DNLP 2016). This means that the average rate of issuing certificates of customary occupancy has been a little over 3,000 per year, which today means on average less than 20 certificates per district per year, with 3% of the country’s customary land parcels registered and titled. The government acknowledges this challenge and has undertaken to increase the rate to 300,000 certificates per year, although because of resource constraints it is now aiming to achieve 30% of this target. To date it is estimated that 70% of Tanzania’s village land boundaries have been surveyed, and 60% issued with Certificates of Village Land<sup>46</sup> and 10% of villages have land registries. Clearly the system is not working as it needs to. Land administration remains a low budgetary priority within government, and the vast majority of titling on village land is dependent on financially limited and geographically restricted donor funding. For example, a new donor-funded USD 15 million ‘Land Tenure Support Programme’ aims to provide 300,000 certificates of occupancy between 2016-2018 in three districts (MLHSD 2016).

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<sup>46</sup> Data from the draft National Land Use Policy 2016.

- ii. *Design issue:* The law is in places far too complex, overly prescriptive and detailed, making it largely impracticable to implement without substantial ongoing external support and training. Furthermore, the law’s implementation requires a level of resources that most villages are unable to easily afford (such as the construction of village land registries).

*Impact:* There may be a varying but frequently substantial level of uncertainty at village level about the proper procedures for the basic administration of land – often for lack of easily attainable information and guidance. Even in villages where village land registries have been set up, village government trained and the system supported for an initial period, the ability of villages to continue on with its implementation has been short lived once external support has ended, due to the turnover of village governments and the complexity of the system (Looloitai pers. comm.). The lack of capacity and support at village level leads either to inertia with Village Executive Officers and Village Council chairpersons uncertain of how to proceed with key land administrative functions such as processing applications for customary rights of occupancy, or it leads to irregular and/or corrupt practices in the allocation and transaction of land that may in turn compound land-use conflicts and existing land distribution inequities (see Box 2). For example, large local land owners (e.g. rice farmers) have emerged at village level who have built up their land holdings through the acquisition of village land, despite the (obviously unimplemented) safeguards in the law that are designed to prevent the over-accumulation of land by emerging local elites (pers. obs.).

An often aired complaint (for example, in the National Land Use Policy 2016) is that certificates of customary rights of occupancy have not enabled their holders to secure lines of credit with banks. While this is very largely true, the exception to this reality illustrates why the legal standing of certificates of customary rights of occupancy are not necessarily the real issue at hand. The reason is, other factors being equal, that the value of land in rural villages is often insufficient to cover the transaction costs and risk exposure of banks to loan default: where the value of land is sufficiently high and there is a sufficiently strong land market, a certificate of customary rights of occupancy has little legal encumbrance and no legal inferiority as compared to a certificate of granted rights of occupancy. Therefore, banks can, and it is understood have in some circumstances, accepted certificates of customary rights of occupancy. In reality the real reason that certificates of customary rights of occupancy cannot be used to secure credit from banks, is that many smallholder villagers are simply ‘unbankable’<sup>47</sup>, and therefore need access to alternative rural financial services (a rapidly innovating sector) which put them on a ladder towards becoming ‘bankable’ in the future. Claims to the contrary largely demonstrate a lack of understanding about the realities of rural financial access, and are borne out by experiences in Kenya (see Stein et al. 2016, who provide a thorough review of this issue in regard to the Tanzanian context).

In summary, when:

- The complexity of the Village Land law,
- The lack of information and awareness about the law at village level,
- The very constrained resources of the District and Village Councils for effectively and efficiently administering land,

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<sup>47</sup> A useful publication explaining this is: (Dalberg Global Development Advisors 2016)

- The inability of many village-based land applicants to pay for land administration costs,
- The persistence of corrupt practices either increasing the cost of access to land administration services, or perverting land justice,

Are put together with the fact that:

- Elected councillors and office bearers at both district and village level often change every five years leading to a need for constant training / capacity building,
- The number of villages and districts is constantly growing,
- The paper-based documentation and record keeping of the land administration system is very slow and error-prone (although a new modernisation initiative is underway<sup>48</sup>),
- The land dispute settlement system is overwhelmed with 18,033 pending cases in April 2015 and its management split across three ministries responsible for local government, land and justice (Massay 2016).

This means that the village land administration system, while essentially sound in concept and generally strongly supported at district and village level, seems to be substantially dysfunctional and not adequately serving the needs of rural Tanzanians.

Concerns have been previously expressed about eminent domain (e.g. Wily 200) in regards to:

- The large-scale alienation of areas of village land greater than 250 hectares by order of the President for local and foreign investment projects<sup>49</sup>
- The declaration of village land as ‘Hazard Land’ and its removal by order of the President for land conservation purposes

While these two issues continue to be a real and present threat to village lands, the latter concern has infrequently materialised, and in the case of land alienations for large investments, it appears to be less of a threat right now than five years ago (for example, with the biofuels ‘boom’ declining).<sup>50</sup> However, the draft Land Policy (2016) clearly identifies an ongoing objective, underlined by the Minister in a recent (May 2016) budget speech, of identifying land for both local and foreign investment, while acknowledging that clear ceilings on land allocations and controls on land hoarding need to be effected.

In summary, the manner and the extent to which villages effectively and equitably implement the land law, particularly in terms of ensuring that key safeguards such as protecting communal land (common property),

<sup>48</sup> A new land registry digitization system is under development within the Ministry- the Integrated Land Management Information System (ILMS). In addition, USAID’s piloting of ‘Mobile Applications to Secure Tenure’ (MAST) that operates in 9 districts in Iringa District, if further developed and appropriately mainstreamed, could make major inroads into people’s ability to obtain certificates of customary rights of occupancy - <http://www.land-links.org/project/mobile-application-to-secure-tenure-tanzania/>

<sup>49</sup> The Village Land Act somewhat strangely removes the safeguard that village assemblies have to prevent the transfer of Village Land to General Land for areas greater than 250 ha in size.

<sup>50</sup> The Government of Tanzania instituted ceilings on land allocations to foreign investors in 2013, and in addition, it seems in 2016 that 6 of 20 (30%) documented international large scale agricultural investments have failed (132,000 ha out of 257,000 ha allocated), significantly lower than the 640,000 ha for which MoUs existed in 2009. It is possible more investments that have not yet started are struggling or may have foundered – for example, one large investment of 300,000 hectares (Agrisol) appears to be in hiatus – see Brüntrup et al. (2016); Cotula et al. (2014); and <http://www.landmatrix.org>.

regulating land accumulation (with its impacts on environment and society), and ensuring that land is equitably allocated between different interest groups, ultimately dictates land use outcomes. This in turn depends on the quality of local government (village and district) democracy and the prevailing governance environment in any given village: villages with better leadership and stronger governance institutions – i.e. more informed, inclusive and accountable village government, and a more engaged, diverse and vocal village assembly are likely to be able to better manage their land relations and land use outcomes. Achieving this is not easy and stands to become more challenging. As the pressure on land continues to grow, with a rapidly increasing rural population, the local government’s ability to modulate multi-interest land use relations, to manage land use conflict and to support sustainable natural resource use through formal mechanisms such as the Village Land Act and Land Use Planning Act (see next Section), is becoming increasingly important.

## 3.2 VILLAGE LAND USE PLANNING

Village land use planning has the potential to empower villages to allocate and manage their land in a locally relevant and socio-ecologically sustainable manner, and to help mitigate land-use conflict. As the population grows and the available fertile land becomes in ever-shorter supply, central government has acknowledged the increasing importance of land-use planning, concerned about maintaining economically productive, sustainable and peaceful land-use outcomes.

It is understood that the village land use guidelines are generally followed by most districts and NGOs facilitating land-use planning, because although in reality the NLUPC largely expects this, most would agree that the guidelines are, with some variation generally appropriate at least up to stage four, for developing most village land use plans (see Section 2.3.1).

The shortcomings of the village land use planning process arise from three different but interlinked types of challenge – resourcing, facilitation and political economy – to start with the last first:

- i. *Design issue:* The land-use planning approach as designed is an expedited, spatially focussed and technocratically oriented process, while land-use outcomes are often inherently as much or more the result of social process, which is in turn a product of contestation and negotiation over access to land by different groups.

*Impact:* Village land-use plans can be seen as a snapshot in time for a village undertaking a planning process in terms of (a) current land use delineations and practices, (b) existing thinking, priorities and needs about these delineations and practices, and (c) future aspirations and plans – assuming that the planning process is able to adequately capture and incorporate a representative set of stakeholder views. While a well-executed village land use plan will skilfully incorporate and attempt to reconcile these often opposed and/or competing views and interests over land, a village land use plan is only as useful and meaningful as it is well designed, if different groups within the village, together with the village authorities, are supported through its implementation. Process obviously matters. In reality, the village land-use planning process may exacerbate or trigger the eruption of underlying tensions and conflicts of interest over land (e.g. Kalenzi 2016) as people are asked to articulate and delineate their interests. This can lead to a local ‘land rush’ either as different village (and other) stakeholder groups, or anyone with the ability (i.e. the wealthier), expedite their claim(s) to particular land resources. Alternatively, it can

lead to an attempt by a hegemonic group within a village to stamp their authority over the land-use planning process in order to safeguard their position of power and access to land.

This is particularly and increasingly relevant in the current context in Tanzania of substantial and significant levels of internal migration by different farming and herding groups in search of land fertility, and the fact that, increasingly, many rural communities find themselves having to welcome new arrivals. To be clear, internal migration is not something new – people have long moved in the landscape: what is arguably novel is the increased numbers of people that are moving and the relative speed and extent of the inter-mingling of different farming and herding groups which is leading to locally unprecedented and heightened land tensions, and recurrent outbreaks of violent conflict<sup>51</sup>.

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<sup>51</sup> These movements have been brought about by repeated evictions of pastoralists for the creation of protected areas and commercial farming since the 1950s. For example, the Maasai were made to leave the Serengeti to create the national park in the early 1950s, and the Barabaig forced from the Basotu plains for wheat farming in the early 1970s. These evictions have continued to the present day; for example, with the eviction of the Parakuyo Maasai from Mkomazi to create a game reserve in 1988, and up to 70,000 Sukuma and other agro-pastoralists from the Ihefu Swamps in 2006 ostensibly to protect a nationally strategic watershed (it turned out that rice farming was the main driver of watershed degradation). A large number of Maasai households were also evicted from their village lands in Loliondo in 2013. Other groups, such as the agro-pastoralist Sukuma, have expanded out of their homeland area in search of grazing and farmland, following the long-term degradation of their customary lands caused in part by an expansion of cotton farming and population growth.

#### Box 4 | THE REALITIES OF LAND USE PLANNING: LOCAL ELITES, MARGINALIZED LAND USERS AND THE CREATION OF CONFLICT

Land-use planning is often at risk from being subverted by local elites, who may be interested in building their own constituencies and/or soliciting illegal payments for irregularly allocating land. There are many reported instances of this happening across the country particularly in situations where herders and farmers co-exist and are competing for access to common property resources. It is commonly the case that the chance of land use conflict increases because of a lack of accountability on the part of local leaders and administrative staff at village and ward level. Sometimes district and regional administrations may be implicated as well.

For example, in Mpanda Mdogo Village, in western Tanzania, agro-pastoralists report that they have been treated unfairly by their village leaders. During the land use planning process some years previously, a grazing area for resident agro-pastoralists had been identified and agreed. However thereafter, the then village chairperson 'allocated' an important part of the grazing area to farmers from a neighboring village who moved onto the land to settle and farm. The agropastoralist community subsequently refused to move to the area allocated to them in protest, not least because they felt that the remaining part of the grazing area to be insufficient. Following the local government elections, the chairperson was elected a ward councilor. Because of the agro-pastoralist's continued complaints, his successor together with an extension officer visited the grazing area and declared that it was sufficient for the agropastoralist community's needs, ordering they move to their allocated area without delay. However, the stand-off has continued. In a subsequent meeting between the current chairperson, agropastoralist community representatives and field staff from the NGO that had originally facilitated the land-use planning process, it was suggested that the original coordinates of the grazing area as set out in the land use plan should be revisited, and the farmers who were irregularly allocated that land be made to leave, if they had encroached upon the area. But in reality this may not be easy to achieve, because the farmers will have the political support of the ward councilor, unless the district administration supports and has the time and resources to ensure that the land-use plan is enforced.

This incident and ongoing situation is far from unique: Over the last twenty-five years there have been repeated and growing incidents of agro-pastoralist and pastoralist communities being unfairly and sometimes grossly discriminated against, with human rights violations. Pastoralist and agro-pastoralist groups have been repeatedly the target of forced evictions to expand protected areas or remove them from wetlands through the 1990s, 2000s and 2010s. It is not uncommon for village land-use plans and herder occupancy rights to be disregarded by village and sometimes district administrations, sometimes in direct contempt of court orders. These infringements have been associated with outbreaks of violence, especially in central Tanzania, between farming and herding communities, with loss of life on both sides (IWGIA 2016).

† Makala (pers. comm.) and Khatun et al. (2015).

Drawing lines and zoning areas can be as dangerous as much as it may be thought to be necessary unless done so in a manner which does not aggravate existing land-use tensions. This means both using the Village Land Act to carefully create shared as well as exclusive access to different land areas for different

groups when needed, and ensuring that impartial mediators / facilitators are on hand to help parties manage and/or resolve arising disputes in the following months and years. Unfortunately, this level of engagement, outside of crises, is largely impracticable for many district governments because of their limited resources, and instead may be often inconsistently carried out by a limited number of overstretched NGOs.

- ii. *Implementation issue:* The quality of facilitation of land-use plan development and implementation may often suffer from the speed with which it is carried out (the guideline is eleven days), and also sometimes from the perfunctory level of understanding and professionalism of the participatory land use management planning team.

*Impact:* While it is not easily possible to sufficiently assess or document the quality of the land use plans that are developed, it has been repeatedly reported by practitioners that land-use planning is commonly rushed and/or perfunctory, with sometimes extraordinary inconsistencies and inaccuracies occurring in the documentation of boundaries and land-use areas between and within villages. In part this may come down to the timing of a land use planning exercise, and in part, because of insufficient professionalism on the part of participatory land use planning teams. With regard to the former, the composition of a participatory land use team can have a significant impact on the outcome of the land-use planning process, and a missing village member holding a key piece of oral history can lead to quite a different narrative and boundary: for example, village boundaries either will have been administratively drawn when entirely new villages were created during Ujamaa<sup>52</sup>, or will be a product of longer-term land use histories, or a composite of both. Alternatively, in mixed farming and herding villages, the composition of participatory land-use planning teams can matter in a different way: for example, pastoralist groups have their own distinct customary land and natural resource practices, and yet when living in areas that have traditionally been the domain of farming communities, they either may be excluded from participating in land-use planning decisions, or their land and livelihood needs may be treated second to those of the farming community, even if they have been resident in a village for many tens of years. This is a recurring challenge, and even when ostensibly equitable land-use plans have been agreed, the farming-majority in mixed farmer – herder communities may later ignore or renege on the agreement as expedient, reflecting deeper tensions and conflicts of interest – see (Kalenzi 2016) and (IWIGA 2016).

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<sup>52</sup> During the 1970s up to five million people were forcibly resettled into collective villages as part of Tanzania's 'Ujamaa period' – to bring people closer to development services and promote President Nyerere's ideal of African socialism.

#### Box 5 | LAND USE PLANNING – MORE THAN JUST A TECHNICAL EXERCISE

Rapidly carried out land-use planning may often miss important details, which can subsequently create conflicts in the future. For example, it is important to walk the whole or greater part of the village boundary with each joint-village boundary team, to ensure that everyone reaches a consensus about the boundary as drawn, and that unexpected or what were thought to be insignificant physical attributes of the land (including new or long defunct settlements and farms) are documented and their provenance agreed upon. Instead, it is not uncommon for a limited number of points to be identified on a simple polygon, and straight lines to be drawn between them, with minimal ground truthing, unnecessarily creating the potential for boundary conflicts in the future. Finally, it is important to note additional reasons for carrying out boundary delineation and other land use planning work diligently – in a traditionally oral society these types of events are long-remembered and may become formative experiences and bodies of knowledge for the next generation in turn to pass on.

The quality of land-use planning facilitated by district teams may suffer when district staff have a limited number of days in the field for which they are paid. If they need to stay longer than their field budget or their energies allow – in order to more definitively get to the bottom of a boundary or land-use issue, they may often not feel able to do so, leading to misleading assumptions and/or errors in the resulting land use plans. To be fair, other challenges are encountered when delineating boundaries, for example, when conflicts exist between districts and regional boundaries, these disagreements may be even more intractable (pers. comm. Njiadi).

However, in summary, it seems not uncommon that land use planning processes facilitated by district land use planning teams suffer from being too perfunctory and orientated towards ticking boxes, as opposed to being opportunities for better understanding and engaging with land-use issues and relations that go beyond the somewhat cursory land-use planning exercises engage with. Certainly, failures of governance and common property resource management at local level and on all sides play their part. But the increasing levels of conflict between land users, together with claims and counter claims about ecological degradation are really the result of the long-term failure of central government to address these issues in an effective and equitable manner. The government has not been willing to invest the requisite resources for adequately implementing and improving the country's land policy and land laws, including much needed investment in a cadre of professionals at district level with the ability and resourcing to adequately support village land and conflict management institutions. This has been compounded by sometime overly heavy handed and outmoded approaches to protected area management that have only worsened conflicts over common property resources. Finally, the continued growth of rural populations, livestock numbers and the expansion of farmland are straining all natural resource management institutions.

- iii. *Implementation issue:* The extent to which villages are supported to implement their land use plans and to prevent and manage conflict, is either entirely dependent on the usually very restricted resourcing and capacity of District Councils, and/or reliant on medium-term and geographically limited donor-funded project cycles.

*Impact:* To date land-use planning has not been carried out at the scale needed nor, as or more importantly, has enough ongoing facilitation and support been provided to villages to enable them to

equitably and effectively manage land and land use relations when implementing their land use plans. As with village-based and district-supported land administration, the resources available for carrying out land-use planning are very constrained, with a reported 1,640 land use plans having been developed over more than a decade, with at least 10,800 villages in Tanzania still waiting for land use plans. The government has perhaps tacitly recognised that it may not be able to secure the necessary budgetary resources it needs to reverse the slow rate of land use planning to date. In recently setting a target to increase the number of villages with land use plans to 7,500 by 2020, it said it would be working closely with NGOs and Civil Society Organizations to achieve this target.<sup>53</sup>

An unknown but not insignificant number of existing land-use plans are likely to need reviewing, not least because villages are continually being subdivided, largely in order to create new wards and District Council seats, not infrequently because of political gerrymandering by ward councillors and political parties to shore up their power bases.

An additional challenge is that the costs of land use planning are high relative to constrained budgets.<sup>54</sup> These costs vary depending on the size of the village, the extent of work previously carried out (for example, whether the village has had its boundaries delineated and it possesses a Certificate of Village Land), the number of villages that are included in a single land-use planning exercise (to reduce costs), and which stage the land use planning process is taken to. A typical cost range is TZS 6 – 12 million<sup>55</sup> per village to develop a land-use plan with signage and bylaws approved by the Village Assembly and the District Council (stage 4), and up to TZS 20 – 25 million per village to start from the beginning and take the village land use planning through to a point where GCCROs over communal land resources have been issued, permanent beacons delineating the village boundary and signage for different land use areas have been installed, the village land use plan and its bylaws has been approved at village and district level, and accepted by the National Land Use Planning Commission (Stage 5/6). A significant proportion of the cost is comprised of the field costs of the District Participatory Land Use Planning Team. These costs are largely unavoidable<sup>56</sup> because it is critical that the District Council agree with the land use planning process and that its staff coordinate and take a lead in it, as ultimately, the district will be a key stakeholder in ensuring the plan's success, and in providing technical advice and support to the Village Council and/or Assembly, when it needs it. This is particularly important for land use plans and supporting arrangements (such as group certificates of customary rights of occupancy) that aim to protect the land rights of minority and marginalised groups such as hunter-gatherers as well as pastoralists in certain circumstances. The interests of these groups and their common property regimes need to be recognised and included in the development plans and institutional norms and culture of the districts in which they are situated.

An important example (see Box 5) is the land use planning work that has been carried out along the north-eastern shore of Lake Eyasi and in the Yaeda Valley to the east of the lake, protecting the land

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<sup>53</sup> The Citizen Newspaper, 16<sup>th</sup> October 2016 (<http://www.thecitizen.co.tz/News/Land-hoarders-face-major-hike-in-taxes/1840340-3418388-u5qbuxz/index.html>)

<sup>54</sup> Land administration, under which land use planning falls, has not been a national budgetary priority since Ujamaa.

<sup>55</sup> USD 1 = TZS 2,180 in October 2017.

<sup>56</sup> Government staff salaries have long been augmented by field allowances, and a culture has resulted where civil servants are used to being paid 'sitting allowances' and 'overnight allowances' which can significantly add to the costs of land use planning. These costs are ultimately necessary investments in the institutionalization of land-use planning outcomes within the district government apparatus.

rights of hunter gatherers and pastoralist groups, with the support and participation of Karatu and Mbulu District Councils, the Commissioner of Lands and the National Land Use Planning Commission. Although there are other examples of best practice in the country, this work carried out by Ujamaa Community Resources Team together with the participating villages and District Council staff is a leading example of what diligently facilitated land use planning and management can achieve.

Although no comprehensive review of the outcomes and efficacy of village land use planning has been carried out as far as is known, it would seem that land-use planning is often only a starting point for improving land use outcomes and securing common property regimes. It is understood that the vast majority of land use plans developed have been taken to stage four (i.e. the development of land use plan maps and supporting by laws), which is sufficient for them to be implemented. But the extent to which most plans are being actually implemented and enforced by Village Councils is simply unknown but highly questionable. This ambiguity points towards the common sense reality that without ongoing facilitation and support, Village Councils will simply administer village land as expedient, often ignoring previously developed and often poorly disseminated and understood land use plans. In situations where local governance is weak, village leaders succumb to inducements to allocate land irregularly or to tolerate irregular and unsustainable land use practices<sup>57</sup>. In other situations, where Village Councils find themselves either dealing with land shortages or at the centre of tensions and conflicts over land, they may re-designate and allocate land as they see best in the majority public interest, even if this goes against previous stakeholder agreements that, for example, safeguard a land-vulnerable group. Land use plans are therefore a potentially useful but insufficient step towards achieving ecologically sustainable and socio-economically equitable land use outcomes at village level, particularly in relation to common property. It is clear that additional steps to safeguard communal land are often needed, for example through promoting community forestry, in some circumstances Wildlife Management Areas, as well as providing for communal rights of occupancy registered to vulnerable groups. A summary of emerging experiences with these legal tools are examined in the following sections.

### 3.3 COMMUNITY-BASED FORESTRY

Community forestry, although not without its challenges is arguably the most successful approach in Tanzania that has helped to strengthen village-level common property regimes. Broadly, the legal framework and guidelines are well designed and practicable – and it would seem that a large number of Tanzanians agree: Today CBFM covers about 2.3 million ha of forests<sup>58</sup>, with 1233 villages managing 1091 village land forest reserves in varying states of development of which 47% have been declared, and some 6% gazetted (Tanzania Forest Service 2012).<sup>59</sup> In recent years, the rate of expansion of PFM is considered to have slowed (but see footnote 58), largely because much of the underpinning resourcing of more than \$60 million over a period of a 20 years was from long-term donor investments in community forestry, which have since largely drawn to

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<sup>57</sup> Askew et al. (2016) review the history and recent pastoralist experiences in pursuing their land rights in the higher courts system. While in the past most pastoralist land rights claims have either been lost in court, or if occasionally won, ignored by the government or other disputants, this record is changing. Askew et al. (2016) document how two important cases in Kiteto, where land encroachers attempted to reinvent the law in their favor were thrown out / won, albeit not without substantial cost to one defendant pastoralist community.

<sup>58</sup> The Ministry of Natural Resources and Tourism now claims in 2017 that this has risen to 8 million ha across 67 districts.

<sup>59</sup> This data drawn from the National PFM database is known to have inaccuracies and inconsistencies.

a close or been re-directed towards private community plantation forestry enterprise (Lund et al. 2016). Districts continue to support and expand CBFM as their limited resources allow.

When there are the resources available to sufficiently develop the capacity of participating communities, with some ongoing technical support and facilitation, the evidence is that CBFM can deliver effective results in a sustained manner, in terms of sustainable forest management and conservation outcomes, and in some circumstances, in terms of social and economic benefits (see Box 4). A series of reviews indicate that CBFM on village land has resulted in improved forest management and conservation outcomes (Persha & Blomley 2009); (Mbwambo et al. 2012); (Treue, et al. 2014)<sup>60</sup>. These findings are in clear contradistinction to the impacts to date of Joint Forest Management carried out in government forest reserves, which indicate that Joint Forest Management has not resulted in any measurable overall improvement in forest management and conservation nor in livelihood outcomes (Persha et al. 2014). However, it should be noted that while CBFM has created revenues in some instances for participating villages, this is still more of an exception, albeit a growing one (see below).

The added layer of governance that is required for CBFM tends to improve the overall quality of governance and accountability in villages, particularly when the villages have benefited from long-term and high quality facilitation (see Boxes 4 & 5). However, evidence as part of a larger study across multiple districts in Tanzania suggests that governance in villages participating in CBFM has not improved as much as it has in villages that are part of Joint Forest Management initiatives (Persha & Meshack 2016) – perhaps because Joint Forest Management holds a prospect of greater oversight from government.

These successes aside, this is not to say that the CBFM is not without its shortcomings that include:

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<sup>60</sup> Important caveats exist, two of which are that proximity to cities results in all forests being unsustainably utilized, and that non-reserved forests on village lands may act as 'leakage' areas / sites of displaced and unsustainable levels of forest utilization (Treue et al. 2014).

## Box 6 | COMMUNITY-BASED FOREST MANAGEMENT DELIVERING TRANSFORMATIONAL SOCIAL AND ECOLOGICAL DIVIDENDS

Mpingo Conservation & Development Initiative (MCDI) is a NGO based in Kilwa District, that currently supports 37 communities in six districts in southern Tanzania to manage 277,412ha of forest through community-based forest management. MCDI first started in 2004 in a small number of villages in Kilwa District, and in the last four years it has been able to take its work to scale, based on its accumulated experience and an emerging business model. Its key focus is on enabling communities to engage in sustainable timber harvesting and to market their timber primarily to local markets, with a view to supplying international markets as possible. MCDI was the first organization in Africa to secure a Forest Stewardship Council Group Certificate for community-managed forests, which currently covers 150,485ha of forest. MCDI also monitors the impacts of its forest management initiatives on biodiversity, ecosystem health and carbon stock changes, and on village governance and socio-economic household impacts.

A key part of MCDI's success has been investing in long-term relationships with its partner communities that go beyond short-term donor project cycles. Not only has MCDI taken many communities from having no formalized rights over their village land and forest to a point where they now have these rights and tangibly benefit from them, but it has also continued to support them in their ongoing forest management activities. Over the twelve years that MCDI has worked with these communities, it has seen some significant changes<sup>‡</sup>:

- Long-term investments in improving village governance, including the holding of quarterly village assembly meetings (which otherwise tend to happen much less regularly), that has improved peoples' access to information and their understanding of forest management and governance.
- The improved levels of forest-related information and awareness have resulted in high levels of financial accountability and transparency, and reportedly little elite capture. An additional benefit has been improved and stronger levels of governance in other aspects of village development.
- Forests are being managed sustainably and incidents of illegal use have generally been recorded and compensated for in annual forest harvesting quotas. It is unclear, however, what levels of broader leakage / displaced forest use exist as a result of the expanding sustainably managed forest estate.
- As villages have benefited from increasing and significant forest-based revenues, they have become much more appreciative and supportive of forests (although these revenues vary substantially by forest area and composition). About 50% of forest revenues are reinvested in forest management, and 50% are reinvested in community-selected public-benefit projects.
- Villages have taken the initiative to resolve emerging land-use conflicts, and in some cases pay for their resolution. For example, one village in particular recently requested the District Commissioner and District Executive Director to visit and resolve a boundary dispute, offering to cover their full costs.

- Villages are increasingly willing to contribute to, or in some cases pay for, the costs of service provision by MCDI, because they trust the organization and they value the services provided, viewing them as key to their ability to generate forest-based revenues.

However, despite these successes, there are tensions and conflicts of interest within some villages. While the expansion of community forestry has resulted in villages perceiving Village Land Forest Reserves as a valuable source of income with little or no opportunity cost, this is not always the case. In recent years, there has been an influx of sesame seed farmers seeking out areas of undisturbed higher canopy forest to pursue a locally lucrative agricultural opportunity, leading to conflicts of interest between forest conservation and agricultural cash-cropping, particularly in areas of forest that are not reserved.

<sup>‡</sup> Makala (pers. comm.) and Khatun et al. (2015); <sup>§</sup> Makala (pers. comm.).

- Implementation issue:* Low overall levels of economic benefit – CBFM has been slow to deliver widespread tangible monetary benefits to participating communities.

*Impact:* Although this is starting to change, with communities in Kiteto, Kilwa, Lindi, Ruangwa and Tunduru districts benefiting economically from timber harvesting, and others such as in Kiteto and Iringa Districts harvesting charcoal, there are many communities yet to be able to do so<sup>61</sup>. The ability of communities to benefit from their Village Land Forest Reserves is both a function of the quality of the forest resource base and its size, the availability of technical support to enable them to develop and implement a forest harvesting plan, and their relative proximity to forest produce markets. Additional barriers include the lack of business development expertise in local communities, competition with illegally harvested charcoal and timber, complex value chains for sustainable timber, and significant government barriers to legal and sustainable harvesting and sales (e.g. transit rules, regulations about use of chainsaws, frequent bans of log exports etc.). Overall, there is a pressing need to enable more communities to benefit more tangibly from their forest reserves in a sustainable and well planned manner. Good examples of best practice are now increasingly well established, and innovative ways for scaling these practices up need to be promoted.

- Implementation issue:* Institutional conflicts – the ambiguity between the Land Act and the Village Land Act over what constitutes Village Land (see Section 2.2.1) has resulted in villages often being excluded (and minimally consulted) in the issue of forest harvesting permits by the Tanzania Forest Service Agency for unreserved forests on village land<sup>62</sup>.

<sup>61</sup> Communities have also had to contend with government circulars over the years largely intended to combat illegal and unsustainable forest product trade that have resulted in their own operations and legal trade being made more challenging.

<sup>62</sup> It is understood the issue of permits can be quite arbitrary and lead to unsustainable levels of forest harvesting – either because there is no up-to-date District Harvesting Plan or because the existing District Harvesting Plan has been poorly developed (in one case, the quota for one timber tree species was found to be the equivalent of the entire maximum sustainable harvest for the entire district's forest resources due to an arithmetical error).

*Impact:* The Tanzania Forest Services Agency has treated all unreserved forests on Village Land as being on General Land and therefore under their jurisdiction thereby disenfranchising villages, in part due to the contradiction in the Land Laws. In 2016, the Tanzania Forest Services Agency conceded that it would stop issuing harvest permits for unreserved forests on village lands as it had in the past without prior consultation, and it would recognise the right of villages to have jurisdiction over who entered the forests on their land. Under the law however, villages do not have legal rights to issue permits to users until these unreserved forests are declared as one or other type of community-based forest reserve (see Section 2.4.1). Nevertheless, District Forest Officers, who are accountable to both their District Councils and the Tanzania Forest Service, and District Forest Managers, are under pressure to meet revenue collection targets, do not appear to be aware of this recent development (Doggart pers. comm.), and this issue will continue to be a point of contest.

- iii. *Implementation issue:* Governance and resource-use pressure – there is evidence to suggest that community-based forests that are close to large urban centres with high demand for charcoal and other forest produce tend to succumb to unsustainable levels of forest harvesting.

*Impact:* Urban-driven resource-use pressure can extend outwards from large urban centres surprising distances leading to illegal and unsustainable forest use which is uncontrollable by local Village Natural Resource Committees to the extent that village members may engage in illegal activities (Treue, et al. 2014). Clearly, there are circumstances where the cost of protecting Village Land Forest Reserves exceeds the perceived benefits of doing so, and no manner of governance support, except the strong arm of government law enforcement will stop the resource-use pressure. In turn the government usually does not have the requisite resources and sometimes the political will to stand behind villages in such a predicament.

- iv. *Implementation issue:* The need to further devolve CBFM to the sub-village level.

*Impact:* Villages participating in CBFM in the remoter parts of the country can be quite large, and this can act as barrier to effective forest management in two ways: (a) Remote sub-villages may often not be able to participate in village governance processes, including CBFM, leading to their marginalisation and lack of awareness (b) These sub villages may not play their role in helping to regulate, manage and protect community-based forest reserves because of their lack of awareness, leading to otherwise preventable illegal and unsustainable forest use (Brown pers. comm.). Sometimes this may also mean agreeing an informal Joint Forest Management agreement with a neighbouring village in order to prevent forest encroachment in peripheral areas of the village that is a Village Land Forest Reserve (Makala pers. comm.).

- v. *Implementation issue:* Forest reserve size and resource use pressure – a recent review of the performance of CBFM raises an important point about the overall sustainability of community-based forest reserves given their size and the increasing level of demand for forest produce (principally, timber and charcoal) (Treue, et al. 2014).<sup>63</sup>

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<sup>63</sup> This point is also raised by NAFORMA (2015) which reports that the forest area has decreased from 3 ha/person in the early 1980s to 1.1 ha/person using the 2012 population census data. The National Forest Resources Monitoring and Assessment Report also states that consumption exceeds the sustainable supply, causing an annual wood deficit of 19.5 million m<sup>3</sup>. The estimate of the average demand for wood is therefore 1.39m<sup>3</sup>/year/capita while the annual allowable cut (the sustainable supply) is estimated at 0.95m<sup>3</sup>/year/capita.

*Impact:* As the country's population grows, and with its demand for both agricultural land and forest produce, there seems to be a strong case for ensuring that village land use plans clearly identify expansion areas for both agriculture and community-forestry, where the land is available. Existing Village Land Forest Reserves and Community Forest Reserves need to be expanded and new ones created where land-use plans identify these as required, in order to put more *de facto* open-access unreserved forest on village land under sustainable forest management regimes. Otherwise, the remaining unreserved forests on village land will be lost as villages will not have forest user rights to them, and therefore little incentive to manage them sustainably. This is particularly the case if District Forest Officers and Managers view these forests as under their jurisdiction for issuing harvesting permits without recourse to their village land owners. Lastly, and contrarily, as the extent of forest-lands dwindles, their relative value should increase, and thus the benefits accruable to, and conservation incentives for, communities.

CBFM has achieved some notable successes at a limited number of sites in terms of generating significant and growing revenues for communities, and these successes are slowly being taken to scale. However, the bigger picture of community-based forestry in Tanzania is of concern, as districts are unable to deliver the level of facilitation and support to participating villages that is often needed, for lack of capacity and resources, and communities are not benefiting from their forests as much as they might. While some NGOs are working hard to scale up innovative sustainable forest management models that significantly improve forest revenues for villages, offsetting forest management and opportunity costs, these initiatives are struggling with a lack of investment and the ability to scale sufficiently.

Donor support which provided – in effect – a first phase of public investment to create the institutional framework, capacity and initial scale in community-forestry, and which was channelled through both government and NGOs, has declined markedly. A missed, and perhaps with the benefit of hindsight, mis-directed (Lund et al. 2016) opportunity with REDD+ investments did not lead to a second phase of innovating and scaling up value-added community forestry for generating vibrant forest-based sustainable forest value chains and ecosystem services. As a result, **the future of community-based forestry in Tanzania is beginning to hang in the balance**, and as the opportunity cost of managing common property forest resources continues to increase, and without further investment, the progress achieved to date can be expected to suffer from reversals.

### 3.4 WILDLIFE MANAGEMENT AREAS

Unfortunately, the country's Wildlife Management Area initiative which officially started in 2002<sup>64</sup>, and which has 38 Wildlife Management Areas at varying stages of development, is struggling.

- i. *Design issue:* There was insufficient thought given to developing selection criteria and practicable mechanisms to ensure the financial viability of Wildlife Management Areas in terms of them meeting their operational costs and achieving sufficient economic returns for their constituent communities. Additionally, rather than view Wildlife Management Areas as requiring ongoing government

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<sup>64</sup> The Wildlife Management Area Regulations were released in 2002 together with the Wildlife Management Area guidelines. Prior to this there had been a pilot period of different community-based wildlife management projects that had run through much of the 1990s, in part subsequently leading to the 1998 Wildlife Policy, which set out the basis for the devolution of wildlife user rights to communities.

investment and support in playing an important role as human-wildlife buffer and mixed use areas key for conserving ecosystems, counter-intuitively the government views Wildlife Management Areas as a source of revenue. This is a perverse situation as the opportunity costs of maintaining wildlife on Village Lands, compounded by the expensive cost structure of Wildlife Management Areas, continue to rise.

*Impact:* Seventeen Wildlife Management Areas have been gazetted with Authorised Associations that have received wildlife user rights, but in 2015 only six Wildlife Management Areas were receiving a level of income which provides them with a workable operating budget. Of these it is understood that only two Wildlife Management Areas – Ikona and Burunge – have been able to provide meaningful levels of revenue to their constituent villages, and these Wildlife Management Areas account for the majority of revenues flowing into Wildlife Management Areas (PROTECT 2016).<sup>65</sup> The majority of Wildlife Management Areas are at best barely functional for lack of revenues and/or external support to cover their costs<sup>66</sup>. This situation is compounded by the fact that the government continues a rather perverse policy of retaining about 35% of revenues generated by Wildlife Management Areas, which further undermines their financial viability. The failure of most Wildlife Management Areas to generate sufficient levels of revenue to cover their management costs, and to return a socially acceptable level of revenue to their constituent communities which sufficiently offsets their opportunity costs has had a direct and adverse impact on their social licence to operate.

- ii. *Implementation issue:* The withdrawal of effective financial and technical support by some NGOs from failing Wildlife Management Areas has arguably led to greater levels of land tenure insecurity than previously, as weak or collapsed Wildlife Management Area institutions are unable to effectively and adaptively address land-use change pressures and opportunity costs.

In Wildlife Management Areas where village expectations have been sunk, the land-use plans that underpin those Wildlife Management Areas that are not receiving significant revenues are being increasingly ignored, as villagers pursue their livelihood interests, and/or as parts of Wildlife Management Areas are subject to in-migration of people looking for land. In some cases, this has led to substantial parts of Wildlife Management Areas being converted to farms, such as in Ngarambe Tapika (pers. comm. Sosovele) and Umemarua Wildlife Management Areas (pers. comm. Bracebridge), or used by livestock keepers for grazing Wami-Mbiki and Jukumu Wildlife Management Areas (pers. comm. Sosovele). The official management vacuum that is left behind in Wildlife Management Areas when Authorized Associations are barely functioning can lead to an increase in land tenure insecurity (pers. comm. Wambura). Village leaders may have several incentives, including reclaiming land back from the Wildlife Management Area by allocating it to immigrant herders or farmers, soliciting bribes in doing so, and further building their local political constituency (pers. comm. Mwanjela). This process

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<sup>65</sup> The most successful Wildlife Management Areas have been able to generate higher levels of revenue than others because of their prime location in northern Tanzania next to national parks with high visitor numbers. In reality most Wildlife Management Areas are far removed from the lucrative northern photographic tourism circuit, and were often previously hunting concessions. Many of these concessions are no longer commercially viable, without long-term investment, in part because of local declines in wildlife populations. In recent years, the hunting industry in Tanzania has undergone a significant reversal in its fortunes. As a result, Wildlife Management Areas, which tend to have the least viable hunting concessions, have especially suffered, failing to generate the revenue that previously had been optimistically envisaged.

<sup>66</sup> Most bilateral donor-funded Wildlife Management Area-support projects implemented by NGOs have come to an end, and the level of ongoing support provided by these NGOs has in many cases substantially declined or simply stopped.

can then lead to subsequent tensions and disputes either between long-term local residents and new immigrants and/or between villages, districts and the wildlife authorities.

Where Wildlife Management Areas continue to function and/or where wildlife populations remain, the opportunity costs of the Wildlife Management Areas, particularly when livestock grazing is prohibited in addition to farming, may often be perceived to be high (PIMA 2016). Not only are livestock and farming economic opportunities foregone in Wildlife Management Areas in a context where higher quality land is increasingly in short supply, Wildlife Management Areas have costs that are felt beyond their boundaries. This is especially the case when wildlife has come into conflict with livestock and farms, and Authorized Associations have lacked the capacity and resources to invest in effective human wildlife conflict mitigation, with adverse impacts for both people and increasingly endangered species.

- iii. *Implementation issue:* Many Wildlife Management Areas were developed in a manner which could only lead to subsequent conflicts of interest between their constituent communities and resource-user groups. Insufficient attention was paid to securing villagers' full consent. Insufficient effort was often given to understanding, planning around and managing long-term resource-use conflicts and interests at village and sub-village level, and in the past these issues have tended to be side lined or ignored in order to achieve project deliverables and timelines.

As a result, Wildlife Management Areas have often been beset by internal conflicts, either over the restructuring of benefits from pre-existing tourism developments, contested access to different zones in the Wildlife Management Areas (particularly by pastoralists in areas where they are marginalized), and/or over commercial conflicts with investors – often as a result of mishandled or unrealistic agreements. These conflicts may severely hamper the operation of a Wildlife Management Area – such as has happened in Burunge and Idodi-Pawaga Wildlife Management Areas.

Unfortunately, it has often been the case that the design of Wildlife Management Areas has been heavily driven by NGOs acting on behalf of government, in a manner in which local communities are not sufficiently able to engage in a meaningful way, not only during their inception, but also in their subsequent implementation. Unless there is especially strong emphasis placed on downwards accountability by facilitating NGOs, the Authorized Associations, which often have very limited capacity, tend to become upwardly accountable to their district administrations and the Wildlife Division (Bluwstein et al. 2016).

- iv. *Implementation issue:* There is a lack of consensus about what to do about failing or failed Wildlife Management Areas, with no official government policy on the matter. A state of denial and inertia prevails.

There is tacit acknowledgement by some NGOs in private that a significant number of Wildlife Management Areas they were involved in setting up are failing. Some NGOs are looking towards relying instead on CBFM – and the revenue that both sustainable timber and carbon offsets can generate – to bolster the income of Wildlife Management Areas. But they have yet to address the institutional issues that come with this refocussing – particularly over the allocation of forest management and revenue rights between villages and the Authorized Association with regard to Village Land Forest Reserves that overlap with Wildlife Management Areas. Finally, the villages in some Wildlife Management Areas that were reluctant participants at the outset have been prevented from withdrawing from their Wildlife

Management Areas, despite their right to do so, by their CBOs, districts and the wildlife authorities, demonstrating the extent to which they have lost control over their common property resource.

Overall, wildlife management areas are arguably in deep trouble as an approach for managing (formerly) wildlife-rich common property resources. While community-based wildlife management is of course much in need, the design and implementation of the Wildlife Management Areas was handicapped from the outset, with often coercive institutional arrangements, high levels of centralised control, a lack of transparency and rights over revenues for the Authorized Associations, and a poor appreciation of the real costs, likely benefits and financial viability of Wildlife Management Areas by all involved. The creation of a new institution (the Authorized Association) at supra-village level has unfortunately resulted in a frequently ineffective, poorly accountable and costly institutional structure which has often resulted in local elite capture<sup>67</sup>. While the ecological rationale for this supra-village institutional approach is understandable (ecosystems require ecosystem level institutions), the governance and political challenges that the approach has created have undermined the equitability, efficacy, and affordability of Wildlife Management Areas. The authorized associations have simply been too poorly structured, ill-equipped and under-resourced to adaptively manage increasingly socio-ecologically complex and challenging landscapes. Finally, while the overall outlook for Wildlife Management Areas is currently troubled, there have been some unexpected upsides in some instances: for example, the pastoralist communities of Makame Wildlife Management Area, have been able to use their Wildlife Management Area designation to safeguard their land from encroachment from migrant farming populations, and without the Wildlife Management Area designation, it would arguably have been much harder to achieve this (Wambura pers. comm.)<sup>68</sup>. This raises the prospect that in some situations WMAs can usefully bolster local rights and enforcement capacity, by enabling local communities to call on wildlife authorities (who often have much stronger legal enforcement capacity than local authorities) to help enforce land use zones. As land and resource pressures grow in Tanzania, this level of co-enforcement is likely to become increasingly necessary, as has been the case for Makame WMA in the pastoralist Maasai steppe, or which might stand to be helpful at some point for the Yaeda Valley.

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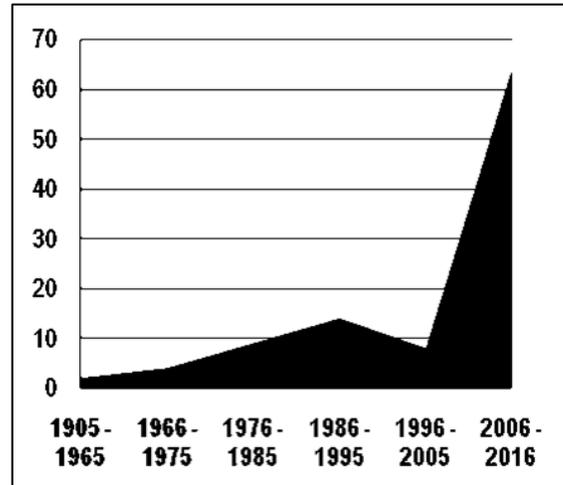
<sup>67</sup> For example, districts have sometimes in the past exerted undue and extra-legal authority over Wildlife Management Areas, as is the case of Iringa District where the AA leadership was removed and replaced by order of the District administration. A more straight-forward approach of locating common property management at the village or sub-village level, as has been adopted by community-based forest management, and then scaling upwards through incentive-based mechanisms and broad-based buy-in at village level, ultimately may have been a better approach.

<sup>68</sup> It is understood that in early 2016, the Member of Parliament for Kiteto had attempted to lobby the Prime Minister to rezone and allow some pastoralist areas to be allocated to migrant farming communities. The request was denied when it was learnt that the pastoralist area was also part of a Makame Wildlife Management Areas.

### 3.5 GRAZING LANDS

The management of grazing lands on village lands is amongst the most challenging common property resource management challenges in Tanzania today. Only 2% of grazing land is protected within existing village land use plans, and village land use plans have only been implemented in 10% of Tanzania's villages (Kami et al. 2016). Over the last twenty-five years, as Tanzania's human population has almost doubled<sup>69</sup>, and the livestock population has similarly increased<sup>70</sup>, rangeland resources have come under increased pressure as different communities vie for access to them. There are repeated practitioner-based anecdotal accounts that strongly point towards the country's rangelands as having become increasingly fragmented and as suffering from increasing levels of degradation<sup>71</sup>. Levels of conflict between herders and farmers, and between herders and state protected area agencies, appear also to have increased markedly over the last two decades. One estimate, based on a review of documented incidences of serious conflict, suggests by as much as 600% - see Figure 1 (Bedford 2016). While it is dangerous to infer a direct causal link between the increase in people and livestock, and the rise in land use conflicts, the trend is unlikely to be merely coincidental, and is likely to have been compounded by the failings in village and district-level governance<sup>72</sup>.

Figure 3: *The number of reported major land-based conflicts over the last 100 years* (Source: Bedford 2016)



There is documented evidence to suggest (for example, IWIGA 2016 and Kalenzi 2016) that village land-use planning in mixed farming and herding communities that sets out grazing lands has not been effective in safeguarding the long-term continuity of those grazing areas. Frequently, over a period of years, these grazing lands suffer from encroachment for farming and settlement, and/or may be reduced in size by Village Councils in order to sustain the land needs of the expanding majority farming community. In this context, it is not uncommon for grazing lands that have been delineated in village land use plans to be viewed by the predominantly farming communities as negotiable set-aside areas of land to be eventually reallocated in part or in whole for future farming needs.

<sup>69</sup> Tanzania's human population has grown from 26.3 million people in 1990 to an estimated 46 million in 2016 (Bedford 2016).

<sup>70</sup> Tanzania's cattle population has increased from about 13 million in 1990s to an estimated 23 million in 2016, with an additional estimated 22.6 million goats and sheep (Bedford 2016).

<sup>71</sup> Degradation is defined here, (after Abel and Blakie 1989), as a 'naturally irreversible decline in the rate of output of livestock products from the range under a specified system of management', and in this context is driven by grazing and browsing pressure, in addition to the introduction and spread of exotic invasive plants. A literature search failed to uncover a recent or contemporary assessment of the socio-ecological state of (any of) Tanzania's rangelands outside of protected areas other than a commentary about degradation in communal rangelands (Selemani 2014). The government often refers to rangeland degradation – for example, in the Tanzania Livestock Modernization Strategy (2015) and the Guidelines for Sustainable Management and Utilization of Rangelands in Tanzania (2014). There can be little doubt however that rangeland degradation is becoming increasingly severe.

<sup>72</sup> For example, see IWIGA 2016, which documents widespread failings of governance across Tanzania's rangelands and major outbreaks of conflict, particularly in central Tanzania, where mixed farming and herding populations co-exist.

In other contexts, where grazing lands have long been in the customary ownership of pastoralists, there is a different underlying dynamic. These grazing lands are coming under increasing pressure from farming, carried out either by local village members who both herd and farm, or by incoming farming communities. Often, the occurrence of farming on delineated grazing lands is a result of a failure of governance within the Village Council, which succumbs to inducements to allow or ignore larger-scale farming and grazing land fragmentation. Sometimes, the situation may be complicated as immigrant farming communities push their way onto grazing lands, with political patronage. In addition, the remaining grazing lands are having to support much increased levels of stocking, and with this increased levels of range degradation as grazing pressures seasonally change the grassland species composition and reduce the productivity of the range.

In addition, despite overall livestock increases, as average per capita livestock holdings at household level continue to decline, poorer pastoralist communities have come to increasingly rely on farming as a core pillar of their livelihoods, leading to an expansion of farmland. In addition, wealthier livestock owners may often also farm extensively, investing in seasonal farming which can be very profitable.

Overall, it seems that the designation of grazing lands within village land use plans is rarely sufficient to secure common property grazing resources, unless local village and customary leadership institutions are particularly strong and committed to safeguarding these resources (including enforcing their own bylaws), and they are able to withstand and manage external pressures on their rangelands. In addition, these institutions often do not enforce improved grazing management regimes, beyond simple dry and wet season pasture opening and closing, because they do not have the capacity and popular support to do so<sup>73</sup>. However, this ability is more the exception than the rule, and as a result, grazing lands are generally succumbing to long-term decline as they are under constant threat of encroachment and loss.

### 3.6 INNOVATIVE ARRANGEMENTS

In response to the shortcomings of both Wildlife Management Areas and Grazing Lands designated as part of village land use plans, a small group of organisations<sup>74</sup> have developed additional and innovative arrangements through using existing laws – the Local Government Act (1982) and the Village Land Act (1999) – to further strengthen and secure common property regimes<sup>75</sup>.

#### **Land easements**

As described in Section 2.2.3, the Village Land Law allows for easements in its definition of disposition rights. A variation of this possibility has been developed whereby Terrat and Sukuro pastoralist villages in northern Tanzania have agreed to receive payment from a private wildlife conservation interest group in return for

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<sup>73</sup> The grazing pressure on the range from both within a community, and from surrounding communities looking to benefit from reciprocal grazing access, may present quite a challenge for a local management institution when trying to manage the overall grazing pressure in a grazing unit, particularly in drier years. Limiting access to a grazing area may cause conflict when people are desperate for access to grazing, creating difficult choices.

<sup>74</sup> Ujamaa Community Resource Team, the Dorobo Fund and the Simanjiro Grazing Easement Group have all worked collaboratively together to develop these innovations.

<sup>75</sup> It is understood that the Sustainable Rangelands Management Project (implemented by ILC & ILRI) is also piloting the use of cooperatives as an alternative means for enabling pastoralists secure their access to land in mixed herding and farming communities in central Tanzania.

ensuring that village grazing areas remain intact and solely used for grazing. A further condition is that in some villages livestock be temporarily moved off these easement grazing areas during the wet season when these areas are used by migrating wildebeest and other wildlife for calving. The pastoralist communities have benefited from this arrangement as these grazing grounds had started to become increasingly fragmented by crop-farming, with the loss of important grazing commons, and this easement initiative has helped to stop this loss. In reality, this arrangement is likely to be poorly scalable because there are a limited number of circumstances in which outside interests see a benefit in developing an easement arrangement with communities that reinforces the governance and security of a common property resource on village land. Moreover, there is the likelihood that when the arrangement stops, the underlying pressures on the common property resource will not have diminished, and may not be mitigatable without other safeguards, such as those set out in Section 3.6.2, also being in place.

### **Collective rights of occupancy**

The Village Land Law allows for groups to apply for and to be issued a customary right of occupancy on village land. This possibility has been developed to enable hunter-gatherers and pastoralists to safeguard the fragmentation and loss of commons, a process that has now been repeatedly recognised and approved of by the Commissioner of Lands. A body of three trustees (at least one of which must be a woman) is selected by the Village Assembly to represent the wider land interests of the hunter-gatherer or pastoralist community. The area of communal land (commons) requiring protection and safeguarding is demarcated and the Village Council effectively offers the trustees a customary right of occupancy to this important natural resource or grazing area held in trust for the wider community.

Simultaneously the village creates bylaws to regulate how the area of land under the group customary right of occupancy is to be managed for the benefit of the community. This arrangement then helps to improve the security of the commons, as legally no-one can permanently settle on the land, be granted a piece of it nor claim it for themselves on the basis of prior or existing occupancy, without an extended appeals process. The three districts in which this process exists – Karatu, Mbulu and Simanjiro – have formally supported this arrangement (since the Authorized District Land Officer must sign the certificates of occupancy) – further adding a layer of institutional security and support for protecting these village commons.

This instrument then reinforces the underlying village land-use plan and can be additionally supported by arrangements such as land easements set out in Section 3.6.2. While this innovation has been beneficial thus far, it should be noted that it is largely contingent on villages agreeing their boundaries, and in some areas, such as the Simanjiro Plains, where there are long-term boundary disputes that have sometimes proven intractable (Peterson, pers. comm.), this has prevented – or much slowed – this otherwise promising triple combination of land-use plan, group certificate of customary occupancy, and land easement from being implemented as effectively as it could have been.

GCCROs could become a useful instrument in parts of the country where there is a plausible prospect of herder-farmer conflict breaking out in the future, because there is already evidence of land use tensions and occurrences of dispute. However, it is vitally important that this instrument is introduced in manner in which the majority of stakeholders perceive some degree of benefit at local level, and this requires appropriately designed and implemented initiatives that are well facilitated at local level and not limited to short-term project cycles. In addition, group certificates stand to be additionally helpful if pre-existing conflicts between

farmers and herders can be sufficiently resolved, as a means for helping to ensure that land allocation agreements between these groups are not renege upon as the demand for land continues to increase.

## Box 7 | SAFEGUARDING COMMUNAL AREAS WITH GROUP CERTIFICATES OF CUSTOMARY RIGHTS OF OCCUPANCY

The rangelands of northern Tanzania are rapidly changing and becoming increasingly contested by farming, herding and hunter-gatherer groups. Over the last fifteen years, Ujamaa Community Resources Team (UCRT) has supported communities in these rangelands to secure their certificates of village land, carry out land-use planning, improve village and customary governance institutions, help mediate resolutions to land-based conflicts, and help communities benefit from equitable partnerships with responsible tourism companies.

While gains had been made in protecting and better managing common property resources, it had become clear that where landscapes were subject to significant levels of mixed use – for grazing, farming and/or hunter-gathering – land-use plans had not sufficiently safeguarded vulnerable people’s land rights. Land that communities had designated for herding was increasingly being encroached upon by farming, and farming and herding was increasingly encroaching upon hunter-gathering areas. Village governments had often not been able to prevent repeated land incursions and it was clear that stronger legal protection was required.

UCRT, together with the Dorobo Fund, developed the idea of using a GCCRO to reinforce user group land rights in communal areas identified through village land use planning. The GCCROs are particularly appropriate since they can be held by a marginalized group with common cause, and they are quite unlikely to be sold or traded as it would take the whole group’s agreement. A hunter-gatherer Hadzabe community in the Yaeda Valley to the East of Lake Eyasi had lost 90% of their land to immigrant farming and herding groups since independence, and if they lost any further land, they also stood to lose their only source of community revenue from eco-tourism. So the GCCRO process was prioritized for this community. The basic procedure for securing a GCCRO is straight-forward: three to four trustees are selected by the community in a village where basic land use planning has been completed. The boundaries of the GCCRO are then delineated (in this case facilitated by UCRT and the District)<sup>§</sup> and agreed by the Village Assembly. An application by the trustees for the GCCRO is then approved by the Village Council and passed to the District Authorized Land Officer for signing and the issue of the certificate<sup>¶</sup>. The area is then managed according to by-laws agreed by the village. In October 2011, the Commissioner for Lands awarded the Hadzabe community their GCCRO in person for 23,000 hectares of land in Mongo wa Mono Village. Thereafter a Datoga pastoralist group to the south also received a GCCRO supported by UCRT. By the end of 2016, UCRT had helped communities in the Lake Eyasi area and the Maasai steppe secure 38 communal CCROs, covering 426,109ha of communal lands, of which 358,426ha is communal grazing and the rest is for use by hunter-gatherers, much of which is forest.

Although early days, the GCCROs have been effective thus far. With the support of UCRT and Mbulu District, in 2016 the Hadzabe community were able to fend off a significant land grab by a wealthy herder. But this incident underlines the fact that as numbers of people and livestock grow, grazing is becoming ever scarcer particularly in drier years. Similar incidents and incursions will become ever more likely, and GCCROs stand to be increasingly challenged. A ‘legal-light-touch’ approach was taken to developing the GCCRO methodology in order for them to be secured quickly and relatively easily by communities. Some important considerations were side-stepped. And these legal ambiguities need to be formally addressed to the extent that GCCROs are sufficiently legally secure when contested in court.

<sup>§</sup>As part of this process, UCRT had first obtained a letter from the Commissioner of Lands approving the precedent and the use of a small group to represent the land interests of the larger hunter-gatherer community.

## 4. Summary Conclusion and Recommendations

Despite the strong underpinning framework of the land, local government and land-use planning laws for enabling successful common property resource management in Tanzania, the implementation experience and management outcomes remain mixed to date, and the outlook challenging.

### 4.1 THE VILLAGE LAND AND NATURAL RESOURCE MANAGEMENT LEGAL FRAMEWORK

#### 4.1.1 The village land and land-use planning laws

The Village Land Law, while broadly supported and well integrated with the country's system of local government, has only been implemented in the most basic of terms, with most households having been unable to access what is a highly dysfunctional land administration system. The complexity of the Village Land Act in places, and more importantly, the failure of the government to sufficiently invest in its implementation, have resulted in this outcome. Land use planning has also suffered from woefully inadequate levels of investment by government<sup>76</sup>. The reported increasing backlog of land dispute cases at district tribunals driven by the increasing number of land-based conflicts at village level indicates the overall failings of the system. Today the government has openly recognised these failings and is seeking to address these challenges, although until a far greater level of budgetary resources is allocated to land administration and land use management, too little will change. Initial concerns that the new draft National Land Policy were going to radically alter Tanzania's land laws seem to be unfounded, although potentially concerning changes (pers. comm. Lekaita) seem likely. These include a drive to expedite titling (which has occurred elsewhere in East Africa and which can lead to increased land inequality and marginalisation), and limiting the administrative land powers of Village Councils<sup>77</sup> (this could undermine the democratic design of the administration of Village Land unless proper safeguards are put in place<sup>78</sup>). In the main though, and pending the development of

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<sup>76</sup> Shortly after the implementation of the country's land laws began, the government launched an initiative called the Strategic Plan for the Implementation of the Land Laws (SPILL). SPILL was primarily to have been funded from the then Medium Term Expenditure Framework (MTEF) with a budget of USD 270 million and USD 2.9 million (in equivalent 2005 shillings) raised from a Land Administration Infrastructure Fund (LAIF). Neither was secured (Massay 2016).

<sup>77</sup> Although the draft is equally clear (Section 4.1) in stating that, '...Village Councils should continue to administer village lands and that all land allocations or land alienation is subject to the approval of the Village Assembly'.

<sup>78</sup> It is understood that the Ministry is at least considering extending land administration services down to ward level, which actually could be beneficial for village members accessing more professional and efficient services, so long as the types of safeguards already in place in the Village Land Act (1999) are kept and more effectively implemented.

sufficient safeguards, some of which the draft Policy clearly identifies (for example, administrative and fiscal measures to control land hoarding), the continuity of the land laws is good news, because, some notable shortcomings aside (mostly in relation to some important loopholes<sup>79</sup> and the complexity and inaccessibility of the law as written), the fundamentals of Tanzania's Village Land Law are arguably sound: the challenge lies less in their design than in their implementation.

### ***The forestry, wildlife and grazing laws***

It is clear that there have been different levels of success experienced in forest- and wildlife-based common property resource management. Village-based community forestry appears to be a more effective and successful approach in terms of the number of participating villages, the relative health of community forests and the degree of conservation outcomes, the potential scalability of the approach and the potential for local revenue generation. Contrastingly, supra-village-based community wildlife management has struggled to deliver dividends for both communities and wildlife conservation. Overall, it is hampered by too high a cost base, frequently high and increasing opportunity costs for communities, low levels of revenue (with insufficient prospect at present for addressing this challenge), low levels of community buy-in, low levels of accountability and weak organisational governance and management. Finally, although pastoral communities in northern Tanzania and elsewhere have been supported to delineate their grazing lands as part of land use planning, surprisingly little initiative has been invested to date in supporting customary and village grazing management institutions to better manage their grazing lands in the context of rapidly increasing resource use pressures, with no participatory range management and monitoring initiatives taken to scale. Finally, the rising level of farmer-herder land-based conflicts has been compounded by heavy handed government interventions, an increasing level of corrupt practices, and inadequate access to conflict management mediators, able to work with opposing communities with different customary law systems to better manage these conflicts.

### ***Summary conclusion for securing the commons in Tanzania***

Overall, while the country's land laws, and specifically the Village Land Act, provide a strongly supportive underlying framework for protecting common property resources, the sectoral forest and wildlife laws provide more nuanced opportunities and constraints for safeguarding the commons. Some key conclusions are:

- **Securing a Certificate of Village Land** is a fundamental foundational step for enabling a village to use further legal instruments to secure and safeguard its commons.
- **Carrying out Village Land Use Planning** is an important but insufficient next step – because the process if carried out in a sufficiently participatory and supportive manner, provides the opportunity for different groups in a community to think through and negotiate among themselves how their land-based resources are to be apportioned and managed.
- **Group Certificates of Customary Right of Occupancy** have emerged as a strong and promising legal instrument for enabling communities to delineate and secure legally defensible rights to their commons. This instrument is becoming increasingly widely recognised and supported by districts that understand and value the role of the commons in underpinning local sustainable livelihoods, wider

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<sup>79</sup> For example, see Footnote 47.

natural resource values and ecosystem functioning, as well as local cultural heritage. However, it is important to note that a **GCCRO does not ordinarily endow its holders with user rights to the natural resources on their land** – specifically in this context, forests and wildlife.

These formal user rights comprise separate bundles of entitlements which are only securable through pursuing the specific procedures laid out in the respective sectoral forestry and wildlife laws:

- **For wildlife user rights**, this means that communities must proceed with developing a Wildlife Management Area, and
- **For forest user rights**, the land holders must either proceed with developing a Village Land Forest Reserve, a Community Forest Reserve or a Private Forest Reserve.

Exceptionally and rarely, the Director of Wildlife may allow user rights without the necessity of creating a wildlife management area – for example, in the case of hunter-gatherers.

This in turn results in an important dichotomy / distinction (given the current laws):

- **Where the commons are to be primarily and solely used for subsistence livelihoods without any aspiration or expectation of generating commercially-oriented revenues from forests and wildlife, GCCROs are likely to be sufficient for securing local common property resources, particularly when supported and governed by locally developed by-laws;**
- **Where the commons are to be additionally used for commercially-oriented purposes, for example, wildlife tourism<sup>80</sup> and sustainable forest use (timber / charcoal), then there may be clear justification for moving to secure formal user rights, particularly for forestry where the benefits of securing formal user rights potentially stand to be significant – dependent on the quality and extent of the forest resource base.**

A further reason why Group Certificates of Customary Right of Occupancy are an attractive proposition for securing the commons, particularly when the objective is maintaining and supporting local sustainable livelihoods, is that the instrument when created together with by laws, can be adapted to a wide range of contexts and customary natural resource management practices. This builds local buy-in and if well-facilitated by third parties (e.g. NGOs), stands to empower communities and user groups to adapt and develop their customary natural resource management practices to respond to what are often very challenging contemporary pressures and threats to their commons.

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<sup>80</sup> The case for pursuing a WMA, given the current design and revenue sharing arrangements, should be carefully evaluated: are the financial and opportunity costs of setting up and operating a WMA likely to be sufficiently offset by the revenues and other benefits that are likely to realistically accrue to the community(s) concerned? More often than not, the answer has been no.

### Box 8 | GROUP CERTIFICATE OF CUSTOMARY OCCUPANCY ENABLING A SUCCESSFUL VOLUNTARY CARBON OFFSETTING INITIATIVE

In the Yaida Valley, a Hadzabe Hunter Gatherer community has partnered with UCRT and Carbon Tanzania (a local Carbon offset social enterprise) to develop a successful voluntary REDD project, certified with Plan Vivo, through the forest / wood lands they hold with their Group Certificate of Customary Right of Occupancy. The reason why this has been possible is that the Forest Law has not been updated (yet) to include carbon rights within the bundle of forest user rights it regulates. At some juncture in the future, it may be the case that the Hadzabe community may have to formally declare a village land based forest reserve if/when the Forest Law (and/or other laws) is updated to include forest Carbon. However, other than the cost of preparing a management plan, and assuming that the community retains full rights to the revenue generated from the Verified Emissions Reductions, there should be no downside. Currently, this is the only example of deploying a Group Certificate of Customary Right of Occupancy for forest conservation (and commercial gain), but perhaps one that should be more broadly considered in the future, particularly in situations where communities are not ready to subscribe to the full rigour of a forest reserve, but nevertheless want to protect their forest land, particularly from undesired settlement and use by immigrant outsiders.

## 4.1.2 Recommendations

There are arguably some clear ways forward for addressing some of the shortcomings in the design and/or implementation of (i) The village land and land planning laws, and (ii) The forestry, wildlife and grazing laws. Ideally these recommendations, or rather ideas, are directed towards the types of activities that the Africa Biodiversity Collaborative Group (ABCG) could potentially commission or support, either through one or more groups of organisations in Tanzania around the following issues:

### **The Land laws**

1. **Review the new (draft) National Land Policy and its accompanying implementation strategy** – identifying key areas of concern and missed opportunities for improving the policy and legal framework underpinning village-based land and natural resource management.
2. **Review the existing Village Land Act and its associated regulations and laws** – a longer-term undertaking in relation to the new National Land Policy and its implementation strategy, is to carry out a review of the Village Land Act<sup>81</sup> as a pro-active step towards ensuring that its key strengths are safeguarded, and that improvements to its shortcomings are identified and readied in advance of the amendments to the Land Laws that will surely be tabled in Parliament in due course. A related area of inquiry is better understanding the implications of new technologies for improving people's access to land administration services.

**Suggested lead:** Both these activities could be carried out in collaboration with the Tanzania Land Alliance.

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<sup>81</sup> For example, building on Wily's (2003) work.

## **The grazing commons**

There is strong reason – on the basis of experience to date – to pursue GCCROs as a key way forward for protecting pastures as common property resources. No other instrument affords both the legal protections and level of local community buy-in which also serves as an appropriate platform for enabling adaptive community-based rangeland (and livestock) management.

3. **Review and strengthen the legal safeguards for using GCCROs to secure grazing land resources** – the ‘legal light touch’ (see Box 6) approach that has thus far been taken should be thoroughly reviewed to address a number of likely risks which include:

- a) Addressing the lack of a legal relationship between the ‘trustees’ who hold the certificate on behalf of the community – particularly in terms of describing:
  - The limit of their legal rights and responsibilities are - to each other, the village and third parties – for example, restrictions on the disposal of the land, or protections in the event of them being sued or needing to sue.
  - What happens when they die or want to relinquish their ‘trusteeship’.
  - What happens in the event that the land is subject to a sub-division of their village.
  - What the ideal balance is between informal and formal institutional and legal arrangements – for example, does registering a trust lead to too high a transaction cost and therefore a less effective means for scaling up the use of Group Certificates of Customary Rights of Occupancy?
  - Better understanding the transaction costs of formally and legally registering a group of trustees and/or association with the Registrar of Societies, and how this process might be streamlined and made more affordable, perhaps for example, with a quasi-legal solution tacitly allowed at District instead of National level.
- b) Developing a guide for practitioners, villages and user groups that sets out best practices for developing and managing a Group Certificate for an area of grazing land, including the types of issues that need to be considered in the accompanying village by-laws and in the actual certificate and any other accompanying documents.

4. **Pilot the use of group certificates to secure and better manage grazing in other contexts** - to date Group Certificates have been used in the northern Tanzanian rangelands to increasingly good effect amongst pastoral and hunter-gatherer groups but not yet elsewhere. What about their suitability, for example, in the miombo woodlands with mixed farming and socio-culturally different agro-pastoralist communities?

**Suggested lead:** This area of work could be advanced by individual NGOs, such as the Jane Goodall Institute in Western Tanzania, taking on the challenge of piloting GCCROs in new contexts, and then sharing their experiences through a working group, such as those convened and facilitated by the Tanzania Natural Resources Forum.

## **The forest commons**

5. **Review and document the emergence of more innovative and entrepreneurial models for scaling up CBFM** – there are parallel ongoing initiatives which have adopted different business models in developing and scaling up sustainable forest management (i.e. timber and charcoal harvesting) across the country,

mostly facilitated by NGOs. What are the emerging lessons from these initiatives, and what is required to enable the most promising models go to further scale? Key issues include:

- How the costs of scaling up CBFM can be sustainably financed within one or more innovative service provision models
- Linked to this, what are the most effective institutional arrangements for enabling communities to profitably engage in long-term sustainable forest management – for example, should more straightforward village-based timber sales to private sector customers be promoted or should community forest cooperatives be promoted that begin to invest in product value addition as well? What lessons can be drawn from elsewhere?
- Better understanding local market dynamics and linkages – can all communities with varying levels of forest resources look to being able to benefit from sustainable forest management or what are the market constraints based on their location and the nature of their forest resource-base?

**Suggested lead:** The development of market-based pathways and supporting institutional arrangements towards scaling up and better sustaining CBFM could be taken forward through a collaboration between ABCG with the International Institute for Environment and Development (IIED), which has extensive expertise in developing ‘locally controlled forestry’ value chains in Latin America, Africa and Asia.

### **The wildlife commons**

6. **Review best practice business relationships between the private-sector and communities** - - in terms of structuring long-term performance-based partnerships for both photographic and tourism sport hunting, for which extensive knowledge and expertise exists from, for example, Namibia and Kenya. While there are a growing number of reasonably successful partnerships between communities and photographic-orientated tourism ventures, especially in northern Tanzania, there is a need to collectively define best practices and to promote them within the industry in partnership with communities and civil society organisations. However, while the most successful Wildlife Management Areas have been able to capitalize on photographic tourism, the majority are largely unsuitable for photographic operations for varying reasons and need to rely instead on sport hunting for their revenues. Unfortunately, many Wildlife Management Areas in Tanzania are becoming increasingly marginal areas for hunting and unattractive for most hunting companies. There are three choices that communities can make in terms of what to do with Wildlife Management Areas that are failing:
  - a) Re-invest in their Wildlife Management Area to rejuvenate them because they could become viable wildlife hunting areas due to the types of wildlife they stand to offer and given their socio-ecological context;
  - b) Degazette and/or convert forest rich parts of their Wildlife Management Area to community-based forests which they may be able to sustainably harvest and better benefit from;
  - c) Degazette the Wildlife Management Area and return them to village lands, potentially with alternative low cost options (such as land easements and/or group certificates of customary rights of occupancy) for maintaining some degree of wildlife-compatible land-use for ecosystem functionality where required.

**In many cases, the simplest option is likely to be the development of Village Land Forest Reserves to replace at least part of the existing non-functional Wildlife Management Area.**

But where there is some realistic economic prospect and explicit support from local communities for maintaining an existing but poorly performing WMA, new ideas and approaches are required that address:

- How long-term well-structured performance-based partnerships between mission-driven private sector partners and currently marginal Wildlife Management Areas can be developed;
- The requisite changes in the law and other support and incentives that local and central government need to provide – such as ending the punitive 35% tax on gross community wildlife revenues;
- What can be applied from relevant models, best practices and lessons from other parts of Africa – such as Namibia and Kenya.

**Suggested lead:** This is likely to be a challenging brief because of inertia and organisational constraints within the Tanzania Wildlife Authority which retains a firm grip over wildlife management in Tanzania. It is possible that locally well-respected NGOs, such as Wildlife Conservation Society and/or The Nature Conservancy, working together closely together with a couple of large mission-driven private sector initiatives in a consortium, might make some headway.

### **A common commons**

7. **Investigate arrangements for integrating all natural resource management at village level** – the sectoral approach adopted by government has limited the options available for communities in terms of how they manage their common property resources. Some Wildlife Management Areas have significant volumes of exploitable timber, and some community-based forests potentially have exploitable wildlife. Both forestry and wildlife laws generally permit joint community wildlife and forestry management, but this has yet to be explored or implemented. How can the strong institutional and economic case for integrating forestry and wildlife management at community level to improve the effectiveness and financial viability of their management be moved towards? What would these institutional arrangements look like? What limitations would there be? How might they be piloted? As elusive as this integrated approach to community-based natural resource management has been to date, and not only in Tanzania, it is important that it continues to be advocated for.

**Suggested lead:** The Nature Conservancy – in collaboration with the Northern Tanzania Rangelands Initiative, USAID PROTECT<sup>82</sup>, USAID EENT<sup>83</sup>, the Authorized Associations Consortium (representing WMAs in Tanzania) and the Tanzania Forest Working Group.

### **New sources of finance**

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<sup>82</sup> USAID PROTECT is a USD 14.5 million project (2016-2020) supporting the wildlife sector in Tanzania, with a strong focus on Community Wildlife Management.

<sup>83</sup> USAID EENT is a USD 14 million project (2016-2020) supporting community-based and related ecosystem management issues in Northern Tanzania.

8. **Investigate the significance of the contribution by Tanzania’s village-based forest and wildlife areas to Tanzania’s UNFCCC INDC<sup>84</sup> and how this contribution might be financed** – forests on village land account for 51.4% of Tanzania’s total forest area (NAFORMA 2015), and these forests are the most at risk from loss. Given that the forest sector is one of four sectors<sup>85</sup> identified for delivering the country’s INDC, and that the INDC explicitly recognises the importance of participatory forestry, it stands to reason that community-based forestry together with enhanced village land use planning and management should be receiving a significant level of finance to deliver the emission reductions from reduced deforestation and forest degradation. What options exist for government and/or accredited NGOs to access financing (for example, from the Global Climate Fund) to invest in the country’s village land forests? What institutional arrangements and steps would ensure that as much of this finance is efficiently and effectively used to expand and improve common property forest resource management at village level, and accompanying land use planning and management?

**Suggested lead:** A derivative piece of work would be for WRI to work with the Tanzania Forest Conservation Group (TFCG) to quantify the potential for forest-based emissions reductions that established and scaling models of CBFM could deliver for Tanzania’s INDC, and the most straight-forward way for achieving this through existing CBFM modalities.

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<sup>84</sup> Tanzania’s Intended Nationally Determined Contribution pledged to the United Nations Framework Convention on Climate Change Treaty in 2015.

<sup>85</sup> The others are Energy, Transport and Water. No breakdown of emissions figures is provided, but it is likely that the forests and energy sectors are the top two contributors by some measure to the INDC.

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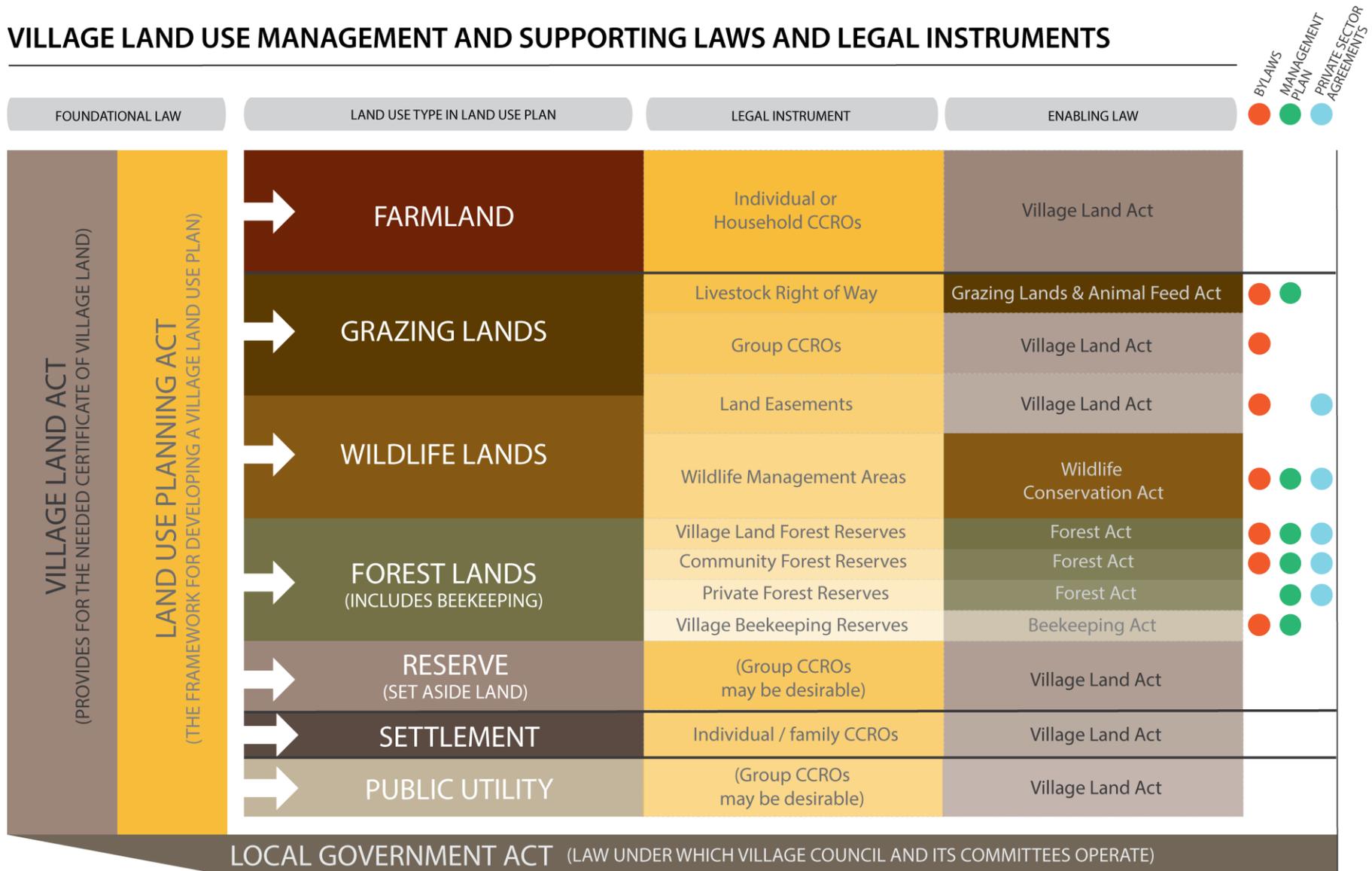
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# 7. ANNEX

## 7.1 COMMON PROPERTY MANAGEMENT IN TANZANIA – LAWS AND LEGAL INSTRUMENTS

### VILLAGE LAND USE MANAGEMENT AND SUPPORTING LAWS AND LEGAL INSTRUMENTS



Land Use Planning Act		
Pros	Cons	Context best suited for
<ul style="list-style-type: none"> <li>• Concept relatively well understood across government.</li> <li>• Guidelines are logical and well-set out providing a common approach to land use planning across the country.</li> <li>• Brings together land and natural resource management laws in one integrated framework at village level.</li> <li>• Designed to be participatory with all local stakeholders included – potentially leading to more equitable land use outcomes.</li> <li>• Provides a useful opportunity for participatory mapping and resource assessment.</li> <li>• Designed to formalize existing land use practices, while encouraging a long-term planning perspective (20 years).</li> <li>• Creates a ‘Community Action Plan’ which can be used as a road map for improving land use management and addressing related issues.</li> <li>• Designed to be implemented by Village Councils supported by District Councils</li> <li>• Can be scaled up to create Joint Village Land Use Plans.</li> <li>• Governed by village-approved bylaws.</li> </ul>	<ul style="list-style-type: none"> <li>• Designed to be carried out in a rapid manner, which often leads to complex land use issues being inadequately addressed: marginalized land user groups may not be sufficiently included unless the process is well facilitated, which can potentially result in (more) conflict.</li> <li>• Capacity, time and resource constraints may often lead to inadequate, inaccurate and erroneous land use plans, often underestimating villagers’ needs.</li> <li>• It is not infrequently the case that land-use planning is carried at the behest of external interests - whether for conservation or commercial agricultural developments. Ulterior interests can significantly sway the democratic / participatory outcome of the land-use planning process, sometimes detrimentally for the community.</li> <li>• Most village land use plans are only taken to stage four (the development of a spatial plan and bylaws with supporting information): land adjudication and advanced land use management e.g. improved forest, farming and grazing management is often not further developed.</li> <li>• Insufficient long-term capacity building is invested in village land management institutions – often land use planning stops with the production of a report, and the land use plan is either not implemented at all, or not implemented as designed and agreed.</li> <li>• Land use planning unless well facilitated in an ongoing manner can lead to worsening land use relations and land inequity as different stakeholders rush to secure land over others.</li> </ul>	<ul style="list-style-type: none"> <li>• Village (and district) land use plans are broadly suitable for all village land management contexts and as a foundational framework for more advanced natural resource management.</li> <li>• Land use plans need to be developed with particular care and diligence in situations where different land-user groups and ethnicities are co-resident in a village or cluster of villages. Rushed land-use planning in these contexts can easily lead to the further marginalization of one group over another, and/or set the context for increased levels of land-use dispute and outbreaks of conflict.</li> <li>• Best suited for situations where follow-up facilitative work either in terms of developing more ‘advanced’ levels of natural resource management (e.g. CBFM) is planned, or where village land management and dispute resolution institutions are going to be strengthened / supported over the longer term.</li> </ul>

Land Use Planning Act		
Pros	Cons	Context best suited for
	<ul style="list-style-type: none"> <li>Districts often cannot afford to pay for the planning and ongoing facilitation of land use management except in crisis situations.</li> </ul>	

Village Land Act		
Pros	Cons	Context best suited for
<ul style="list-style-type: none"> <li>Usefully resolves previous legal ambiguities about land tenure at village level created by Tanzania's period of Villagisation (1970-1977).</li> <li>Provides the basis for villages delineating and securing their land area through a Certificate of Village Land.</li> <li>Provides the legal foundation (together with the Land Act) for key parts of Tanzania's other natural resource management laws – particularly in regard to community-based natural resource management and collaborative natural resource management on government lands.</li> <li>Recognizes and provides the means to formalize customary / community-based land law in a pragmatic and adaptive manner (so long as this does not contravene national policy and other laws that safeguard people's human rights and entitlements).</li> <li>Recognizes that formal titling and registration of land is not compulsory for the recognition and validity of customary land holdings (although it is encouraged).</li> <li>Customary / community-based law is given full legal weight in the Village Land Law and in relation to other land laws.</li> </ul>	<ul style="list-style-type: none"> <li>The law is long and detailed and not easily understood by people with only a basic education (many rural Tanzanians) – there are at least 13 sets of regulations and 7 other acts of law which may be applicable in the course of administering village land.</li> <li>The administrative procedures and the number of forms (50) that are supposed to be used in the implementation of the law are overwhelming for most Village Councils to administer.</li> <li>In some places the law is unnecessarily detailed and prescriptive and these sections are unlikely to have ever been implemented.</li> <li>As far as is known, there is no simplified guide to the law or</li> </ul>	<ul style="list-style-type: none"> <li>Despite its myriad shortcomings in terms of its length, detail and implementability (all potentially addressable), the law is arguably conceptually well designed for Tanzania's context and, if its administration is well facilitated and sufficiently resourced, it seems that it can be quite effective in achieving its objectives.</li> <li>In terms of natural resource management, the law is probably best used to secure common property grazing and marginal wildlife areas that require safeguarding from land-use change and encroachment – through the use of Group Certificates of Customary Rights of Occupancy. However, these certificates must be accompanied by a process of long-term natural resource governance</li> </ul>

Village Land Act		
Pros	Cons	Context best suited for
<ul style="list-style-type: none"> <li>• Provides a devolved, democratic, transparent and fair mechanism for administering land by the Village Council, which is in turn accountable to the Village Assembly. This mechanism is meant to be implementable by and based within the Village Council.</li> <li>• Seeks to ensure that secure access to land is provided for a wide range of interests at village level including individuals, families, user groups and local organizations. This also includes marginalized groups. Notably the law provides for joint family title (husband and wife).</li> <li>• Provides for the titling and registration of both private and communal (common property) holding of land through the issue of a Certificate of Customary Right of Occupancy.</li> <li>• Enables land to be bought, sold, leased, rented and mortgaged.</li> <li>• Creates administrative safeguards to regulate the accumulation and transfer of land, with ceiling limits on the amount of land parties can hold without recourse to further approvals (decided by the District Council with a national default of 20 hectares).</li> <li>• Empowers the Village Council to decide whether an application to transfer village land to general or reserved land can proceed (see caveat in 'cons').</li> <li>• Provides a mechanism for the voluntary arbitration / resolution of land disputes.</li> </ul>	<p>procedural manual currently widely available in Swahili that helps Village Councils and Assemblies with the administration of their land.</p> <ul style="list-style-type: none"> <li>• The adjudication of land is in reality entirely dependent on the availability of staff and resources from the District Council. These are frequently lacking so village members are not able to acquire Certificates of Customary Rights of Occupancy unless they are able to pay for the process themselves (which many rural Tanzanians cannot afford).</li> <li>• The paper-based form system appears to be subject to a great deal of delay and bureaucracy (less the fault of the law, and more a reflection of the state of local government) with the processing often becoming muddled and misplaced, and open to arbitrary grey payments.</li> <li>• The Village Council (and Assembly) has the right to refuse transfers of Village Land to General Land of up to 250ha, but if the president decides larger land transfers are in the public interest, the village has no recourse to refuse. This opens up</li> </ul>	<p>support to the implementing villages and district(s) if they are to be effective.</p> <ul style="list-style-type: none"> <li>• GCCROs also may be complemented by 'land easement' arrangements (provided for in the Village Land Act) to further enhance and incentivize biodiversity-conservation land-use outcomes at village level – and potentially at scale across multiple villages, as has been achieved in the Simanjiro Plains in northern Tanzania.</li> </ul>

Village Land Act		
Pros	Cons	Context best suited for
	the possibility of major alienations of Village Land by eminent domain.	
<p><b>Group Certificates of Customary Rights of Occupancy (GCCROs)</b></p> <p>The Village Land Act provides for the issue of Group CCROs to registered local groups and associations. Since 2012, this provision has started to be used by hunter-gatherer and pastoralist communities to secure their collective rights to their lands that otherwise have been increasingly encroached upon by third parties. The difference between zoning an area as a wildland<sup>1</sup> or grazing area<sup>2</sup> in a land use plan, and then further acquiring collective title to it, is that zoning is often not easily enforced, whereas additionally acquiring title provides unequivocal land rights which can only be legally challenged through the courts, and this latter arrangement is therefore more secure. As of late 2016, Group CCROs have been used to secure hunter-gatherer and pastoralist common property resources.</p> <p><sup>1</sup> A wilderness or largely uninhabited area; <sup>2</sup> An extensive area of (range)land used for grazing.</p>		
<ul style="list-style-type: none"> <li>• <b>GCCROs for Wildlands</b> – can provide a useful alternative arrangement to Wildlife Management Areas (WMAs) where there is no clear rationale for creating a WMA (principally because either there is no popular demand, and/or no financially viable business case to underpin the WMA).</li> <li>• Control of the wildland area is retained directly by the community through the Village Council and/or User Association, through bylaws.</li> <li>• Varying arrangements are possible for how the wildland under the Group CCRO can be managed.</li> <li>• Precedence has shown that the Group CCRO for a Wildland can withstand attempted encroachment and take-over by third parties.</li> <li>• District Councils have supported the creation of Group CCROs for Wildlands and the underlying land use plans.</li> <li>• Group CCROs for Wildlands can be developed in adjoining villages in a contiguous manner to safeguard larger landscapes and ecosystems.</li> </ul>	<ul style="list-style-type: none"> <li>• A Group CCRO for a wildland does not give the community formal user-rights to any wildlife occurring in the wildland unless these are expressly granted by the Director of Wildlife;</li> <li>• Any agreements entered into with the private sector for use of the wildland for wildlife viewing or related activities are subject to regulations under the Wildlife Conservation Act (2013), and the private sector must pay specified fees directly to the Wildlife Division. Because the wildland is not a WMA, unless they have extraordinarily received user rights, the Wildlife Division is not bound to return the stipulated ~65% of these fees to the community as it does with WMAs.</li> </ul>	<ul style="list-style-type: none"> <li>• The Group CCRO can be an effective way of safeguarding wildlands when developing a WMA is unlikely to be a viable or an appropriate option. This is particularly the case when either there is little local support for the creation of a WMA, and/or the wildland has a low density wildlife resource and/or is unlikely to be able to support significant tourism operations to generate enough revenue to support the operational costs of a WMA – see the section on Wildlife Management Areas.</li> <li>• The Group CCRO for Wildlands can be particularly effective for protecting the rights of local groups of indigenous hunters and communities whose livelihoods and</li> </ul>

Village Land Act		
Pros	Cons	Context best suited for
<ul style="list-style-type: none"> <li>• Examples of this type of arrangement exist in the Yaeda Valley and the north-eastern periphery of Lake Eyasi for Hadzabe hunter-gatherers and in the southern Maasai Steppe for Akie hunter-gatherers.</li> </ul>	<ul style="list-style-type: none"> <li>• Any revenues derived from ecosystem payments may be subject to new legislation which may put these payments at risk (for example REDD+ payments).</li> </ul>	<p>culture may be endangered if their land rights are not secured.</p>
<ul style="list-style-type: none"> <li>• <b>Group CCROs for Grazing Areas</b> – can provide useful additional land tenure security for grazing areas set out in village land use plans and approved by Village Assemblies.</li> <li>• Management of the Grazing Area is provided for through bylaws, and the potential exists for these bylaws to be developed to help restore or improve the management of rangelands that are suffering from over-use / degradation through participatory improved and adaptive grazing management measures.</li> <li>• District Councils have supported the creation of Group CCROs for grazing areas and the underlying land use plans.</li> <li>• Group CCROs for grazing areas can be developed in adjoining villages in a contiguous manner to safeguard larger landscapes and ecosystems.</li> <li>• Examples of Group CCROs for Grazing Areas exist in the Yaeda Valley for Datoga pastoralists and the Maasai Steppe (Simanjiro) for Maasai pastoralists.</li> </ul>	<ul style="list-style-type: none"> <li>• To date there has been a weak / unclear link between the Group CCRO and the conditions upon which the certificate is issued to the Group CCRO's trustees, and the bylaws required for managing the grazing area and controlling access to it.</li> <li>• The corporate nature of the group (of trustees) holding the Group CCRO for the community appears to be ambiguous and the trustees tend not to be legally registered. It is unclear what would happen if the legality of the Group CCRO were to be challenged in court (by law the group / trustees must be legally registered). It is also unclear how the trustees' successors are appointed and what their exact roles and responsibilities are.</li> </ul>	<ul style="list-style-type: none"> <li>• If the legal ambiguities around the corporate nature of the trustees, their roles and responsibilities and their succession are resolved, as well as the conditions upon which the Group CCRO is approved by the Village Council, then the Group CCRO stands to be a very useful instrument for more effectively securing tenure over common property grazing areas for communities. These caveats also apply to Group CCROs for Wildlands.</li> <li>• Group CCROs are likely to be most effective where grazing areas are under threat of encroachment, but where Village Councils are in overall support of their existence, but equally are likely in the future to be pressured into reducing or eliminating parts of the grazing area for other land-uses (principally farming) as a result of growing demand for land.</li> </ul>

<b>Grazing Land Act (2010)</b>		
<b>Pros</b>	<b>Cons</b>	<b>Context best suited for</b>
<ul style="list-style-type: none"> <li>• The Grazing Land Act provides for the creation of Grazing Lands through the provisions of the Village Land Act (1998) and Land Use Planning Act (2007). It also states that Villages should identify and set out rights of way for livestock where these are needed.</li> <li>• The Grazing Land Act also provides for the development of a grazing-land inventory, trend condition and land use planning for sustainable grazing-land productivity, which may help in situations where grazing areas are under threat of encroachment or inappropriate pressure from being open to additional graziers.</li> <li>• The Grazing Land Act also provides for regulation of stocking rates on Grazing Lands through a livestock inspector.</li> </ul>	<ul style="list-style-type: none"> <li>• The Grazing Land Act while supporting common property grazing arrangements, does not appear to provide a tangible level of security for communal grazing areas.</li> <li>• The proposed mechanism for regulating stocking rates is arbitrary and technocratic, and moreover relates little to the dis-equilibrium ecology of many semi-arid grazing areas. Stocking regulation is far better carried out through a participatory range management approach.</li> </ul>	<ul style="list-style-type: none"> <li>• The Grazing Land Act and the Grazing Areas it provides for are widely applicable across the country for any communal or large-scale grazing context.</li> <li>• However, the law has to be applied together with the Village Land and Land Use Planning Acts in order to be meaningful.</li> </ul>

<b>Wildlife Conservation Act (2013) and the Wildlife Management Area Regulations (2012);</b>		
<b>Pros</b>	<b>Cons</b>	<b>Context best suited for</b>
<ul style="list-style-type: none"> <li>• Wildlife Management Areas (WMAs) Regulations enable one or more villages to form a Community-based Organization (CBO) which takes responsibility for managing a WMA that has been identified through a (joint) land use plan within one or more villages. A Resource Zone Management Plan sets out how the WMA is going to be spatially used and may be further added to with a more advanced General Management Plan. These</li> </ul>	<ul style="list-style-type: none"> <li>• WMAs are highly dependent on having the requisite partnerships with hoteliers, tour and hunting companies in order to generate sufficient revenues to cover their operational costs. In most circumstances to date (not all) this has not been possible and most WMAs are barely, if at all, functional because they are not able to attract the requisite partnerships with the private sector, largely because they are located in marginal wildlife areas in poorly</li> </ul>	<ul style="list-style-type: none"> <li>• WMAs tend to be costly to develop and to operate, in part because of relatively high governance costs, and even higher wildlife protection / law enforcement / community outreach costs. The latter costs are often high because the WMAs are either situated in areas where they are vulnerable to wildlife</li> </ul>

<b>Wildlife Conservation Act (2013) and the Wildlife Management Area Regulations (2012);</b>		
<b>Pros</b>	<b>Cons</b>	<b>Context best suited for</b>
<p>arrangements potentially allow for effective wildlife management to be undertaken by communities.</p> <ul style="list-style-type: none"> <li>• The CBO applies to the Director of Wildlife for wildlife user rights which enables it to manage the wildlife in the WMA in accordance with the WMA (2012), Non-Consumptive Wildlife Use (2008), and Hunting (2010) Regulations. These regulations guide how the CBO (or now Authorized Association) can enter into formal agreements with hoteliers, tour and/or hunting companies to develop wildlife tourism in the WMA, and how fees and wildlife hunting quotas (all largely controlled by the Director of Wildlife) are to be agreed and levied. This arrangement allows both the Authorized Association and its constituent communities to benefit financially from wildlife.</li> <li>• The Authorized Association receives revenue from the Wildlife Division according to revenue sharing formulas decreed by the Director of Wildlife. Conventionally (but not mandatorily) the Authorized Association shares 50% of the revenue received from the Director with its constituent villages and invests 50% back into the management of the WMA. This ensures that wildlife revenues are distributed between communities for local benefit and the WMA for management purposes.</li> </ul>	<p>accessible locations far removed from the main tourist circuits.</p> <ul style="list-style-type: none"> <li>• WMAs have a costly management and governance structure which most WMAs are unable to afford.</li> <li>• Those WMAs that do generate revenues are unable to operate effectively because they (and their private sector partners) are required to remit nearly all their fee revenues to the Wildlife Division which then returns the WMA's share in a non-transparent and unpredictable manner.</li> <li>• WMAs are forced to share nearly all of their revenues with the Wildlife Division and this arrangement reduces WMA revenues by about 35% - a significant amount.</li> <li>• WMAs are not able to enter into long-term performance-based partnerships with hunting companies (the most suitable form of tourism for many WMAs because of their remoteness and the habitat type). The concessions are limited for the most part to five year cycles. Hunting companies wishing to practice conservation hunting are penalized for not hunting their full quota which is set by the Wildlife Division in a non-transparent manner.</li> <li>• Land-use restrictions and low levels of benefits derived from wildlife in WMAs mean that most communities experience high opportunity costs (forgone land use, crop and livestock loss from wildlife depredation). There can also be high levels of inter-village tension over the allocation</li> </ul>	<p>crime, and/or there is significant encroachment pressure, and/or human-wildlife conflict is a major issue. In all regards communities need appropriate and sufficient outreach and support.</p> <ul style="list-style-type: none"> <li>• WMAs should really only be initiated where there is a strong prospect that the WMA will be able to generate sufficient revenues to cover its management costs and provide a sufficient financial return to communities, which together with other benefits, is judged to provide a strong social license to operate. This requires a sufficiently good wildlife resource and the requisite commitment and long-term partnerships with anchor private sector operators to deliver the financial viability.</li> <li>• It is critical that WMAs are initiated in a manner where the varying wildlife resource endowments across villages are acknowledged and differentially rewarded.</li> <li>• The free prior and informed consent of the village assemblies</li> </ul>

<b>Wildlife Conservation Act (2013) and the Wildlife Management Area Regulations (2012);</b>		
<b>Pros</b>	<b>Cons</b>	<b>Context best suited for</b>
<ul style="list-style-type: none"> <li>Some WMAs – such as Ikona and Burunge WMAS – are currently generating significant levels of revenue.</li> </ul>	<p>of revenues if villages do not have similar levels of wildlife resource endowment.</p>	<p>of prospective village WMA members is critical.</p>

<b>Forestry Act (2002)</b>		
<b>Pros</b>	<b>Cons</b>	<b>Context best suited for</b>
<ul style="list-style-type: none"> <li>The Forest Act (2002) enables villages to protect, manage and directly benefit from any type of forest on village lands through a process called Community-based Forest Management (CBFM). If well facilitated with support from the district, the CBFM process can be completed within a year or less and includes carrying out a Participatory Forest Resource Assessment (PFRA), developing a Forest Management Plan and supporting set of bylaws approved by the Village Council, District Council and Director of Forestry leads to the declaration of a forest reserve which can either be a Village Land Forest Reserve (managed and owned by the Village Council), a Community-based Forest Reserve (managed and owned by a forest user group) or a Private Forest Reserve (managed and owned by an individual, family or local organization).</li> <li>Once declared, the forest managers can sustainably manage their forest according to the management plan that has been approved, and which can include sustainable timber harvesting</li> </ul>	<ul style="list-style-type: none"> <li>While CBFM has long delivered improvements in forest conservation outcomes, and associated indirect benefits, it is only in the last five years that an increasing number of communities have started to financially benefit from CBFM through sustainable forest harvesting. There is still a tendency for CBFM to be viewed by District and Central Government as a forest protection instrument, when clearly sustainable use (outside of high conservation value areas) is critical for long term forest conservation outcomes.</li> <li>There is emerging evidence to suggest that greater devolution is needed with focus placed at sub-village level in terms of forest governance and management institutions – many forest-rich villages struggle to</li> </ul>	<ul style="list-style-type: none"> <li>CBFM is broadly suitable for a wide range of contexts in Tanzania – and some 1,200 villages reportedly participate in the initiative. A far smaller proportion of villages benefit in a financially tangible manner, but this is steadily increasing.</li> <li>Care should be taken to ensure boundary disputes between villages are sufficiently resolved when proceeding with CBFM in a village – these seem to be a recurring challenge.</li> <li>Long-term forest governance support, technical advice and marketing assistance is a pre-requisite if CBFM is to successfully deliver locally significant financial benefits and forest conservation outcomes.</li> <li>The design of CBFM is generally strongly commensurate with good common property resource</li> </ul>

Forestry Act (2002)		
Pros	Cons	Context best suited for
<p>(guidelines for this exist), sustainable charcoal making, and other wood and non-timber forest products. In the future, depending on the nature of REDD+, this could also include payments for bio-carbon sequestration.</p> <ul style="list-style-type: none"> <li>• The forest manager is able to retain all the revenue from sales of these forest products, although it is not uncommon for a small percentage of revenue to be shared with Districts. Where the Village Council is the manager, revenues are varyingly invested in community / public projects, often for education and health.</li> <li>• Where the reserved forest has reasonable tree resources which are well managed, Community-based Forest Management can become financially very beneficial for communities, particularly where strong market linkages exist.</li> <li>• Empirical reviews have found that in general CBFM has resulted in improved forest conservation outcomes, although some reservation exists as to whether non-reserved forests are being more heavily utilized instead. However overall, CBFM is, and stands to further become, an effective sustainable land use management tool.</li> </ul>	<p>effectively manage their forests across large areas because of logistical issues.</p> <ul style="list-style-type: none"> <li>• Many villages do not have secure tenure over their non-reserved forests which can be arbitrarily exploited by third parties authorized by the District Forest Manager, often on the basis of District Harvesting Plans which can be inaccurately formulated or out of date. This undermines village-based improvements in forest management.</li> <li>• Carrying out a full PFRA as per the CBFM guidelines may be unnecessary and some NGOs have developed a more streamlined methodology.</li> <li>• The CBFM development process can be slow unless facilitated by organizations with a high level of experience in expediting the process.</li> <li>• Occasional government orders and policies can inadvertently undermine community-based sustainable forest management, although these are usually a resolvable detraction on progress of scaling up CBFM.</li> </ul>	<p>management practices: the costs of forest management can usually be kept affordable, opportunity costs in more remote areas are low, and the financial returns are potentially locally significant and meaningful. Closer to urban conurbations, this is less the case, and care must be taken in assessing the long-term cost-benefit ratio and viability of CBFM when starting a new initiative.</p> <ul style="list-style-type: none"> <li>• Tanzania has a deficit supply of wood products, and more concerted work needs to be done to ensure that CBFM's financial benefits and village forest reserve coverage is taken to greater scale, in a financially sustainable manner. Otherwise, the remaining unreserved forests on village land will increasingly become depleted as the country's wood deficit increases as a function of its continued population growth.</li> </ul>

<b>Beekeeping Act (2002)</b>		
<b>Pros</b>	<b>Cons</b>	<b>Context best suited for</b>
<ul style="list-style-type: none"> <li>• The Beekeeping Act enables the creation of Village Beekeeping Forest Reserves in similar manner to how CBFM works, except that no Participatory Forest Resource Assessment or Forest Management Plan is required. Bylaws however must first be directly approved by the Director of Beekeeping unless they otherwise follow a generic model set out by the Director.</li> <li>• Village Beekeeping Forest Reserves exist for beekeeping only and other forest uses are usually not permitted. This is advantageous for the conservation of small forest reserves that might otherwise be significantly adversely impact by direct utilization.</li> <li>• The Beekeeping Act also provides for the control and management of bee diseases.</li> </ul>	<ul style="list-style-type: none"> <li>• The Beekeeping Act can be restrictive of other forest uses which are important for communities and for underpinning the financial and social viability of particularly larger community forests.</li> <li>• The law provides for the direct intervention of the local authority (District Council) in the event that a Village Beekeeping Forest Reserve is poorly managed by a community, although it is unclear how this would necessarily change the trajectory of its management.</li> </ul>	<ul style="list-style-type: none"> <li>• Village Beekeeping Forest Reserves have been largely restricted to western Tanzania and for most village contexts appear to be best suited to small areas of forest not able to withstand direct use pressure.</li> <li>• Access by low impact user groups for non-timber forest products should be considered, as part of building local support for the continued conservation and appropriate management of Village Beekeeping Forest Reserves.</li> </ul>