

Tanzania's New Wave Land Reform: a Matter of Institutionalisation

By: Rasmus Hundsbaek Pedersen, Postdoc at the Danish Institute for International Studies (DIIS)

Abstract: Much has been written about the economic aspects of contemporary land reforms. Often, reforms are evaluated critically, accused of being state-centric and unimplementable. Their effect on institutions at the local level has received much less thorough analytical attention. Based on empirical research into the Tanzanian mainland reform this paper argues that reform may have a systemic impact in rural areas. It analyses and compares different types of intervention that have been carried out to implement the reform. It argues that although much attention has been paid to land titling, the reform's most important contribution has been within land dispute settlement. By introducing the concept of institutionalisation it demonstrates that successful implementation hinges on addressing the values and everyday problems and practices of villagers and village leaders. This requires long-term engagement with communities and continuous support to make institutions work in practice. Reforming laws and institutions is not enough.

Introduction:

Land has reappeared on the political agenda in Sub-Saharan African countries in new ways. With growing populations, the pressure on land is increasing. Investors – domestic and foreign alike – contribute to the competition over land as they seek land to grow crops for the market. Conflicts over land are fierce across the continent. African governments have sought to address the challenges posed by land use and land ownership since the end of the Cold War. The primary focus is on the series of reforms that have been introduced to streamline land legislation, land administration and land court systems, and to facilitate markets in land. Since 1990 at least 32 out of Sub-Saharan Africa's 43 mainland states have started land reform processes (Wily 2012).

Much has been written about the content and making of these new wave land reforms. In particular their economic aspects – their market-friendly character and the idea that land titling can promote economic growth – have been debated, often quite critically (Berry 1993; Place and Migot-Adholla 1998; Deininger 1999; Manji 2006; Boone 2007; McAuslan 2013). Empirical research on these matters is divergent and inconclusive (Arruñada 2012, 126). The non-economic, institutional effects of the reforms, on the other hand, are often neglected (Borras Jr. and Franco 2010). To what extent are they implemented? What is their effect on institutions at the local level? In short, we do not know much about how the new wave land reforms work in practice.

By introducing the concept of institutionalisation this paper directs attention towards the importance of not only reforming laws and institutions, but also of addressing values and everyday practices at the local level. Through case studies of implementation in rural areas in mainland Tanzania it seeks a better understanding of the impact a reform may have on institutions at the local level. It argues that though Tanzania's reform implementation process has been slow and often project-driven it has had a systemic impact on institutions. Much attention has been paid to short-term titling projects, but the reform's most important contribution has been within land dispute settlement, where a more accessible land court system has been set up, which is increasingly being used to settle land conflicts (see also Pedersen, forthcoming). More attention to the institutionalisation of such everyday problem-solving mechanisms is important if the reform's promise to deliver improved tenure security that may facilitate economic growth is to come true.

Overall, Tanzania's reform differs from the reforms of the past in important ways. Like other new wave land reforms Tanzania's reform is characterised by (i) the recognition of existing rights to land, including customary rights; (ii) decentralisation of the responsibility for land administration and land dispute settlement to the local level; and, (iii) facilitation of registration and titling of rights to land with the dual goal of enhancing tenure security and promoting markets in land (Pedersen 2013). It has been highlighted as being among the best because of its far-reaching protection of customary rights to land – those of women and vulnerable groups included – and because of its radical decentralisation of power to existing, elected village authorities, something that is thought to improve the prospects for implementation at the local level (Boone 2007; Knight 2010; Wily 2003b).

In order to better analyse these changes, I suggest focusing on institutions and institutionalisation as a more suitable alternative to the controversial formalisation concept, which is used in order to emphasise the importance of universal land titling provided by the state as an essential component in modern market economies (Platteau 1992; de Soto 2000. For critics of the approach, see Bruce and Knox 2008; Sikor and Müller 2009). However, the concept of formalisation may mean a number of different things – from different administrative procedures related to land registration and titling, to the state’s basic recognition of existing rights, including customary rights to land (Arruñada 2012, 11; Hall, Hirsch, and Li 2011, 27). The latter is a defining element of new wave land reforms and need not include title deeds. It is out of a wish to include these aspects of reform in the analysis that I prefer to focus on more or less formal institutions.

Institutions can be defined as the rules of the game in society, which consist of both ‘formal written rules as well as typically unwritten codes of conduct that underlie and supplement formal rules’ (North 1990, 3–4). Most importantly, institutions mediate between the individual and the collective and they are not necessarily set up by the state (Poteete and Ostrom 2004, 453). For instance, despite Tanzania’s ambitious new wave land reform’s aim to streamline land administration and land court systems, it also recognises existing customary institutions and practices that mediate access to land. Inspiration for the analysis of such intermediate institutional forms can be found in Keith Hart, a pioneer of the study of the informal economy. In contrast to Max Weber’s emphasis on the formalism and standardised procedures of modern ‘rational’ bureaucracies (Weber 1972, 130), Hart does not equate state bureaucracies with formal institutions. He suggests a more pragmatic focus on institutions’ regularity and relationship to the bureaucracy as the defining features of formal institutions (Hart 2008, 11).

A related characteristic often associated with formal institutions is their written character (Hodgson 2006, 13; Leftwich and Sen 2011). This may apply both to written rules and regulations and to the increased use of writing in general. In a discussion of the relationship between the production of written documents and formal institutions, John M. Carey points out that written rules and regulations – ‘parchment institutions’ – help establish mutual expectations about behaviour (Carey 2000, 737); in other words, they increase the institutions’ regularity. In practice, formal and informal institutions can be seen as a continuum rather than as binaries (North 1990, 46). In contrast, I find the term ‘informal formalisation’, which has been used in the land literature to describe the grey zone of autonomous practices to register rights, unfortunate (Mathieu 2001; Lund, Odgaard, and Sjaastad 2006, 21; Benjaminsen et al. 2008, 32) because it indicates a higher degree of informality than can be justified. Such registrations are often carried out by officials, chiefs or elders, whose authority has been recognised by the state, and they follow state-prescribed rules and procedures. Because existing rights are increasingly recognised by the state these less formal documents can be used as proof in courts. I would hardly call such practices ‘informal’.

Thus, I emphasise that the more formal institutions have to be made up of a combination of rules and structures *and* of people’s practices and cultural values at the local level if they are to be functional. Without corresponding internalised values, formal institutions cannot function in the longer run; they are not *institutionalised* as Talcott Parsons, an important 20th century sociologist, puts it (Parsons and Smelser 1956, 102 and 123). Parsons acknowledges the importance of law and sanctions for the institutionalisation of a modern, secular market economy, much in line with one of the few scholars who have used the concept in a land administration context, Leiser Silva, who furthermore sees it as a matter of power, that is, the creation of alliances (Silva 2007). But Parsons stresses that for institutions to be effective and facilitate conflict-free action, they should be based on values that are shared by members of society (Parsons 1982, 117; see also Habermas 1996).

To some extent, this emphasis on local values is in line with many critical land reform scholars’ emphasis on local perspectives as the main reason for the failures of state-led reforms of the past (see, for instance, Berry 1993; Lund 2008; Scott 1998). But unlike these scholars Parsons is not generally sceptical towards the state. On the contrary, he sees the state as important in facilitating these processes of change. By introducing the concept of institutionalisation into the study of land reforms, I wish to shed light on these complexities

related to new wave land reform processes and stress the importance of long-term engagement with local people and communities.

The paper combines a literature review of new wave land reforms with ten months of fieldwork, carried out in rural areas in the northern part of mainland Tanzania in the period 2009–12. A focus was applied on the implementation of Tanzania's Land Acts (the Land Act No 4 and the Village Land Act No 5 of 1999 and the Courts [Land Disputes Settlements] Act of 2002) and their effect on local practices throughout the fieldwork. Special attention is paid to the experiences from Handeni, where the state-led Property and Business Formalisation Programme (in Swahili known as Mpango wa Kurasimisha Rasilimali na Biashara Tanzania or MKURABITA), carried out a pilot project in 2006. The pilot was among the first pilots carried out to implement the Village Land Act and, despite some differences, it shares a number of features with the pilots carried out by the Ministry of Lands, Housing and Human Settlements Development in terms of intervention approach and relations between implementing agencies and local people.

Experiences from Handeni may thus provide insights into the impact of implementation in rural areas in the rest of mainland Tanzania as implementation gathers speed. The Handeni experiences are supplemented with information from other sources; a short field visit to another large, state-led Tanzanian implementation project, finished in 2012 as part of a Business Environment Strengthening programme (BEST), and carried out by the Ministry of Lands and financed by bilateral donors and the World Bank; information from in-depth research into the effect of NGO-led implementation in Kiteto District, and; information from various official and scholarly reports on implementation experiences across the country. In total around 125 structured, qualitative, in-depth interviews with villagers, elders, local leaders, district officials, court representatives, NGO representatives and ministry officials were conducted during fieldwork.

After this introduction the characteristics of new wave land reforms are analysed. This is followed by a section on Tanzania's 1999 reform, which has been highlighted as a model for other countries to follow, and a section introducing the sometimes quite critical literature on its implementation. Then comes the paper's main section, which describes and analyses the experiences from a number of interventions to implement the reform. It points to the fact that often too little attention is paid to making changes function in the longer run, that is, to institutionalising the changes at the local level. However, it also highlights some more successful interventions. It is followed by a conclusion.

New Wave Land Reforms Defined

Land reforms have been introduced in a large number of countries in Sub-Saharan Africa in the last couple of decades to streamline land administration and land dispute settlement. Prior to reform, countries have typically displayed a confusing mix of land law regimes, including pre-colonial customary practices, colonial land policies promoting large-scale farming and post-colonial, state-led redistribution and land nationalisation programmes. Often, this mix undermines tenure security. Reforms seek to address the competing legal frameworks by simplifying and harmonising land legislation. The term 'new wave land reform' has been used to describe these reforms, but it is rarely properly defined.

An important feature of a new wave land reform is its immediate recognition of existing rights, including customary rights, to land. This is important for two reasons. First, the recognition of existing rights represents a break with the past, when colonial and post-colonial authorities alike seized land for development purposes, often without compensation. This reduced poor people, whose rights were rarely formally recognised and documented, to the status of second-class citizens as compared to the wealthy who could access the formal system and secure land title deeds (Knight 2010, 7). Secondly, the recognition of customary rights is important because it is applied from the day a reform is enacted. With enactment, existing rights are valid in land court cases and should colour land administration and land dispute settlement practices. It may still be difficult to prove customary ownership rights in practice, but *de jure*, the recognition is important.

A second important common denominator of new wave land reforms is the decentralisation of responsibility for the administration of land and land dispute settlement to the local level (Boone 2007; Lipton 2009, 259; Sikor and Müller 2009). The choice of local level institutions to administer land administration varies widely, as do decentralisation models in general. Often, but not always, customary authorities are recognised and incorporated into more formal land administration and land court systems. Other models emphasise the responsibility of elected local governments or appointed land boards. Most often, a combination of these decentralisation models is chosen (Toulmin 2000. See also Crawford and Hartmann 2008).

Finally, and more controversially, new wave land reforms facilitate the registration and titling of rights to land with the dual goal of enhancing tenure security and promoting markets in land. Indeed, the registration of rights is often an important task of the new, decentralised land administration bodies and has been described as ‘the driving force’ behind decentralisation (Wily 2003b). Whereas some scholars demonstrate a certain distrust towards the land markets, which they see as potentially threatening the rights of the poor (Boone 2007; Lipton 2009), Rachael Knight (2010) does not see this as an inherent contradiction to current reforms. On the contrary, she stresses that recognition and protection of rights is important, both for the poor and for establishing stable investment environments which are attractive to investors. Typically, customary rights are often registered with caveats and some may not be brought onto the land market.

The outline of new wave land reforms becomes clearer when they are compared to the previous ‘first-wave’, or post-colonial reforms. The first wave, which occurred from the 1960s to the mid-1980s, viewed customary land administration systems as ineffective in providing tenure security and the optimal use of land required for modernisation. Reforms during this period varied widely from nationalisation and forced villagisations (the resettlement of people into designated villages by government) in Tanzania to redistribution, individualisation and land titling in Kenya. Often labels like ‘redistribution’, ‘restitution’ or ‘tenure reform’ were used in these first reforms to emphasise certain reform elements. But overall, while these reforms aimed to strengthen the role of the state in land administration, they were often administered top-down, heavy-handedly, and with little success (Ostrom 2001; Peters 2009; Sikor and Müller 2009).

In comparison, today’s new wave land reforms are reluctant to centralise and override land markets. Michael Lipton, who has written most extensively on the new wave land reforms, uses the term ‘negotiated land reform’ (Lipton 2009, 259). Indeed, Lipton and some other scholars have criticised the theoretical underpinnings of the term ‘new wave land reform’ and question whether there is anything new about these reforms at all. They insist that a reform should aim at redistributing land in order to qualify for a land reform label (Lipton 2009, 327; Jacobs 2010, 16). I find this emphasis on land transfers and land redistribution unfortunate because it may reduce the analytical focus to being one of definitions, hampering research into reform effects. When I prefer the term ‘new wave land reforms’, it is out of a wish to focus on the reforms’ non-economic, institutional elements, of which surprisingly little is known.

The discussion makes it clear why a country like Zimbabwe, with its heavy-handed, state-led redistribution in the 2000s that did not even pretend to redistribute land without the use of force (Lipton 2009, 149; Moyo 2011, 80), can hardly be labelled a new wave land reform. Generally, the former settler colonies seem to be outliers, although to varying degrees. South Africa’s 1994 land reform programme initially focused narrowly on state-controlled restitution and redistribution until its Communal Land Rights Act was introduced in 2004. Even then, the country’s reform deviated from other new wave land reforms because it vested much power in traditional communities as mediating layers, thus undercutting the immediate legal recognition of existing rights to land provided elsewhere in Sub-Saharan Africa (Cousins and Claassens (eds.) 2008, 14; Lipton 2010, 1207; Mufune 2010). Kenya’s reform, outlined in its 2010 Constitution, seems to reconcile the new wave land reform’s immediate recognition of existing rights with some redistribution, but it remains to be seen how it will achieve these goals in practice (Boone 2012).

Tanzania’s New Wave Land Reform

Each country chooses its own path towards a new wave land reform. In a way, Tanzania started its process in 1983 with the opening up of private land ownership after more than two decades of African Socialism.

Basically, the reform came about as a response to an increase in the number of conflicts over land in the late 1980s, caused by private land ownership (Sundet 1997, unpublished). A Presidential Commission of Inquiry into Land Matters, established in 1992 to investigate the increase, cited widespread confusion over, and abuse of, power related to land allocations and land services due to contradictory policies (URT 1994a, 1994b). However, it was not until 1999 that the Parliament passed the two land acts, the Village Land Act governing village land in rural areas and the Land Act governing land in cities and other types of land. Together with the Courts (Land Disputes Settlements) Act from 2002 they constitute the core of Tanzania's new wave land reform.

Like other new wave land reforms, Tanzania's reform is a highly complex legal framework comprising both the streamlining of existing legislation and novel innovations. Its Land Acts fill more than 800 pages of legislation (URT 1999a, 1999b). Patrick McAuslan, who drafted the Acts, distinguishes between procedural and substantive matters (McAuslan 2010). Substantive matters describe the nature of rights and obligations. With its recognition of existing rights to land, the Village Land Act strengthens the protection of ordinary rights-holders vis-à-vis the state by elevating customary rights into the formal legal framework. Indeed, the Land Acts explicitly state that customary rights of occupancy are on a par with the security provided by the granted rights of occupancy associated with titled land (Knight 2010; Wily 2003a). Procedural matters are about the procedures that describe the administrative and legal proceedings. Here, the reform represents a significant move towards a more important role for village authorities in managing natural resources (Wily 2003a, 14).

In rural areas, they are part of the same, broader trend towards decentralisation of responsibility for the delivery of public services which has been ongoing in Tanzania for more than 30 years, starting with the establishment of villages as an important unit in the local government system in 1975 and the reintroduction of district councils in 1982 (Max 1991, 100). Whereas the authority over land allocations between national, district and village authorities was not clear earlier on, the Land Acts make it clear that it is the village authorities who are responsible in the main for administering village land (Sundet 2005). Similarly, the first stop in the new land dispute settlement system – the village land councils – is the responsibility of the village authorities. It is ironic that the Village Land Act vests so much power over land in village authorities when these authorities were largely bypassed in recent decades by the 1998 Local Government Reform Programme and other programmes aimed at improving service delivery (Lange 2008; Tidemand and Msani 2010).

Finally, the reform aims at facilitating a market in land by enabling registration of rights and the issuance of land title deeds. Indeed, the reform has also been seen as first and foremost a response to an increase in demand for land administration services caused by a greater demand for land (Daley 2008, 72; Kombe and Kreibich 2006, 149). Some scholars have described this as a vehicle for disempowerment because it supposedly strengthens the middle class and marginalises the poor (Pallotti 2008; Shivji 1998). In village areas, title deeds are called Certificates of Customary Rights of Ownership (CCROs), which are of the same value as the reformed classic title deeds, the Granted Right of Occupancy, that can be found elsewhere. However, the Village Land Act also seeks to protect the rights of women and some vulnerable groups, for instance through caveats on sales of customary rights to land. More than most other contemporary land reforms, Tanzania's reform strikes a balance between creating a new legal framework for a land market and protecting the rights of vulnerable groups (Ik Dahl et al. 2005, 38; Ik Dahl 2010; Knight 2010, 211).

Research into the Implementation of Tanzania's New Wave Land Reform

In 2009, when this PhD project began, very little was known about the implementation of Tanzania's new wave land reform. Research and debates had been framed by Professor Issa Shivji, who headed the Presidential Commission of Inquiry into Land Matters in the early 1990s, and who became highly critical of the entire reform process when it became clear that not all the Commission's recommendations had been heeded (Shivji 1998, 1999, 2006; Shivji and Wuyts 2008). Subsequently, much research focused on the making of the reform and whether donors had had undue influence on its content (see, for instance, Sundet 1997, unpublished; Tsikata 2003; Manji 2006; McAuslan 2010). To a large extent, this research agenda is in line with a broader international trend where a number of scholars see these 'neoliberal' reforms as mere

tools for national elites and international investors to grab land and alienate small-scale landholders from their land (Manji 2006; Moyo 2011; Amanor 2012).

Another body of literature focuses on the analysis and interpretation of the new legal framework. Liz Alden Wily's very positive evaluation of the Land Acts for their far-reaching devolution of administrative power set the tone (Wily 2003a). Professor Fimbo puts the reform into a historical perspective, which showed it to be less radical than as portrayed by Wily. Since many of the Land Acts' building blocks had existed earlier in other pieces of legislation, the reform merely systematises and simplifies them. Although he found that tenure security had improved Fimbo was also worried about the reform's land market elements (Fimbo 2004).

In a similar vein, Ingunn Ikdahl and Rachael Knight's rather positive evaluations of the protection of the land rights of vulnerable groups carried certain caveats. Ikdahl made it clear that devolution does not free the Tanzanian state from its obligation to protect women's rights. She pointed to the internal tensions in the legal framework between protection of women's rights on the one hand and the potential gendered effects of the reform's more market-friendly elements on the other (Ikdahl 2008). Knight is equally positive with regard to the reform's rural elements and concluded that because of its strengthening of customary rights, it was among the best of its kind in Africa. She also pointed out that *not* recognising rights may disadvantage the poor and 'relegates them to a status as second-class citizens' (Knight 2010, 7).

Indeed, the reform states that land can only be transferred with the approval of the village council and upon agreement over the level of compensation. If no agreement can be made, the case is to be referred to the High Court. This limits the Tanzanian government's ability to alienate land for development or investment purposes, something it recognises – and regrets – in, for instance, the documents outlining an agricultural growth corridor in the central and southern parts of Tanzania (URT 2010). However, Knight also pointed to the question of implementation, which may be a totally different – and under-researched – matter.

Not until almost ten years after the passing of the reform and coinciding with the beginning of the PhD project¹ upon which this paper is based, did research papers begin to publish data on actual implementation. In an article from 2009 Bruce and Knox compared insights from experiences with decentralisation reforms in eight African countries and noted that very little implementation had taken place in Tanzania (Bruce and Knox 2008). However, they based their observations on figures from a representative from the Ministry of Lands, Housing and Human Settlements Development from 2005, the same year that Tanzania's Strategic Plan for the Implementation of the Land Laws (SPILL) was finalised and only four years after enactment of the reform (Pedersen 2010).

Kennedy Gastorn's case study of the reform's impact on customary rights of pastoralist land in two districts in Northern Tanzania, based on field research from 2005/6 and published in 2008, showed some more progress. He concluded that the reform had a fundamental impact on customary rights, but that its effect depended on the level of implementation (Gastorn 2008, 18 and 215–17). Somewhat in line with Gastorn, Rie Odgaard in 2006, based on three weeks' field research into the Tanzanian reform debates, acknowledged that the Tanzanian government was conducting a commendable process of streamlining land tenure systems. However, she also sounded the alarm when it came to the most important implementation programmes, whose effect could undermine the strengthening of rights that, for instance, women, pastoralists and vulnerable groups had experienced. She concluded that more research into these programmes was needed (Odgaard 2006).

¹ More studies have been published about land in Tanzania in the 2000s, but were typically based on research material gathered before the enactment of the reform in 2001 and thus are less relevant for this thesis (Maganga 2002; Cleaver 2003; Maganga, Odgaard, and Sjaastad 2007; Daley 2008; Benjaminsen, Maganga, and Moshi Abdallah 2009).

Odgaard's call for research into implementation programmes was heeded. MKURABITA, whose pilot project in Handeni District is analysed and discussed in this paper, came to be one of the most written-about elements of the entire land reform. The programme was initiated by Tanzania's former President Benjamin Mkapa in collaboration with the controversial economist Hernando de Soto and with the direct participation of his Institute of Liberty and Democracy (de Soto 2008). MKURABITA was based on de Soto's ideas, namely that enhancement of economic growth and empowerment of the poor is possible through formalisation of property, that is, the issuance of title deeds which will enable the poor to use their land as collateral for credit. Ole Kosyando participated in two of the MKURABITA pilot projects as an NGO representative and wrote some informative reports about his experiences. Although the aim of the pilots was to test innovations within implementation and land administration and, therefore, some mistakes were to be expected, the rushed character of the pilots and the lack of understanding of the importance of local capacity caused many mistakes and made the programme a target for criticism to such an extent that the donor, the Norwegian Agency for Development Cooperation (NORAD), subsequently pulled out (Kosyando 2007, 2008; NORAD, Claussen, and Group 2005; NORAD, URT, and Claussen 2008; Sundet 2008).

The Ministry of Lands, Housing and Human Settlements Development's own pilot projects, though often bigger in scope, received less attention, perhaps because their reports and evaluations were rarely publicly available. I only managed to get my hands on them through personal contacts at various levels in the land administration system. These documents are quite technical and focus on project methodologies and outputs (Ministry of Lands 2006; Mkumbwike and Ministry of Lands 2007a; Mnyanga and Ministry of Lands 2007b, 2008; Ministry of Lands and Bank 2010/1).

The latest and by far the biggest implementation project carried out in Tanzania to date – a pilot in Babati and Bariadi Districts financed by various donors and a World Bank loan – was scrutinised in Ahikire and Kassim's 2012 review of the land reform's impact on women's rights to land. They pointed out that the pilot as well as the Ministry's Strategic Plan for the Implementation of the Land Laws (SPILL) is largely gender-blind, which undermines Tanzania's gender-sensitive land legislation (Ahikire and Kassim 2012, 24). Ahikire and Kassim's conclusion – that the protection of women's rights is neglected in state-led implementation – was largely supported by the findings in Helen Dancer's 2013 doctoral dissertation on women and land. Although Dancer did not research land reform implementation directly, she concluded that the reform reaffirming a discourse of equal rights at the local level might be the most important feat for Tanzania's women in securing their rights to land, whereas there is room for improvement in terms of enforcement (Dancer 2013, Unpublished).

Finally, a large and growing body of literature has analysed and discussed the land grabbing and large-scale land acquisitions taking place in Tanzania. I shall mention a few examples here, although they do not always touch directly on land reform implementation. Many of these works differ in their evaluation of the character and scale of the problem. Chambi Chachage has written some instructive reports on the privatisation of state farms and ranches, which, according to him, are examples of how other laws may bypass the protection of ordinary villagers' land rights provided by the Village Land Act (Chachage 2009, 2010). Indeed, it may be argued that the current strengthening of existing rights to land is no different from the protection provided by colonial and previous post-colonial authorities. Back then rights were overruled by, for instance, the use of documentation acquired through the formal system, even if the land had been acquired irregularly (Askew, Maganga, and Odgaard 2013; Lane 1993; Mwaikusa 1993; Rwegasira 2012; Tenga and Kakoti 1993). Research has pointed to the continued weaknesses in the current land laws and to the dubious transactions that take place, which make it hard for villagers to benefit from land deals (German, Schoneveld, and Mwangi 2011; Massay and George 2012).

In contrast, Nelson, Sulle and Lekaita describe the legal framework as basically sound and stress that the ill-reputed biofuels investments from 2005-8 seem to have followed the rules laid out without evidence of corruption or irregularities (Nelson, Sulle, and Lekaita 2012, 12; see also Locher and Sulle 2013). In support of this interpretation are the recurring complaints by current Tanzanian governments that the protection of rights provided by the 1999 Land Acts makes it difficult to find land for investors (URT 2010; Council 2009;

G8 2013). Indeed, except for the grabbing of land in some pastoralist areas by local elites, many of the conflicts over land deals in Tanzania seem to relate to land alienated prior to the passing of the land reform. For instance, the state farms analysed by Chachage were typically established in the 1960s and 1970s. It has also been pointed out that the scale of large-scale land acquisitions seems to be smaller in Tanzania than in many other African countries (Bank 2010, xiv; see also similar, but less conclusive observations by Cotula 2012; Cotula and Polack 2012; Hall 2013; Cotula et al. 2014; Abdallah et al. 2014).

The Implementation of Tanzania's New Wave Land Reform

The implementation of Tanzania's new wave land reform has proved to be slow, uneven and to a large extent project-driven (Pedersen 2010; Deininger, Selod, and Burns 2012). The late finishing of the Strategic Plan for the Implementation of the Land Laws (SPILL) in 2005 and lack of funding provide part of the explanation why. From the outset, it was estimated that SPILL would cost over 300 billion TSH, of which only about 3 billion are foreseen to come from the ordinary government budget. Consequently, the remaining 297 billion would have to come from outside the government budget (Hakikazi in Collaboration with Experts from the Ministry of Lands, July 2006). In May 2012, two and a half years before the end of SPILL, only around 17% of the planned 300 million USD had been spent (Byamugisha 2013, 167). Equally important to underfunding is decoupling, that is, the lack of coherence within the land administration structure (Pedersen 2012). Decoupling hampers implementation and, consequently, institutionalisation over time.

However, there are examples of both successful and less successful interventions in rural areas. We can learn quite a deal from comparing these different interventions. This section contains some selected experiences with implementation and the extent to which changes are institutionalised. It is in no way a comprehensive overview of the implementation activities that have been carried out to date (for a more comprehensive overview, see Pedersen and Haule 2013). But it does provide insights into some of the more important mechanisms at play.

Lack of Institutionalisation (1): MKURABITA's Pilot Project in Handeni District

The Handeni pilot project was initiated by MKURABITA in partnership with Handeni District Council (MKURABITA 2006). MKURABITA itself was initiated by former President Mkapa and funded by NORAD (de Soto 2008). It was based on Hernando de Soto's ideas, namely that enhancement of economic growth and empowerment of the poor is possible through formalisation of property, that is, the issuance of title deeds which will enable the poor to use their land as collateral for credit. This philosophy influenced the outcomes of the pilot project in Handeni District.

On the surface the implementation process in Handeni District was quite successful. Over a short time period – three months at the end of 2006 – it facilitated the establishment of the land administration structures required by the Land Acts, that is, the making of land use plans and village land certificates, some basic training of local leaders in the procedures for issuing CCROs and the establishment of institutions for land dispute settlement, which are all preconditions for issuing CCROs. However, the short-term focus on issuing as many CCROs as possible proved problematic later on.

In 2010, three and a half years later, after the MKURABITA pilot, I carried out fieldwork in the most successful (in terms of CCROs issued) of the seven pilot project villages, Mzeri Village. In August of that year 666 CCROs had been issued in Handeni District of which around 225 had been issued in Mzeri Village (for a description of pilot experiences, see Kosyando 2007; Pedersen 2013). However, it had proved challenging for the village to make the land administration and land dispute settlement institutions function properly. The surveying of plots in order to issue new CCROs stopped shortly after the MKURABITA teams left because the village did not have the right equipment (the pilot had used GPS devices, which were later taken away from the village). And Mzeri's village land council, which had been set up to handle land conflicts, but had received no training, never really functioned. It also proved hard to settle conflicts over plot boundaries correctly without access to a GPS that could help establish the boundaries agreed upon during demarcation.

When I last visited the village in October 2012 none of this had changed. No proper training had been carried out in the village on how to make the newly established land administration and land dispute settlement institutions work in practice. The District Land Office did not, the officers said, have the resources and they did not see it as its work task. A MKURABITA officer confirmed that follow-ups were not part of the partnership between the organisation and Handeni District:

About continuing training, no. We did not have any agreement on that. But we had an agreement that they should continue to monitor and give us names of farmers eligible for loans. So that we have our. . . fourth phase in our programme. We want people to get capital for production. (Interview, 30 August 2010)

In other words, the narrow focus on issuing CCROs, combined with the short-term project implementation mode, affected project outcomes. Without continuous support from the outside, the village land institutions proved too weak to carry on and implementation stalled. In short, changes were not institutionalised.

Lack of Institutionalisation (2): BEST's Pilot Project in Babati and Bariadi Districts

A similar short-term project approach seems to have applied in the largest state-led pilot implementation project in Tanzania to date, which started in 2006 as part of a Business Environment Strengthening programme (BEST) (Pedersen and Haule 2013). The overall purpose of the BEST program is to reduce the burden on businesses by eradicating as many procedural and administrative barriers as possible and to improve the quality of services provided by the government to the private sector. The goal of the programme's land sub-component, carried out by the Ministry of Lands, Housing and Human Settlements Development and financed by bilateral donors and the World Bank, is to reduce 'land disputes and the time taken to allocate and register land and mortgages from more than 60 days to less than 30 days' to the benefit of small and medium size enterprises (Ministry of Lands 2006, 1).

The land component of the project was scheduled to be carried out in 15 rural districts and in a number of unplanned urban settlements through capacity building and improving of infrastructure for surveying, mapping and registration. Later, it was decided to carry out pilot projects in Babati and Bariadi Districts in two phases, the first phase including systematic demarcation and titling in nine villages in each of the districts, and the second phase a roll out to all villages (PMO 2008, 6). The first phase finished in 2010 and after long discussions about continuing to a second phase a new project with a land component to support BEST was approved towards the end of 2013 (Interviews with donor representative 12 September 2012 and Ministry official 5 October 2012; World Bank 2013).

Again, the pilot project's rather short-term focus on issuing customary title deeds seems to influence outcomes negatively over time. On the surface and according the Ministry of Lands, Housing and Human Settlements Development itself, the project in Babati and Bariadi was a major success. More than 30,000 CCROs were produced, almost 90% of the target (Ministry of Lands and Bank 2010/1). However, during a field visit to a Bariadi BEST programme village in October 2012, no villagers had received a customary certificate, even though a significant number had been reported from there in the Ministry's internal evaluation. According to people in the District Office, the main reason was that many mistakes had been made during the fast-tracked implementation, which had mixed up people's identities, photos and plots; therefore the CCROs had been held back.

In October 2012 there were no funds for finishing the project, the project database with the information about the plots had been sent to the Ministry to be serviced and the District had no computer-literate person employed, who could maintain the system (interview with District Officer 18 October 2012). The maintenance of equipment and skills – also part of the institutionalisation of change – appears to be a general problem at the end of pilot projects aimed at issuing CCROs, not only at village, but also at district level (Nyarubaji 2013).

As was the case with the MKURABITA pilot project in Handeni District, the design of the intervention seems to have shaped implementation outcomes. Obviously, the Ministry plays an important role in this. But

so do the donor organisations because donors want measurable outputs. Projects are often carried out without much long-term planning. A leading ministry official pointed out that BEST also suffered from these problems:

And we went to Babati, Bariadi, Namtumbo and Mbozi. These were initially pilots to design a system that will issue the customary certificate of ownership in the most efficient way. Donors again, they counted this as implementation. So instead of looking at how we could develop a system for land administration, they started asking: 'how many CCROs are you issuing?' So, the Ministry of Lands was rushing out to prepare more CCROs. Nobody cared about the system that has to be put in place and nobody cared about the cost of CCROs. (Interview 5 October 2012)

These observations from the BEST programme in Bariadi District are based on a very short field stay and we cannot take it for granted that they are representative of the entire land component. However, since the methods and procedures applied during the programme are not very different from those applied by MKURABITA in Handeni District, described above, it is quite likely. In other words, the short-term focus on issuing CCROs reduces the likelihood of institutionalisation in the longer run.

The Mixed Outcomes of NGO-led Interventions

A number of NGOs have been engaged in implementing the Land Acts in rural areas. I carried out field research in Kimana Village in Kiteto District to investigate the activities of an NGO, Community Research and Development Services (CORDS), which had been actively engaged in seven or eight villages, all situated around the main town, since 2003. Initially CORDS' main focus was on securing the communal rights to land – primarily the rights of pastoralists – and on empowering women. The land legislation was a vehicle to those ends, but the organisation had no plan to implement the Village Land Act in its entirety.

In some ways, the organisation had come a long way in achieving its goals by facilitating the making of land use plans and facilitating villages in acquiring village land title deeds, both of which are preconditions for village governments to take over responsibility for the administration of village land. CORDS also disseminated information about the Land Acts and helped establish a functioning village land council and trained its members regularly. The village land council in Kimana therefore functions well. The council follows proper procedures and produces a paper trail of evidence and decisions. There are even records of local leaders having been brought before the village land council and the ward tribunal.

Because of ideology, however – out of resistance towards individualising land ownership through the issuance of CCROs, a measure which CORDS found was contrary to the Maasais' traditional communal grazing rights – it had long abstained from facilitating the issuing of CCROs. Only when some NGO representatives realised that the communal land use plans were not enough to protect pastoralists' rights to land did the NGO start the process towards issuing CCROs. Initially, it had been projected to start in early 2010. At the end of 2012, however, the village had still not been able to issue any certificates, primarily because of an ill-equipped district land office, which could not take care of its work tasks related to the issuance of CCROs. Now CORDS representatives have realised that they have to cooperate more closely with the district land office:

Now we need . . . there is a structure of land-use planning from the national to the bottom to the village to the grassroots level. We have the village government, and you have the land-use planning at the district level and then you have the land-use planning at the national level. Therefore, now, they have their own regulation and everything. Therefore the role of the programme now is to facilitate them to achieve what they intend. (Interview, 24 February 2010)

Thus, NGO-led implementation has led to mixed results. With its focus on protecting existing rights to land CORDS has come back to the villages repeatedly, provided training in land rights and in the land administration and land dispute settlement procedures. It has, in other words, helped institutionalise change. However, whereas an NGO may thus step in and facilitate activities, NGO-led implementation is hardly a

viable way to implement the reform on a larger scale for two reasons. First, not all NGOs are as vehement and persistent as is CORDS. In her book, *Being Maasai, Becoming Indigenous*, Dorothy Hodgson describes how many organisations spend most of their time in the main towns and only pass through villages from time to time, delivering training rather randomly and with no thought of coming back to assist the villagers in addressing the challenges they face of making the laws and institutions function on a daily basis (Hodgson 2011). Secondly, as illustrated in the quote above, NGOs also rely on functioning land administration institutions at the district and national levels to carry out their activities properly. In other words, changes are not necessarily institutionalised due to NGO-led interventions.

Two Successful State-led Interventions

A couple of state-led implementation interventions have been more successful in coupling layers and institutionalising change. These initiatives demonstrate that successful interventions initiated at the national level are characterised by involvement of all layers in the land administration structure and a clear division of labour between them.

For instance, a large number of villages have received village land certificates due to a successful national intervention. The village land certificates include maps of a village's land and, prior to their making, village boundaries are surveyed and boundary conflicts between neighbouring villages are settled. The certificates are the precondition for village authorities to take over full responsibility for administering the village's land. In July 2012, 9,460 out of 11,817 registered villages had received such a certificate, up from 4,227 in 2010 (Ministry of Lands 2012; Pedersen 2012). The combination of a minister, who some years back had started a project to produce aerial photographs of rural areas, and additional funding from a World Bank project made it easy for districts to finish the job in cooperation with villages.

Similarly, in 2004–2005, the Permanent Secretary for Regional Administration and Local Government in the Prime Minister's Office issued a circular ordering the district authorities to establish village land councils. Although we cannot take it for granted that all councils are working as demonstrated above, we can assume that a large number of Tanzanian villages do have functioning village land councils today. In 2005, only 40% of villages in Tanzania had village land councils, and the same problem plagued the ward tribunals (Bruce and Knox 2008: 1,364). From the same period, a study of the pastoralist Simanjiro District showed similar mixed evidence, whereas in the more densely populated Bariadi District all villages had village land councils (Gastorn 2008: 112 and 127). This was a year after the enactment of the Land Court Act in 2004. My own, more recent, figures from 2010 show more positive findings. According to the Kiteto District Land Office, 51 of 58 villages in the district had village land councils (Interview, 5 February 2010). In Handeni District, all 112 villages and 19 wards were supposed to have the prescribed institutions for land dispute settlement.

The anchoring of the implementation of this land reform aspect in the Prime Minister's Office and making it the responsibility of the district authorities that the land councils were established seems to have had some effect. Though some councils may be dysfunctional and members of village land councils and ward tribunals do not seem to get sufficient training in the Land Acts, the fact that there was oversight of their establishment seems important. This aspect – that the districts are made responsible for the functioning of village land institutions – should also be taken into consideration if the land court system is reformed as suggested by some researchers: will the Judiciary, where it has been suggested that these institutions are to be placed for the sake of simplicity (Massay 2013, 9; Deininger, Selod, and Burns 2012, 87), be able to perform this duty of oversight properly?

Towards a Conclusion

The implementation of Tanzania's new wave land reform requires coordination of activities. Despite decentralisation, the local village level institutions are too weak to institutionalise change and make the more formal land administration and land dispute settlement institutions, prescribed by the reform, function on their own. Therefore, villages depend on resources and capacity supplied from the outside, which they rarely get. Officials in the districts and in the Ministry of Lands rarely see support to village institutions as their responsibility. Who, then, is supposed to make the Land Acts work in practice?

By introducing the concept of institutionalisation into the study of new wave land reforms, this paper aims at directing attention towards the importance of not only formulating laws and establishing institutions, but also of addressing cultural values and everyday practices over time. It demonstrates that the short-term focus on issuing customary title deeds, CCROs, is unlikely to be successful if the needs and practical problems that villagers and village leaders may face concerning land matters are not also being addressed. The state-led pilot projects in Tanzania that have been carried out so far tend to focus narrowly on land titling, but ignore the importance of continued support to village and district institutions over time. However, without ongoing support, activities are likely to stop once projects are over; registers will therefore not get updated and conflicts over land will not get settled according to the legal framework.

NGOs may step in with support and training to cover this vacuum, but this raises other problems. With their focus on protecting local rights to land through dissemination of information and through training, NGOs may be able to address the concerns of most villagers. However, NGOs rely on cooperation with district and state authorities – something they cannot take for granted since these authorities have their own priorities. And NGOs may also cherry-pick reform elements according to their agenda and render other land services inaccessible at the local level.

In brief, a short-term and skewed focus on selected reform aspects is likely to undermine institutionalisation in the longer run. Institutionalisation requires long-term engagement with communities and continuous support to make the new land administration and land dispute settlement institutions work in practice. Tellingly, the most successful interventions that have been carried out so far have been marked by a coordination of activities, from the national to the local levels, and by oversight that changes are upheld over time. More work like this remains to be done to make the newly decentralised land institutions function in practice.

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