

THE 1999 LAND ACT AND VILLAGE LAND ACT

A technical analysis of the practical implications of the Acts

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Working Draft – Comments welcome!

Geir Sundet
(geir.sundet@repoa.or.tz)

The 1999 Land Act and Village Land Act are arguably among the laws that most directly impact on the well-being of most Tanzanians. They occasioned considerable debate when they were enacted, particularly on aspects pertaining to gender. After enactment, the Land Acts have made occasional appearances in the policy debates. Enactment on the Land Act was one of the trigger points in the HIPC process and there was also considerable debate surrounding the recent amendment of the Land Act that sought to make titled land more useable as collateral.

Notwithstanding the centrality of land to Tanzanian socio-political and economic life and the sporadic appearances of land law in the policy debates, it is striking how little the Land Act and the Village Land Act has changed the way that land is administered on the ground. There is also a comparative paucity of technical or academic analysis of the Land Acts. Although policy makers often refer to the Acts, it may be surprising to some how little they actually know of the substance of the Acts. Part of the reason for the substantial vacuity (excuse the term!) of the discourse around the Land Acts, especially the Village Land Act, may be that they to a large extent still aren't being implemented. The purpose of this essay is to venture a modest analysis of the Acts. The focus will be on the practical aspects of the Acts, in order to provide a guesstimate of the Acts' likely impact on the administration of land in Tanzania.

The next part of this essay provides the background to the Acts and a general discussion on their adoption. This is followed by more detailed discussions of first the Land Act, and then the Village Land Act. The last two sections of the essay considers alternatives to the existing legislation and some strategic observations on how the debate and policy process concerning land may be taken forward.

BACKGROUND TO THE ACTS

The National Land Policy was adopted by the cabinet and was presented to Parliament in 1995. The policy had gone through a long gestation period, which involved numerous policy drafts, a

Presidential Commission of Inquiry, a number of commissioned studies by domestic and international experts and a National Workshop. Some controversy surrounded the adoption of the Policy, as it ignored much of the recommendations put forward by the Presidential Commission (hereafter referred to as the Land Commission). The Land Commission had recommended a system that vested rights in the users of the land and substantially reduced the Executive's administrative prerogatives over the use and ownership of land. The National Land Policy, on the other hand, eschewed any effective attempt at imposing new checks and balances on executive power.¹

In 1996, the Ministry of Lands hired a British consultant to draft the Land Acts, with funding from DfID. He faced an unenviable task in that he was strictly bound by the letter of the Land Policy, with all its ambiguities and inherent contradictions. The two Acts reflect the complexity of this task.² They run to a formidable 800 pages, providing detailed legislation for three categories of land: Village Land, General Land and Reserve Land. On the one hand, the Acts introduce a long overdue clarification of many of the grey areas in the large body of legislation that it replaces. The Land Act repeals no less than 10 Acts and defines in law many of the procedures which had previously only been set down through administrative Directives.³ On the other hand, both Acts replicates many of the fundamental problems of the system they replace. They continue to give considerable scope for discretion and administrative directives.

Robin Palmer juxtaposes two diametrically opposed interpretations of the Land Acts (1999). One is that presented by Liz Wily, who did work on the Land Acts as a consultant for DFID and the Ministry of Lands. Issa Shivji, who was the Chairman of the Land Commission, and who has continued to do analytical work relating to land, puts the other forward. The contrasting of these two scholars' positions is instructive, particularly their respective evaluations of the Acts' treatment of the key issues of village land and the safeguarding of customary tenure. Liz Wily comes down heavily in favour of the new Acts, and classifies them as "basically sound", arguing that they are the best of their kind in Africa in terms of "vesting authority and control over land at local level" (Palmer 1999: 2). Issa Shivji, on the other hand, finds little to commend the Acts, and sees them to achieve little but to consolidate the status quo:

the Acts now entrench in law what was the practice. Which is to say that the administration, management and allocation of land are placed squarely in the Executive arm of the Central Government under a centralised bureaucracy (Shivji 1999: 3).

That the Acts can elicit such different response is striking, but perhaps not so surprising considering the considerable complexity of the Acts and some of their inherent contradictions

¹ For a detailed discussion of the National Land Policy, see my D.Phil dissertation on the Politics of Land in Tanzania (1997). I am currently preparing it for publication. Also see Shivji 1998.

² Interview with Patrick MacAuslan, conducted in 1997, after he had completed the first draft of the Acts.

³ The repealed Acts are The Land Ordinance, Cap 113; The Land (Law of Property and Conveyancing) Ordinance, Cap 114; Rights of Occupancy (Developments Conditions) Act, 1963 Cap 518; Land (Settlements of Disputes) Act, 1963 Cap 524; Range Development and Management Act, 1964 Cap 569; Land Tenure (Village Settlements) Act, 1965 Cap 579; Rural Lands (Planning and Utilization) Act, (No. 14 of 1973); Specified Coffee Estates (Acquisition and Regrant) Act, (No. 31 of 1973); Specified Sisal Estates (Acquisition and Regrant) Act, (No. 11 of 1974). It does not, however, repeal the Land Registration Ordinance Cap 334, Town and Country Planning Ordinance Cap 378, or the 1967 Land Acquisition Act. The Act also validates the Directive of 1988 *Mwongozo Kuhusu Kubuni Michoro, Kupima na Kugawa Ardhi* (MNRT 1988), which establishes the Land Allocation Committees, and asserts that the appointment of Committee members is at the discretion of the Minister.

and ambiguities. We now turn to a more detailed examination of the legal letters of the Acts. First the Land Act.

THE LAND ACT

The Land Act provides the legal framework for two of the three categories, namely General Land and Reserved Land. Reserved Land denotes all land set aside for special purposes, including forest reserves, game parks, game reserves, land reserved for public utilities and highways, hazardous land and land designated under the Town and Country Planning Ordinance. The distinction of Reserved Land from General Land does not alter much in relation to the present system of tenure. It does little more than to draw attention to the fact that Reserved Land has been set aside for a special purpose under a different legislation. For example, forestry reserves will continue to be administered according to the legal provisions of the Forests Ordinance.

General Land is a residual category. It includes all land that is not Reserved Land or Village Land. Or so it appears. The ambiguity stems from the definition of General Land which is provided in the Land Act: “ ‘general land’ means all public land which is not reserved land or village land *and includes unoccupied or unused village land*” (s. 2, emphasis added). The part of the definition in italics does not appear in the definition of General Land in the Village Land Act. There are no provisions in either Act that clarify to what exactly the former definition refers. There is little doubt that this definition is yet another expression of the by now familiar concern of freeing ‘surplus’ land from villages for external investors. We will return to this in the discussion of the Village Land Act.

As surprising as it may seem, there is little in the Act that sets it apart from previous legislation. The Act retains the basic features of the old system, such as Rights of Occupancy and the imposition of Development Conditions and land rent. It retains most, if not all, characteristics of the system it replaces by providing for detailed bureaucratic control of all aspects of land use and ownership. In its more detailed provisions, the Land Act does little more than partially to consolidate earlier legislation, clarifying some grey areas and setting down in law areas that have previously only been subject to administrative regulations.

Concentration of powers in the Ministry

Arguably, the most striking feature of the Act is the manner in which it settles any previous conflict between the Ministry of Lands and Local Authorities firmly and unambiguously in favour of the Ministry. The Act clearly states that only the Ministry, through the Commissioner of Lands, has the authority to issue Grants of Occupancy (s. 14). In an obvious reference to the legal wrangle, which ensued after the reintroduction of local authorities in the eighties, the Act firmly declares:

A local government authority, shall not, unless specifically authorised by this Act, make an offer of or grant any right of occupancy to any person or organisation and any such purported offer or grant shall be void (s. 14).

The Act further states that any local authority officer “shall comply with any directives of the Commissioner issued to him specifically or generally, and shall have regard to any circulars issued by the Commissioner” (s. 11(7)).

The Act provides for the establishment of Land Allocation Committees at the levels of local authorities “to advise the Commissioner on the exercise of his power to determine applications

for rights of occupancy” (s. 12). It is explicitly stated in the Act that the Commissioner is not bound to act on the recommendations of the Land Allocation Committees (s. 26).

The provisions for a market in land

One issue, which has received some attention, is the much-vaunted allowance for a land market. Section 31 of the Land Act states that the “Minister may require the payment of a premium on the grant of a right of occupancy.” The premium shall be decided by the Minister, who is directed to have regard to factors such as prevailing market prices and the assessment of a qualified valuer. In section 52, we find that the Minister *may* direct that the land be sold at an auction or through a process of tendering, with the relevant procedures to be according to regulations made by the Minister. As we can see, the scope for discretion is considerable, and it is doubtful whether these provisions provide any strong guarantees against land being granted to companies or individuals at below market rate. The absence of any such guarantee, of course, continues to leave room for illicit rent seeking in the allocation of land.

For a holder of a Granted Right of Occupancy wishing to sell, there is still less evidence of anything approximating an open land market. Enigmatically, the Act provides that:

“Unless otherwise provided for by this Act or regulations under this Act, a disposition of a right of occupancy shall not require the consent of the Commissioner or an authorized officer” (Section 36 (2)).

The following sub-section provides the significant proviso that the seller is required to notify the Commissioner, and that the Commissioner needs to “endorse” the notification before the Registrar of land can register the transfer. The Act further explicitly states that grants that have been held for less than three years require prior approval from the Commissioner (s. 37). In section 38 we find that the Commissioner may, at his or her discretion, ask for any additional information relevant to the sale and direct that the sale shall not take place before approval is granted. In other words, no formal approval is required unless the Commissioner says otherwise. Grounds for refusing approval range from non-fulfilment of development conditions, any previous criminal record of the seller, suspicion that the land is being sold at below market value or that there is any form of corrupt influences involved. Approval may also be refused if there is a breach of the rights of any disadvantaged groups, such as women, children or low-income persons.⁴

Even after a sale has been formally registered, the Commissioner may, within two years of the transfer, move to annul it. In this period, the Commissioner may annul the sale if he or she “has reasonable cause to believe” that the sale has been “affected by fraud, or undue influence, or lack of good faith, or the fact that one party appears to have taken unfair advantage over another party...” (s. 38 (3)). It is indicative of the overall spirit of the Act that this kind of safeguard is put in the hands of the head administrator, rather than the courts. The provision of retroactive administrative scrutiny only serves to add an unnecessary layer of bureaucracy and uncertainty to what is already a dense wall of bureaucratic procedures and discretionary decision-making. Considering all the above, it is clear that the new Act provides no strong guarantee for would-be

⁴ The Land (Fines) Regulations (GN 84, 2001) sets a fine of 2% of the value of the land for the following offence: “Disposition of the Right of Occupancy or part thereof without the approval of the Commissioner of Lands or authorized officer.” This further illustrates the ambiguity connected to whether there is an explicit requirement to have the approval of the Commissioner for the disposition of a right of occupancy.

sellers and buyers of land that they will not be subjected to undue interference from the Authorities.

The other provision of the Land Act that is seen to be a significant departure from the previous system is the restriction against non-nationals from acquiring land. The one significant exception to this rule is for land acquisitions connected to investments that have Investment Approval.⁵ The bar against holding land also applies to companies where non-citizens have a majority share holding. Civil activists in Tanzania have lauded the restriction against foreigners holding land, although some might have liked to see still stronger protection against foreigners amassing land at the expense of nationals and smallholders.

Still, it may be argued that the perceived threat of foreign mass-acquisition is easily over-stated. The main threat against the landholdings of smallholders (and urban ‘squatters’ for that matter) is not an unrestricted land market, with or without foreign participation, but a regulated market that may be manipulated by politicians and bureaucrats. There is a wealth of empirical evidence from comparable countries to support this assertion.⁶

Women’s rights to land

Both the Land Act and the Village Land Act have been hailed as a triumph for the women’s rights movement in Tanzania. Gender activists have been among the most active lobbyists in the national debates surrounding the land acts. They successfully lobbied for the inclusion in the Acts of provisions to ensure equality before the law for women in both statutory and customary tenure. Land Act states as one of its fundamental principles that:

The right of every woman to acquire, hold, use, and deal with, land shall to the same extent and subject to the same restrictions be treated as a right of any man (s. 3 (2)).

The same principle is explicitly laid down in the village land Act to cover customary rights of land (see below).

Conflict resolution

The Land Act introduces little new in the area of conflict resolution. Section 167 is the only one in the Land Act dealing with dispute settlement, and it does no more than define which courts have jurisdiction of land cases. These are in descending order, the Court of Appeal, the Land Division of the High Court, the District Land and Housing Tribunals, the Ward Tribunals and the Village Land Councils. Of these, the Land Division of the High Court and the District Land and Housing Tribunal are new bodies. There may be a virtue in creating special divisions in the court for dealing with land matters, but it is doubtful whether this in its own will have a substantial impact on the court system’s processing of land cases. The Ward Tribunals are already virtually defunct as argued in Chapter 5, and as we will see in the following section, the Village Land Councils are not strictly judicial entities, and are not likely to have an appreciable impact on the incidence of land litigation.

⁵ The so-called “Investment Approvals” are now issued by the Tanzania Investment Centre (TIC) under the Tanzania Investment Act, 1997.

⁶ See Shipton 1988 and Collier 1983 for a discussion of Kenya’s experience with land markets. Also see Sundet 1997. Note that the argument not that land markets might not produce more unequal distribution of land, they often do, but that the imposition of regulatory powers which are wielded in a discretionary manner by bureaucrats and politicians is *more likely* to lead to increased inequality in land holdings.

Concluding comments on the Land Act

To summarise, the Land Act represents no significant reform of the present system. One's judgement of the new law, therefore, would differ according to one's assessment of the legal and institutional set-up prior to the Act. If one accepts the diagnosis put forth in much of the contemporary analysis of land in Tanzania (e.g. Bruce 1994 and 1994a, Hoben *et. al.* 1992, URT 1994, Sundet 1997, and Shivji 1998), that the land administration is at various stages of breakdown, one's inescapable conclusion would be that the enactment of the Act provides no significant improvement on the legislation it replaces. What is needed, and what the Act fails to accomplish, is to address the fundamental problems of the system. These are over-centralisation of the land administration and the amassing of powers to control in detail the ownership and utilisation of land. Powers which are either beyond the capacity of the land administration to enforce in a professional and rational manner or which merely lend themselves to abuse.

If one believes that the present system is essentially sound, on the other hand, one may take a more positive view of the Act. The people of this persuasion tend to view the main problem as one of ensuring compliance with the laid-down regulations. This is the opinion voiced by the Tanzanian administrators, who are the main authors of the National Land Policy we encountered in earlier discussion of the making of the policy. If one accepts this assessment, the daunting challenge remains one of bringing about massive capacity building in the land administration. Not least, successful implementation of the Policy and the Acts will depend on the establishment of enforceable procedures to institute a satisfactory degree of transparency and accountability in this high margin business.

THE VILLAGE LAND ACT

Unlike the Land Act, the Village Land Act has in its provisions which bear witness of some attempt to learn from past problems and experiences. Indeed, an optimistic reading of the Act suggests that the major parts of the administration of land has been decentralised to the village and that there are solid guarantees in place to protect the smallholder security of tenure. Essentially, the Village Land Act vests all village land in the village. The precise distribution of authority between the Village Council and the Village Assembly is not always defined, but the underlying principle is clearly that village land is vested in the Village Assembly, and that the Village Council administers the land through the authority of the Village Assembly.

A more critical reading of the Act exposes several problem areas and ambiguities. The legal provisions of key aspects of the administration of village land are set out in some detail below. We will see that elaborate processes of adjudication, registration and safeguarding of land rights have been put in place. The provisions are long on protocol and seek to incorporate security of tenure. At the same time, they impose administrative controls to ensure that developmental policy concerns are considered. In other words, ownership of land is not only determined by pre-existing rights but also by the perceived capacity of the landowner to develop the land in question. In order to safeguard against improper manipulation of the bureaucracy required to impose developmental control of land allocation, a complex layer of legal stipulations has been put in place to block potential loopholes from abuse.

The reasoning behind this approach appears to be that "more law is better law." This is clearly illustrated by the citation below, which is from a presentation by the drafter of the Act, in response to criticism that the Act was undermined by a faulty policy:

The real revolutionaries therefore might turn out to be not those who propose radical policies but those who, through the NLP [National Land Policy], propose a radical legal methodology for implementing policies; namely a detailed and inevitably lengthy new land code in which legal rules and checks and balances replace reliance on administrative and political action based on goodwill and common-sense. (McAuslan 1996, cited in Shivji 1998, 107)

The problem with this kind of approach, which comes right out of the British legal tradition, is that it presupposes that villages possess the capacity to ensure that their land is administered according to the letter of the law. Complex legal provisions are not necessarily the best way to protect the security of tenure of smallholders in a fragile and poorly developed political and administrative framework. Legal and administrative complexity lends itself to exploitation and manipulation of those in the local environment who are better endowed, informed and connected. This is the case even if those legal provisions have been put in place to guard against their manipulation. This observation is substantiated below through a discussion of five key policy areas raised in the Village Land Act: transfers to general lands, the registration of customary grants of occupation, adjudication, gender and conflict resolution.

While attempting to make sense of what follows, the reader is urged to keep in mind the context in which these regulations apply. Namely, villages where administration and officialdom often are exclusive arenas reserved for those with connections with the political and economic elite of the district, and where there is no strong tradition of transparent and inclusive governance and rule of law.

Definition and registration of village land

True to the letter of the National Land Policy, the Village Land Act states that a “customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy” (s.18 (1)). The meaning of this statement is somewhat unclear, as the holder of customary rights answers to a different set of rules with different encumbrances and privileges than does a holder of a granted right of occupancy. One can only assume that it is included in the Act to assert the Government’s intention not to discriminate between customary rights of occupancy and granted rights. Either way, the statement in its own right is inconsequential – the status of customary rights will only be determined by the way in which the law will be administered.

The definition and registration of village land is provided in section 7. The authority to demarcate and register villages lies with the Commissioner. In cases where the village is in dispute with bordering villages or other landholders, the Minister shall appoint a “mediator” to work with the conflicting parties to find a “compromise” (s. 7(2)(a)). Where the mediator is unable to find a compromise, the Minister shall appoint an “inquiry” under section 18 of the Land Act (s. 7(2)(b)). According to the Land Act, a judge of the High Court, selected on the advice of the Chief Justice, shall hold the inquiry. The inquiry shall be held as a judicial inquiry, shall be open to the public⁷ and, perhaps most importantly, the report of the inquiry shall be published. The Minister is required to accept the recommendations of the inquiry, “unless there are overriding reasons of public interest to the contrary” (s. 7 (5)).

There is no definition of what such an “overriding reason of public interest” may or may not be. It may be relevant, however, that the definition of Public Interest provided in the 1967 Lands

⁷ Albeit with provisios for holding hearings in private, when deemed appropriate.

Acquisition Act includes developmental and economic considerations or any other concerns that the President considers to be in the public interest.

The procedure for registering village land set out above does not differ significantly from the previous practice, with the exception of the provision for inquiries. When the village has been demarcated, the Commissioner issues to the village a *certificate of village land*. The certificate confers upon the Village Council the authority to manage the land. There is no provision that requires that the village formally verify the boundaries stipulated in the certificate.

The relative weakness of the village in determining its boundaries becomes still more obvious in the preceding sections on transfer of village land to general land:

4 (1) Where the President is minded to transfer any area of village land to general or reserved land for public interest, he may direct the Minister to proceed in accordance with the provisions of this section.

(2) For the purposes of subsection (1), public interest shall include investments of national interest.

The Minister shall consequently publish in the Gazette the location and extent of land and a brief statement on the reasons for the transfer. A copy of the Gazette shall be sent to the Village Council. The Village Council is given a minimum of ninety days before the transfer takes place.

The way in which the village may deal with such proposed transfer makes interesting reading. Firstly, the Village Council shall inform any villager who have already been granted a certificate of customary rights or a derivative right (see below) of the transfer. In other words, only landholders holding a certificate issued by the Village Council need to be notified. There is no requirement for the Village Council to inform villagers that hold land under customary rights, but have not yet been issued certificates. Any holder of registered rights to the land in question may subsequently make “representations to the Commissioner and the village council”. The Village Council and the Commissioner are then required to take these representations “into account in any decisions or recommendations they may make on the proposed transfer.” (s. 4 (5))

Where the land to be transferred is less than 250 hectares, the Village Council shall submit its recommendation on the transfer to the Village Assembly, for its approval or refusal. Where the land in question is greater than 250 hectares, on the other hand, the Minister shall consider any recommendation made by the Village Assembly through the Village Council, and signify his or her approval or refusal (s. 4 (6)). It is striking that the Village Assembly appears to have been given less say in the decision on very large transfers, than in transfers below 250 hectares.

On a more positive note, the Act provides one important improvement on the previous system, as it states that no village land shall be transferred “until the type, amount, method and timing of the payment of compensation has been agreed upon between ... the village council and the Commissioner...” (s. 4. (8)). If an agreement cannot be reached, the matter is referred to the High Court for determination.

Registration and adjudication of customary rights

It is recognised that one of the main weaknesses of customary rights *vis-à-vis* granted rights is that the former are not formally documented. Both the Presidential Land Commission and the National Land Policy recognised that formal registration of the customary rights is much needed.

The problem, of course, lies in the way in which registration is brought about, what will be the privileges and limitations of the registered rights and how the rights will be administered.

The procedure the Village Act lays down for registration and issuing of ‘Certificates of Customary Right of Occupancy’ bears a striking similarity with the procedure for issuing Granted Rights of Occupancy.⁸ Both villagers and non-villagers may apply. The applicant first submits a prescribed application form to the village council. In the case of non-village applicants, the Council is required to seek advice from the Commissioner. The Council deliberates the application and takes into account, *inter alia*, the availability of the land and the applicant’s ability to make productive use of the land (s. 23). If the Village Council finds in favour of the applicant, the Council issues a Letter of Offer, stating development conditions, yearly rent and any fees, which the Village Council may stipulate. The applicant shall pay the required fees and agree to the development conditions on a prescribed form, after which the Village Council shall issue the Certificate (s. 24). In no cases of a first time grant of a Certificate of Customary Right of Occupancy is the Village Council required to seek approval from the Village Assembly.

The Certificates are evidently meant as an upgrading of customary tenure. The security of tenure is more robust when a Certificate documents it and it avails the holder with access to credit. Overall, it bears a passing resemblance with the system proposed by the Land Commission, in which all villagers would be issued with similar certificates (*Hati za Ardhi ya Mila*). A number of significant issues set the system provided by the Village Land Act apart from the one described by the Land Commission. Firstly, it concentrates considerable powers in the Village Council (akin to those of the Commissioner at the national level) to impose detailed control of the use of land and to define the terms and criteria for ownership of land.⁹ Secondly, issuing certificates on demand will invariably favour well-off and well-connected villagers. If the village elite gets the first opportunity to register their land, there is a real risk that an internal process of landgrabbing will be set off. This is particularly the case, seeing that there is no requirement for approval or even consultation of the Village Assembly. It is obvious that there is little, if any, chance that all landowners in the any of Tanzania’s villages will receive Certificates in the near future. One may wonder how the introduction of a second, no doubt superior, level of customary tenure in the village will affect the relative security of tenure within the villages and the internal distribution of land.

There are a number of further provisions relating to the Certificates of Customary Rights of Occupancy that provide detailed rules for the sale of ‘derivative rights’, grant of ‘derivative rights’, breach of conditions and revocation. Only a few of these points will be summarised here.

⁸ See Part B of the Village Land Act.

⁹ The Village Land Act can be seen to take the basic principles of the 1975 Village Land Act to its logical conclusion by unequivocally concentrating the ownership of land in the hands of the Village Council. The 1975 Act followed the villagisation drive in the early 1970s, which at the time evoked the following observation on its effect on land rights from a common villager:

“In the old days, that is before Villagization, people owned the land. You could sell the house and the earth because no man would buy a house without first looking at the land with it. But most people cleared their own land, and even when people began to come and buy houses here they got more land by asking people with a lot of land to give them some, or they borrowed it. Today you can’t do anything with your land. It is not our land anymore.” (Wily 1988: 288)

On villagiation, see Sundet 1997, URT 1994, Coulson 1982 and van Freyhold 1979.

The case of derivative rights justifies some elaboration. The Act defines a derivative right as “a right to occupy and use land created out of a right of occupancy”, including any form of lease or sub-lease (s. 1). It appears from the Act that as soon as you “do” anything to the land, i.e. sell it or lease it, it becomes a derivative right. Meaning that customary rights of occupancy can’t be sold or leased, except as rights derived from the “original” customary right. Nevertheless, the granting (by the Village council) or selling (by the holder of a customary right of occupancy or a derivative right) of derivative rights, which constitute more than a ten-year lease or a small mortgage, invokes a lengthy administrative procedure (see ss. 31-33). An application has to be submitted on a prescribed form to the Village Council. The Council shall consider, *inter alia*, the grantee or buyer’s ability to use the land for the benefit of the village, the rights of women, and the availability of land for the village’s future needs. The procedure is very similar to the process of granting customary rights of occupancy, including the setting of fees, rent and development conditions. There is, however, an added dimension to the case of derivative rights.

Derivative rights are divided into three categories according to hectarage. Rights for land less than 5 hectares classify as Class A. Land between 5 and 30 hectares are Class B, and land of more than 30 hectares is graded as Class C. For Class A, only the approval of the Village Council is required. Class B requires the additional approval of the Village Assembly. Grants or sales of Class C require the approval of the Village Assembly and the “advice” of the Commissioner (s. 32).

The following sections (ss. 34-47) provide a detailed list of provisions relating to the duties of the holder of rights, revocation, foreclosure, passing on rights to next of kin, breach of conditions, fines and remedies for breach of conditions, appeals, etc. Each type of action or process is laid down in detail, down to the stipulated mode of consultation, maximum time allowed for processing and what form to fill in. One may justifiably wonder how any village can be expected to comply with this law, and how the law might be expected to assist Tanzania’s villages to administer their land in a manner that is consistent with the principles of sound land management and justice.

In section 48 we find that, except where “boundaries in land are fully accepted and agreed to”, no grant of customary occupancy shall be made until the land has been adjudicated according to the provisions laid out in Sub-Part C, Part IV of the Village Land Act (ss. 48-59).¹⁰ There are two main alternatives. Either the person applying to register a customary right of occupancy may apply to the Village Council for “spot-adjudication” on a prescribed form (s. 49). If the Village Council is satisfied that it will not be necessary to first adjudicate the larger area contiguous to the land in question, it may approve the application. In which case it may proceed to the process of adjudication (see below). If the Village Council rules that a more comprehensive process of adjudication is required, it needs to submit its decision to the Village Assembly for approval. The Village Council is also required to inform the District Council of its decision. If the Village Assembly rejects the Village Council’s recommendation, the Village Council shall inform the District Council. At this stage, the District Council may order the Village Council to proceed with spot-adjudication.

When the Village Assembly has approved adjudication, a process of “village adjudication” may begin. First, the Village Council appoints a villager with good knowledge of the issues at hand,

¹⁰ This notwithstanding, there are no references to these provisions in the sections dealing with first-time grant of certificates of customary rights of occupancy discussed earlier.

or an official from outside the village to be the village adjudication advisor. The appointment requires approval from the Village Assembly. The Village Assembly shall also elect a “village adjudication committee.”¹¹ The committee shall proceed with the adjudication process, with the village adjudication adviser as its chair. The committee will hear all claims to the land in question and seek to settle any disputes that arise. After the committee has reached its final decision, this shall be recorded and posted in a prominent place in the village. If there are no appeals after thirty days, the decisions shall be deemed accepted and be recorded in the village land register. Appeals go to the Village Land Council in the first instance and further appeals go to Court (presumably at District level).

If the District Council receives complaints at any stage in the adjudication process, from “not less than 20 persons” whose interests in land are affected, the District Council may take over the process of adjudication and conduct a process of “district adjudication” (s.50 (4)). In that case, it appoints a public officer to supervise the village adjudication advisor (or dispense with the advisor all together), and has the option of replacing elected members from the village adjudication committee with candidates of its choice. The District Council will subsequently supervise and direct the adjudication process. The final decision shall be posted in the same manner as for the “village adjudication”, with the difference being that in this case appeals go to the Commissioner or the High Court.

The basic structure of the village adjudication process is sound. It is participatory and transparent, and the outcome is relatively likely to be considered legitimate. The process of district adjudication (in the village), on the other hand, is a problematic one. It would seem that the District Council’s role in this situation is seen as that of an impartial umpire, who is brought in if the village adjudication committee is not performing competently. To expect the district authorities to act in such a disinterested capacity in determining the ownership of a commodity as valuable as land is naïve. It is difficult to see the justification for putting the District Council’s decision above any challenge at the local level. It would be much easier for local communities to tolerate what they might justifiably see as undue interference, if the Council’s decision needed the approval through a majority vote in the Village Assembly. After all, if such a vote were not forthcoming, what basis would there be for the District Council’s ruling on a matter of customary law?

Women’s rights

The Village Land Act does break new ground in women’s rights to land. With the stroke of the pen the Act renders as invalid any customary practices that discriminates against women:

[Any] rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly or any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land (s. 20 (2)).

This is taking a more radical approach than the Land Commission on the issue of gender equality. In the national debate preceding the finalisation of the National Land Policy, a group based at the University of Dar es Salaam, criticised the Land Commission’s conservative

¹¹ Once elected, the members of the village adjudication committee remain ‘in office’ for three years, after which they may be re-elected.

approach (see Sundet 1997). The group, which was chaired by Prof. Anna Tibaijuka, had challenged the Commission's advocacy for an 'evolutionary approach', arguing that 'hard law' was the only way to deal effectively with gender discrimination in land ownership¹² (LTG 1995, 44).

It is not likely that this important provision will lead to an overnight revolution in the rights of women to land in rural Tanzania. The capacities effectively to oversee and enforce the law are not there and, as argued below, the established system of mediation, conflict resolution and enforcement are ill suited to tackle what are bound to be highly controversial issues. This notwithstanding, the fact that gender equality has been laid down firmly in law, also in reference to customary rights, represents an important advance. There is little doubt that it might have a real effect on the situation on the ground in the longer term.

Conflict resolution

The Act makes special provisions for the establishment of a Village Land Council "to mediate between and assist parties to arrive at a mutually acceptable resolution on any matters concerning village land" (s. 60). For some reason, its jurisdiction has been limited to cases related to land sharing arrangements with other villages (s. 11), or land sharing arrangements between pastoralists and agriculturalists (s. 58). The Village Land Council shall consist of seven people, to be nominated by the Village Council and approved by the Village Assembly. Three of the members shall be women.

The Village Land Council is not a village land court like the Elders' Land Council recommended by the Land Commission (*Baraza la Wazee la Ardhi*). Firstly, its jurisdiction is severely limited, and secondly, it only functions in a mediating capacity. Its brief is to assist the aggrieved parties to arrive at a mutually acceptable solution. In the event that this is not possible, the conflict may be referred to the courts. In other words, the parties to the dispute are not compelled to follow the recommendation of the Village Land Council. It is also noteworthy that the Act explicitly states that: "No person, or non-village organization shall be compelled or required to use the services of the Village Land Council for mediation in any dispute concerning village land." (s. 61 (6)).

The latter provisions make it quite clear that the Village Land Council is only to provide the service of arbitration between consenting parties. Strictly speaking, it is not even a quasi-judicial body. It seems surprising that while going to the pains of creating a potentially useful body as the Village Land Council, the Government should choose to delimit its powers to the extent of stripping it of any legal judicial standing. The Land Commission's principal purpose behind establishing the Elders' Land Council, for example, was to bring the judicial system within the reach of the common villager, and to set it in a context that would be more understandable and legitimate. The Village Land Council will not serve this bridging function, as long as any party to a dispute can lawfully choose to ignore it.

The enabling legislation

As can be seen from the above, the legal and regulatory framework for village land lays down extraordinarily complex procedures of land administration. The sheer weight of the technical paper work prescribed is perhaps best illustrated by the enabling legislation. The 1999 Village

¹² The Land Tenure Study Group 1995, 44. Also see the discussion on the same in Sundet 1997, Chapter 6.

Act became effective with the enactment of the Village Land Regulations passed in May 2001.¹³ The Regulations provide for no less than 50 different forms to be used by the villagers in the administration of their land.

Recently, I was discussing with a group of extension workers and local government officials on ways to assist village governments run their affairs in an open and competent manner. Part of our discussion centred on what tools and resources that could best be provided. First and foremost, I was told, they need writing material, pens and *daftaris* (exercise books), and a place to keep their records. Villages often don't have a village office, and there is little tradition of keeping and using records and forms. The typical procedure adopted for the annual collection of the development levy is a good illustration of village government at work:¹⁴

The District Council or the Ward Executive Officer provides Village Executive Officers and Kitongoji Chairmen with receipt books and a simple summary form. The village executives then collect the development levy, providing each taxpayer with a simple receipt. The tax collection is then recorded on the forms they have been provided with, a portion may be kept as an allowance for the Village Executive Officer, and the rest is sent to the District Council, through the Ward Development Council. The used receipt books and summation forms are sent back together with the cash tax collection, as a proof of the amount collected. It is exceptional that any record is kept at village level, and villagers are hardly ever informed of the amounts collected.

Put in this context, it quickly becomes obvious that it is hardly realistic to expect the Village Council to maintain a land tenure system that requires 50 different forms for its correct application. The task of training village officials in the correct use of the forms and to understand the system in which they operate will be formidable. Even if this were to be accomplished, the challenge would remain one of ensuring that the common villagers understand the basic features of the new system. Unless people understand it, they will not accept it as legitimate and they will not be able to guard against improper manipulation of the system by the village and district leaders.

Concluding comments on the Village Land Act

The Village Land Act is a step in the right direction in terms of devolving authority to the local level. As set out above, there are important aspects of the prescribed adjudication process that has the potential for providing transparent and credible decisions. The problem is that the act as it stands is largely unworkable. The level of investment required in basic training of officials at district level and in Tanzania's 11,000 villages is almost certainly beyond the means of the Government. In addition to the basic training, there would also be a need for massive public education programmes to ensure that common villagers are in a position to hold village leaders accountable in the administration of the new system. It is highly unlikely that whatever improvements in land management that such a massive operation would deliver would be commensurate with the investment required.

The key problem areas of the act may be summarised as follows:

- **The inappropriateness of the administrative system described above is obvious. There is little justification for replicating the system used for national lands at**

¹³ The Village Land Regulations, 2001. Government Notice No. 86 published on 4/5/2001.

¹⁴ The development levy was abolished in 2003, but the case outlined above is still illustrative of the administrative and financial relations between districts and villages.

- village level.** Much more imaginative use could be made of public hearings and public posting of information. A requirement of the sanction of the village assembly for the first time registration of land would resolve most concerns of ensuring transparency, justice and legitimacy;
- **The consideration of “developmental concerns” in the allocation of land adds an unnecessary dimension to the procedures of adjudication, registration and allocation.** The overriding deciding factor in the process should be the local consensus of existing ownership under customary law;
 - **The introduction of Certificates of Customary Rights of Occupancy as an intermediary level of tenure does not seem appropriate.** Registration of customary rights should be seen as tool for formalising and documenting existing patterns of ownership. It should not be approached as an opportunity to create an entirely new regime of tenure rights. The process of registration should be seen as a step in a “fluid” formalisation of the customary system of tenure, with precautions put in place to ensure that the process does not undermine existing rights. This would entail adjudication and registration, at whatever pace is possible, of all existing rights to land in the village;
 - **The role that the District is ascribed in the Act as an external and impartial adjudicator is not appropriate.** The vesting of land in villages would necessarily mean that the Village Assembly is the highest executive authority on matters relating to land. Appeals to decisions made by the Village Assembly, therefore, should go the courts, not to the District Council;
 - **The system of conflict resolution and mediation with the Village Land Council is not likely to reduce the incident of land conflict or reduce the growing backlog of land related cases in the courts.** What is needed is a village institution with judicial status. This institution would need the necessary authority to back its decisions in a way that would make its decisions credible. It should be based on open and accepted practices in order for its decisions to be seen as legitimate;
 - **The relative ease with which the executive can appropriate village land is the aspect of the Village Land Act that has been criticised most.** This is grounded in several areas of the legislation. Firstly, the statement in the Land Act that “unoccupied or unused village land” is defined as General Land is problematic. This means that what is seen as ‘excess’ village land falls under the jurisdiction of the Land Commissioner rather than the village authorities. Secondly, not requiring the Village Assembly to verify the village boundaries misses a valuable opportunity to ensure public legitimacy of the process of first time adjudication. Thirdly, the procedures outlined for transfer of Village Land to General Land provide no strong guarantee that most villagers are informed and does not give the village the final say in whether the land may be transferred or not.

The above factors and other aspects that have been touched upon suggest that the Village Land Act will not be possible to implement. If a serious attempt were made to implement it, the likely outcome would be an increase in the incidence of land litigation. There would also be a considerable risk in further proliferation of the violent conflicts over land. The impact on

smallholder security of tenure will probably be negative. It follows that it does not seem likely that the Village Land Act will be conducive to economic growth and/or improved food security.

IF NOT THIS, THEN WHAT?

Land and land rights have a very real impact on virtually all aspects of social and economic development. Nowhere is this more relevant than at the various levels of local government. In a consultancy report to the Government in the preparation of the National Land Policy, the renown expert on land, John Bruce, asserted that:

control of land and viable local government seem to be inextricably tied together in rural Africa. A local government which does not control land is almost irrelevant, given that the concerns of rural people are so focused on land. (1994: 4-5)

Virtually all expert commentary that went into the drafting of the National Land Policy made similar observations and recommendations in relation to the land policy (see Sundet 1997). At the time, such recommendations were successfully pushed to the side by the civil servants who were tasked with drafting the policy.

The Land Acts are a logical outcome of a deeply flawed policy. As we have seen in the discussion above, the Acts consolidate the powers of the Commissioner of Lands to regulate every aspect of land use and ownership. The powers that have been delegated to the local Land Allocation Committees are effectively only advisory. Also, when it comes to the Village Land Act, local authorities and/or the Central Government through the Ministry easily supersede the powers that are vested with the villages. The basic problem with the Land Act and the Village Land Act is that they rely on administrative procedures rather than market forces, and that they make highly unrealistic assumptions of administrative capacities. The net result of this is likely to be the continuation of inefficient and non-transparent administration of land. This will not be conducive to economic growth, justice or equality.

The inevitable conclusion emanating from this is that both Acts are ill conceived. Their guiding principles, which are found in the National Land Policy, are centralising, anti-market and make assumptions on the impartiality of civil servants that accord poorly with realities and good economic practice. This is not a cheerful conclusion, considering that this system is the product of more than a decade of intensive consultations, expert deliberation and continuous drafting and fine-tuning of policy and legislation. The question of how such a seemingly meticulous process of policy making could produce such a result is the question that the main body of this work has sought to answer. I will not belabour the answer to that question any further in this postscript. Instead, I will conclude with a few suggestions of what kind of system of land tenure could work in Tanzania.

The basic principles of the Tanzanian land policy need to be reviewed. Tinkering with minor legal amendments and regulatory adjustments is not going to address the fundamental problems affecting the Tanzanian system of land tenure and its administration. The problem lies in the sheer complexity of the present system. Only a complete overhaul could succeed in doing away with the present ambiguities and multi-layered provisions for discretionary controls.

Firstly, there is a need to acknowledge that there is no capacity in the land administration to regulate the use of land in detail. The present use of “development conditions” only provides for unnecessary discretionary powers. There is no capacity to enforce the

development conditions in a professional manner. There is ample evidence of this in the analysis and the cases presented in the earlier chapters.¹⁵ Development conditions were originally introduced as a means of discouraging speculation in land. This is also the modern justification for their application, or as it is often put: ‘ensuring that the land is developed in the interest of the country’. The imposition of development conditions is not the best way of achieving this purpose.

The main cause of land speculation is allocation of land at below market value. The most economical and most effective way of staving off speculation in land would be to ensure that there is an effectively operating land market. This would mean that sales of land should be de-regularised, and that first-time allocation of land should *always* be by public auction.

The common argument against this approach is that it would lead to greater inequality in land holdings and produce a large class of landless, rural poor. **Imposing discretionary controls on land markets is not the best way of protecting the rights of the poor. Measures to favour the poor need to be context specific, transparent and predictable.** There are at least two scenarios that need to be addressed. The first, which is the most common and easily addressed, is the protection of existing rights to land. The second relates to the need to redress existing imbalances in landholding.

Most of the poor in Tanzania live in the villages, and most of them already own land under customary tenure. We have seen in the previous chapters how rural small holders loose land to Government and/or donor initiated development projects, to expansion of urban borders, declaration of national parks or reserved areas, and increasingly through ‘landgrabbing’ by local and international ‘investors’ who are allocated land by local or central administrators. The introduction by the Village Land Act of a new tier of Registered Customary Rights of Occupancy through a demand driven process is likely to add another threat to the land rights of the rural poor. **The process of first-time registration in villages should not be demand-driven. This is only likely to favour the best connected and best resourced, at no demonstrable gain in terms of development.** Protecting the rights of the rural poor must be a priority in the process of registering customary rights in the village.

Rather than a demand driven process of adjudication and titling, therefore, the approach adopted should be inclusive and comprehensive on a village-by-village basis. Titling on a first come first serve basis will inevitably exacerbate existing inequalities in land holdings and add another threat of the land holdings of the poorer segments of the population. The Village Land Act’s process of “village adjudication”, outlined above, would seem to provide a good methodology for open and fair adjudication based on common perceptions of existing patterns of ownership. Although, as is argued above, the role accorded the District Commission as an impartial arbitrator is not appropriate. The decision of the Village Assembly should be binding, and the only recourse to appeal should be to the courts.

It needs to be recognised that the primary purpose of this exercise would be to register existing customary rights to land and to prepare for the ultimate transfer of the rights to statutory and fully marketable rights to land. It should not be seen as a method for addressing

¹⁵ Take for example the estates in Babati District that was repossessed by the banks and sold in the late eighties, where the new owners simply charge rent for the use of land from people who were moved onto the land, when they were forced to leave their old farms during villagisation (see Sundet 1997, Chapter 4). All this in blatant disregard of development conditions, but it is clear that the land administrators have little incentive in effectively enforcing these.

any need for land reform in order to achieve a more equitable pattern of landholding. Nor should it be used as a means of releasing “surplus land” (*vide* the repeated calls for this from the land administrators, as documented throughout this work). Either of these objectives would necessitate the application of a more discretionary process of registration and would be more open to abuse.

This is not to say that there is no need or room for land reform. On the contrary, land reform and the achievement of a more equitable pattern of land holding should be important objectives of the introduction of a new land regime. As we have seen, the two Land Acts make no provisions for land reform, and would almost certainly lead to a still more inequitable pattern of land ownership.

Land reform needs to be specifically targeted as such and should take as the point of departure under-utilised areas under public or private ownership that lay adjacent to populated areas. Likely targets would include:

- **Previously allocated plots to private owners who have failed to make effective use of the land** – an example being the farms in Babati district, where smallholders were first forcefully settled during villagisation only to be evicted from again in the eighties when the banks foreclosed on the land and sold it to wealthy individuals, many of whom simply proceeded to charge rent from the farmers that were already settled on the land (see Sundet 1997).
- **Large tracts of land owned by the Government, either through (now mostly defunct) parastatals or by public bodies, such as the army or prisons, where these are not making effective use of the land.** There are several such areas identified by the Land Commission (Volume Two, URT 1993). Such areas are now usually put up for sale for so-called investors. They are typically allocated through a highly discretionary process, and less emphasis seems to be put on the price gained (public auctions are very rare) than on the “investor’s” assessed ability to “develop the land”.

Both the above scenarios present tailor-made opportunities for land reform that are not being used at the moment. The main argument against such reforms from the authorities would be developmental. They would argue that it is not in the national interest to allocate these tracts of land to smallholders, as they do not possess the capacity to develop the land. This assertion is poorly substantiated by existing empirical evidence on the relative economic efficiency of smallholders versus large-scale commercial farming in the African context and elsewhere (Binswanger *et al.* 1993; Bruce and Migot-Adholla (eds.) 1994).). It also accords poorly with the Land Policy’s stated objective of ensuring an equitable pattern of landholding.

CONCLUDING OBSERVATIONS – WHAT NEXT?

It is still far from clear what impact the Land Acts will have on life in Tanzania. Neither Act is being properly implemented. What is perhaps more surprising is how little debate the Acts have occasioned since they have been turned into law, and how little concern there appears to be that little seems to be changing in the lands sector.

Only on one issue, has there been some level of public debate. This is concerning push from the private sector, notably banks, and the donor community, notably the World Bank, to amend the

Land Act to make it easier for banks to foreclose on bad mortgages where land is put up as collateral. A number of civil society activists have lobbied vigorously against the amendment, arguing that it would unfairly exposed disadvantaged farmers to being tricked into losing their land by the banks. The Ministry of Lands have also urged caution for the same stated reasons.

The banks and the pro-amendment lobby are arguing that the Land Act puts in place too onerous safeguards against unfair appropriation by the banks. The effect of this, it is argued, is to raise the risk, and therefore the price of giving loans against land as collateral. This, it is argued, puts needless breaks on economic growth. The anti-amendment lobby, civil society activists and Ministry, cautions against uncritical and hasty reform that could put the disadvantaged at risk. They argue that there is a need for special safeguard to ensure that banks ensure that clients who put up their land as collateral fully understand the consequences of foreclosure. They are particularly concerned about what is termed ‘small mortgages’, which refer to mortgages of less than 500,000 Shillings (approx. \$500). The anti-amendment lobby agrees that there is a need to amend the reform in order to facilitate access to credit, but they disagree with the pace of reform.¹⁶

The fact that there is public debate around the Land Acts and that the Government recognises that there will be need to adjust the Acts through further amendments is positive. Having said that, it is striking how little in the Acts has been subject of debate since they legally came into force. It could be argued that the extensive reforms that Tanzania are in the process of implementing – notably Local Government Reform, Public Sector Reform, Financial Management Reform and Legal Sector Reform – as well as the National Strategy for Growth and Reduction of Poverty (NSGRP), have focused all public attention on those respective sectors. In the NSGRP process, for example, land is not singled out as one of the priority areas, and it is striking how little acknowledgment there is of the importance of land ownership arrangement and security of tenure in economic development.¹⁷

As it stands, the Land Act is not likely to have any appreciable impact. It primarily serves to iron out a few earlier inconsistencies, by effecting a further concentration of powers in the Commissioner of Lands. Procedures of allocation and administration of land rights continue to be highly discretionary and aimed at effecting detailed regulation of land use by the owner of the land. The emphasis remains one of ensuring economic development rather than on guaranteeing ownership. This approach has failed singularly in the past, and there is no reason why it would work in the future.

It is a truism that the principal problem in the land administration today is corruption in the allocation of titles and a complete lack of capacity to oversee and enforce the elaborative regulatory framework of the land administration. There is little in the Land Act that promises to redress these problems. The allowance for a premium of land is intended to facilitate a land market and forestall administrators doling out land in return for illicit payments. The mere fact that it is at the Commissioner’s discretion whether the land will be put out for public auction renders this provision without much value. Although it needs to be recognised that the Ministry of Lands and many politicians will find it politically problematic to put up land for public

¹⁶ Interview with Magdalena Rwebangira, Chair of the Gender Land Task Force, which has fronted the anti-amendment lobby, 6 May 2003. Since the first draft of this essay was drafted, the Amendment has been enacted. I have not yet had the occasion to include an analysis of the amendment.

¹⁷ Contrast this with the persuasive argument made by Hernando des Sotos in his book *The Mystery of Capital* that property rights are the key to releasing capital for development (2000).

auction, as this would draw attention to the high premium on prime land. The fear is that too much land will be bought by foreign investors or non-indigenous nationals. These are political problems, but to avoid acknowledging them will not make them go away.

The impact of the Village Land Act is a bit harder to foresee. It is quite possible that the Act will have no appreciable impact on the way land is administered in Tanzania's villages. To the extent that it will have an impact, it is more likely further to undermine existing patterns of tenure rights rather than to provide the much needed consolidation of land rights of poor small holders and livestock keepers. The enactment of the Village Land Act, therefore, would seem to be an opportunity missed. On the one hand, it incorporates much of what is required: it vests powers in villages to administer their own land, sets out sound adjudication procedures and puts in place what could have been a much-needed village based land court. But, as is argued above, these provisions are set in a context that most likely renders them ineffective.

Having said that, the manner in which the Village Land Act is implemented and enforced is likely to vary significantly across the country. There could be considerable mileage in public awareness campaigns that seek to build on the positive aspects on the Act and attempt to put in place procedures of land adjudication that are transparent and well understood. In other words, the Village Land Act, albeit deeply flawed, can be seen as an opportunity presented. Its enactment could be used as a springboard for a new attempt at making sense of land rights in rural Tanzania. Such a drive would be more effective, if given a high profile and if a concerted effort was made to collect relevant information and experiences to enhance the understanding of policy makers and practitioners of the challenges that are at stake.

Is it politically realistic to call for a return to the drawing board for the National Land Policy and the Land Acts? On the face of it, probably not. What could be expected, on the other hand, is that the questions related to land and land tenure are accorded the attention they deserve in the national policy process and that much more concerted efforts are made to understand how a viable system of land tenure can evolve that protects rather than undermines existing rights of smallholders and livestock keepers. At the very least, one would hope to be able to assess to what extent the new Acts are a step in the right direction.

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