

*Map of Tanzania, Showing Regions*



## DEEDS AND MISDEEDS

### *Land Titling and Women's Rights in Tanzania*

**C**ONFLICTS OVER LAND are on the rise in Tanzania.<sup>1</sup> Almost daily, the news headlines announce five deaths here, two more there, on account of land-use struggles. Spokespeople for the ruling ccm party explain that this is just a temporary phenomenon, as their programme of land titling unfolds; once boundaries have been demarcated and rights to occupancy formally registered, the conflicts will disappear.<sup>2</sup> William Lukuvi, the ccm Land Minister, argues that his programme to formalize title deeds across the country will not only provide security of tenure but facilitate access to credit and bring about the empowerment of women.<sup>3</sup> Though Tanzania has several big cities—in addition to Dar es Salaam, now a sprawling conurbation of almost 5 million, and Mwanza, the bustling port on Lake Victoria, the provincial hubs of Arusha, Mbeya, Morogoro and Tanga all have populations of over a quarter of a million—70 per cent of its citizens are rural, mostly poor subsistence farmers, living in some 12,000 villages across this vast country. Land issues, here as in many other parts of Africa, are a burning political-economic question.

Lying just south of the Equator, on the same latitude as Brazil and Indonesia, Tanzania is the largest country in its region. It has a population of 57 million and a territory twice that of California, although vast tracts of it have been set aside for tourists; the Serengeti National Park is half the size of Belgium. With the partial exception of its restive Indian Ocean islands—Zanzibar and, especially, Pemba, incorporated in the 1960s—Tanzania has so far largely escaped the politicized ethnic conflicts that have riven many of its neighbours. This may be partly due to the multiplicity of ethnic groupings, estimated at over 120, none

of them large enough to impose their hegemony on the rest. In addition, the overwhelming preponderance of the ccm means that power struggles are usually played out inside the party, and not through rival politicians mobilizing their ethnic bases for electoral competition. Since the liberalization of the economy, investment and growth—telecoms, tourism, construction—have been concentrated in the cities, in conservation areas (national parks, game reserves, etc.), and along the coast, creating disparities of growth. Nevertheless, tensions have so far largely been managed by the ccm. The rise in land conflicts signals a worrying development, raising questions about the country's approach to land formalization.

This article draws on field research in different parts of Tanzania—the southern highlands, the central plateau, the shores of Lake Tanganyika, to the west, and the lush valley of Babati, in the northern region of Manyara—to examine the gendered outcomes of the land-formalization process. We present a number of specific case studies, involving women in varying social positions and land parcels of different value. Over the course of eight years, our team also investigated titling in some forty villages, assessing the certification data in the land registries of different districts.<sup>4</sup> First, though, it may be helpful to set out some more general coordinates of land formalization.

### *Getting started*

Though the ccm had replaced its 'African socialism' model with orthodox World Bank economics in the mid-80s, Tanzania was a slow adopter of

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<sup>1</sup> This paper draws heavily on research pursued by the authors with Faustin Maganga, Howard Stein and various assistants titled 'Transformations in Property Rights and Poverty in Tanzania'.

<sup>2</sup> The ccm—Chama Cha Mapinduzi, Kiswahili for 'party of the revolution'—is the direct descendant of Tanganyika African National Union (TANU), the largest pro-independence organization under British rule, which established itself under Julius Nyerere as the sole party of government after independence in 1961. The law was changed to permit multi-party elections in 1992; since then the ccm has continued to win every election, thanks to its vast reservoir of rural votes.

<sup>3</sup> Budget Speech to Parliament for 2017–18 by Minister for Lands, May 2017, discussion point 94, p. 62.

<sup>4</sup> We collected data from land registries for Babati (Manyara region), Chamwino and Kongwa (Dodoma region) and Kasulu (Kigoma region) between 2014–16.

land-formalization policies. In the early 1990s Issa Shivji, the country's leading scholar of development, was commissioned by the President to report on the issue. Shivji's team travelled the length and breadth of mainland Tanzania to canvas and record the views of subsistence farmers on land rights, access, conflicts, concepts and management.<sup>5</sup> The Commission's goal was not the marketization of land but security of tenure for peasant producers. Its proposals included amending the constitution to recognize and protect land rights for all citizens; abolishing the Ministry of Lands; divesting the President of radical title over all land; and simplifying the classification of land into just two categories—village land and national land. The former would be managed by Village Assemblies, comprising all adult members of a village, and the latter by a new Board of Land Commissioners.<sup>6</sup> This was not what the ccm's international advisers wanted to hear, and few recommendations from the Commission's 1992 report made it into Tanzania's subsequent land policy. Instead, ten years later, they brought in Hernando de Soto.

In *The Mystery of Capital* (2000), the Peruvian economist famously argued that lack of legal titles to their assets, whether plots of land or shanty-town dwellings, condemned the poor to operate in the informal sector—the domain of 'extra-legality', as de Soto preferred to call it—cut off from the formal credit and banking system.<sup>7</sup> Without legal proof of ownership, their assets constituted 'dead capital' which could not be offered as collateral for loans. State-backed programmes to formalize titles—to land, to dwellings, to small businesses—were the first step in empowering the poor and enabling them to become successful entrepreneurs. With improved access to credit, enterprising farmers would be able to improve their yields through purchase of improved seeds, fertilizer, mechanization and irrigation, thus generating sufficient profit

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<sup>5</sup> Transcripts of the Commission's evidence, running to twenty volumes, are held in the library of the University of Dar es Salaam.

<sup>6</sup> United Republic of Tanzania, *Report of the Presidential Commission of Inquiry into Land Matters*, Vol. 1: *Land Policy and Land Tenure Structure*, Dar es Salaam 1994; Issa Shivji, *Not Yet Democracy: Reforming Land Tenure in Tanzania*, Dar es Salaam 1998. See also Dzodzi Tsikata, 'Securing Women's Interests within Land Tenure Reforms: Recent Debates in Tanzania', *Journal of Agrarian Change*, vol. 3, nos 1–2, 2003, pp. 149–83; Abdon Rwegasira, *Land as a Human Right: A History of Land Law and Practice in Tanzania*, Dar es Salaam 2012, pp. 88–92.

<sup>7</sup> Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, New York 2000.

to repay the loan and more. The green revolution would finally reach Africa's shores.<sup>8</sup>

In addition to kick-starting agrarian capitalism, a stated objective of the land-titling programme—heavily promoted by the World Bank and by the northern donor organizations and state-aid agencies which provide nearly a third of Tanzania's budget—was to improve women's rights. International advisers and local activists both argued that customary norms generally disfavoured women, who had everything to gain from the formalization of land rights. Indeed land titling has supplanted microfinance as the current one-stop solution to gendered poverty, though it bears the imprint of its precursor, with its promise of loans and claims to female empowerment. Shivji's report was now criticized for its lack of a gender dimension.<sup>9</sup> Women and the poor were posited as the primary beneficiaries of rural title deeds.

### *Roll out*

From the early 2000s, a series of land-titling programmes have been undertaken in Tanzania. One of the most lavish projects, known by its Kiswahili acronym MKURABITA, was rolled out from the President's office, with de Soto's Institute for Liberty and Democracy the primary consultant and funding from the Norwegian government (we were told that de Soto's fee amounted to almost half the \$14 million contributed by Oslo). In 2004, an EU-funded pilot project in the village of Halungu announced, with great fanfare, the issue of the first of the new deeds to a smiling grandmother, Sala Labison Ngoya, who worked two acres in the upland coffee-growing area of Mbozi District, in the southwestern Mbeya Region. A further Ministry of Lands initiative, trailed as a 'private-sector competitiveness project', began in 2005 with World Bank funding. De Soto won UN Development Programme backing for an entity entitled the High Level Commission for Legal Empowerment of the Poor, again with Norwegian funding, chaired by himself and Madeleine Albright,

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<sup>8</sup> Hernando de Soto, 'Are Africans Culturally Unsited to Property Rights and the Rule of Law? Some Reflections Based on the Tanzanian Case', in Dan Banik, ed., *Rights and Legal Empowerment in Eradicating Poverty*, Surrey 2008, pp. 155–6. The formalization campaign in Tanzania was accompanied by a campaign to issue national identification cards to all citizens, but it has ceased due to insufficient funding.

<sup>9</sup> See the discussion in Ambreena Manji, *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets*, London 2006.

and backed by former Tanzanian President Mkapa as well as a host of international worthies (Gordon Brown, Fernando Cardoso, Mary Robinson, Lawrence Summers, Anthony Kennedy, Ernesto Zedillo). The latest land-formalization project got a \$150 million loan from the World Bank.<sup>10</sup> Again, female empowerment was a key pillar.

With Anna Tibaijuka's tenure as CCM Minister for Lands from 2010, formalization found a female champion. Under her leadership, the Ministry actively surveyed and certified villages to facilitate titling at the household level. In an earlier incarnation as executive director at the UN-Habitat office, Tibaijuka had been more critical of land-titling—'slow, expensive and cumbersome', with 'serious equity and governance issues'.<sup>11</sup> Now she promoted de Soto's line: untitled land was 'dead capital'. As she assured Parliament in her 2013–14 budget speech, title deeds would reduce conflicts over land, as well as providing collateral for loans. More unusually, she also reminded Tanzanians that titling included the duty to pay land rents, fees and fines as dictated by the law: 'My Ministry is ordering all government authorities to take legal action against owners who are in arrears on their land rents, even repossessing the land and taking people to court when necessary.' This was a rare instance of a CCM politician affirming the objective of raising tax revenues outright.<sup>12</sup>

The donor-backed formalization programmes in Tanzania focus on issuing 'certificates of customary rights of occupancy' (CCROs) for village land. Unlike American title deeds, which confer freehold ownership rights, CCROs also differ from the renewable Tanzanian leasehold titles—'certificates of occupancy' (COS)—pioneered by German and

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<sup>10</sup> See Elizabeth Fairley, 'Upholding Customary Land Rights Through Formalization? Evidence from Tanzania's Programme of Land Reform', PhD thesis, University of Minnesota 2013; World Bank, 'Project Appraisal Document on a Proposed Credit in the Amount of SDR 65.5 Million (\$95 Million Equivalent) to the United Republic of Tanzania For a Private Sector Competitiveness Project', Washington, DC 2005; James Kandoya, 'WB Grants Govt 300/- billion [= \$150 million] to Support Land Tenure', *The Guardian* (TZ), 18 January 2019, accessible at [ippmedia.com](http://ippmedia.com).

<sup>11</sup> Anna Tibaijuka, 'UN-Habitat's Contribution to Security of Tenure', in M. E. Brøther and J. A. Solberg, eds, *Legal Empowerment: A Way Out of Poverty*, Oslo 2006, p. 28.

<sup>12</sup> Tibaijuka was obliged to resign in 2014 over the Tegeta escrow account corruption scandal, which saw \$1 million transferred to her personal account. She claimed the money would have gone to a charity for girls' schools.

British settlers during the colonial era, and available to wealthier African farmers after independence.<sup>13</sup> The CCROs have been explicitly designed for the mass of poorer farmers, following de Soto's prescriptions. Yet progress has been slow. To get their title deeds, villagers generally have to travel to the district capital, obtain passport-sized photos for each of the seven copies of the certificate that would be filed at various regional, district and village offices, navigate the notoriously cumbersome government bureaucracy and pay (often exorbitant) registration fees. Their claim also has to be verified by the district surveyors. Should any dispute arise, the costs of legal settlement are even greater, involving travelling long distances (fares, accommodation, food) to file complaints, submit evidence, have their cases heard and return for the judgement, in addition to lawyers' fees. Official estimates are that only 3 per cent of Tanzania's rural land parcels have been conclusively titled to date. The outcomes—especially for women, the poor and other vulnerable groups such as pastoralists and hunter-gatherers—have been problematic.

### *Complexities*

Neoliberal economic theory predicates its assumptions on the basic unit of the rational individual. Land-titling regimes, as outlined by these economists, privilege individualized ownership rights, conceptualized as those of a husband and a (single) wife. This fails to grasp the specificity of social relations in Tanzania, structured as they are by multiple forms of kinship, complex land-use patterns and modes of economic activity that range from hunter-gatherers and pastoralists, to subsistence farmers and small-scale rural industry, to large-scale land grabs by multi-national capital for export agriculture or global tourism. A growing literature on the impact of privatization and formalization on women's land rights in Africa argues that this has to be understood in the context of socio-cultural, familial and economic relations.<sup>14</sup> We'll consider these briefly in turn.

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<sup>13</sup> Once a CO leasehold title has been granted for a piece of village land, the plot is automatically re-categorized as 'general land', under the authority of the state, whereas with CCROs, village land remains under village control. What the CCRO bestows is formal legal recognition of individual use rights to a rural-land parcel.

<sup>14</sup> See for example: Rie Odgaard, 'Tea—Does it Do the Peasant Women of Rungwe Any Good?', in J. Boesen et al., eds, *Tanzania: Crisis and Struggle for Survival*, Uppsala 1986; Thea Hilhorst, 'Women's Land Rights: Current Developments in Sub-Saharan Africa', in C. Toulmin and J. Quan, eds, *Evolving Land Rights, Policy and*

The process of mapping Western—or, more accurately, us-based—household models and ownership patterns onto the mosaic of Tanzanian kinship structures and local land-management systems has proven more than a little complicated. First, the process of land formalization in Tanzania confronts multiple legal regimes: ‘customary law’ endows a clan with the right to pass its land to its descendants, whether sons or daughters; institutional ‘village law’ authorizes elected village councils to administer land; finally, statutory law confers the holder of title deeds with occupancy rights to land, through a process of written applications, fees and state authorization. The Land Act and Village Land Act of 1999 recognized these regimes, while attempting to steer the system in a liberalizing direction. They delineated three categories: village land, general land (including urban and leasehold land) and reserved land (national parks, forests and other conservation areas as well as land used for highways and other public projects). While the Acts grant equal legal status to statutory rights and to customary rights, the state nonetheless recommends that people in rural areas have their land registered and titled.

Second, kinship relations are highly varied in Tanzania. Polygamy is still widely practised in the rural areas, at least by wealthier farmers. A majority, some 80 per cent, of the country’s 120-plus ethnic groups are patrilineal; the ‘customary’ system here is for rights to clan land to pass down the male line of descent, often with daughters inheriting as well as sons, but excluding wives. ‘If my wife were to be included on the title, and if I were to die before her’, one man gently explained to us, ‘and if my wife were to remarry, as would be her right, how could my uncles

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*Tenure in Africa*, London 2000; Tsikata, ‘Securing Women’s Interests within Land Tenure Reforms’; Birgit Englert and Elizabeth Daley, eds, *Women’s Land Rights and Privatization in Eastern Africa*, Woodbridge 2008; Elizabeth Daley and Birgit Englert, ‘Securing Land Rights for Women’, *Journal of Eastern African Studies*, vol. 4, no. 1, 2010, pp. 91–113; Ambreena Manji, ‘Eliminating Poverty? “Financial Inclusion”, Access to Land, and Gender Equality in International Development’, *Modern Law Review*, vol. 73, no. 6, 2010, pp. 985–1004; Cheryl Doss, Ruth Meinzen-Dick, and Allan Bomuhangi, ‘Who Owns the Land? Perspectives from Rural Ugandans and Implications for Large-Scale Land Acquisitions’, *Feminist Economics*, vol. 20, no. 1, 2014, pp. 76–100; Marit Widman, ‘Land Tenure Insecurity and Formalizing Land Rights in Madagascar: A Gender Perspective on the Certification Programme’, *Feminist Economics*, vol. 20, no. 1, 2014, pp. 130–54; Helen Dancer, *Women, Land and Justice in Tanzania*, Woodbridge 2015; Faustin Maganga et al., ‘Dispossession through Formalization: Tanzania and the G8 Land Agenda in Africa’, *Asian Journal of African Studies*, no. 40, 2016, pp. 3–49.



and brothers accept a man from another clan [another patriline] coming to live on our clan land? They would not accept it.' Our field data records women who share this position, and who fought strongly against their sisters-in-law being allowed to have their names on their brothers' title deeds, especially where clan lands are concerned. And although women may inherit from their fathers, the reasoning that a married woman has a husband to care for her needs underlies a logic that privileges passing more land to sons over daughters. By contrast, in matrilineal communities, such as the villages of the Uluguru Mountains in the Morogoro region of east-central Tanzania, mothers pass land to their daughters, bypassing the husband.<sup>15</sup>

Third, instead of a unitary authority over the use, sale and transferability of a land parcel, land usage in Tanzania typically gives rise to multiple layers of rights, claimed by multiple actors: *access*, or the right to be on the land; *withdrawal*, the right to take something from it, such as water, firewood or produce; *management*, meaning the right to change the land in some way, such as by planting crops or trees; *exclusion*, or the right to prevent others from using the land; and finally *alienation*, the right to transfer it to others through rent, bequest or sale. The historical structuring of this 'bundle of rights' frequently takes on gendered meanings: comprising the bulk of the agricultural labour force, women often have rights to access, withdrawal and management, but less commonly to exclusion and alienation.<sup>16</sup> Finally, social relations of land use have been complicated by two further factors since the 1990s. The first of these is the arrival of refugees and other displaced groups: from Mozambique in the south, Somalia and Ethiopia in the north, and Rwanda, Burundi and the DRC in the west. The other factor has been the appropriation of large tracts of land by external capital for bio-fuel plantations, agribusiness, mining and tourism; the expansion of national parks and game reserves

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<sup>15</sup> See Birgit Englert, 'From a Gender Perspective: Notions of Land Tenure Security in the Uluguru Mountains, Tanzania', *Austrian Journal of Development Studies*, vol. 19, no. 1, 2003. For a discussion of matrilineal-matrilocal patterns in Malawi, see Pauline Peters, "'Our Daughters Inherit Our Land But Our Sons Use Their Wives' Fields": Matrilineal-Matrilocal Land Tenure and the New Land Policy in Malawi', *Journal of Eastern African Studies*, vol. 4, no. 1, 2010.

<sup>16</sup> Edella Schlager and Elinor Ostrom, 'Property-Rights Regimes and Natural Resources: A Conceptual Analysis', *Land Economics*, vol. 68, no. 3, 1992, pp. 250–1. See also Doss et al., 'Who Owns the Land?', pp. 79–80.

has often involved the exclusion of pastoralists and the eviction of farmers, intensifying land pressures.

### *Looking through the records*

Within this complex social landscape, how have programmes for women's empowerment via land-titling fared? Our examination of CCROS confirmed the initial findings for the Ministry of Lands: within low levels of registration overall, the vast majority were held by men. The CCROS registered in women's names, or jointly held by married couples, were few and far between. Yet conditions varied widely between the regions. In Dodoma, on the arid central plateau, we collected data from CCRO registries in two districts: Chamwino and Kongwa.<sup>17</sup> The main indigenous ethnic group here is the Gogo, traditionally keepers of livestock. But as in other districts, this situation has changed over time. The area is now also inhabited by people from other ethnic groups who have migrated to Dodoma: pastoralists, agro-pastoralists and farmers. Crop cultivation is taking up more and more land. The Gogo themselves are now heavily involved in cultivation, as well as livestock keeping. The level of land-titling here is low: in Chamwino, we found a total of 292 CCROS registered, of which just six were jointly held by a married couple (2 per cent). In Kongwa there were 434 CCROS, of which only one was issued jointly to a married couple; more surprisingly, 76 CCROS were registered to women (14 per cent).

In the northwestern Kigoma region, up near the Burundi border by the shores of Lake Tanganyika, we examined CCROS in the Kasulu district.<sup>18</sup> The main ethnic group here is the Ha, traditionally engaged in crop cultivation, iron smelting and fishing. The population here has increased, partly because Kasulu houses large refugee camps for those fleeing from Burundi, Rwanda and Congo, but also due to a substantial influx of migrants from other parts of Tanzania, especially pastoralists like the Sukuma and Maasai. Here, among a population of nearly a million, we found 580 CCROS, of which 153 were jointly held.

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<sup>17</sup> The information provided here is derived from data collected in the field and from 'Kongwa District Council Profile', Kongwa 2012; and 'Chamwino District Agricultural Profile', Chamwino District 2014.

<sup>18</sup> Information about Kasulu also stems from data collected in the field and from Kasulu District Council Investment Profile, 2014.

Strikingly, these gender ratios were higher than those from the World Bank pilot districts of Babati, in the northern Manyara region, and Bariadi, in neighbouring Simiyu. Land conflicts have multiplied in Babati, which has a highly heterogeneous population—pastoralists, agro-pastoralists, hunter-gatherers and farmers. Previously, most of the ethnic groups here—the Maasai, Barabaig, Hadzabe and Akie—based their livelihoods on pastoralism, hunting and gathering, while others—the Iraqw and Arusha—practised agro-pastoralism. However, land pressure in other parts of Tanzania and potential for accessing land both for cultivation and for grazing of livestock have attracted large numbers of people from southern, central and other northern regions. The result has been increasing land scarcity and clashes between the livelihood patterns pursued by the different groups. Perhaps for that reason, the large-scale titling programmes rolled out here emphasized land-tenure security and access to credit, without specifically safeguarding the rights of women. According to initial reports published by the World Bank projects, of 15,059 CCROs issued in Babati, only 3.4 per cent were given jointly to men and women. In Bariadi, the figure was only slightly higher: 5.8 per cent of the 16,429 CCROs were jointly issued.<sup>19</sup> It's worth noting that the district data we examined in Dodoma and Kigoma represented numerous villages where only a few households obtained title, be it through their own initiative or through some NGO-led programme. By contrast, in the villages selected by the World Bank, every parcel was surveyed and titled. That this approach yielded considerably worse outcomes for female land rights is sobering, since the government is increasingly insisting on universal titling as a top priority.

### *Gideon's wives*

Examining CCROs in Mbozi district, in the southwestern region of Mbeya, we were taken by surprise. From the over-exposed passport photos on the laminated sheet, two women returned our gaze, with guarded smiles. Mbozi had been selected as the pilot district for issuing CCROs in the early EU-funded programme, mentioned above. There has been a long history of coffee cultivation in these fertile highlands, originally introduced by German settlers in the early 1900s. At that time

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<sup>19</sup> Ministry of Lands, Housing and Human Settlements Development (URT), 'Private Sector Competitiveness Project: Component 1, Sub-Component B: Land Reforms, Evaluation Report for Pilot Project on Systematic Adjudication in Babati, Bariadi, Nanyumbu and Manyoni Districts-Tanzania, Phase 1', March–July 2010.

the area was sparsely populated, and the main ethnic group there, the agro-pastoralist Nyiha, showed no interest in working for the Europeans. Instead the settlers recruited Nyakyusa labourers from the neighbouring Rungwe district, near the Zambian border, where land scarcity was already becoming an issue.<sup>20</sup> Today, many of the Nyakyusa migrants have acquired land in Mbozi, while the Wanyiha are also turning to coffee growing. Over time other groups also found their way to Mbozi, acquiring land for cultivation and grazing, contributing to population increase. A wide range of subsistence crops are grown in Mbozi, including the staples, maize and beans; but with coffee as a high-value cash crop, it was seen by Tanzania's external advisers as a good place to start the formalization process.

We had been going through CCROS for some time, but never before had we seen a landholding conferred on two women. The few jointly titled certificates we came across often seemed to represent compliance with the exhortations of the NGO activists and Ministry of Land officials who travelled through rural areas to raise awareness about titling and encourage village participation. These teams would expound on the need to include wives on CCROS, to protect them and their children from being forced off the land in the event of a husband's death—although, as we have seen, they were seldom heeded. After perusing so many CCROS registered to men, we were startled to find a CCRO according an abundant holding of 50 acres to Neema and Upendo.<sup>21</sup> We asked the village chairman and his colleague about the women: sharing the same last name, were they sisters? No, we were told, they are co-wives. Were they widows, then? No, their husband Gideon was alive and well, a prosperous coffee farmer.

We set out the next day to find this unusual man who had bequeathed so much land to his two co-wives. A woman greeted us as we arrived at the house. Our mission was explained to her and we asked if she might be either Mrs Neema or Mrs Upendo. Indeed, she was Upendo. But when we inquired whether she would be willing to speak with us about her

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<sup>20</sup> See for example Rie Odgaard, 'The Gender Dimension of Nyakyusa Rural–Rural Migration in Mbeya Region', in Ngware et al., eds, *Gender and Agrarian Change in Tanzania With a Kenyan Case Study*, Dar es Salaam 1997, pp. 46–70. See also Robert de Zouche Hall, 'Local Migration in Tanganyika', *African Studies*, vol. 4, no. 2, 1945, pp. 53–69.

<sup>21</sup> Pseudonyms, to protect respondents' identities.

CCRO, both she and her co-wife Neema, who had joined us, demurred and pointed to a home on an adjacent hill where we could find their husband Gideon. He would be the appropriate one to answer our questions. At the second house, equally well-maintained, a woman welcomed us into the living room. Gideon greeted us with a smile. He explained that this was where his third and fourth wives lived; Neema and Upendo were his senior wives across the valley. Why had he decided to register 50 acres, half his land, in the names of Neema and Upendo? Between them, they had borne him eleven children. For that he was grateful and wanted to ensure their well-being. What of his new wives? He explained that they had as yet only borne him one child between them, and therefore there was no need to register land in their names. When the number of children increased, he would revisit the issue.

The case of Neema and Upendo illustrates several aspects of the land-titling process. First, Gideon was a wealthy man, with 100 acres of land in a district where the median holding is less than 4 acres. For him, the costs of titling—travel, fees—would not have been a major obstacle. Second, extra-legal relationships weigh heavily on legal rights, sometimes modifying them in unexpected ways. By virtue of their childbearing, Neema and Upendo have a different relationship to their husband than do his new wives. Women's rights cannot be generalized within this household. Nor would Neema and Upendo necessarily have been able to manage their 50 acres autonomously, just because they had a CCRO. Finally, in the eyes of the clan or other social groupings, not all land is equal. Gideon inherited land from his clan, but then purchased other plots to expand his holding to its present 100 acres. Neema and Upendo's CCRO likely concerned land that Gideon had purchased, not clan land, because his family would not have allowed that to occur.

### *Sara's plot*

In the case of Sala ['Sara'] Labison Ngoya, the first Tanzanian to be granted a CCRO in 2004, the outcome was very different. When our team sought to interview her about what the deed had meant to her and her family, we learned that she had passed away and that the CCRO had not been transferred to any of her grandchildren. Despite the fact that her village—as the pilot project for rural titling—had received significant support from the CCM government in getting the paperwork done, seven years later only 400 or so out of 1,700 landholdings had been

fully registered; barely a quarter of the certificates had been collected. When asked why, owners said they had heard from fellow villagers that the promised bank loans never materialized, but instead registration resulted in an obligation to pay annual property taxes, which they could ill afford. Sara's case raises the question of previously existing rights being lost with formalization. Before she got her CCRO, Sara's holding would have been recognized by the village authorities as belonging to her and the grandchildren with whom she lived. The certificate, however, bestowed legal recognition of the right to occupy the plot upon a single person: Sara. In such instances, prior collective rights can disappear.<sup>22</sup>

If Sara's grandchildren wanted to re-claim the plot, they would probably have to go through a district land tribunal, a process even more cumbersome than registration itself. Only a third of Tanzania's 169 districts has a functioning land tribunal to resolve disputes, due to a lack of both financial and human resources. In Manyara region—an area larger than Massachusetts and Connecticut combined, encompassing five districts and over 17,000 square miles, with a population of 1.5 million—there are just three district land tribunals. Access to justice in land disputes is once again restricted to those who can afford to travel to file complaints, submit evidence and have their cases heard. That access is also gendered. The chairman of a land tribunal described the case of a man who had acquired a CCRO to his household's plot and, in this instance, included both his wives on the deed as well as himself. After some time, the man sold the farm plot, which was some distance from the house, without consulting his wives. Uninformed of the transaction, the wives continued their daily routine of going to the plot to tend the fields. Inevitably, they ran into the new owner who accosted them, demanding that they leave his land. The wives fought back: he was trespassing on *their* land; how dare he accuse them of the same? They solicited the support of the village chairman who came to their defence, confirming that the plot belonged to the two women and their husband. The new owner triumphantly produced the title deed, clearly signed over to his name. Yet the village chairman still supported the wives, since the law holds that surrender of customary rights of occupancy is deemed legitimate only if 'every co-occupier and person

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<sup>22</sup> Edward Robbins, 'Formalization of Land and Housing Tenure to Empower the Poor: Simple Nostrum or Complex Challenge?', *Rights, Legal Empowerment and Pro-Poor Governance*, Oslo 2007, p. 187.

or body having any interest in that land has consented in writing to the surrender'. The new owner then filed a complaint at the nearest land tribunal, which was in another district.

Whatever the arguments in the family compound, the wives allowed their husband to represent them at the tribunal hearing. Despite having the law on their side, and the sympathies of both the village authorities and the land tribunal chairman, they lost their claim through extra-legal circumstances. Given, perhaps, the great distance involved—an eight-hour bus trip on unpaved roads—the expense, the time away from home responsibilities, and possibly diffidence at operating within a male-dominated official domain, the women decided not to attend.<sup>23</sup> Their husband made a poor representative of his wives' interests: he ran away altogether. In the absence of any counter-argument, the plaintiff's claim of ownership prevailed.

### *Flora and Martha*

A final case from the Babati district further illustrates the complex inequalities structuring land formalization and gender relations. The World Bank titling project there was working in a village abutting several large-scale farms growing rice and sugarcane, situated in a lush valley. This was an area that German and British colonial authorities had claimed for settler holdings; the farms remained intact, protected by renewable title deeds from the colonial era. In the village, the World Bank team was not hard to find: a bustling hive of activity, temporarily camped out in the district land office. They had produced staggeringly expensive high-resolution satellite images—\$9 million was lavished on the selected pilot areas, covering perhaps fifty villages.<sup>24</sup> After walking the perimeter of every plot with its farmers, their adjacent neighbours and the village authorities, taking GPS measurements all along the way, they drew the boundaries on the satellite images and converted these into computer-generated maps, identifying individual plots by assigned number, before finally generating individual title deeds.

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<sup>23</sup> In fact, the district land tribunals are structured by law to include women in positions of authority. At this particular tribunal, although the tribunal chairman is a man, both of his two assessors are women, and final judgements must take into account all three opinions. The wives were likely unaware of this, and their husband had an interest in confirming their worst fears.

<sup>24</sup> See *Taarifa Fupi ya Utoaji Hati Miliki za Kimila Katika Wilaya ya Babati*, August 2016.

We secured an invitation to accompany the team in the field, so as to observe the actual work of surveying. Our group was walking the perimeter of a five-acre plot belonging to Samwel. After the plot had been surveyed and approved, Samwel signed the form and invited his wife Flora to mark her 'X' on the document as well. The cameras came out, and Samwel was handed a small chalkboard, with the assigned plot number for his title deed written in large block numbers. Looking somewhat nervous, he held the chalkboard while the cameras flashed. Then it was Flora's turn. She smiled happily, clearly pleased with the legal right bestowed on her to the land on which we stood. After the photo shoot, the World Bank team moved on. We stayed behind for a cup of tea, at Samwel and Flora's invitation. The land-titling teams all agreed that it was an uphill battle convincing men to include their wives on title deeds, but Samwel proudly explained that he was doing it twice over. He owned two five-acre plots of land and was going to jointly title the other one with his second wife, Martha. So the two wives would have equal shares? Not exactly. One plot was irrigated and so could produce high-value crops, like rice. The other depended on rainfall, and was used to grow maize, pigeon peas and sunflower. This was another type of inequity concealed by the formalization process.

More seriously, despite the scale of the World Bank exercise, when we visited Samwel, Flora and Martha two years later, they had yet to receive their CCROS. Samwel spoke about the titling project with palpable disdain. Not only had no one in his village been given the much-lauded deeds, but conflict was on the rise and lives had been lost. The very public formalization of boundaries, even without erecting fences or walls, had fostered a sense of exclusive and individualized ownership of land, as well as its inverse: a sense of violation and notion of trespass. This is not to imply that land in Tanzania was historically understood as a resource equally shared by all—a concept largely restricted to hunter-gatherer groups like the Hadzabe, Sandawe and Akie, among whom understandings of property rights are now undergoing 'modernization'. Nevertheless, many communities operate with what is effectively a concept of multiple rights to land, often defined in seasonal terms; it is an asset long valued as communally held, where 'communal' may carry context-specific meanings. An elected village council designates areas for communal grazing, or for building a school, within village boundaries. Senior male kin decide collectively how to allocate land belonging to their clan. Yet the ideology of exclusive, individualized



property rights perpetrated by the formalization programmes is spawning tangible effects.

What lessons can be drawn from these cases about formalization as a strategy for women's 'empowerment'? Neema and Upendo may be well-positioned to fulfil the de Soto claim of rising agricultural profits, to the betterment of themselves and their children. Flora and Martha may perhaps see some benefit, but will do so unevenly, and in the meantime face growing tensions where they live. Sara died poor, leaving the future of the title and its claimants in question. The case of the co-wives whose husband sold their plot without their knowledge, despite their names being registered on the CCRO, reveals the limits of a paper deed: social relations ultimately determine its efficacy.

There has also been a further, unanticipated, legal twist in the regime shift to titling. Tanzania's 1971 marriage law stipulated that 'a marriage shall not operate to change the ownership of any property to which either the husband or the wife may be entitled', a provision intended to protect women's rights. However, the 1999 Land Act states that there is a presumption that 'spouses will hold the land as occupiers in common', *unless* the CCRO states 'that one spouse is taking the right of occupancy in his or her name only'. In other words, whenever a woman's name is *not* added to the title for land she jointly occupies with her husband, she is legally dispossessed of the land. With the stroke of a pen, the land becomes legally his. There is a way for the wife to contest this, if she can prove she has regularly been tending the field and contributing her labour to its maintenance. But the burden of proof shifts to her. In addition, the presumption of co-ownership attends to 'marriage', which renders women's rights vulnerable upon divorce or the death of their spouse; and since so few rural marriages are officially registered, women's claims as 'spouses' can be refuted with relative ease.

When we asked women whether they wanted a title deed, almost without exception they said yes. When we asked why, the answer invariably was that they hoped to use it to get a loan. What would the loan be for? To educate their children. Though virtually every Tanzanian village has a primary school, however dilapidated, there is a dearth of secondary schools—typically, one per 5 or 6 villages—and the costs of boarding put it out of reach for households struggling below the poverty line. We cannot count the number of women who lamented their inability to educate

their children beyond primary-school level. But de Soto's theory only works if loans secured with land titles are used to generate higher yields or to spawn successful small-business ventures. The return on a loan to pay a child's secondary-school fees cannot manifest itself within the typical term of a loan. Nor—given the shortages of teachers, books and lab equipment at secondary-school level, and increasing post-secondary unemployment—would returns on such a loan be even minimally assured. Banks know this, and so by and large are not granting loans on the basis of rural land titles. But money-lenders are rushing to fill the gap, only too happy to seize land and title deeds from those they exploit. The upshot is a rise in debt, dispossession and landlessness.

All this begs the question of what poor rural women stand to gain from the sustained state and donor spending on titling. If education is their main demand, it would be more straightforward to put the money into improved access to secondary schools. Ambreena Manji has argued that the strategy of land-titling, as a way to facilitate credit flows, aims to place the burden of paying for education and healthcare squarely onto the shoulders of the poor.<sup>25</sup> While title deeds are benefiting a minority of women, they are dispossessing many more.

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<sup>25</sup> Manji, *The Politics of Land Reform in Africa*, p. 127.