
Finding the Right Institutional and Legal Framework for Community-Based Natural Forest Management

The Tanzanian Case

Liz Wily



CIFOR Special Publication

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Published by

Center for International Forestry Research

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tel.: +62-251-622622 fax: +62-251-622100

e-mail: cifor@cgnet.com

WWW: <http://www.cgiar.org/cifor>

ISBN 979-8764-16-1

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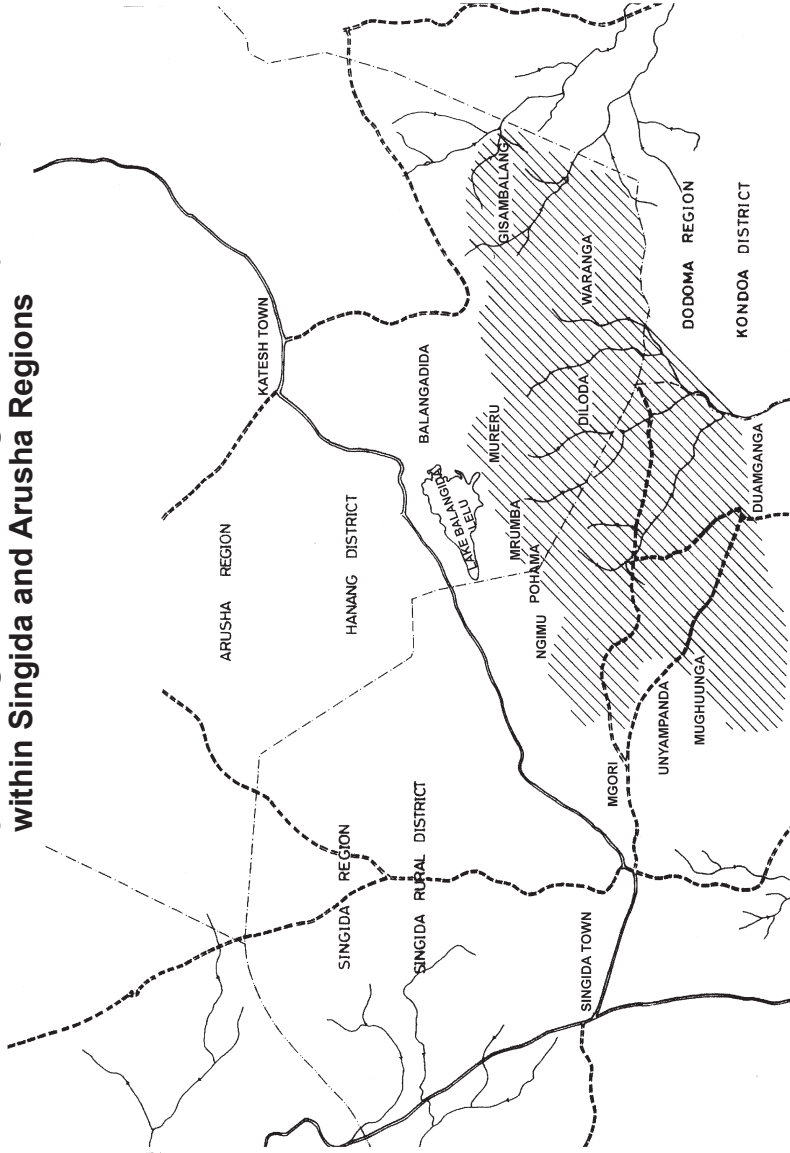
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Location of Duru-Haitemba Forest (1) in Arusha Region and Mgori Forest (2) in Arusha/Singida Regions, Tanzania



Sketch Map Showing Location of Mgori Forest (shaded) within Singida and Arusha Regions



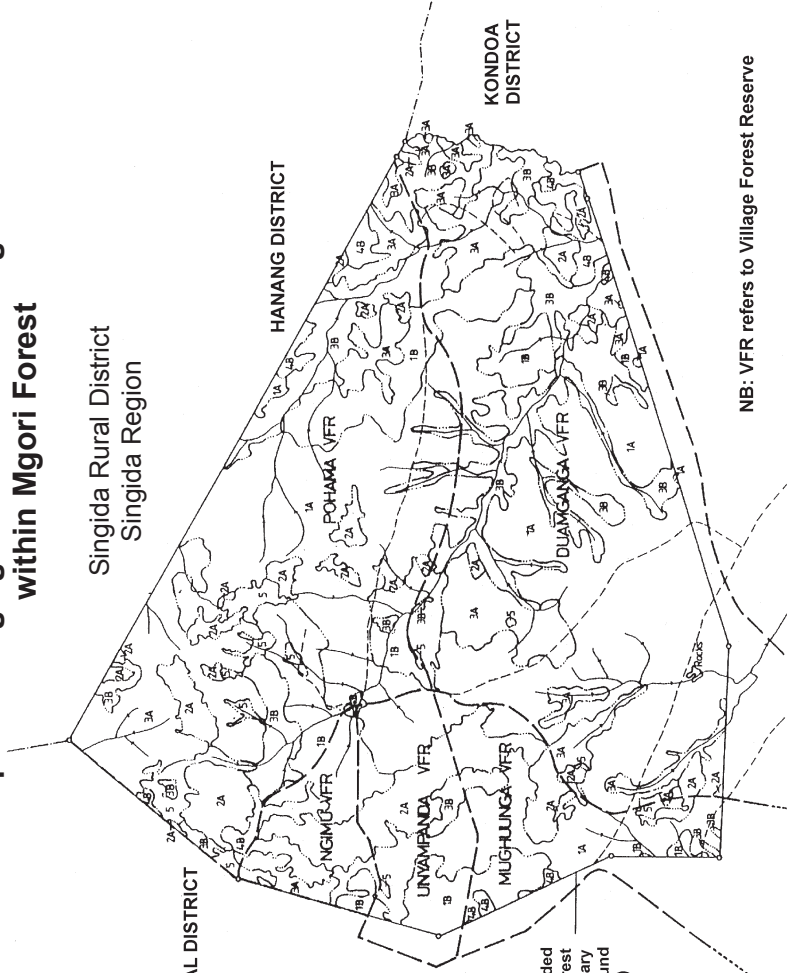
Sketch Map of Emerging Boundaries of Village Forest Reserves within Mgori Forest

Singida Rural District
Singida Region

SINGIDA RURAL DISTRICT

HANANG DISTRICT

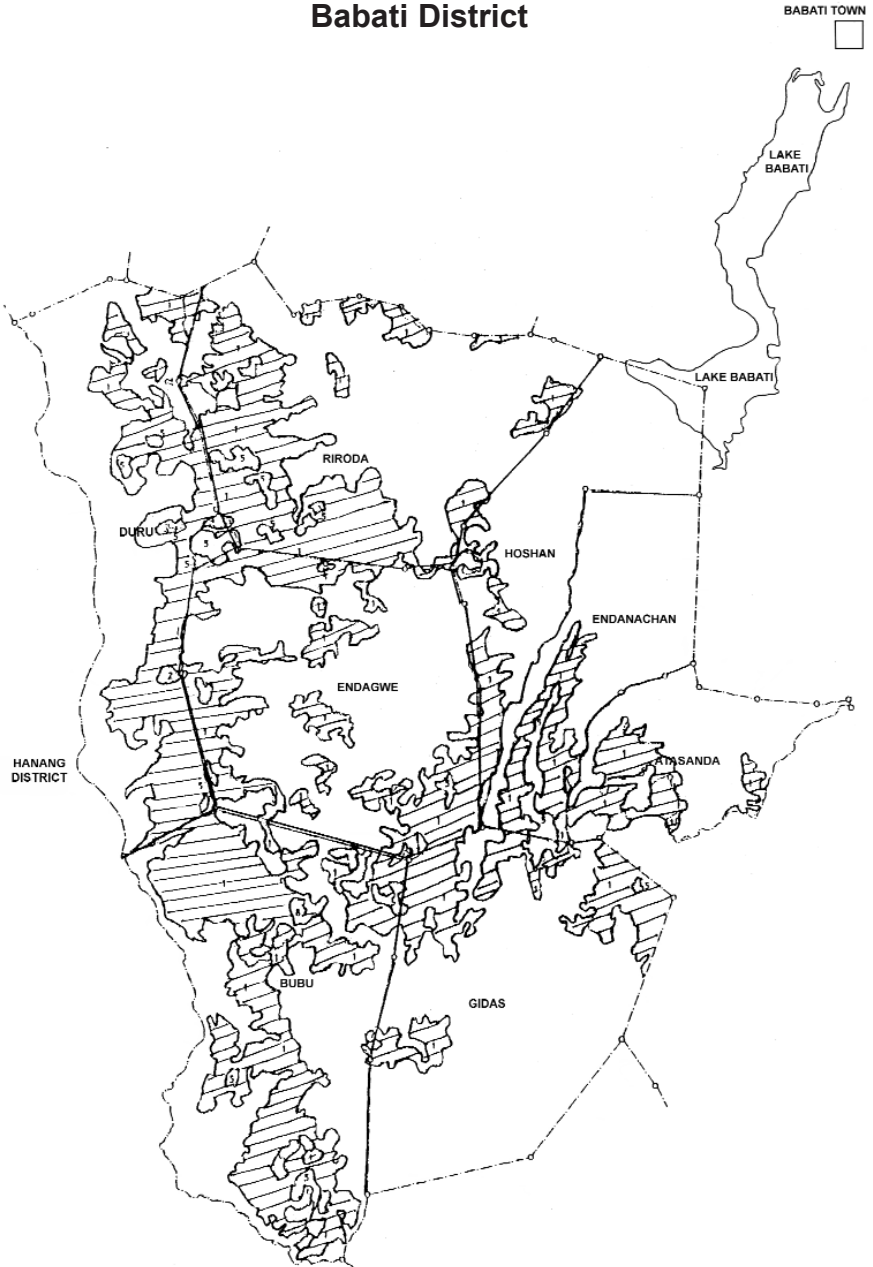
KONDOA DISTRICT



Originally Intended
Government Forest
Reserve Boundary
(marked on ground
as a cut-line)

NB: VFR refers to Village Forest Reserve

Duru/Haitemba Forest Babati District



INTRODUCTION: THE CONCEPTUAL FRAMEWORK

The need to share power, not just use rights or the work of management

A variety of institutional and legal frameworks exist in the modern developing world through which the involvement of local communities in forest management is expressed, prescribed – and proscribed (Fisher 1995; Borrini-Feyerabend 1996). Joint Management Agreements (JMA) are most common (*ibid.*). Some countries, most notably India and Nepal, have gone so far as to promulgate supporting legislation, providing an administratively and jurally bound framework for collaboration between state and people (Asia Sustainable Forest Network 1994; Talbott and Khadka 1994; Asia Forest Network 1995).

In most “joint forest management”, partnership is singularly unequal in terms of the locus and exercise of authority; the state retains key decision-making powers, sanction and ownership of the resource (Wily 1995a; Sarin with SARTHI 1996). Instances where forest-local communities genuinely control the use and management of a forest are in fact rare (Matose and Wily 1996). Where forests are considered particularly valuable in terms of revenue-generation or biodiversity, local people are rarely involved at all. There are exceptions; mostly where the incentive for people-state collaboration has not been resource management *per se*, but an outcome of a land rights claim on the part of the local community. Such cases are mainly found on the American continent and involve indigenous, and often hunter-gathering, societies with indisputably original tenure (Cultural Survival 1993, *passim*).

Questions of power and distribution of power are slowly but surely becoming a more central strategic concern of the sector, not least because the local partners themselves over time demand that such

rights as they have obtained are lodged more securely in law (Lynch 1992). Alternatively, this is because there is greater recognition that success in collaborative forest management tends to correlate with the extent of local control (Wily 1994; Hobley and Shah 1996; Poffenberger 1996).

African community forestry

In comparison to the pivotal experience of South Asia, community involvement in natural forest management in Africa has been slow to evolve (for example, see Shepherd 1991; World Bank 1992; Sharma *et al.* 1994). Even now it is largely confined to discrete, and usually donor-prompted, initiatives rather than arising from shifts in national policy or practice (e.g., see Dunn 1995a, 1995b (Nigeria); Diouf 1995 (Senegal); Watts 1994 (Cameroon); Wily 1996a (Tanzania)).

This is not to say that African governments have not been cognisant of the link between forest resources and people; indeed, modern forest policies in many sub-Saharan states retain the commonly articulated principle of British colonial forest policies that “satisfaction of the needs of the people must always take precedence to the collection of revenue...” (Government of Tanganyika 1945; cf. Government of Tanzania, *TFAP* 1989). Such positions, locating people as forest users, probably explain the strong orientation of most modern African “community” forestry initiatives towards reducing rather than increasing local vested interest in forests (see Arnold 1992).

“Participation” to reduce local interest

In such initiatives, the forest-local community is either the target of investment to substitute local use of forest products (on-farm tree planting being the paramount intervention), and/or to displace forest-based economic dependence through promotion of improved agricultural production and off-farm income opportunities. Buffer zone programmes and so-called ICDPs (integrated conservation and development projects), were frequently developed on this basis in the late eighties (for example, see Hoesflood, forthcoming, on Uganda; Blokhuis 1992).

Alternatively, the forest-local community becomes the target of benefit-sharing arrangements, in which a proportion of revenue is distributed from state to community, usually in the form of infrastructure. The forestry sector has gained much impetus in this strategy from the wildlife sector, which has available a usually more financially-rewarding product: revenue from hunting and tourism (Maveneke 1996; Nhira and Matose 1996).

The attempt may also be made to confine the area of local forest use by designating multiple use zones on the periphery of the forest, where local people are permitted to harvest (defined) products, usually under rigorous supervision or conditions (e.g., see Wilde 1994). In still other instances, efforts are made to “meet the needs” of forest-local people through giving them priority in the issue of commercial licences to extract timber, poles or fuelwood (e.g., see Soulama 1996 on Burkina Faso).

These diverse strategies nonetheless share a product rather than management focus, and an understanding of the troubled state-people-resource relationship that is defined as simply a matter of economics. This confirms the traditional assumption that such interests as forest-local people may have in a forest are solely product-based and that such conflicts as exist between state and people may be resolved solely by increasing access to the products. Issues of socio-cultural and especially customary tenurial rights tend to be ignored. Indeed, economic determinism in conservation-driven natural forest management, has reached unprecedented heights of elaboration over recent years. State-of-the art calculations of local forest values generate in turn inevitably expensive and unsustainable investment proposals for alternative income generation, without resolving the causes of forest-related free-loader behaviour.

Beneficiaries not actors, gaining products not power

Fundamentally, such approaches share a definition of the forest-local community as beneficiary, not actor in resource management. What is being offered and shared in the common collaborative forest management approach is the use of (certain) forest products, not rights over the resource itself, nor the authority behind forest management.

Nor does involving local people in practical management tasks (usually surveillance) necessarily constitute a meaningful form of participation. In such arrangements the local partner is as often as not fulfilling protection activity according to the programme of the authority, the forestry department. Labour, or the burden of management, rather than the rights of management, are being traded.

Getting to the heart of the problem: power relations

Although improved co-operation may be achieved, such approaches continue to avoid what this author, among others, regards as the more fundamental question to be addressed: the socio-political relations which drive state-people conflict and forest degradation. Viewed from this perspective, the foremost task becomes not the re-definition of who *uses* the forest and how, but of who owns, controls and manages the forest?

An ideal transformation in power relations devolves *authority* to those within whose socio-spatial sphere the forest falls, and who alone have the practical capacity to protect and supervise forest utilisation on a continuing basis. The current conjunction of “*(forest use) rights and responsibility*” shifts into a more profound conjunction of “*responsibility and authority*”. In this frame, the basis of forest management is a state-people collaboration in which the state supports the effort of the people rather than the people supporting the effort of the state – a subtle but critical shift from joint forest management into community-based management.

Whilst there is a degree of polemicism to such concerns, the socio-political nuances of collaboration are obviously fundamental to the nature of management pursued – and, this author would argue, the extent of success. The locus and exercise of power in the partnership defines – and is also defined by – the manner of the institutional and legal framework used to carry them. Depending upon the balance of power, these may facilitate and promote, or constrain and frustrate, what is considered here as genuine “community forestry” (Wily 1994, 1997a).

THE TANZANIAN CASE

In sub-Saharan Africa it is perhaps in Tanzania where most significant progress has been made in this regard. There, thirteen communities in two Districts have been awarded full management authority over two local “forests” (more correctly, woodlands) and, in eight of these cases, have been recognised as the owners of the “forest”. One forest is known as Duru-Haitemba Forest in Arusha Region, a degraded hilly woodland of 9,000 ha. The second is Mgori Forest, a much more intact woodland of more than 40,000 ha in the central Tanzanian region of Singida.

Government foresters play no role in the day-to-day management by the villages but do provide technical advice on request and do fulfil a watchdog role on progress and problems – of which there has been much on both counts. In theory the state retains, through national environmental legislation, a resumptive right should these communities fail to maintain the areas as conserved and sustainably used forest. In practice, this exists as more threat than real possibility. In any event, as more and more Government Foresters are aware, if a community cannot manage a natural forest in its vicinity, then what chance does government have?

Several other districts in the country are adopting the approach, and central government is currently re-designing strategies of managing more than 100 gazetted Forest Reserves to encompass the fundamental principles developed in Duru-Haitemba and Mgori in terms of involving forest-local communities (Catchment Forestry Programme 1996a, 1996b). In September 1996, the Director of Forestry himself publicly advised Government Foresters throughout Tanzania that:

Making the communities partners in natural forest resource management promises sustainability and will be cheaper. Forestry worldwide is advocating that greater control of the

management of local resources be given to local communities... Our management approach should move in this direction...

(Professor Said Iddi, in *Misitu ni Mali*, September 1996).

It is not the purpose of this paper to describe the Duru-Haitemba or Mgori initiatives which have played such a key role in moving community forestry forward in Tanzania, not least because these have been amply described elsewhere (Sjoholm and Wily 1995; Wily and Haule 1995; Wily 1996b). Rather, the task is to present the institutional and legal frameworks which have been brought into play in their regard and to explore more widely the whole range of legal mechanisms which may be called upon to embed community-based forest management more securely in practice. A short background to provide the setting must therefore suffice.

Duru-Haitemba and Mgori

In summary, the establishment of community-based management over Duru-Haitemba and Mgori Forests is a recent initiative, arising under the auspices of Swedish-aid funded and Tanzanian Government-implemented land and forestry programmes. An early objective of the forestry programme was to help the Government of Tanzania identify and gazette new Forest Reserves. This was in keeping with the traditional strategy of promoting conservation on the one hand, and opportunities for revenue generation on the other, through withdrawing natural forest from the public sector into the supposedly protective hands of the state (*reservation*) – a strategy which the Tanzania Forestry Action Plan for the period 1990-2008 retains (*TFAP* 1989).

Over 350 Forest Reserves already existed in Tanzania in the 1980s but together these comprised less than 30 per cent of the national forest estate (around 13 million ha of an estimated 40+ million ha). Ninety per cent of the total forest estate is more accurately categorised as mixed *miombo* woodland – dry, often open-canopy and semi-deciduous “forest”, dominated by *Brachystegia* species (Campbell 1996). Such woodlands play an acknowledged multitude of environmental and socio-economic roles in local house-

hold economy throughout the southern half of the African continent. Additionally they serve as buffers between social groups and as “spare” land for future settlement and agricultural expansion – all this quite aside from their enormous potential for revenue-generation from licensed timber and wildlife harvesting (*ibid*).

It was primarily for revenue generation that Duru-Haitemba and Mgori were identified for state reservation in the mid-1980s and the costly and time-consuming processes of survey and demarcation launched. These provoked not untypical reaction in the local community against the loss of land and resources considered customarily their own. More unusually, circumstances conjoined to encourage government and donor eventually to listen and to offer, for the first time in Tanzania, those same communities the opportunity to prove they could satisfactorily conserve and manage the forests themselves.

This, the eight forest-adjacent villages around Duru-Haitemba and, later, the five villages on the boundaries of Mgori Forest, proceeded to do with alacrity, encouraged by the physical withdrawal of government Forest Guards, the promise of controlling rights over the use and future of the forests – and last but not least – an unspoken threat that state reservation would begin again in the event of failure. With facilitatory assistance, each village developed simple management regimes for that part of the forest mutually agreed, within the forest-surrounding community, as under its aegis. In most cases, the boundaries finally agreed reflected spheres of pre-colonial and colonial customary use and jurisdiction by hamlet elders of that period, leavened by the practical demands of protection in today’s circumstances.

Village Forest Committees were established to manage the evolving *Hifadhi ya Msitu ya Kijiji* or **Village Forest Reserves (VFR)** as they rapidly became known. These committees demarcated the boundaries of each, formulated rules as to what products and what areas (*Ukanda* or Zones) of the VFR could be used or not used, and supervised the fielding of voluntary *Walinzi* (Village Forest Guards). These were usually young men in the community, encouraged by exemption from contributing labour in other communal activities such as school-building and village road maintenance and, later, by receiving a portion of the fines levied on illegal users they apprehend.

Problem-solving as the means and marker of change

Over the short period since the initiative began (September 1994), the practice of active Village Forest Reserve management has refined and consolidated; a passage marked by the emergence and resolution of one need or problem after another. Implementation has become “experience” as the community both grows in confidence and capacity to act and, in the process, confirms its authority over the resource.

With boundaries secured, in-forest occupation controlled (or eliminated), and degrading uses limited, the basis or need for government management has fallen away, prompting government itself to accept with ease – sometimes to its own surprise – the normalisation of village jurisdiction over respective “*Hifadhi*” (VFR). In the case of Duru-Haitemba Forest, formal acceptance was manifest first-ly in approval by the District Council of each village’s *Forest Use and Management Rules* as **Village By-laws**, followed by acceptance of those same forests as falling within the respective land areas titled to the communities, through the issue of **Village Title Deeds**.

In the case of Mgori Forest, where village titling is less advanced, the five villages are recognised guardians and managers of their respective part of the adjacent Mgori Forest through administrative mandate. This is underlain by an existing and very general by-law in the district which requires villages to protect local natural resources. Under this less firm and essentially only permissive aegis, the five villages will practise and consolidate their management authority, pending physical survey of their boundaries. These boundaries will be mapped to include the respective adjacent portions of Mgori Forest which each Village is managing. In this way, the five Mgori Villages, like the Duru-Haitemba Villages, will obtain full tenurial jurisdiction. Entitlement will explicitly include conditions which require each to conserve that part of its Village Area which is naturally forested. These have already been mapped and grid references noted.

Security of tenure, not use rights

A startling feature of the process throughout has been the impact of the “security of tenure” afforded by such approvals, allowing each community the opportunity to adopt a longer-term view on forest use

and management. This has been manifest in the prompt abandoning of the very destructive forest uses which, whilst it was under government jurisdiction, the same communities insisted they could not do without. It is, they argue, not the use of the forest which they lacked (they enjoyed abundant forest use), but “ownership”. The incentive for success in these cases appears to be power and control, not use rights.

Moving the forest out of open access

An inseparable element has been the shift in the status of the forests **from open to closed access situations** through the provision of village-based jurisdiction. Under government jurisdiction the forests were effectively regarded as a resource for all. Now, each forest-adjacent community jealously guards its own sphere of forest against encroachment or illegal use by “outsiders”.

Empowerment and government “learning to let go”

The brevity of this account and the over-riding success of this still very new initiative should not lead to assumptions that the process has been without difficulties and setbacks. It is pertinent to the subject of this paper to note that the majority of problems have been socio-political, not logistical or managerial, in origin and nature. Each problem and its resolution aptly reflects adjustments in the *balance of power*. Thus officials, including in one case a District Magistrate, have at times had difficulty “letting go” their accustomed authority and, it must be noted, the (legal or illegal) “benefits” that may have accrued.

Much more common, however, have been conflicts *internal* to the forest-managing community. At one point or another, most of the thirteen villages have found the need to restructure the way in which they manage the forest to ensure local leaders in particular are unable to use the process to their individual advantage, or be persuaded to do so by influential outsiders.

The common response has been to refine the systems through which forest use is regulated, decisions implemented, and the forest guarded. Efficiency, transparency and accountability have all heightened. The base of representation in management has widened to

include the entire village community in its quarterly general meeting where problems are reported and resolved – a shift which has encouraged democratisation more widely in village affairs.

Shifts in power draw on the law and institutional modes in new ways

As important, has been an associated need, and response, towards lodging community forest guardianship institutionally and legally, and in a way that is binding not just upon Government but upon the membership of the forest-managing or forest-owning community itself. It is to this subject, securing the right institutional and legal frame for community-based forest management, that this paper now turns.

THE SOCIO-LEGAL SETTING IN TANZANIA

Three socio-legal circumstances in Tanzania play a special role in the way community-based ownership and/or management of forest resources may be constructed institutionally and legally. The most important relates to the formation of the modern rural community (village), which in Tanzania has characteristics far beyond its social, or even socio-spatial form. Linked to this is the body of land law, and the emphasis it gives to matters of communal property, an emphasis which the new National Land Policy (Government of Tanzania 1995, *Policy*) and pending linked land legislation, the Draft Basic Land Act (McAuslan 1996a, *Bill*) will reinforce. Forest law must also be considered. Each is discussed below.

The village and the law

If the “village” is the most ubiquitous social form in the world, its institutional identity is as multi-various. In Tanzania, the village has served as the focus of socio-political development since the 1970s, where policies of grassroots self-reliance and co-operation (*Ujamaa*) were conjoined most definitively in the construct of the rural “Village Settlement” (*kijiji*; plu: *vijiji*), with particular features, as summarised below:

1. the registered Village exists as a *discrete social community* with fully identifiable membership – i.e. it is not an open-ended society into which any person is able to randomly settle;
2. the Village represents an integrated *socio-spatial unit*, “Village” referring both to a definable social community and to the area of land they occupy and/or use;
3. the Village represents a tangible *socio-institutional form*, and one that is recognised in law as a legal person able, for example, to

sue and be sued in its corporate name; this corporate identity is held however not by the village community *per se* but by the government it elects to act on its behalf, the Village Council;

4. these features combine to provide a framework within which principles of *common property* can be exercised in a statutory, not only customary, manner. The Village Council, as a definable agency and as a legal local entity, is able to own land and/or other resources, albeit in trust for its membership. Moreover, as has already been hinted at above and as will be elaborated upon below, this is not a remote or theoretical possibility but one that policy has pursued since the 1980s;
5. the Village is *the foundation of national governance*; the Village Council is known in Kiswahili as *Serikali ya Kijiji*, or literally the Government of the Village; administrative law locates the Village Council as the most local level of Tanzania's formal and legally defined hierarchy of decentralised administration, albeit one which is subject to the direction of the next level of government, the District Council;
6. the Village is an essentially *democratic and egalitarian institution*, operating by the governance of leaders who are elected by the entire adult membership of age eighteen years and above, not by those who attain authority through tradition, class or wealth, and not through appointments made by higher levels of government;
7. the modern Tanzanian Village is a *viably sized working unit* of self-management which in turn enhances accountability in local management; a community cannot be registered as a Village unless it comprises 150 spatially cohesive households. Where it grows beyond a manageable range of around 300-400 households, it is legally assisted to sub-divide into two registered Villages, or to recognise Sub-Villages, each of which has a legally bound right to elect Sub-Village Chairpersons, who automatically sit on the wider Village Council.

These features are embedded in law, originally in the *Villages and Ujamaa Village (Registration, Designation and Administration) Act*,

No. 21 of 1975, superseded by a refined law of governance and administration, the *Local Government (District Authorities) Act*, No. 7 of 1982, introduced to formalise decentralised government. Key supporting legislation include the *Local Government Finances Act*, No. 9 of 1982, and an important *Amendment of Local Government (District Authorities) Act*, No. 8 of 1992 (see Wily 1995b for details).

The timing of the Villages Act in 1975 is worth noting; a quarter century has passed in which Villages have had the need and the time to evolve practical systems of local-level governance, management and experience. The fact that the resource-poor central government has so infrequently been able to deliver even basic services over this period, has served to consolidate local level self-reliance. Although highly varied in their success, Tanzanian Villages of today exhibit a degree of organisational cohesion and productivity that is rarely seen in that majority of sub-Saharan African states, where the same post-colonial 1960s and 1970s saw mainly the dismantling of local-level, or traditional, organisation below the level of district authorities.

Processes, functions and tools

The key process through which a modern Tanzanian rural community establishes its legal existence is the legally bound act of Registration, in which member households are listed and established as the supreme authority of the community (**Village Assembly**) [Section 141 of No. 7 of 1982]. This Assembly elects a representative government (**Village Council**), which is in turn issued with a **Certificate of Incorporation** [Section 26 of No. 7 of 1982].

The legal functions and responsibilities of the village government are wide-ranging, in essence mirroring those of the District Council but within the sub-realm of the village [Sections 142, 143 of No. 7 of 1982]. In addition, the District Council may delegate any of its own functions to a particular village government. Although these are not specified in the administrative act, it could, for example, designate a particular Village as responsible for a certain Forest Reserve on its own behalf [Section 120 of No. 7 of 1982].

Because of its liable legal basis [Section 26] and tangible institutional form as a level of governance, even the President is explicitly able to delegate any of his own powers or those of central government

to the community – *including any judicial, quasi-judicial or administrative power* [Section 144 of No. 7 of 1982]. This requires an order approved by the National Assembly [Parliament]. In principle, it is such facilities that would make it possible, for example, for a Village to be designated the Manager of a certain Forest.

Administrative law also provides the village (or more precisely, its elected Village Council), with functional tools of management; certain sub-committees have to be established and others may be added. The law indicates that such sub-committees may represent the Village in any government forum or court of law [Sections 107, 108, 142]. In this way a Village Forest Management Committee may be established to operate on behalf of the Council, itself operating on behalf of its constituency, the Village Assembly.

However, the most important facility of all granted to this most local level of government is the ability to make **Village By-laws** [Section 163]. Once a Village By-law is drafted and approved by the local District Council, it becomes law, uphold-able in any court [Section 118, 166]. In addition, a village government may fine those breaching its by-laws [Section 166], and the *Local Government Finances Act* (No. 9 of 1982) allows the village government to retain all moneys from fines, licences, permits, dues and fees in respect of any by-law it has made. This means, for example, that villages are able to fine those breaching their forest by-laws and retain the income to pay village forest guards.

Representation

Democratic elements of village government have improved over the years. A major 1992 Amendment to the principal administrative statute, the Local Authorities Act, removed formal political control over village governments, through eliminating the *ex officio* status of the positions of Village Council Chairman and Secretary as, respectively, Chairman and Secretary of the village branch of the Ruling Party, *Chama cha Mapinduzi* (CCM) [Section 13 of Act No. 8 of 1992].

The same amending legislation made it easier for villagers to remove elected Village Chairmen whom the majority find unsatisfactory [Section 15 of No. 8 of 1992]. Thirdly, it was this Act which formalised the entity of Sub-Villages (*Vitongoji*) mentioned above,

thus bringing representation and management even closer to constituent households [Sections 5, 13 of Act No. 8 of 1992].

The village as land manager

The integrated socio-spatial nature of the Village is clear in these principal administrative laws.¹ The principal 1982 Act specifies that at the time of registration and designation of a settlement (thereafter *Kijiji* or “Village”), *the boundaries of that (village) area can be particularly defined* [Section 22 (1)]. The above-mentioned amendment to the act ten years later confirmed the territorial nature of Villages in that section of the Act dealing with the establishment of Sub-Villages [Section 5 of No. 8 of 1992].

Since the early 1980s, with the approval of the 1984 National Agricultural Policy, communities have been encouraged to consolidate their tenure through application for **Village Title Deeds**. This is not a form of tenure described under current land statutes which have their origins in land law of the 1920s, but is seen to fall under the category of a **Granted Right of Occupancy**, granting the Village tenure for a period of 99 years. The Village Title Deed is issued to the Village Council which acts, in this respect as in others, on behalf of the community as a whole.

Thus, despite the demise of the socialist villagisation policies of the 1970s, their core institutional creation, the corporate community, is alive and well in Tanzania – and proving uniquely suited to the institutional and legal demands of establishing workable and secure community custodianship over natural resources. Having said that, there remain areas of weakness, or unclarity, most notably for this discussion, the firmness with which the elected village government, the Village Council, is required in law to secure the approval of the Assembly on key decisions or merely to “report” its decisions, and the extent to which a Village Council may still be used as an instrument of the District Council.

¹ No. 7 of 1982 and No. 8 of 1992 and, prior to these, the founding Village Act, No. 21 of 1975, which was repealed when incorporated in its entirety into No. 7 of 1982.

The land law environment

Current land law

It will be clear already that property law comes prominently into play in any discussion of local-level rights to manage or own natural forest and in forest conservation and management strategies in general. Land law in Tanzania has its foundation in British colonial legislation of the 1920s [*Land Ordinance* No. 3 of 1923], substantially amended over the years, especially by 1928 and 1948 *Regulations* promulgated under the Land Ordinance, and the post-Independence *Freehold Titles (Conversion) and Government Lease Act* of 1963 (Cap 523) and the *Government Leaseholds (Conversion of Right of Occupancy) Act*, No. 44 of 1969 (Wily 1988).

Under current land law, both public and private property exist, proscribed however by, firstly, a principle that ultimate title and authority over all land rests with the state in the person of the President, albeit in trust for the nation, and confusingly called **public land**, whether publicly administered, privately held, or simply unoccupied; secondly, that tenure is subject in law (if less so in practice) to conditionality, strongly biased towards the need to occupy or use the land in question; thirdly, that land is able to be fairly readily withheld, or withdrawn, from private or common ownership, in service of national or public interest; and fourthly, that a dual system of tenure has operated throughout, with some land held under contractual statute and some land held by custom, a duality which lies at the heart of most confusion and discrepancies in the law (Wily 1988; Shivji 1995). The manner in which either body of law is administered is of course another matter; overall, the last decade or so has seen a strong tendency towards abuse of the privileged role the law grants (government) land administration.

Under current law, private property is manifest in a category of tenure known as **Granted Rights of Occupancy**. Land held through customary or traditional right of occupancy is also considered private ownership, and when registered, known as a **Deemed Right of Occupancy**. Although the law insists on the equivalency of granted and customary rights (through a 1928 Amendment to the Land Ordinance), this has long been regarded as more declaratory than legally defined, in that this principle exists at the whim of the

President and, in case law, has proved the weaker for it. Particularly where the customarily-held land is not farmland (cultivated) but in the form of woodlands, grazing land, hills or swamps, and therefore held by a group rather than an individual, the Land Ordinance does not readily protect such assumed “deemed rights”.

A firmer form of communal private property exists in the issue of modern **Village Title Deeds**. These were mentioned earlier. Again, this form is not described in the law, and in addition, suffers from the need to vest ownership indirectly in the community, through the Village Council, as its tangible legal person. Moreover, falling under the category of statutorily bound Granted Rights of Occupancy which were reduced to leaseholds by post-Independence legislation [Cap 523, 1963 and No. 44 of 1969), the title is limited in term to 99 years.

Strictly speaking, the establishment of a **Village Area** at the time of registration, imparts in law only the right to control and administer the land, or a right of **jurisdiction only**. Case law has shown that it does not vest ownership (Shivji 1995; *Policy* 1995). As discussed below, the new National Land Policy and supporting new land bill confirms this in “reducing” the Village Title Deed to a level of controlling jurisdiction only, in order to allow individuals or groups of village members to fully own the rights over farmland within certain parts of the Village Area. A debated alternative was to do away with any form of village tenure at all. Although flawed in many other respects, the draft land law (1996) enhances group management of local land administration and provides also for the community itself to hold all rights over certain parts of that land – “Village Communal Land”.

In making such provision, policy and law promote village-based tenure over resources such as natural forests, swamps or grazing lands which might prove inappropriate for sub-division among individual members of the community. Without the facility of village-based land tenure and administration, such resources would likely fall to the state, or state-administered agencies, as the nearest aegis for communal property ownership and management.

Forest Reserves (and Game Reserves and National Parks) represent property *reserved against* private tenure. Strictly speaking, government does not “own” these lands and resources, only controls their management on behalf of the nation.

Under current law, aside from the use of “public land” to mean the entire land of the country, public land is a term used to refer

broadly to all land **not reserved**, and not held privately under Granted Rights of Occupancy. This includes most of the country, all that land held by Villages, excluding those few Villages which have secured statutory Village Title Deeds. It also includes land which appears “un-owned” or outside the realm of Village Areas.

The new National Land Policy (1995) and draft Land Act Bill (1996)

After several years of intensive consultation and deliberation by a Presidential Commission of Inquiry into Land Matters, the Tanzanian Government (specifically, the Cabinet), approved a new *National Land Policy* in mid 1995. The new policy sets out the principles upon which land access, use and disposition will be administered and framed in a single, all embracing new Basic Land Act. A draft of this comprehensive bill (November 1996) is under discussion and expected to be presented to Parliament for enactment in late 1997.

There is little doubt that both the new National Land Policy and the Bill for a new Basic Land Law are highly significant documents, not least because they have ultimately determined to reinforce, rather than undermine, many of the fundamental principles of land disposition over the last 25 years which have been traditionally associated with – and sometimes condemned as – rural socialism. Thus, a stated prime objective of the policy and new law remains fixedly to promote and facilitate “an equitable distribution of and access to land by all citizens”, to be supported by constraints upon land accumulation, limitations upon non-citizen landholding, and legal determination that customary rights be fully and readily recognised and secured in law [*Policy*: 2.2.1; *Bill*: Part II Section 3].²

² There are many aspects of the proposed new land law which are deservedly the subject of local debate and indeed dispute. Many revolve around the extent to which the law provides for transparency and justice in administration. Others reach into jurisprudential concerns as to seeming over-extension of the arm of the law into local land control. These and related matters are not touched upon in the above summary, for there is little dispute upon the issue of most concern to this paper – the capacity of the new law to support local control over local natural resources, most notably forest. Wily (1997b) does however provide a comprehensive review of the socio-political implications of the draft land bill.

Perhaps most surprising of all, policy and draft act locate the major management of the country's land base in the hands of villages. This endorses the *de facto* socio-political situation in which the rural village serves as framework for more or less every aspect of national and local development. It also seeks to lodge land administration in a framework which is accessible to the majority and therefore more accountable, and wherein each and every citizen may participate in land-related decision making [*Policy*: 4.1.1, 4.2.1; *Bill*: Section 3 (g), (h)].

Village land

In the draft act "*Village land*" becomes the major class of land, alongside the smaller spheres of *reserved land*, and so-called "*general land*". The latter refers mainly to situations where leasehold rights are in effect and to land over which the state has loose jurisdiction due to the absence of other defined rights – in short, to that category of land which is traditionally referred to as "public land" with a connotation of not being owned by anyone in particular.

Part VII of the Land Bill, acknowledged by the drafters of the law as "the heart of the Bill",³ is devoted to every possible aspect of Village Land.

Local jurisdiction confirmed

Summarily, the local control over local land disposition is made law through the issue to each and every village of a **Certificate of Village Land**. This confers upon the village government "the functions of land management" as trustee, and affirms "the occupation and/or use of the area by village members under and in accordance with a communal customary right of occupancy" [*Bill*: Section 57 (7)]. This is a non-negotiable title, capable of indefinite duration ("in perpetuity"), and provides for the long-term jurisdiction over the land by the community. At least once every two months, the Village Council, as trust land manager, must report on land matters to the Village Assembly [a meeting of all adults in the community] [Section 58 (5)].

³ Clause by Clause Commentary of the Draft Bill for The Land Act (McAuslan, 1996b: 32).

Transfers from and to village land

The draft bill does not alter the ease with which the President (state) may acquire village land for public interest, calling into play the *Land Acquisition Act*, No. 47 of 1967. However, the draft bill follows closely the directive of the Land Policy that consultation and consent of a Village Council is required and that alienation may be challenged in a court of law [*Policy*: 4.1.1 (iv), 4.2.16]. The legally binding procedures for transfer are set out in Section 5 of the draft bill.

Of much significance is the fact that the new land law will give equal weight to the transfer of general or reserved land to *village land* [Section 6]. This means that part of a Forest Reserve could be lodged within a village area.

Communal property upgraded

A wide range of tenurial arrangements may accrue within the general category of Village Land, but the policy and draft bill provide specifically for two sub-categories: **Communal Village Land** and **Grant Land**.

The former is land to be held communally by the village for purposes of natural resource management, communal use, or a specific project of the villagers [*Bill*: Section 60 (a), 61]. The latter is land earmarked as available for productive use (i.e. mainly farming) through the issue of **Certificates of Customary Rights of Occupancy** (*Hati ya Ardhi ya Mila*). Both categories of land are to be defined by the Village Council, formally approved by the Village Assembly, and registered in the Village and District Land Registries [Section 61]. Neither category of rights need have a term limit and rights over land held under granted Certificates may be independently bought and sold, thus meeting another prime principle of the new policy, that “land has value” [*Policy*: 4.1.1.(c)].

It is of note here that the new Land Policy and Land Bill confirm a fundamental principle of landholding in Tanzania since 1963 that all land in Tanzania is vested in the President on behalf of all citizens, and all that may be transferred, bought or sold, are rights in land, not the land itself [Section 3 (a)].

Forest law

The **Forest Ordinance** [Cap 389 of the Tanzanian laws] is an old act (1959), and one introduced to provide a legal framework for establishing *government-owned and managed* Forest Reserves. Therefore, the act is unsurprisingly silent on how people might be involved in forest management. At the same time, the Forest Ordinance does not explicitly prohibit local custodianship. Certain sections of the Act may be called upon “permissively” therefore to put community-based management of forest reserves into effect but – it will by now be clear – only because supporting frameworks exist in administrative and land law, into which such custodianship may be vested.

The Forest Ordinance came into being through the establishment of a new **Forest Policy** in 1953. This built upon earlier policies (1912, 1925, 1945), and furthered the dichotomisation of forests into Reserves (where the most important forests are set aside for state-controlled conservation and revenue generation), and the remainder, made available “to the best advantage of the community” (Forest Policy for Tanzania, 1953).

Although a new **Forest Policy for Tanzania** was drafted between 1980-86, it remains un-approved. A new draft is proposed for 1997. For the purposes of involving local people in forest management, the current 1986 draft is, like the Forest Ordinance, potentially permissive, if not directly helpful. Villages are given responsibility to help government “...in controlling the entire forest estate...”, to “establish and manage woodlots and plantations ...”, and “to formulate village by-laws in order to conserve and rationally utilise the forest resources” (Draft Forest Policy 1986; *passim*).

Although such references arguably refer only to woodlots, in the right circumstances, a window of wider opportunity remains. This window is developed somewhat in the **Tanzania Forestry Action Plan for 1990-2008**, which identifies a main strategy to be the involvement of people in conservation (*TFAP*: 3.3), and specifically mentions village forest reserves as being needfully included in the still to be finalised new Forest Policy (*TFAP*: 6.2.1 (i) (vi) vii). Again, these probably refer to communally established woodlots, but at least the concept of a village forest reserve is introduced.

Summary

In summary, the laws and associated institutional frameworks which may be called upon to embed community-based forest management are various, and of mixed utility. The Forest Ordinance can not be relied upon alone to support such a development and realistically, at most is only permissive. By contrast, long-standing post-independence administrative law, combined with the extraordinarily innovative proposed new basic land law, will together avail local people, and the state, of precisely the opportunities they require to promote and sustain local custodiam over forest resources.

The critical provisions are manifest, firstly, in the capacity of local people to act in a corporate manner on the one hand, and to act as a level of “government” on the other, including a limited legislative function, the ability to make and implement “laws” affecting the use and management of resources in their vicinity. Secondly, the new Land Policy and Land Bill build upon and in turn consolidate these unusual capabilities, by pursuing the decentralisation and democratisation of land administration. They place firmly in the hands of communities, statutory jurisdiction over local land resources and their disposition and, in addition, provide a clear and modern legal framework for a community to retain certain land areas under its jurisdiction as common property, under common management. Furthermore, these capabilities may be exercised in perpetuity.

The uniqueness of these facilities is perhaps best illustrated through (a necessarily brief and somewhat over-simplified) comparison with the intentions of similar draft new land legislation in the neighbouring East African state of Uganda. There, the Uganda Tenure and Control of Land Bill (1996) explicitly categorises customary land tenure as a lesser form of landholding to freehold and leasehold and, rather than upgrading its status, plans to abolish it through conversion into individually freehold titles along lines which suggest enforced privatisation [Section 28]. Nor does the draft act make any provision at all for the maintenance of common property. Whilst the state is required to consult with “affected public” when it wants to acquire locally held land, no guidelines for this are provided [Section 13]. Land administration goes no further to the people than proposed

District Land Boards, which may appoint advisory committees at the parish level [Section 37] [Wily 1997c].

In short, the draft land laws of Tanzania and Uganda are moving in directly opposite directions. The former is moving towards the localisation of control over land and a system of administration and right-holding that locates the villager and the village community as the foundation of both administration and right-holding and in ways that derive directly in principle and in law from the conventions of customary landholding. The latter tends towards the outright individualisation and privatisation of each and every square metre of land and in a manner which makes local jurisdiction over any sphere of natural resources virtually impossible.

MAKING COMMUNITY-BASED FOREST MANAGEMENT REAL ON THE GROUND

Finally, this section explores precisely how Tanzanian law may be practically put to work in support of specific cases where community-based forest management might be applied. Different circumstances will require slightly different approaches. The main determining factor will be the current tenure of the forest, broadly dividing forests into those which are held by the state (reserved) and unreserved forests, subject to several tenurial regimes. The less complicated category, Forest Reserves, is addressed first.

Forest Reserves

Although as noted earlier, Forest Reserves represent less than 30 per cent of the national forest and woodland resource, they embrace the most valuable forest in terms of catchment, biodiversity and production (plantations). They are often on upland, fertile areas which, for the same reasons, provoke high population densities. This, and the value of their resources, makes Forest Reserves vulnerable. The Government of Tanzania recognises that rates of agricultural encroachment into Forest Reserves and degradation of their resources within are as almost as significant as those affecting unreserved forest areas (*Draft Policy* 1986; *TFAP* 1989). The need for new conservationary management approaches is accepted.

Initially, the idea of a forest-local community securing “ownership” or even management authority over a Forest Reserve, as a means towards improved conservation and management, may appear a contradiction in terms. After all, the intention of reservation is to secure those rights to the state, assumed as the only entity which may satisfactorily manage valuable forests. Not only has state management proved less than satisfactory and an exercise which few modern African states are able to sustain, the premise itself appears flawed in modern times.

More specifically, it stands in contradictory to the spirit of the *Constitution of Tanzania* in both terms of the primacy of people's rights over natural resources and the principles of their empowerment through decentralised governance [Articles 9, 14, 24]. As has been shown above, administrative law [Sections 141, 142, 144 of the Local Government Act No. 7 of 1982] and even existing property law [Section 4 of the Land Ordinance], give practical support to these elements of the Constitution, in providing tenurial and institutional mechanisms for communities to hold and manage natural resources as their own.

The main legal and institutional framework through which reserved forests exist is the *Forest Ordinance* (Cap 389). *The Local Government (District Authorities Act)*, No. 7 of 1982 supports the Forest Ordinance in providing a legally bound institution – the District Council – to which central government may decentralise management responsibility for certain Forest Reserves to the district level [Part III of Cap 389] and [Sections 113 (2), 117 (1), 118 (2) (n) of No. 7 of 1982].

The tenurial status of Reserves is simply that the state “reserves” the land against private ownership. In this sense even the state does not own the land. The state is however the controlling authority. A **Territorial Reserve** (TR) is one controlled by central government, whilst a **Local Authority Forest Reserve** (LAFR) is one where a District Council has been designated as the responsible management authority, but not its owner nor even the ultimate authority. The act is quite clear on this [Sections 10 (1), 12 (1), (3) of Cap 389].

Much of the Forest Ordinance is devoted to the procedures through which Reserves are established [Parts II and III]. Two points are of particular relevance to discussion of how community jurisdiction may be secured.

Firstly, Reserves may only be declared over *unreserved land* [Section 5 of Cap 389]. For the purposes of the Forest Ordinance, unreserved land is identified as land outside a Forest Reserve and neither held as freehold, leasehold or under a granted right of occupancy. A mechanism for state intervention and/or protection of forest on such private land is supported through the ability of the Chief Conservator to make **Covenants** with private landholders [Part IV].

Meanwhile, if village land were to be recognised as private land, it would be difficult to legally establish a Forest Reserve without recourse to a Presidential Directive to withdraw the land “for a public purpose”, using the Land Acquisition Act (No. 47 of 1967). Under current law [Land Ordinance, Cap 113], villages are most readily regarded as private owners when they receive Village Title Deeds.⁴ Under the proposed new Basic Land Act, even those Villages without such Deeds (i.e. the vast majority), will receive (or be deemed to have received) Certificates of Village Land which, although they do not confer ownership, confer a level of jurisdiction that makes it as difficult for the state to withdraw land without the permission of the villagers. Section 5 of the Bill sets out clearly how the permission of the community (villagers) must be secured, in order for a Forest Reserve to be created.

Secondly, the Forest Ordinance places much emphasis upon the need for local people to be well informed of the state’s intent to reserve the area and to have their interests thoroughly heard and accounted for. There is even a legal requirement that the boundaries of the area intended for a Forest Reserve be *visibly demarcated on the ground* [Section 5 (3)], as if to provoke local awareness of the intention. Eleven sub-sections are devoted to procedures for local consultation including a significant requirement that rights which must be heard and considered include rights of customary *use*, not just occupation [Sections 6 (4), 9 (3) (b) (c) of Cap 389].

Moreover, although the Forest Ordinance makes provision for the voluntary surrender or extinction of local rights [Section 6], provision is also made for local rights to be maintained and exercised within the Forest Reserve [Section 8]. A final point of interest for this discussion is the explicit ability of the Chief Conservator (Director of Forestry) to revoke the declaration and gazetting of a Forest Reserve [Section 5], or to exempt the whole or part of any Forest Reserve (either a Territorial or Local Authority Forest Reserve) from any provision in the act [Section 15 (3)].

⁴ In actual fact, even where no Title Deed has been awarded, an “aware” community could appeal to have its customary use and occupancy deemed equivalent to a Granted Right of Occupancy [Section 4 of Land Ordinance].

Community as owner

Thus, if the objective were to transfer ownership of an already-gazetted Forest Reserve to a community, then it is relatively easy for this to be undertaken, even under the Forest Ordinance (Section 5 (1)], without recourse to land law, either current or proposed. De-gazettement under the Forest Ordinance is in itself not a difficult procedure; nearly 20 per cent of Forest Reserves have in fact been so revoked (Holmes 1995), although in no case to date has this been to enable the retention of a forest under local ownership and management. In most cases the purpose has been to allow for expanded agricultural settlement.

Due cause for revocation or amendment are not directly indicated in the Forest Ordinance. However, strong grounds could exist in a finding that the original gazettement was **illegal** in the first place, because the process did not follow the requirements of the Forest Ordinance adequately in ensuring, for example, that the intention to gazette was made known in the area “*in such manner as may be customary in the area concerned*” [Section 6 [1] (a)] and/or that all claims to rights were investigated and determined [Section 6 (1) (c), 9 (3)].

A more general argument could be that revocation of the Reservation of a particular forest is **in the public interest**, given that it is a constitutional right of the people to see natural resources properly conserved, and that this is not being achieved. Not only the Constitution but main national agricultural (AGRIPOL 1983), land (1995) and environmental (*TFAP* 1989) policies, quite aside from the existing forestry policy (1953, and draft new policy, 1986), require optimal natural resource management. Mismanagement is in fact specifically mentioned in the Forest Ordinance as a cause of revocation of local authority management where it is found to be mismanaging the estate [Section 12 (3)].

Parameters

Inevitably, if the President and Chief Conservator [Director of Forestry] were to approve and effect revocation, entitlement of the one-time Forest Reserve would need to be in favour of a tangible and em-bounded entity – preferably a legal person such as a registered

Village or Villages, which could be called to account in court if need be. As already shown, the institutional framework for this exists in Tanzania.

Further, there would likely be a need for such divestment to be conditional upon the new owner (or manager, see below) retaining the forest intact and managing it sustainably over the period of the entitlement (the period would vary dependent upon the basis upon which the Reserve was given to the community). It has been observed above that a tradition of resource-related conditionality amply exists in Tanzanian law and could be expressed as normal *Conditions of Occupancy* under the existing Land Ordinance, retained in the draft new Basic Land Act [*Bill*: Section 37]. Alternatively, conditions of tenure or management may be expressed through a *Covenant* entered into between the Chief Conservator and the concerned community [Section 14 of Forest Ordinance].

Finally, it is reasonable to assume that the community involved would need to have shown capability as well as cause to secure jurisdiction over the Forest Reserve. Practically speaking, any devolution of control would be *an end result* rather than starting point of such demonstrated capacity.

Community as manager

If the objective is to secure only community management authority over a Forest Reserve, rather than community “ownership”, then the status of the Reserve need not change, only those legal and institutional means through which it is managed. Although not designed precisely for this purpose, several instruments under the Forest Ordinance may be called upon to effect a transfer of authority from either central government (where the Forest Reserve is a Territorial Forest Reserve), or from a district council (where the forest is a Local Authority Forest Reserve).

Territorial Forest Reserves (TFR)

In the case of the former, the Forest Ordinance gives the Minister (or his delegee, the Director of Forestry) the power “*to appoint any person he deems fit to be an **honorary forest officer***” responsible for

any one or more Forest Reserves [Section 4]. As a legal person, a village could therefore be appointed. In making such an appointment, the honorary officer may have the same powers as other forest officers as set out in Part VII of the Forest Ordinance, or additional and/or different powers [Section 30 (u)].

Alternatively, a Village/s may become the designated responsible Manager of a particular Reserve through the Minister/Director simply giving **advice** to that effect [Section 12 (1) (2)] - i.e. not necessarily making the Village an Honorary Forest Officer. Or, this may be more formally indicated through **publication of a notice** in the Gazette, stating that a certain community, comprising named Villages, is henceforth the recognised Manager of a specified Forest Reserve, and with term and conditions indicated [Section 31].

Means also exist whereby a community may be issued a **licence** to manage a specified forest [Section 10]. Although the Forest Ordinance does not state so, legislation relating to the powers of Ministers make it quite possible for the Minister or his delegee, to even enter a **contract** with a community, such as could be manifest in a Management Agreement, to manage a Forest Reserve.

Local Authority Forests

Where the Forest Reserve is a Local Authority Forest Reserve (LAFR), then the District Council is explicitly able to appoint a **Forest Manager** [Section 11 (1)], although nowhere is it indicated in the 1959 Forest Ordinance that a Village could play this role.

Other laws enable a District Council to **delegate any responsibilities** it may have to Village Councils [Section 120 of No 7 of 1982]. However, the law is clear that in such a case, the delegee acts as *agent* of the district council [Section 120 (2) of No. 7 of 1982]. This could be constraining, unless the concerned Village Council made sure that the powers so transferred gave it the necessary authority to act effectively.

There are other mechanisms through which local government may mandate a Village responsible and powerful in the matter of managing a LAFR. District Councils have ample powers to promulgate District By-laws [Section 118 (d) of No 7 of 1982], and this is an instrument frequently used by Councils. The form of by-laws is simple and fairly flexible. A District Council could readily draft a

District By-law which sets out in general terms or in detail, which Village or Villages will henceforth manage which part of which LAFR, with what powers and through which means. The concerned Villages would need to ensure that the By-law could not be revoked without due cause.

A contractual agreement could also be devised. Although **contracts** increasingly appear in community forestry management situations, they are not necessarily a superior legal framework than that of a District or Village By-law. Contracts traditionally imply a short-term lifetime, and tend to be drawn into force in regard to commercial activity, amply evident in the relevant sections of the Local Government Act [Sections 125-127]. Nor are contracts between two levels of Government anywhere mentioned in administrative law. Nonetheless, Section 125 of the Local Government Act explicitly permits a District Council to “*enter into any contract necessary or desirable for the discharge of any of its functions under this Act...*”. The contract in this case would set out the respective roles and responsibilities of the contractor and contractee. Village members, on whose behalf the Village Council would make the contract, would need to be fully involved in its preparation and fully committed to its terms. The benefits to themselves would need to be clear. A Management Agreement could fall into this framework.

Unreserved land

With the exception of a capability to declare any tree species outside Forest Reserves to be henceforth “Reserved”,⁵ the Forest Ordinance and, by implication, the Director of Forestry or central government, have weak jurisdiction over forest on unreserved land. Nonetheless, as observed earlier, the vast majority of forest resources in Tanzania are on unreserved land – some 30 of 44 million ha.

The legal means through which a rural community might secure rights over forest on unreserved lands depends primarily upon its tenurial status. This varies, from land held by an individual, by a vil-

⁵ Section 17 (1) of Forest Ordinance [Cap 389]. A Reserved tree species is normally one which is protected against felling, damage or removal of parts, unless by special permit or licence [Section 18].

lage, or land falling under the jurisdiction of the local District Council. The first category tends to be referred to as private land, and the second and third as “public land”, although, as has already been indicated, village tenure may be considered both by custom and by statutory issue of a Village Title Deed as private (group) landholding.

Land falling under the jurisdiction of a local authority is also complicated in that such “tenure” is not described in land law, exists passively and in default of the fact that no individuals or villages have acknowledged rights over the area in question. In addition, the rights of the local authority are not those of “ownership” so much as of a loose jurisdiction. Such jurisdiction in fact extends to the entire area of the district. Where Village Areas have been imperfectly and only informally indicated on maps or on the ground, the line between “village land” and “public land under local government”, is vague at best. Nonetheless, it is often in precisely such areas that vast tracts of especially woodland abound. To simplify discussion, forest found within acknowledged Village Areas, is addressed first.

Forest within a Village Area

This is an important category of unreserved land and one that will gain even more importance with the passage of the proposed new land act in late 1997, which, it has been noted, locates “Village Land” as the heart of the bill’s concerns. In terms of area, village land represents the greater proportion of right-holding, and a good proportion of dry woodland falls within the boundaries of one or other village’s land (Village Area). The vast majority of Tanzanians live within one or other of Tanzania’s 8,500+ registered Villages.

However, it does not automatically accrue that villagers are able to exercise exclusive jurisdiction over a forest that falls within their village lands. This is firstly because the boundaries of Village Areas are frequently only loosely defined on the ground, and particularly where communities are new and scattered and where village zones are very large, the boundaries may in fact be open-ended in practice. This is especially so where natural woodlands abound in and amongst settled communities. Secondly, in practice, if not in law, village land is often referred to as “public land”, and those parts not actively used for farming (such as is the case with woodlands and forest), tend to

be subject to “higher” jurisdiction. Thirdly, unlike already Reserved areas, public land bears a consistent feature in the ability of the state to effect dispositions easily on that land.

Forests within Titled Village Areas

The only communities who are not vulnerable in this respect are those Villages who have Village Title Deeds in their possession, thus moving their Village Areas out of the public sphere into a category which could be upheld in a court of law as private land, held by the community. After a ten-year programme of intensive village titling, arising from the 1984 Agricultural Policy, less than one-quarter of Villages have however, had their areas surveyed, and only 2 per cent have Village Title Deeds in hand – that is, no more than 200 of 8,500+ registered Villages.

In theory, it is difficult for the state to reserve forest within village land so entitled. In practice, it can happen, either because the community allows it to be effected, being encouraged to voluntarily surrender their rights, and/or not being aware of the illegality of reserving land over which “private” rights have been established.

The Duru-Haitemba case

This is in fact precisely what occurred in the case of Duru-Haitemba Forest, described earlier in this paper. The eight registered Villages which exist on the periphery of Duru-Haitemba were having their village boundaries (Village Areas) formally surveyed and mapped at the same time another arm of government was proposing to turn Duru-Haitemba Forest into a Forest Reserve. Village boundaries agreed, demarcated and mapped in fact reached deep into the Forest and subdivided it among the eight villages, according to traditional spheres of jurisdiction and, more recently, in accordance with provisional Village Area boundaries, as had been registered with the local District Council twenty years earlier at the time of Village registration (1975). In short, the communities considered the forest integral to their land area, and the entitlement process formally recognised this. Nonetheless, when that other arm of central government (Forestry Division) – unaware of the entitlement procedures initiated – proposed to reserve the forest, villagers assumed they were powerless to prevent this. In the event,

the decision to allow the Villages to manage the proposed Forest Reserve themselves, overtook the gazettement process, and saw the entitlement process come into effect.

Forests in Untitled Village Areas

Most villagers, most registered Villages, and most unreserved forest and woodland exists within *designated but un-titled* Village Areas. In theory, this need not diminish the local right to “own” and manage local forest and woodlands. In the first instance, the community usually has *customary* or *de facto use rights* over the forest within their Village Area. Property law claims that such rights must be respected and accounted for – the famously “declaratory” Section 4 of the 1923 Land Ordinance, shown in the subsequent seventy years to have been consistently weakly permissive at most.

In the second instance, as shown earlier, the registration of a Village Area provides *village jurisdiction over that entire area*. In practice, the boundaries of the Village Area are often imprecise, reflected in the numerous boundary disputes that eventually occur as the villages expand. It has been the practice of most local governments to recognise a Village Area as extending until it reaches the next Village Area, even although the two Villages may be many miles apart. This has resulted, quite reasonably, in often immense Village Areas of many thousands of hectares. Frequently, the remoter parts of a Village Area may never be visited by the governing Village Council, let alone actively managed. Usually, it is in these areas that natural forest (especially dry woodland) is found. Sometimes such parts of a Village Area are in practice used freely by people from quite far afield, not just the villagers within whose Area the forest falls. It is such forests which government treats as public land, despite the legal jurisdiction of the local Village.

If all land in Tanzania, including individual private and village titled land is vulnerable to state disposition “in the public interest”, then obviously land and natural forest held loosely by a community, as above, is even more vulnerable. In general, there is a pressing need for a community to consciously improve the security of its landholding, if the objective is to secure the forest against state-directed disposition for reservation or other purpose.

Under current law, it may do this to a considerable if imperfect degree, through securing the above-described **Village Title Deed**, ensuring that the forest area is within the boundaries surveyed and gazetted. This Deed, it will be recalled, has a lifespan of 99 years at most, and also vests ownership in the Village Council as the body corporate.

Under future law, when the Land Bill is passed (anticipated late 1997), the Village Title Deed will no longer be available to Villages. Instead, Villages will gain jurisdiction over the Village Area. However, this right will be granted “in perpetuity”, and will be much firmer in character than the Village Title Deed, simply through the fact that it is amply described in the land law and will be tangibly manifest in the issue of a **Certificates of Village Land**. This has been described earlier. All will gain, and simultaneously, through the stipulation in the proposed act that all registered Villages (and there are virtually no unregistered Villages) “*shall be deemed to have received a certificate of village land*” through passage of the new law [*Bill*: Section 58 (12)]. This includes even those who have a Village Title Deed, which will no longer has validity [Section 57 (12)].

Furthermore, the nature of the jurisdiction will be somewhat more democratic than is provided in the Village Title Deed in that, although the Village Council remains the holder of the Certificate of Land, the new land law makes it clear that it does so as trustee for the community [*Bill*: Section 58 (2)].

A Village anxious to secure tenure firmly over the local forest or woodland would promptly designate that part of the Village Area as **Communal Village Land** [*Bill*: Section 60 (1)], and register it as such in the proposed Village Land Register [*Bill*: Section 61 (6), (7)]. This will not necessarily secure the land entirely against state intervention but it will generate greater awareness within the community as to their rights – no mean asset when a community is confronted with external pressures.

Establishing management authority over the village forest

It is already legal for a community to designate any part of its lands as a protected or preserved forest area and to manage it accordingly. It may do this without reference to any other authority other than its

own membership. To look after its natural resources is in fact an implicit responsibility the Village Council takes on at the time of formation and registration as a Village [Section 142 (20) (a) (b) (c) (d) of No. 7 of 1982].

Although the law suggests Village Council powers include the making of rules *to support natural forest management* [Section 142 (3)], this is only implicit. If a Village is to exercise this and related instruments of management, it is advisable (but not legally essential) for the Village to embed its management regime in **Village By-laws**. This is especially so if the Village Government wishes to levy cash fines on offenders.

Even without this authority a standing right exists in the form of customary law; community management of common property resources is integral to most customary laws, and may be treated as such in a court of law. However, customary law is difficult to enforce in the current legal environment where much statutory law over-rides it, and it is preferable for those “laws” to be embedded in accessible [statutory] legislation.

Village By-law

The Village By-law is the principal legal instrument available to rural communities to clarify, confirm and endorse any action it wishes to implement in support of its duty “to promote the development and well-being of its membership”. This legislative power is explicitly conferred upon Villages [Section 163 of No. 7 of 1982], and the means whereby a village may make a by-law is set out in the Act [Section 164]. In summary, the Village Assembly must consider the proposals and the Village Council must take account of its views. The by-law is then passed with or without amendments by the Council, which submits it to the District Council to consider and approve. The Village By-law comes into effect on the date agreed by the District Councillors meeting. It is not necessary for Village By-laws to be approved by any other higher authority than the District Council. Nor does the By-law need formal gazettelement [publication in the *Gazette*] [Section 166].

An appropriate by-law would state clearly that the (named) Village is the **Management Authority** over the (named and

described) natural forest, and will implement the following (detailed) **Rules** in its respect. Although the forest area that will be subject to the By-laws needs to be unambiguously indicated, the area does not need to be formally surveyed or demarcated.

District By-law

There are two other means whereby village authority over a forest may be confirmed and detailed; a District Council could pass a District By-law indicating the (named) forest will be under the management of the (named) Village/s [Section 148 of No 7 of 1982]. However, District By-laws must be approved by the Minister responsible for local government, and *normally* published in the Gazette [Section 194 (1)], making it a lengthy procedure.

Furthermore, given that the District would neither wish or be legally able [Section 150 of No. 7 of 1982] to impose management authority upon a Village without its full consent, it would be simpler to help the Village approve a Village By-law, as above. In law, both are as binding.

It is also legally possible for the Minister responsible for local government to **mandate** a Village fully or partially responsible for the management of a designated area of natural forest within their Village Area as under the very general provisions of [Section 110 of No. 7 of 1982]. He may do this only after consultation with the relevant District Council, which in turn would need to consult the relevant Village.

Public Preserved Forest

In many places local governments (District Councils) have established protection orders over tracts of natural forest which villagers consider their own, either by custom or by virtue of proximity. Such protection has accrued through the promulgation of **Local Authority By-laws** under the *Local Government Act* [Section 148], or *The Protected Places and Areas Act*, No. 38 of 1969.

The most common objectives of these by-laws is to control soil erosion and protect water sources, or to provide a framework for the District Council to secure revenue from issuing permits for timber or

polewood extraction, charcoal production, or even grazing. At least half of the country's districts passed such by-laws in the eighties.

The form and content of these by-laws are similar. Vulnerable areas are identified as **Prohibited, Preserved or Protected Areas** subject to certain rules; mainly that cultivation, grazing, or felling, are legal only by permit, and pit sawing and charcoal burning through a fee-paying licence. Permits and licences are issued by an "Authorised Officer"; this is normally a District Agricultural or Forestry Officer, or their field staff, such as Forest Guards, posted to protect and regulate the use of the scheduled Preserved Areas.

In most cases, the objectives of establishing community-based natural forest management will be consistent with the conservationary objectives of the order already placed upon the forest in question. The main "differences" are therefore the *locus* of authority over the forest, and secondly, the *mechanisms* through which enforcement of conservation measures occur.

The main disadvantage to government in surrendering its authority over a Protected Area is the loss of income from licence fees. However, fee rates are low, and monies actually accruing to the District Treasury even lower. Now that virtually all the main natural forest species are protected (through Rules issued under the Forest Ordinance, and especially a recent Notice No. 429 of 1995), the opportunity to earn fees in the first place hardly applies. Even where timber extraction is legal, there is no reason why a Village cannot be taxed on the products at the point of sale, much in the way that local governments already tax forest-derived honey sold in the market place.

Amending the District By-law

If it is agreed by the District Council that protection and management of a Preserved Area may be more effectively carried out by the forest-adjacent community, then either the District By-law may be amended, or repealed in its entirety. Amendment has certain advantages. Firstly, it may be achieved through a meeting of the District Councillors, whereas a full repeal requires the permission of the Minister of Local Government [Section 150 of No. 7 of 1982]. Secondly, although not necessarily the case, most By-laws made by a District Council cover more than one area in the District, and it may be that there is a desire

only to restructure the custodiam and management of one area. An amendment could remove the affected forest from the Schedule of Protected Areas normally attached to the By-law. This will make way for the Village to develop its own regime of protection and management through a Village By-law.

Alternatively, the amendment could merely alter the *identity of the Authorising Officer* in charge of the Protected Area. The usual Authorising Officer is the District Forester or Agricultural Officer, who may in turn delegate their functions as specified in the By-law to Forest Guards. Retention of the forest as a scheduled area under the District By-law may also be practical where there is a desire to enter a *collaborative management agreement* between community and District Council, especially where many Villages are involved.

Unreserved Forest which falls outside a Village Area

This represents the nearest class of forest land conventionally understood as “public land”; i.e. land over which there is no (registered) owner. Cases of genuinely un-owned land are uncommon but do exist, especially within the vast central *miombo* areas of the country, where settlement is still expanding into unoccupied or vacated areas and where communities are still evolving and being registered as Villages. In such areas, seasonal occupancy or use rights may have existed in the past, but have lapsed through non-use, as those people disperse, settle and use land and resources elsewhere.

More commonly a range of customary rights pertain. Seasonal occupation or use rights (especially hunting or grazing) may still be exercised but are either too weak, or too limited in nature, to provide the legal interest for those right-holders to serve as effective guardians of the forest. The important legal requirement in this scenario would be to secure the (voluntary) extinction of those rights, or to incorporate them as use rights, not custodian rights, within the overall management regime established by the forest-managing Village/s.

Other situations exist where several forest-adjacent communities share use of the forest, either traditionally or modernly, and wish this to be the foundation of their management or tenurial regime. Experience in community forest management to date suggests that

the more local the guardianship, the more effective it will be. Therefore sub-division of the forest among the Villages is preferable to joint management of the same estate by several Villages. There will be cases however where the forest is simply too small, or the basis of sub-division too weak.

Most commonly of all, the forested area is either entirely outside or only partly within the sphere of local customary rights or the modern boundaries of Village Areas. Often local communities nonetheless consider the forest to be their own, if only on the basis of current use and physical proximity.

Overall, the basis upon which community rights may be secured clearly vary with the circumstances. They need not necessarily be premised upon the existence of customary rights. Indeed, the situation may arise where the designation of a community as forest manager, or even forest owner, may be considered simply the most workable and effective means of conserving and managing a forest.

Establishing village jurisdiction

The mechanism: extending Village Areas

In all the above cases, the logical legal step to secure community-based tenure over the forest is for the Village Area to be extended to include the forest. Where more than one Village is involved, the forest may be sub-divided to allow each Village jurisdiction over an appropriately adjacent sphere.

Under existing law, it is relatively simple for an un-surveyed Village Area to be extended. Formal survey is not part of the initial village registration process and Village Areas are often poorly defined on maps and on the ground. Amendment may be effected by resolution of the District Council, and reported to the Registrar of Villages, who will in turn publicise (gazette) the information. In those minority of cases where the community or communities have already received Village Title Deeds, the process is more complex, requiring re-survey, re-mapping and formal amendment to the Title Deed by the Registrar of Lands.

Implementation of the new land policy and proposed new land act will generate a flurry of reassessment of village boundaries among

different Villages, and will provide an excellent opportunity for the multitude of forest/woodlands which currently fall outside those areas, to be included, prior to issue of Certificates of Village Land. It has been noted earlier that the procedures for issuing Certificates are greatly simplified in the Bill, requiring largely local neighbourly and Council agreement as to where boundaries lie, not formal cadastral survey [*Bill*: Section 57]. The need for cadastral survey and mapping proved to be the main stumbling block to the issue of Village Title Deeds

Further, modifications to Certificates of Village Land will be readily obtainable through the same procedures, and most importantly of all, the new Land Bill provides explicitly and amply for general land (“public land”) (as well as reserved land, as discussed earlier), to be transferred to village land if need be [*Bill*: Section 6].

In all cases, any parties which might have interests in the land to be included in the Village’s sphere of jurisdiction, need to be consulted and to agree. Depending upon the situation this may mean government, individuals or, most likely, neighbouring villages, including pastoralists with seasonal grazing rights. The agency which must support changes to Village Areas is the Local Authority (District Council) [*Bill*: Sections 58, 14 (3) (b)].

The grounds: custom or capability

A more immediate concern will be *to establish the grounds* to persuade a District Council, District Land Officer and/or Commissioner of Lands, to consider extending the Village Area in the first instance. The interested Village may make its case either on the basis of traditional occupation and/or use, or by demonstrating itself as the logical and effective guardian of the forest in question. This the community may achieve through devising and implementing active management over the forest.

The Mgori case

This is, in fact, precisely what is occurring in *Mgori Forest*, where the five registered Villages adjacent to the forest have sub-divided the forest into five spheres, partly along lines of customary use and part-

ly on the basis of what is most workable from a practical management point of view.

The management they exercise today comprises not only the imposition of clear rules as to forest use, but protection of the forest against unregulated use. Offenders are fined, fines are banked in Village Forest Management Accounts, and used to support the many Village Forest Guards involved in patrol duty. Success has laid not only the basis for securing recognised jurisdiction over their respective parts of the greater forest (“Village Forest Reserves”), but has established occupation and utilisation through its implementation. Thus in effect, ground has been yielded on two counts: custom and capability to manage, especially in this case, in the absence of government management staff or activity.

Village entitlement distinct from the village area

There may be occasions where it is preferable for the community to secure entitlement over the forest separately from its Village Area. This might be the case where the forest is not proximate to the Village Areas of the Villages concerned, or where they wish to establish shared entitlement.

Under current law, it is quite legal for a single registered Village to hold property including land, even distinct from its Village Area. As a corporate entity, the Village Council is capable of “*holding and purchasing, or acquiring in any other way, and disposing of any moveable or immovable property* [Section 26 (2) (b) (c) of No. 7 of 1982]”. In fact, Village Councils are encouraged to undertake such cooperative ventures [Section 143].

The legal instruments through which a single community may secure entitlement are varied. It could secure a second **Village Title Deed** or, in future, a **Certificate of Land**, conferring jurisdiction over the defined area. Alternatively, the community could secure a **Granted Right of Occupancy** over the area; the powers of the President are quite clear in the Land Ordinance [Sections 5, 6, 7, 8, 9], and the new land law even more explicitly sets out when and how these rights may be awarded [*Bill*: Sections 22-33]. A Village, by virtue of its corporate identity is a suitable applicant.

As with all land dispositions in Tanzania, past, present and future, the granting of a Right of Occupancy to a Village/s would almost

certainly be bound by conditions. In this case the conditions would set out conservation and managerial requirements.

Establishing community-based forest authority through group formation and entitlement

Under current law, it is more difficult for several communities to own land in common, without first establishing a legal association for this purpose. Whilst this could be a company or a non-profit trust, the most familiar legal form for rural Tanzanians is the cooperative. Although the *Cooperatives Societies Act* (No. 15 of 1991) is visibly designed to support the formation of cooperatives for business purposes, it does allow a Cooperative Society to be formed for the purpose of holding and managing property jointly [Sections 21 and 74]. Membership of the Cooperative could either be the respective Village Councils, or each and every named household of the relevant Villages.

The establishment of a Cooperative requires a description of the objective of the body [Section 29] and in this case would comprise *the ownership and conservation management of forest land*. Like a registered Village, a Cooperative Society is able to make by-laws binding on all its members and/or in respect of its property [Sections 45 and 46]. These would detail the principles and means through which it would protect and manage the forest on a sustainable basis. The cooperative by-laws would obviate the need for further local-level regulation such as Village By-laws. The legal association of the communities, whether cooperative or other, then needs to secure entitlement of the forest. Again, there are various routes, from grant to outright purchase, all resulting ultimately in a certificate of occupancy (**Granted Right of Occupancy**).

Establishing community management of the public land forest

If the objective is solely to secure community-based *management* of the forest/woodland (not “ownership”), then a range of options are available, most of which have been touched upon earlier. Firstly, the community may be made **Agent of Council** [under Section 120 (1)

(2) of No. 7 of 1982], looking after the public land forest on behalf of the District Council. Secondly, the forest could be declared a **Preserved Area** by District By-law, the community designated as the sole authority responsible for its management [Section 118 of No. 7 of 1982]. Thirdly, the Village could enter a **contract** with local government to manage the specified public land forest area. Or, the Village/s could support the gazettelement of a public land forest as a **Local Authority Forest Reserve**, on the condition that it were itself to be recognised as the Forest Officer or Forest Manager. Earlier, the mechanisms through which a community could establish itself as manager of an already-gazetted Forest Reserve, were detailed. Still, until community management of Forest Reserves is routine, and mechanisms through which a community may embed its role in law as legal guardians of Forest Reserves, it hardly seems appropriate to promote yet more reservation.

The new land act will provide another option, in the stated legal capability of a Village Council to enter a **Joint Management Agreement** with other Village Councils to manage a tract of land of interest to them all [*Bill*: Section 59]. The agreement they draw up could sub-divide the forest in question, appoint one Village among several to be the Manager, or any other strategy agreed among the concerned parties, to secure local managerial jurisdiction over the forest, if not its ownership. It is true that the Bill locates the capability to enter joint management land use agreements within the context of Village Areas. However, forest just outside Village Areas could probably be seen to conform with the spirit of the Bill in this respect.

Forest on private land

Despite common usage, “private land” is not a tenurial category in its own right and is used here to refer only to those lands which have been titled to an individual, company or group, through a **Granted Right of Occupancy**. Under the proposed new land law, such land falls within the category of **General Land** which means land neither reserved (Reserved Land) or under villages (Village Land). Under current and proposed law, government may readily impose **conditions** upon these titles at the time of issue, and may also enter **covenants** with the landowner, requiring the owner to manage forest

in certain ways. Part IV of the Forest Ordinance [Section 14] specifically provides for this.

More important to our discussion is how far community-based forest management may be established on private land, and whether or not forest owned privately may be transferred to community ownership, or come under community management? The former is difficult to achieve and would be unlikely to occur without the latter. *Transfer of general land to village land* does however, exist as an option in the drafted bill. Such transfers need to be effected by the President (or his delegee, the Commissioner of Lands), and provision is made to enable the Ministry in charge of lands to appoint an inquiry if necessary. Grounds are not indicated but would have to be substantial; wrongful issue of the Grant in the first place, or failure of the owner to manage the land according to specified conditions, would be just causes.

CONCLUSION

This paper has looked closely at the modern law of Tanzania in order to determine whether or not it is possible for groups of ordinary people to own and/or manage natural forests in ways that are legally binding upon themselves, others (“outsiders”), and the state. The paper has also examined the institutional frameworks for management to identify how such local-level jurisdiction may be effected.

This investigation has grown directly out of the practical demands of a pioneering initiative in rural Tanzania, which has sought to dramatically improve the chances for forest conservation and sustainable forest management through direct devolution of power from state to people. These practical origins are not unimportant, for findings are informed by what it is proving possible for ordinary rural citizens to achieve in this sphere, the sometimes superficial rigidity of legal provisions notwithstanding. Without doubt, this analysis contains the positivist elements of “making the law work for you” that a less task-driven review might draw out.

Assumptions

There are in addition a range of assumptions in this approach which deserve brief recap, given that they have driven developments on the ground and in turn the need and search for appropriate socio-legal mechanisms to support community-based forest management. These include the idea that devolution of jurisdiction, and to the very people whom foresters traditionally regard as an enemy of forest conservation, the forest-adjacent community, is in fact a correct strategy towards improving resource management. Secondly that, if given adequate incentive, these local people will be able to manage a forest in their vicinity more effectively, cheaply and sustainably than the modern state is able to do at this point in time or in the foreseeable

future. It is a further fundamental assumption that the pivotal incentive assured is not the right to use the forest, but the right to determine if and how the forest is used in the first place – a right of jurisdiction, expressed ideally in property rights and, where that is not possible, in a clearly designated right to manage the concerned forest, to control its use and protection. That is, the awarding of use rights is viewed as simply not enough to make a significant difference to forest conservation and management. If it were, such an exploration as this paper embodies, would not be necessary, for forest law and current management practice amply provide for local forest use, by licence, by permit or special directive.

It has also been an assumption of this review that a legally binding framework, over and above administrative mandate, is necessary. Governments change, policies change, political will changes, and even in those very offices which may have been most supportive. Implementation of community-based management has shown already, for example, that where the income-generating potential of a forest revives through careful husbanding of the resource, local government will to devolve powers may stumble, if not fall. As importantly, the community itself needs structures to remind and bind itself, for similar changes will occur within the community from time to time.

Finally, it has been assumed that forests can not be viably subdivided and held by individuals but are better handled as block units of property over which a group of people may share rights and responsibility. The capacity of modern Tanzanian law to allow this to occur in un-laborious ways has been a main concern.

Results

There will be little doubt by now that the findings of this exploration have been positive. Although imperfect, legal and institutional mechanisms exist which may be drawn upon to encompass and support genuine community-based forest management. That is, the drafting of new laws or the establishment of new institutional frameworks need not immediately be pursued. Nor, more importantly, need change on the ground be delayed for want of socio-legal support. At the same time, it has been shown that a new law, the drafted new basic land bill, will greatly add legal support for community jurisdiction over

local forest in principle, and will provide direct and accessible mechanisms for making this a reality.

Meanwhile, even without the new land act in place, it has been shown that in law, local people already have the capacity to be recognised as “owners” of natural forest within those areas that have been identified as their “Village Area”. Moreover, the law allows them to seek and secure extensions to their Village Areas in order to incorporate natural forest which lies beyond, and which is not already owned by other villages or under the formally gazetted jurisdiction of the state (Forest Reserves). This fact is especially relevant for it has been noted that the greater proportion of natural forest in Tanzania lies within just such a category, falling by default into the hands of local government as “public land”. It has been demonstrated that the law does not even forbid (although neither does it promote) a community securing “ownership” over part or all of a Forest Reserve, provided there are grounds, and provided there is will – a requirement discussed shortly.

When it comes to recognition of local communities as forest managers (as compared to owners), the law offers more tangible and diverse routes. These range from designating a community as the Honorary Forest Officer (a least desirable option, for the community would be limited to the gazetted functions of Forest Officers), to a more flexible recognition of the concerned community as Manager. This latter may occur through promulgation of a District By-law, or recognition of a by-law drafted by the Village itself. Such a by-law would of necessity set out how the community intends to manage and, equally, needs the support of the District Council to pass into law.

Such positive avenues derive not, as one would expect, from environmental statutes but from land and administrative law. It has been shown that forest law cannot in fact be relied upon alone to support the shifts in management authority that are required at this point in time. If the Ordinance is helpful at all, it is so largely through the absence of constraining clauses.

By contrast, both property and administrative laws provide quite startling facilities in support of local-level empowerment, including a central capacity of people to act in groups, and to hold property in common in statutory ways, features of special interest to this discussion. Through laws of governance, the core social unit of rural society,

the village, is, through its elected government, granted identity as a legal person. It is also given considerable powers of self-management, both of community and resource area. The law not only allows the community to make rules on any matter within its concern, but for those rules to enter the body of statutory law as By-laws.

In such respects, Tanzanian law is visibly refined, and people-rather than state-centred in the matter of distribution of power. The more usual pattern in sub-Saharan Africa is for devolution to descend no lower than the District Council, and in a manner than is more properly deconcentration, not devolution. Meanwhile other powers, such as landholding, steadily move in modern African law towards a degree of individualisation that makes the holding of property in common a difficult exercise at best. Earlier, an example of movement of Uganda property law in this direction was cited.

The origins of the unique socio-legal form of the Tanzanian Village and the upcoming rights of jurisdiction the new land law will award the Village, are undoubtedly political and pursuant to the Nyererian vision of “self-reliance”. Villagisation occurred at a time when most other sub-Saharan African states were pursuing centralising governance and land-management policies which served to dismantle village-level responsibility and authority, rather than build upon it. This leaves many states today bare of a viable socio-legal form in which to vest common-property tenure or accountable, community-based natural resource management functions.

Despite significant political change over the last quarter century, the Tanzanian Village has matured and consolidated as an indispensable frame for development and change in the country. Today, it provides Tanzania with a possibly unique opportunity – and therefore responsibility – to secure useful forest and woodland in perpetuity through workable, cost-effective and sustainable local means.

In the process, both law and instruments under the law will doubtless need to be further adjusted and refined – most properly, through a new National Forest Policy and Forest Law. The current forest policy and law are forty years old. A decade ago, a new Forest Policy was drafted but not passed, as uncertainty remained as to desirable thrust. In the event this proved fortuitous, for it is only now that a new policy and law may be expected to fully grasp the need for new strategies of forest management and the utility of looking to ordinary

people as a source and framework for change. Such a new Forest Policy and Law has begun to be written and is expected to be available for comment within the year. There is little doubt that it builds upon new developments in the field and upon the principles established in the new National Land Policy and draft land law. Although conventional wisdom holds change in policy and law must precede change on the ground, there is much in the current case to suggest that it is the demands of improved practice which most sharply define lacunae in current policy and law, and drive their reformation.

Finally, it will be clear that ultimately, it is from the political environment that the opportunity for rural people to secure custodiam over local forests both arises and may be maintained, and that, ultimately, political will is required to sustain and nurture such developments. This reality manifests itself at every turn. It manifests for example in the need for at least passive Government support, if only to endorse and smooth the way for the efforts of a community to secure in law, rights which they may already unwittingly hold. It is of note, in this respect, that it has been largely only through the process of practical establishment of community-based management over certain forests, that the long-standing right of each and every Village to make its own Village By-laws, has been utilised. There are more obvious situations in which government support is indispensable; central government must see the point and advantage of allowing a community jurisdiction over a particular Forest Reserve for example, before it could issue the requisite directives. More pervasively, support of the appropriate District Council is needed to move Village Rules into law, to agree that a certain Village may be a suitable Manager, and to recognise and register the community as a Village in the first place. Equally, villagers themselves need to know how to make use of their powers, and to want to take on the responsibility that accompanies authority. Practice on the ground does much to catalyse these powers, to establish workable modes, and to establish precedents in the use of the law and institutional form, to the benefit of all.

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SUMMARY

As community involvement in natural forest management expands and matures, the need to lodge the rights and obligations of both state and community in workable and legally binding institutional frameworks becomes more pressing. This is particularly so where power and authority are being redistributed.

This paper looks specifically at Tanzania, where forest-local communities are beginning to be designated as the management authority of particular woodlands, and in some cases, even their owners. Positive results are giving considerable support to community-based management as the forest management strategy of choice. Implementation has of necessity also prompted a search for accessible mechanisms through which community authority may be embedded legally.

The author argues that in this respect, Tanzania has an advantage over many sub-Saharan African states in the unusual manner of legal identity granted to rural communities, and in supporting administrative and land laws which provide for village-based control over natural resource management. Specific elements explored include the fact that rural villages in Tanzania are recognised as a formal level of government, endowed thereby with certain rights and obligations; that the rural village may attain legal corporate status, allowing it, *inter alia*, to own and manage property in ways accountable in a court of law; and that property law provides for a modern, statutory version of communal tenure, within the bounds and accountability of a private legal person.

The author provides a step by step guide to the ways in which a forest-adjacent community may secure custodianship over a local natural forest, whether it be an already gazetted Forest Reserve or public land forest, and be held accountable for sound conservatory management.

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