

## **VOLUME I: EXECUTIVE SUMMARY**

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## **VOLUME I: EXECUTIVE SUMMARY**

### **PREFACE**

Since Independence, Tanzania has come a long way in its efforts to empower its people. Tanzanian citizens now have the right to own things, to operate businesses, and to reside wherever they wish. They have been emancipated by policies and laws that bring management down to the village level, allowing people to make decisions for themselves. In the last four decades legislation has been re-engineered and written law has been thoroughly modernized.

Nevertheless, President Benjamin Mkapa has recognized that there is still much to do to unleash Tanzania's economic potential. Poverty still prevails. The legal tools created to enable citizens to cooperate on a nation-wide basis are not being used: assets cannot be fixed in such a way to be economically useful or be pulled together from their dispersed local arrangements into one consistent network of systematized representations; people are not held accountable for their commitments; assets are not liquid and cannot be used to create credit or capital; people are not interconnected, and transactions cannot be tracked from owner to owner; business organizations do not have statutes that allow members to work under one control; they do not have the means to divide labor and control risks through limited liability and asset partitioning, or associate in standard forms such as corporations, cooperatives, and other collectives; people cannot be identified, and contracts are unable to reach a market outside the limited confines of family and acquaintances.

Under these conditions of widespread extralegality, wealth continues to elude the majority of the nation's people; women have yet to be empowered. How to change that? To find the answers, President Mkapa decided to reach into the grassroots of Tanzania to find out what obstacles remained and what tools were available for Tanzanians to lift themselves out of poverty. To that end, the Government of Tanzania commissioned the ILD to shine a light on the shadows of Tanzania's extralegal economy to learn as much as possible about the many local, informal practices that people use to do business among themselves. The Government felt that among those informal rules might lie the building blocks of the kind of formal legal system required to build a prosperous modern economy, rooted in the beliefs of the majority of Tanzanians and, therefore, legitimate and enforceable.

During the last ten months, the ILD's researchers have gone deep into the world of extralegality in Tanzania in an all out effort to trail, find, compile, and diagnose the kinds of documents, rules, and other social devices that Tanzanians have spontaneously generated for organizing their production and assets. We have also tried to identify the legal and administrative obstacles that uselessly get into people's way. Our over-riding goal has been to get a good picture of how the nation's extralegal economy actually operates and how the official legal system interacts with it.

That is why, following the Terms of Reference of our contract, we have focused on how Tanzanians in the extralegal economy connect with each other, how they cooperate and collaborate, how they make their deals and secure their contracts, how they organize themselves in-house and between separate organizations, and how they connect (and don't connect) with the government: the basic stuff of economics. The underlying assumption is that you cannot build a modern economy without including most of the nation's economic activity, and in Tanzania we have found that well over 90 percent of economic activity takes place outside the law. There is no way that Tanzania can escape poverty if the overwhelming majority of its citizens do not have the legal tools to create wealth: organizations that enable them to cooperate productively with each other, a property system to protect their assets and build capital if they so wish, and legalize identity and contracts to gain access to all of their own country.

What our team of 42 Tanzanians and 20 ILD researchers –with the help of 932 key informants throughout Tanzania and Zanzibar (See **Annex**)—have found is nothing short of extraordinary. First, what Tanzanians are generally not aware of, is that in the process of creating solutions for operating outside the law, they have built their own economic model. This model is underpinned by 17 solid and well-documented “archetypes” —patterns of social interaction whose further development is fundamental to the creation of a legal economic order that is rooted in Tanzania’s indigenous culture. Secondly, we have identified what are probably the 67 most important bottlenecks in the legal system that are responsible for the exclusion of the poor and account in part for their inability to create wealth. As a result, this report has been able to put together some preliminary indications as to what the Government of Tanzania might do to integrate its enormous extralegal economy under a single rule of law – based on existing Tanzanian practices and beliefs that will create immediate benefits for all Tanzanians and not only the small minority already using the present legal system.

This report is divided into two parts: Volume I: an **Executive Summary** for those who wish to know its contents in 25 pages; and for those who wish to examine the contents in detail, there is the full 1,700 page presentation: the **Program to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law: Final Diagnosis Report**. (Volume II reports on Tanzania’s extralegal economy, its archetypes and its size; Volume III analyzes the institutions and costs of the nation’s legal economy; Volume IV details the barriers to using property and doing business nationwide; Volume V offers a step by step view of how ordinary Tanzanians experience the existing legal procedures regulating business and real estate; and Volume VI provides the documents that support the Diagnosis).

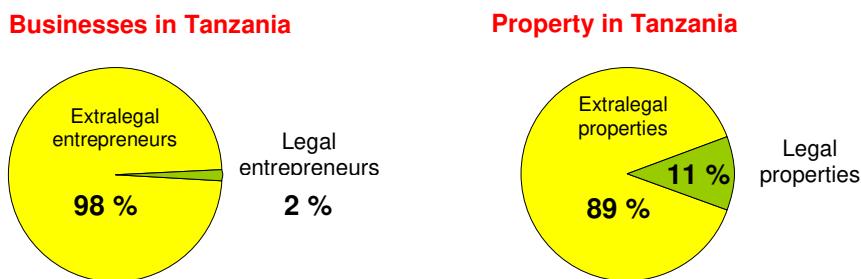
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## THE SITUATION

The Government of Tanzania has continued to make significant progress in terms of macroeconomic indicators: annual GDP growth rates are over 5%, inflation is down to a single digit, and international reserves have been rising for a number of consecutive years.

Similarly, Tanzania has designed most of the policies and laws that are required to build a market economy. Norms are in place to allow Tanzanian entrepreneurs to register and incorporate a business, establish guarantees (using movable or immovable assets), obtain credit (at micro-finance institutions or commercial banks), carry out international trade, participate in public procurement tenders, advertise, take out insurance, resolve disputes, and withdraw a business from the market voluntarily or through bankruptcy. On the property front, citizens have legal access to rights over land and buildings in urban areas, as well as access to occupancy rights in rural areas. Also, the law provides that they can inherit these rights and resolve disputes through appropriate institutions. In short, the legal mechanisms needed to start up, operate, expand, and eventually close a business appear to be in place.

Unfortunately, most Tanzanians do not use this legal system: **98% of all businesses operate extralegally** (a total of 1,482,000). **89% of all properties are held extralegally** (1,447,000 urban properties and 60,200,000 rural hectares, of which only 10% is under clan control — mainly Massai pastoral land), and the rest is privately held. (See Volume IV.)



The crucial question then is: Why don't Tanzanians want to benefit from all the security, organization, information, finance, capital, and the expanded national market that Tanzanian law can provide? The usual Western explanation refers to a general defect in the culture of Africans. The academic commentators in the "culture counts for everything" camp, such as Huntington, Landes, and Harrison, say that African societies are "steeped in traditional cultures and are unsuited to market-oriented development and are, thus, fundamentally hampered in their pursuit of growth."<sup>1</sup> A number of academics "assign hopelessness to countries that are seen as having the 'wrong' kind of culture for development."<sup>2</sup> Some have characterized African cultures as "regressive and tribal."<sup>3</sup> Others are kinder and blame it on Europe: Africa's "traditional structures were destroyed by colonialism."<sup>4</sup> And while many

<sup>1</sup> Summed up by V. Rao and M. Walton, *Culture and Public Action* (Stanford U. Press, 2004), Chapter I, p. 10.

<sup>2</sup> Commission for Africa (March, 2005)

<sup>3</sup> Joy M. Moncrieffe, "The Role of Culture in Development," prepared for the Commission on Africa (March, 2004).

<sup>4</sup> Coquery-Vidrovitch, 1976; Gutkind and Waterman, 1977



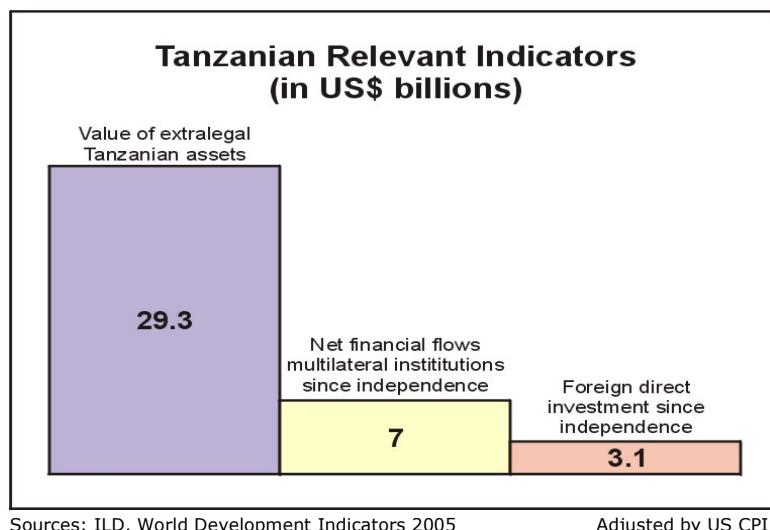
David Hume

do not dare to say it out loud, they are still stuck on prejudices as old as David Hume, who, in the 18<sup>th</sup> century, declared that the main problem with the Africans is that they don't have what it takes to get organized. "There never was a civilized nation of any other complexion than white... no ingenious manufacturers amongst them, no arts, no sciences..."<sup>5</sup>

## THE FINDINGS

The findings contained in this report totally contradict all of the above contentions. Herewith follow three massive facts:

1. **The Tanzanian poor know how to create value on their own: Their extralegal economy has assets worth US\$29 billion (see Vol. II).** This is 10 times all foreign direct investment accumulated since Independence and 4 times the net financial flows from multilateral institutions in the same period. Putting it simply: what poor of Tanzania already have is much more than what foreigners can ever give them.

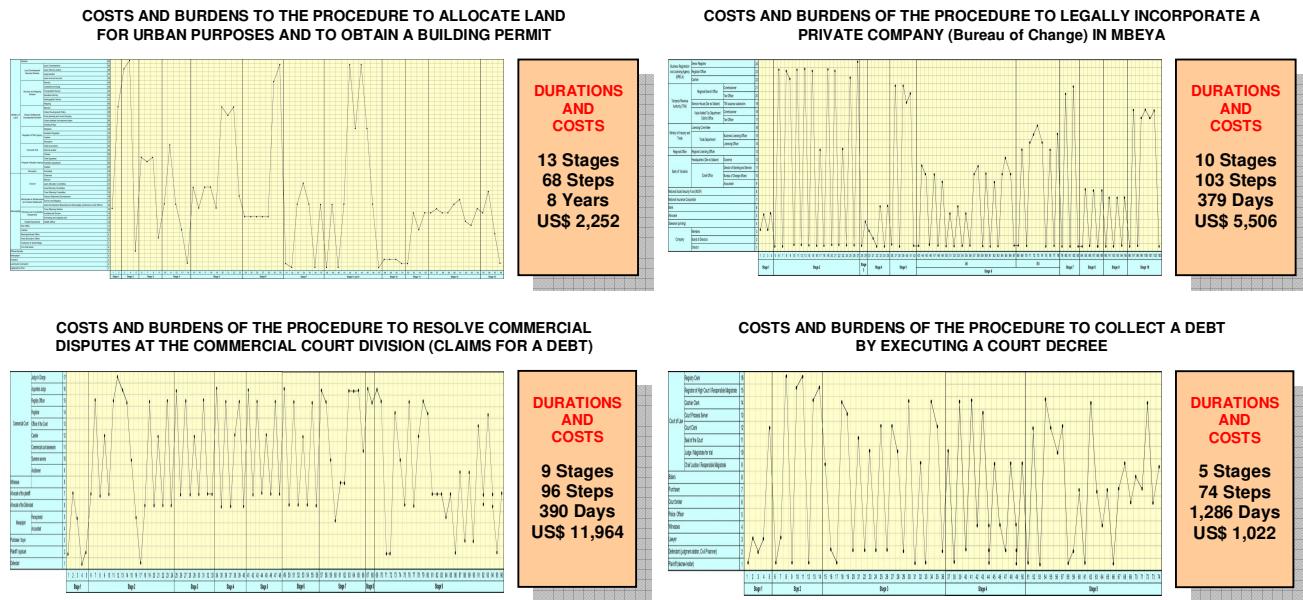


2. **It is virtually impossible for 90% of Tanzanians to enter the legal economy (see Vol. III).** The obstacles that Tanzanians would have to overcome to access the legal system and obtain organizational structures, credit, capital, markets beyond their immediate families, and legal property rights, are insurmountable. If a poor entrepreneur throughout a 50 year business life obeys the law, it will require him/her to make cash payments of US\$91,000 to the State for the requisite licenses, permits, and approvals, and spend 1,118 days in government offices petitioning for them (during which he could have earned US\$9,350). The same entrepreneur would have to wait another 32,216 days for administrators to resolve all his/her requests, and during that time lose another US\$79,600

<sup>5</sup> Essays and Treatises (1768)

in potential income. The grand total of these costs: almost US\$ 180 thousand —enough money to create 31 additional small enterprises.

*These numbers are based on the obstacles documented in 67 flowcharts contained in Vol. IV and supported by the step-by-step research in Vol. V. Here are four examples:*

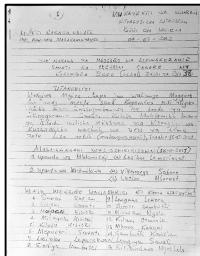


3. **Tanzanians in the extralegal economy have actually created a self-organized system of documented institutions that allows them to govern their actions (See Vol. II).** The extralegal economy is the result of the local interactions of millions of Tanzanians who, in spite of only being able to deal among themselves at local levels, have nevertheless created an abstract order to govern the way they relate to each other. In other words, like all other people in the world, extralegal Tanzanians live in at least two levels of reality: first, the reality made up of things, both tangible (land, businesses, cattle) and intangible (ideas); and secondly, the reality of structures of relationships, physically captured in written documents that are the natural habitat of advanced economic and social relationships.

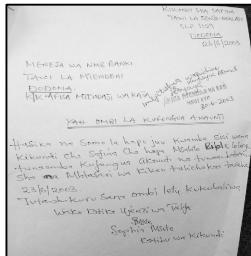
That is why, with the active participation in the field of hundreds of key informants operating in or familiar with the extralegal sector, we searched all over mainland Tanzania and Zanzibar, in rural as well as urban areas, to see if we could find extralegal documents that would help us understand the nature of Tanzania's underlying order. We needed to know what tools this order has created to enable poor people to make economic decisions, cooperate with each other, structure their collaboration, resolve problems, and protect their values.

We found thousands and thousands of extralegal documents. And what are they like? As Wittgenstein said about intellectual tools, "they are no different than the tools in a carpenter's toolbox: there is a hammer, pliers, a saw, a screw-driver, a ruler, a glue-pot,

glue, nails, and screws.” However, Tanzanian documentary tools, instead of bringing pieces of wood together, bring people together to do particular things such as: creating property, extracting credit and liquidity from physical assets, and structuring entrepreneurial associations where they can divide labor internally and trade externally. The extraordinary thing about the documented tools that are used in the Tanzanian extralegal economy is how complete they are. Some examples:



Consenses that recognize the rights of people to their land business or chattel



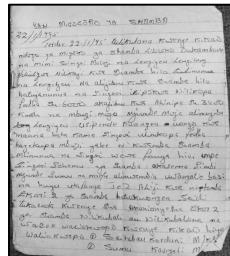
References that testify to the Trustworthiness of economic agents



Titles that assign responsibilities and rights to business organizations



Financial accounts that represent extralegal transactions



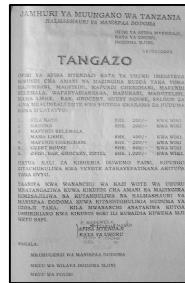
Extrajudicial mechanisms that settle disputes



Informal mechanisms that safe keep and retrieve information



Mechanisms that establish prices



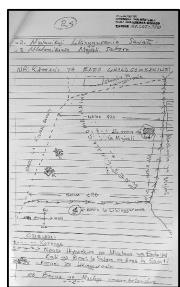
Authorizations that empower enterprises to operate in certain areas



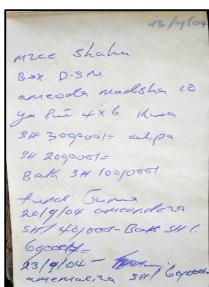
Means to ascertain qualifications



Ways to lay out statements of account



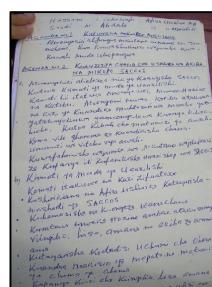
Maps to identify claims and possessory arrangements



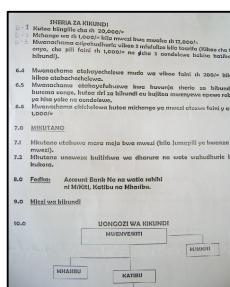
IOUs to bear witness to debts



Systems to identify people, their roles, and terms under which they are accountable



Agreements that establish partnerships and other forms of association



Charts that illustrate the organization of extralegal businesses



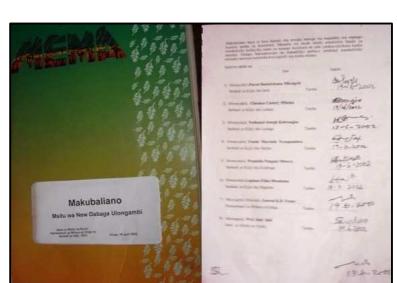
Systems of declaration that convey knowledge



Systems of records to establish institutional memory

KAFATI YA MIROPO SHARGANI	
1. Suliman Jiwatu	= Maenyekiti
2. Imanil Aland	= Katibu
3. Saidi Mohnedi	= Meesa Hazina
4. Yusufu Selemam	= Mjumbe
5. Husein Hamisi	= "
6. Pemeti Saidi	= "
7. Salim Hesani	= "

Agreements to have principals represented by proxies



Deontic objects that have normative power

With these tools, extralegal Tanzanians are today in the process of building a documented, self-styled, homegrown, nation-wide market economy. We know this because that is what documents —the result of the expectations and the collective will of Tanzanians— tell us. There is no need for documents to interact in a small society: everybody knows each other. In the village, for example, Tanzanians can identify each other directly by perceiving the distinguishing physical aspects of people (sex, voice, eye, teeth, gait, etc), and as soon as people know *who you are*, they also know *your place in the village*, through kinship and everyday actions. In the expanded Tanzanian market, however, identity requires standardized representations of all aspects of the life of individuals and groups, and this can only be achieved through documents.

All Tanzanians may be brothers and sisters in the eyes of God, but their memories cannot store the information about millions of other Tanzanians. It is documents that allow people to function beyond face-to-face communication, through descriptive information. The documents created by the extralegal economy are an effort by the Tanzanian poor to move from fragmented, isolated local realities towards a larger self-organized complexity. Like most citizens of other nationalities, Tanzanians also need to know who everyone else is in their country, where they live, who owns what, and who runs what.

## **UNDERSTANDING THE FINDINGS**

### **THE EXTRALEGAL ECONOMY**

The fact that the majority of Tanzania's poor are spontaneously moving into the world of documentation is of huge significance. It means they are leaving behind an earlier oral world and moving from the bottom up into the world of written representations where people, assets, values and memory can be organized with extraordinary fecundity to produce surplus value. The economic systems of the West were created and are held together by documents that, in the form of abbreviated signals, communicate the most essential information relevant to economic activity. Documents empower; titles, stocks and share certificates create property; guarantees create capital and credit; identity documents create identities; adjudication decisions create ownership; authorized signatures and fingerprints create levels of authority; statutes create companies; contracts materialize commitments; proxy forms create delegates, and so on. All of these institutions —property, identity, companies, or capital—come into existence through the creation, signing, and filing of appropriate documents.

Documentation might not be considered much of a technology compared to such advances as the computer, for example. In fact, most people take documents for granted, what clerks spend their days dealing with. Yet documentation is one of the most far-reaching technologies existing. Documentation is the prosthetic externalization of the law, of rules and agreements. If these are not documented, they are fated to remain forever uninterpreted. Documents are, in fact, the signature of organized legal life; they initiate the rule of law. They bring together humans all of whom, “thought-wise”, live in loneliness, and cannot structure a complex relationship with other people, except through documents. They enable

society to work as a whole because they allow people to deal with things at different points in time, and in different places, even when they are not physically present.

What impressed our researchers most were five principles underlying the extralegal order in Tanzania. First, how carefully even the poor of Tanzania take care of the documents that represent their budding order. Though they are impoverished, lack legal professionalism, and have little or no appropriate infrastructure, they are taking care of their documented tools quite well: they have people who create the documents (drafters), sign them (contracting parties), stamp them (elected authorities), fill them out (facilitators), revise them (elected elders), file them (Mwenyekitis), realize actions mandated by them (citizens), deliver them (village self-defense through Mgambo and Sungu-Sungu groups), and declare them active or inactive (adjudicators).

The second impressive principle is how the extralegal effort to create the market economy is being carried out in harmony with the rest of Tanzanian society, families, clans and tribes. Like in other countries, Tanzanians are organizing in separate social bodies that overlap each other, even though they have been created for different reasons and have different surrounding environments. Each group gives Tanzanians a different role to play and allows them to manifest themselves in different ways: Families, clans, and tribes offer Tanzanians opportunities for socialization, while documents that create business associations and property give them opportunities for economic improvement. Like all developing people, Tanzanians are slicing their world into separate pieces so as to better organize themselves in an increasingly complex world.

The third principle that impressed our researchers —as they observed village meetings, adjudication processes, and administrative acts at the extralegal level— was how the whole process of creating documents resulted from rational deliberation. Tanzanian documents are not being born through appeals to brute force or to magic; instead, they come from village meetings and day-to-day practice. Like many, we are witnesses to the fact that Tanzanians have a strong commitment to process and accept the outcome of their deliberations.

The fourth impressive principle is how similar the Tanzanian extralegal evolution is to what once happened in the developed nations of today before their governments wrote out, codified and gave articulated form to extralegal practices. While extralegal Tanzanian devices rules are not yet articulated, they do govern the action of Tanzanians on the ground and are binding upon them. These rules are the *ius gentium* of Tanzania that has yet to be compiled into normative rules, as the Americans and Europeans did in the 19<sup>th</sup> and 20<sup>th</sup> centuries.

The fifth underlying principle we noted is that common to all the documents we found is that they exist essentially to empower citizens over limited resources by giving them the tools with which to govern property, to manage collective cooperation among themselves, and to provide communication with parties beyond their immediate circles of acquaintance. That is why we have grouped all these documents into 17 patterns of interaction —what we shall

from this point call “archetypes,” representing the principal mechanisms that are fundamental to Tanzania’s extralegal market order. In other words, we have organized the thousands of documents that we collected in Tanzania into 17 archetypes with the purpose of mapping Tanzanian’s extralegal economic relationships from the world of acquaintances on the ground to the world of documents and law: the **Archetypes of Property**: Adjudication, Documentation, Registration, Fungibility, Collateral, Testament; the **Archetypes of Business Organizations**: Association, Division of Labor, Management, Transparency, Traceable Liability; the **Archetypes of the Expanded Market**: Identification, Redundancy, Attestation, Representation, Standardization, Contract. These archetypes are set out in Volume II in more detail with examples and illustrations from mainland Tanzania and Zanzibar. Here is a summary:

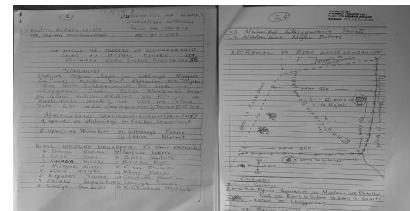
## The Archetypes of Property

### 1. ADJUDICATION

*Archetype: Extralegal adjudication creates property. The way that Tanzanians resolve disputes by submitting to the authority of third parties that adjudicate them is at the origin of much of the property rights being created today in Tanzania’s extralegal economy: This rootedness of property rights in a wider community consensus guarantees their sustainability.*



Council of Elders in Kisongo, Arusha holds dispute resolution sessions

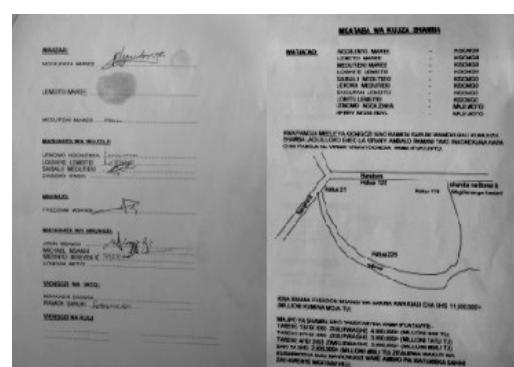


Two pages of the 30-page report by the Kisongo Council of elders settling a boundary dispute. By documenting the resolution in writing and with a map, the Elders have determined who owns what and what the boundaries are.

### 2. DOCUMENTATION

*Archetype: The property rights established by mutual agreement in the extralegal economy of Tanzania are being documented: By transposing the notion of property from the physical object into the written world of documents, Tanzanians are disengaging their assets from their burdensome material constraints into a universe where the non-visible qualities of their assets are represented.*

Document recording the transfer of property in Ilkerin Village. The contracting parties have described not only the boundaries of the land being sold but have also included a hand drawn map with the property boundaries measured in steps.



### 3. REGISTRATION

*Archetype: The repositories of property and business documents run by the Mwenyekiti store the only visible evidence for investigating and ascertaining the truth as to who owns what and who has contracted with whom, and on what terms: Tanzanians are recognizing the value of registration as the storing of documents in a way that makes them permanently accessible, providing in one single source records of the information required to track property and contractual agreements. These village repositories mirror the network of economic relationships that can one day provide the basis of official registries.*

The record-keeping office of a democratically elected Village Council Chairman (Mwenyekiti) in Dar es Salaam



## The Archetypes of Property (cont.)

### 4. FUNGIBILITY

**Archetype:** Authorized documentation of property allows people not only to defend their physical possession but also to do additional kinds of work, such as guaranteeing transactions, obtaining credit, and serving as the capital of a business organization: By representing property on paper, Tanzanians have learned how to uncouple the economic features of their assets from their rigid, physical state and allow them to produce valuable effects.

Property title document of a right of occupancy in an area of the Mtwara marketplace in the south of Tanzania – given as a guarantee for credit by an extralegal micro-finance organization.

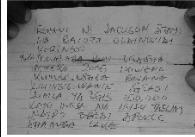
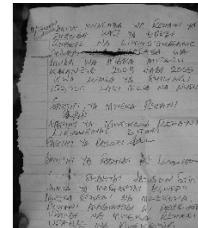


### 5. COLLATERAL

**Archetype:** Humans have demonstrated that they can agree not only to have rights over things but also conditional rights over the real rights of others: Tanzanians working in the extralegal economy have reached this stage on their own because they not only have established the right to property, but also the right to transfer that right to obtain additional resources, such as finance.

A “rehani” type of guarantee that uses land as collateral for a money loan.

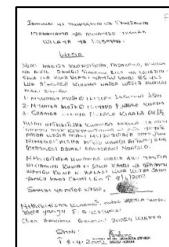
The debtor transfers to the creditor a parcel of land – on the condition that it shall be returned on the payment of the loan.



### 6. TESTAMENT

**Archetype:** Testaments are evidence that an institution is in place allowing people to express their individual will in such a way that it can become effective even when they no longer exist: Tanzanians are producing valid testaments disposing of extralegal property, which are accepted and enforced on the basis of local community consensus.

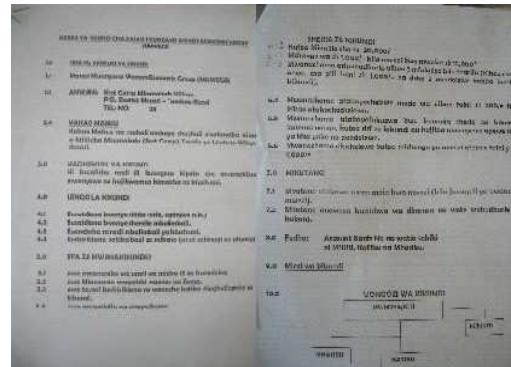
Example of a testament containing a list of goods to be willed, the beneficiaries, and the signatures of the witnesses – officially certified by a Mwenyekiti in the Kibaha area.



## The Archetypes of Business Organizations

### 7. ASSOCIATION

**Archetype:** A business association is a collective put together to organize enterprise and whose determinate meaning is captured by its statutes. Like the family, the clan, and the tribe, the business association is a moral entity, which belongs to an abstract realm and can outlast the individuals who form it: If the poorest of Tanzanians are mapping their entrepreneurial agreements into business associations instead of into the other collective wholes they also belong to, it is because they find that the former are uniquely suited to organize enterprise: the statutory context it provides reduces ambiguity and makes more explicit the relationship between economic facts and statements.



Statutes of “Mungano Women,” an extralegal enterprise that makes and sells straw products in Masasi, a small town in southeastern Tanzania. (N.B. the organizational chart in the lower right-hand corner)

### 8. DIVISION OF LABOR

**Archetype:** The division of labor as practiced in business association consists in the organization of human behavior so that through certain repeated patterns of action it can operate like a body as a single, nested complex system managed by a modern hierarchy: Tanzanians are already organizing the division of labor within business associations where they break up production into more efficient specialized functions, thereby increasing productivity.

A Dar es Salaam furniture showroom, office, lumber supplier, wood working shop, door factory, bed and cabinet manufacturer, and fabric supplier – all independent entities operating under the business license of the showroom owner.



## The Archetypes of Business Organizations (cont.)

### 9. MANAGEMENT

**Archetype:** When people collaborate in business associations, some of them begin specializing in management which covers the functions of developing business goals, organizing and distributing work, keeping track of accounts, supervising labor, distributing profits and salaries, calculating risks, making decisions, determining the organization's policy, dealing with clients, suppliers, and officials: Tanzanians associations are already doing this – even trash collectors.

Members of the Amani Mazingira Group, an enterprise provides trash collection services in a peri-urban area of Dodoma; owned by 13 women partners who have divided management among themselves into Chairwoman, Treasurer, Secretary, and Counselor, who employ male labor to carry out the tasks requiring physical strength, such as pushing heavy three-wheeled trash carts.



### 10. TRANSPARENCY

**Archetype:** When contracts and property are fixed in written form, their power in the market place increases many fold. Representing in writing, no matter how simple, brings out the most economically and socially useful qualities about these agreements. All the confusing lights and shadows of assets and the contracting parties are filtered out and the attention of all concerned is focused on their economic characteristics and potential: Tanzanians are increasingly recording their agreements in writing and storing them with a recognized authority, which shows an evolution towards an increasing transparency in their productive and business activities.

Mwenyekiti making documents that represent property, contracts, and business associations available in his office.



### 11. TRACEABLE LIABILITY

**Archetype:** Written documentation is indispensable in order to attribute responsibilities between economic actors, both inside and outside the organization, and to track the flow of activities through the life of the business organization. The trail that is thereby created allows traceable liability in case of fraud or error and facilitates the enforcement of contracts, the protection of property, along with good governance and self-correction within each association: Extralegal business associations founded by Tanzanians have various devices for tracing liability within their record-keeping.



Members of Iringa Furnitures in Dodoma – including the designated stock-keeper and the record-keeper who keep track of assets.

## The Archetypes of the Expanded Market

### 12 . IDENTIFICATION

**Archetype:** Establishing identity is crucial for economic cooperation and trading relationships. At the village level, establishing identity is simple – physical aspects (face, voice, eyes, teeth, gait, etc.) and knowledge of position in the vicinity makes identification easy. In the expanded market, however, nobody can personally know more than a fraction of one percent of Tanzania's 36 million inhabitants. Identity in the expanded market is the answer to the question "Who are you?" using imaging devices (e.g. photographs and fingerprints) and other imprints (e.g. signatures), and descriptive information (e.g. names, addresses, dates of birth) to validate personal documents. Regarding objects (e.g. cattle and equipment), differentiating marks (e.g. brands and nametags) are necessary: Tanzanians in the extralegal economies are already creating identification imprints and marks to have themselves and the things they own recognized in wider circles.



Document in which a Mwenyekiti from the Kibaha area certifies the identity of an individual from his village by imprinting both the photograph and signature with his official stamp.

Marks used to identify ownership of the cattle at an auction market in Dodoma. Such branding serves as the basis for a formal pledge system.

## The Archetypes of the Expanded Market (cont.)

### 13. REDUNDANCY

**Archetype:** By assembling multiple types of overlapping information in a structured context, Tanzanians are developing the archetype of redundancy –creating extralegal document-based devices that ensure against the subversion of the truth: The problem in any society, and especially one that is market-based, is that agents use their imagination not only to invent, predict and plan but also to lie and deceive, to commit fraud and theft.

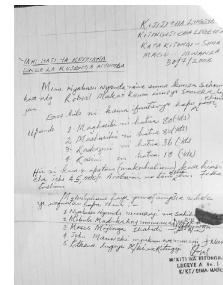


Will made out by “Helen Kiwale” – with her signature AND countersignature of a witness AND written on a standardized form provided by the Kikara Parish Lutheran Church in Moshi AND the church’s official stamp AND the signature of a church authority.

### 14. ATTESTATION

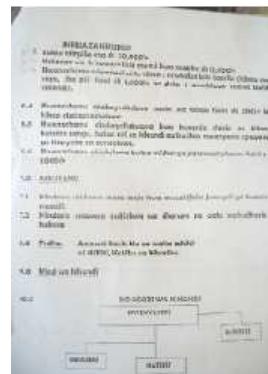
**Archetype:** Acceptance by citizens that recognition by an authority legitimizes a statement. The creation of trust through a triadic relationship: All throughout extralegal Tanzania, there is commitment to a process whereby third parties help determine the validity of transactions. This is a significant step towards the rule of law.

A sales contract for a piece of land in the Mwanza area. Attestation appears in the form of a fingerprint, signatures (also countersignature and official stamp of the Mwenyekiti).



### 15. REPRESENTATION

**Archetype:** Representation as a kind of deontic action-at-a-distance is an important step in the evolution of law, because it allows the expression of intention of one person or entity to have an immediate consequence in the form of an obligation for another group at a remote distance: Tanzanian extralegal associations in many cases have statutes which provide that specific persons within the organization are vested with the powers to represent the organization as an entity in its own right.



The statutes (left) of the “Mungano Women” (right), which authorizes certain members of the group to represent the others in business negotiations – with a chart of their different roles within the company.

### 16. STANDARDIZATION

**Archetype:** Standards are recognized patterns of consensually approved practice which convert documents from ad hoc narratives to structured representations of reality which can be organized within a single inter-connected system with dynamic properties: Poor Tanzanians have already begun creating their own standards and are therefore sharing terms and practices which will allow them to assemble their assets into ever more valuable combinations to reach an ever-expanding market.

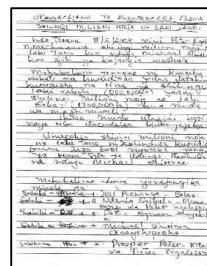
An extralegal sales contract for a one-acre parcel in the outskirts of Arusha with names of witnesses plus a fingerprint –all imprinted on the standardized “dotted line.”



### 17. CONTRACT

**Archetype:** A contract is the written agreement entered by two or more parties to do something – and the terms under which it will be done: Many Tanzanians in the extralegal economy are already concretizing their reciprocal claims and obligations in written documents, increasingly using similar terms and vocabulary.

Money lending contract between two individuals, which establishes the amount of the loan, the interest rate, the payment period, and the collateral to be used in case of non-payment (the debtor's house). The document is signed by both parties, the witness provided by each, and the balozi or “ten-cell leader”.



The problem with these archetypes is that on the ground they all work separately, trapped in thousands of fragmented, informal, undersized and undeveloped circumscriptions. The result is a series of barriers that prevent ordinary Tanzanians from creating efficient and productive legal institutions from the bottom-up. Specifically, these barriers are:

Regarding the **Archetypes of Property**, in the extralegal economy, they have only local validity. To build an effective bottom-up property system that can be recognized by all Tanzanians and foreigners will require that these dispersed property archetypes be pulled together into one consistent network of systematized representations. Additionally, most property in the extralegal economy is not sufficiently fungible: assets cannot be combined into higher valued mixtures, because they are not defined in standard definitions that allow the low cost measurement of their attributes nor their valuation through their inscription in track records that are accessible and easy to follow. Also, because these rights are held in the context of local arrangements, the legitimacy of these rights is still too politicized compared with those that are protected by the impersonal context of national law. People are still more accountable to the local context than to the principles of law. They also miss the low cost legal connecting devices that would allow them to use their property to access credit, capital, services, and insurance, as well as to secure inheritance.

Regarding the **Archetypes of Business Organizations**, they still lack an enforceable law that allows each enterprise to function unwaveringly under one point of control where the division of labor, the combination of assets, and the interconnection of contracts between suppliers, clients, creditors, and investors can take place. The extralegal system does not yet fully separate the legal personality of the enterprise from its owners; nor does it allow the partition of assets so that all parties —including workers, owners, suppliers and creditors— can feel that their rights are protected. They also lack the legal provisions that can give entrepreneurs limited liability so as to reduce risks and increase information about property that is committed to transactions, as well as perpetual succession rules that allow a collective to live beyond the death or departure of its initiators. Missing, too, are clear provisions for statutes and standard organizational forms so that all enterprises can have similar structures and can capture information about each other easily and thereby avoid exploitation.

Regarding the **Archetypes of the Expanded Market**, the extralegal system does not provide them with enforceable rights and obligations throughout the whole nation. It does not protect their trading names and the trademarks of their products, nor protect their imports and exports at national and international levels, nor allow them to freely advertise, nor give them the means to demonstrate cash flow and financial statements to outsiders using official accounting standards, nor allow them to issue shares to raise capital and guarantees to obtain credit outside their local circles.

Because these Tanzanian archetypes lack all the above benefits of standard law, productivity in the extralegal economy is extremely low, the capacity of extralegal enterprises to reap the rewards of organized large scale production in an expanded market is practically nil, and their

chances of using property efficiently and obtaining credit and capital in competitive conditions are very reduced. Extralegal enterprises operate way below their potential because they lack the rule of law.

## **THE LEGAL ECONOMY**

The problem with the existing legal system is that in practice it only applies to 2% of Tanzanians, with reference to business, and 11%, with reference to property. In general, the law lacks transparency, predictability, and economic sense: more than 120 ordinances regulating the business life cycle, and more than 100 administrative offices are involved in the most frequent property and business paperwork; written in English, though most Tanzanians speak Kiswahili; not easy to obtain; frequently amended; incomplete and inconsistently regulated; often contradictory or outdated — and requiring unjustified costs of almost \$180,000 over the 50 year lifetime of a successful business.

This is not at all unusual: all developing countries that draft their laws professionally and inspired by Western systems produce very good legal documents that are harmonious on paper and meet the standards of good universities; but they pay a price for that elegance. As the written law streamlines and the connections between the documents are made more rigorous, the law as a whole becomes detached from the real world. The result is that the legal system – described in detail in Vol. III – creates top down barriers and costs that keep people on the outside, which Vol. IV presents in succinct and graphic form, while Vol. V details the barriers, step by step, from the point of view of the people trying to comply with the law. Tanzania's barriers can be summarized in this way:

### **Property Barriers**

1. Most property rights are not fixed in writing, or standardized to facilitate search, use, and discrimination between similarities and difference.
2. Information is not stored in a fixed place in each village or neighborhood and is also dispersed over 10,000 locations nationwide and disconnected from the 3 separate, uncoordinated registration systems.
3. Registration procedures are unnecessarily burdensome for poor property owners: they have access to only six registry offices nationwide and are obliged to comply with irrelevant red tape — 7 tax and administrative obligations and sophisticated, expensive surveying.
4. Some 90% of Tanzanians cannot be located through the property system and be identified to get credit, services, deliveries, and to exercise their rights as contracting parties and citizens.
5. Due to prior authorizations required from land, government and tax authorities, registrars, and valuers, property is not very liquid: it is difficult to mobilize, transfer, combine, divide, and be leveraged into credit and capital.
6. Complying with the law takes too much time: Valuation, planning, surveying and titling procedures (8 years), land allocation for urban purposes on the mainland (7 years), in Zanzibar (9 years); transferring and registering property (380 days).

7. High-level decisions — virtually impossible to obtain — are often required: The Minister of Land intervenes six times to allocate land in Zanzibar; on the mainland, all surveying maps must be approved by the Director of Surveying and Mapping; all titles by the Commissioner for Lands.

### **Business Organization Barriers**

1. 90% of the businesses in Tanzania are sole traders and partnerships, but the law makes no provision for separating their business and personal assets or for a business to continue after the owner's death.
2. Tanzania has no clear laws for separating the owners of small enterprises from their managers —and holding them accountable for their management.
3. Agreements between employers and trade unions require the approval of the state bureaucracy.
4. Incorporating a private company can only be done in Dar es Salaam — and thus virtually impossible for most of the 87% of the nation's businesses located outside the capital; permits for officially declared “special businesses” (e.g. pharmacies, restaurants, tour agencies, cell phones) are available only in Dar es Salaam — and may cost between \$3,916 and \$5, 506.
5. Authorities have excessive and unregulated discretionary powers over applying laws and regulations — and Tanzanians do not have the reasonable mechanisms to defend themselves against alleged arbitrary decisions. (Objecting to a administrative decision on the mainland requires consent from the Attorney General — and could take 570 days.)
6. To incorporate a private company in Zanzibar or register a cooperative on the mainland requires complying with procedures that are totally unrelated to either objective or that duplicate procedures already completed.
7. Incorporating a private company on the mainland costs \$2,669; to wind up a company voluntarily costs \$2,753 — almost four times the average annual wage for an ordinary Tanzanian.
8. It is impossible for most Tanzanian companies to raise financing by selling shares on the stock exchange — unless they have been profitable for the past three years and have a minimum of TShs 50 million in capital, a description of less than one percent of the nation's companies.
9. Growing through mergers and acquisitions is also closed to the majority of Tanzanian companies who do not have the requisite stock to transfer nor the funds to meet the costs of judicial procedures to change company bylaws.

### **Expanded Market Barriers**

1. Mainland Tanzania has two legal systems, and neither offers security to contracts: The statutory system contains general norms and specific ones, which are not well-known to most entrepreneurs; in the customary system it is easy to make contracts, but difficult to enforce them —an appeal must be moved into an entirely different legal system with different courts, rules, modes of proof, and language (Kiswahili to English).

2. Contracts are typically made only between individuals known to each other and on a cash basis, due to lack of effective national identification and registry systems.
3. For most Tanzanians, contracts to provide goods and services to the State are inconceivable: not only do they have to be in writing, they must have the signed approval of the Attorney General or the Minister of Finance, and carry non-refundable fees and financial guarantees.
4. Traditional forms of credit are unavailable to most entrepreneurs —unable to pay the high costs of registering or use their real estate for collateral because it is extralegal; pledging moveable property, such as a car, takes 297 days on the mainland. (In Zanzibar, such pledges are non-existent.)
5. Micro-financing is also prohibitive, requiring a bank account of at least TShs 10,000 for three months; groups receiving loans are required to attend weekly training sessions for a month.
6. There are no publicly available administrative guidelines for obtaining permission for advertising — and no time limits on the approval of a proposed sign or billboard.
7. Import and export procedures are prohibitive for most Tanzanians: due to the complexity of regulations, entrepreneurs must hire “clearance agents,” increasing the cost of doing business by about 40%.
8. The current law discourages innovation: registering a trademark for a new product in Zanzibar takes 107 days; on the mainland, trademark registration is quicker — but can be done only in Dar es Salaam.
9. Enforcement of contracts through judicial procedures is lengthy and costly: In Zanzibar, recovering a \$1,000 loan through the courts takes 1,286 days and costs \$1,022; appealing the decision could take between 2 and 5 years. On the mainland, the same procedure costs \$4,745.
10. Special, “fast-track” business courts are available only to big businesses: they handle disputes of no less than 40 million shillings, cost 10 times greater than regular courts, and are located only in the capital and Arusha.
11. Most Tanzanians also discount the possibility of legal arbitration and mediation mechanisms, because courts, in practice, can modify the awards, no matter how fair — thus destroying the meaning of “arbitration.”
12. Tanzania simply does not have the systems in place to allow its entrepreneurs access to expanded markets: no national I.D. system, no integrated, national registry with up to date information, no fully organized credit bureaus.

And where does that leave the people? As the following graphic shows, when a legal system detached from the real world gives the people mechanisms to formalize their property, organize their businesses, and expand into wider markets – summarized in the top down arrows (Vol. III has complete list) – its effects are stymied by barriers that keep people out of the system. But when they create their own extralegal archetypes, these, too, smack into barriers summarized in the bottom up arrows. The people are thus stuck in the middle – doomed to being less productive than they might be.

## PROPERTY RIGHTS PROCEDURES

**URBAN LAND ALLOCATION & BLDG PERMIT:** Land Acquisition Act 1967, Land Act 1999, Town & Country Planning Ord. Cap 378, 1956, et al.  
**FORMAL TRANSFER & REGISTRATION:** Land Act 1999, Income Tax Act 1999, Land Reg. Ord. Cap 334, 1954, et al.  
**VILLAGE LAND REG. IMPLEMENTATION:** Village Land Act 1999, Village Land Regs. 2001, Local Govt. (Dist. Auth.) Act, 1982.  
**URBAN LAND ALLOCATION:** Land Acquisition Act 1967, Land Act 1999, Town and Country Planning Ordinance Cap 378, 1956, et al.  
**BUILDING PERMIT:** Town and Country Planning Ordinance Cap 378, 1956, Township (Building) Rules, Cap 101, 1953.  
**SURVEY INDIVIDUAL PLOT:** Land Survey Ordinance Cap 390, Land Survey (General) Regulations 1959.  
**MORTGAGE CLAIMS:** Land (Amendments) Act 2004, Courts (Land Disputes Settlements) Act 2002, Magistrates Courts Act No. 2, 1984, et al.  
**MORTGAGE REGISTRATION:** Land (Amendments) Act 1999, Land Reg. Ord. Cap 334, 1954, Notaries Pub. and Comm. for Oaths Ord. 1928, et al.  
**PLANNING CONSENT:** Town & Country Planning Ord. Cap 378, 1956, Town & Country Planning (Use Classes) Regs. 1950 amended 1993, et al.  
**ATTACHMENT OF UNREGISTERED PROPERTIES:** Magistrates Courts Act No. 2, 1984 Civil Procedure Code Act N°49 1966.  
**LAND DISPUTE RESOLUTION:** The Courts (Land Dispute Settlements) Act 2002, Ward Tribunals Act 1985.  
**RURAL GRANTED RIGHTS OF OCCUPANCY:** Land Act 1999, Land Survey Ord. 390, 390, Local Government (District Authorities) Act 1982.  
**ESTATE ADMINISTRATION (INTESTATE):** Probate & Administration, Ord. 1981 Cap 445, Administration (Small Estate) Ord. Cap. 30, et al.  
**BIRTH REGISTRATION & CERTIFICATE:** Birth & Death Registration Act Number 1, 1993  
**CUSTOMARY INHERITANCE:** Judicature and Application of Laws Act 1961 Cap 358, The Local Customary Law (Declaration) Order 1963

## ORGANIZATIONAL FORMS PROCEDURES

**REGISTRATION & START UP (SOLE TRADER):** Govt. Exec. Agencies Adt No. 30 1997, Business Name (Registration) Ord. Cap 213, Inc. Tax Act 2004 & subsid reg, et al.  
**INCORPORATION (private pharmacy) MBEYA:** Govt. Exec. Agencies Adt No. 30 1997, Companies Ord. Cap 212, Income Tax Act 2004 & its subsidiary regulations, et al.  
**INCORPORATION (private bureau of change) DAR ES SALAAM:** Govt. Exec. Agencies Adt No. 30 1997, Companies Ord. Cap 212, Income Tax Act 2004 & subsidiary reg, et al.  
**INCORPORATION (private bureau of change) MBEYA:** Govt. Exec. Agencies Adt No. 10 2003 Companies Adt Cap 212, Co-ops Societies Rules 2004, Government Notice No. 280.  
**INCORPORATION (public bureau of change) DAR ES SALAAM:** Govt. Exec. Agencies Adt No. 30 1997, Companies Ord. Cap 212, Income Tax Act 2004 & subsid reg, et al.  
**FRAUD OR ANY CRIM. OFFENSE BY CO. DIRECTORS:** Penal Code Chap 16 of Laws (Revised) Princ. Legis. Crim. Procedure Code 1985, Companies Ordinance, Cap. 212.  
**FILE MODIFICATIONS TO MEMOS OF ASSOCIATION:** Companies Ord. 212, Civil Procedure Code 1968, Adt No 49 of 1966.  
**TAX OBJECTIONS:** Tax Revenue Appeals No. 15 2000, Income Tax Act 2004, Value Added Tax Adt 1997 & Amendments, Stamp Duty Adt 1972 & Amendments, et al.  
**BANKRUPTCY PROCEDURE:** Bankruptcy Ordinance Cap. 25, Company Ordinance 212, The Bankruptcy Rules made under section 121, Cap 25.  
**WIND UP A COMPANY:** The Companies Ordinance, Cap 212, Winding Up Rules 1939, The Civil Procedure Code.

## EXPANDED MARKET PROCEDURES

**MOVABLE GUARANTEE CONSTITUTION AND EXECUTION (PLEDGES):** Law of Contract Ord. Cap 433 No.1, 1981, et al.  
**REGISTRATION OF TRADEMARKS:** Trade & Service Mark Act (No. 12, 1986), Trade & Service Mark Regulation, 2000.  
**ADVERTISING SERVICES:** Local Govt. Act (Urban Auth.) 1982, Highway Ord. Cap 167, Town & Country Planning Act 1962, and bylaws.  
**OBTAIN CREDIT / CO-OP (SACCOS):** Co-op. Societies Act No. 2 2003, Co-op. Societies Regs., Banking & Financial Inst. Adt No. 12 1991, et al.  
**OBTAIN CREDIT (NAT. MICRO FINANCE BANK):** Banking & Financial Inst. Adt No 12 1991, B. of Tanzania Act No 1 of 1995, Regs. 2001.  
**OBTAIN CREDIT (NGO PRIDE):** Banking & Financial Inst. Adt No 12 1991, Bank of Tanzania Regs. 2001, NGO's Adt & reg.  
**OBTAIN CREDIT (NAT. BANK OF COMMERCE):** Banking & Fin. Inst. Adt No 12 1991, B. of Tanzania Act No 1 1995, B. of Tanzania Regs. 2001, et al.  
**EXPORT:** Customs Management and Tariff Act, No. 2, 1952, Board of Ext. Trade Adt 1998, E. African Custom and Tariff Tax Mgt. Adt 1970, et al.  
**IMPORT:** Customs Mgmt & Tariff Adt, No. 2 1952, Board of Ext. Trade Adt 1978, E. African Afr. Custom & Tariff Tax Mgt Adt 1970. Customs and Excise Mgt Adt 1977, et al.  
**OBTAIN INSURANCE:** Insurance Adt No. 18 1966, Sub. Regs.  
**COMMERCIAL DISPUTE RESOLUTION – COMM. COURT DIV. (DEBT CLAIMS):** Govt Notice No. 140, Govt Notice No. 141 Judicature & Application of laws Ord. Cap 453, et al.  
**COMMERCIAL DISPUTE RESOLUTION BETW. BUSINESSES:** Const. of Tanzania 1977, Civil Proc. Code Adt No. 49 1966, et al.  
**CONTRACT ENFORCEMENT - CUSTOMARY LAW:** Customary laws, Law of the Contract Ord., Mag. Courts Act 1984, Primary Ct. rules.  
**ALTERNATIVE DISPUTE RESOLUTION:** Constitution of Tanzania 2000 (ref. Civil Proced. Code 1966 & Annex 1, Art. 12, et al.).  
**PROCUREMENT:** Public Procurement Adt No. 21 2004, Local Govt. Auth. Adt No 8 1982, Company Ordinance Cap 212, et al.  
**OBJECTION OF ADMINISTRATIVE DECISION:** The Government Proceeding Adt, No 33 1994, Chap 5 RE 2002, et al.

## BARRIERS TOP DOWN

### PROPERTY RIGHTS

- Most property rights are not fixed in writing, standardized to facilitate search, use, and discrimination between similarities and difference.
- Info is not stored in a fixed local place, dispersed over 10,000 locations nationwide, disconnected from the 3 uncoordinated registration systems.
- Tanzanians can only access six registry offices nationwide and are obliged to comply with 7 tax and administrative obligations and expensive surveying.
- 90% of Tanzanians cannot be located through the property system and be identified for credit, services, deliveries, and exercising rights as contracting parties or citizens.
- Due to excessive prior authorizations, property is not very liquid; difficult to mobilize, transfer, combine, divide, and be leveraged into credit and capital.
- Valuation, planning, surveying and titling procedures takes 8 years, land allocation for urban purposes (7 years), in Zanzibar (9 years).
- High-level, impossible decisions often required (e.g. Minister of Land intervenes six times to allocate land in Zanzibar; on mainland, all survey maps must be approved by Director of Surveying and Mapping).

### ORGANIZATIONAL FORMS

- 90% of Tanzania enterprises are sole traders and partnerships, but the law does not separate business and personal assets or provide perpetual succession.
- Tanzania has no clear laws for separating owners of small enterprises from managers—and holding managers accountable.

### EXPANDED MARKET

- Mainland Tanzania has two legal systems, and neither offers security to contracts: Statutory system contains specific norms not well known; customary system's contracts are easy to make but difficult to enforce; an appeal must be moved to different legal system and language (Kiswahili to English).
- Contracts are typically made only between known individuals and for cash, due to no national i.d. system and ineffective registry system.

- Contracts to provide goods and services to the State must have the signed approval of the Finance Minister or A.G. and carry non-refundable fees.
- Traditional forms of credit are unavailable to most entrepreneurs, unable to pay the high costs for registering or using extralegal real estate for collateral.
- Microfinancing is also prohibitive, requiring a bank account of at least TShs 10,000 for three months; NGO Pride does not even lend to individuals. There are no publicly available guidelines for obtaining permission for advertising—and no time limits for approval.
- Import and export procedures are so complex that entrepreneurs must hire "clearance agents," adding about 40% to business costs.
- Trademark law discourages innovation: registering a new product in Zanzibar (107 days); faster on mainland, but can be done only in Dar.
- Recovering a \$1,000 loan through the courts in Zanzibar takes 1,286 days and \$1,022, appealing the decision could take between 2 and 5 years. On the mainland, costs \$4,745.
- Special, "fast-track" business courts handle disputes of no less than 40 million shillings and cost 10 times greater than regular courts.
- Most Tanzanians ignore legal arbitration mechanisms because courts, in practice, modify awards.
- More than 120 ordinances regulating business life cycle; more than 100 administrative offices involved in common property and business issues; written in English; often amended, contradictory, or outdated; inconsistently regulated – and requiring unjustified costs of \$180,000 over a 50 year business lifetime.
- Systems not in place for Tanzanian entrepreneurs to access expanded markets: no national i.d. system, no integrated, up-to-date national registry, no fully organized credit bureaus.



## BARRIERS BOTTOM UP

### PROPERTY RIGHTS

- \$2 billion in extralegal assets dispersed all over Tanzania – not integrated in a systematized national network.
- Not fungible – and thus can't be mobilized, made more accessible, and combined into more valuable mixtures to create capital, get credit, access public utilities and information, etc.
- Asset owners cannot be easily identified or located; their contracts not enforceable – and thus cannot encourage the kind of trust needed to create surplus value.
- Assets cannot be interfaced in the expanded market via low-cost connective devices such as record keeping organizations, fiduciaries, insurance and trust mechanisms.

### ORGANIZATIONAL FORMS

- Tanzania's 870,000 extralegal enterprises don't function under one control to allow division of labor, combination of assets, and interconnection of contracts with suppliers, clients, creditors, investors.
- Extralegal associations do not have a class of professional managers.
- Not separate "legal persons" to protect rights of all parties.
- Without perpetual succession to survive founders.
- No asset partitioning to protect creditors, suppliers, workers et al.
- No clear statutes on the terms under which all parties are associated.
- No means to bring outsiders into firm, thus reducing transaction costs.
- Unable to define admin. responsibilities so that all know how the firm is run.
- Without standard structures so firms can easily capture info about each other.
- Management & social benefits not standardized to appeal to outsiders.

### EXPANDED MARKET

- Tanzania's 6 million entrepreneurs are not subject to enforceable rights and obligations.
- Cannot protect trading names or trademarks for their products and services.
- Not accountable at a national/international level through corporations.
- Cannot advertise.
- Cannot leave track records through appropriate registration of contracts.
- Cannot publicize compliance or non-compliance with commercial obligations.
- Cannot demonstrate cash flow and financial statements with official accounting standards.
- Cannot obtain financing outside family circles.
- Cannot issue and trade shares freely.



### PROPERTY ARCHETYPES

1. ADJUDICATION
2. DOCUMENTATION
3. REGISTRATION
4. FUNGIBILITY
5. COLLATERAL
6. TESTAMENT

### ORGANIZATIONAL ARCHETYPES

7. ASSOCIATION
8. DIVISION OF LABOR
9. MANAGEMENT
10. TRANSPARENCY
11. TRACEABLE LIABILITY

### EXPANDED MARKET ARCHETYPES

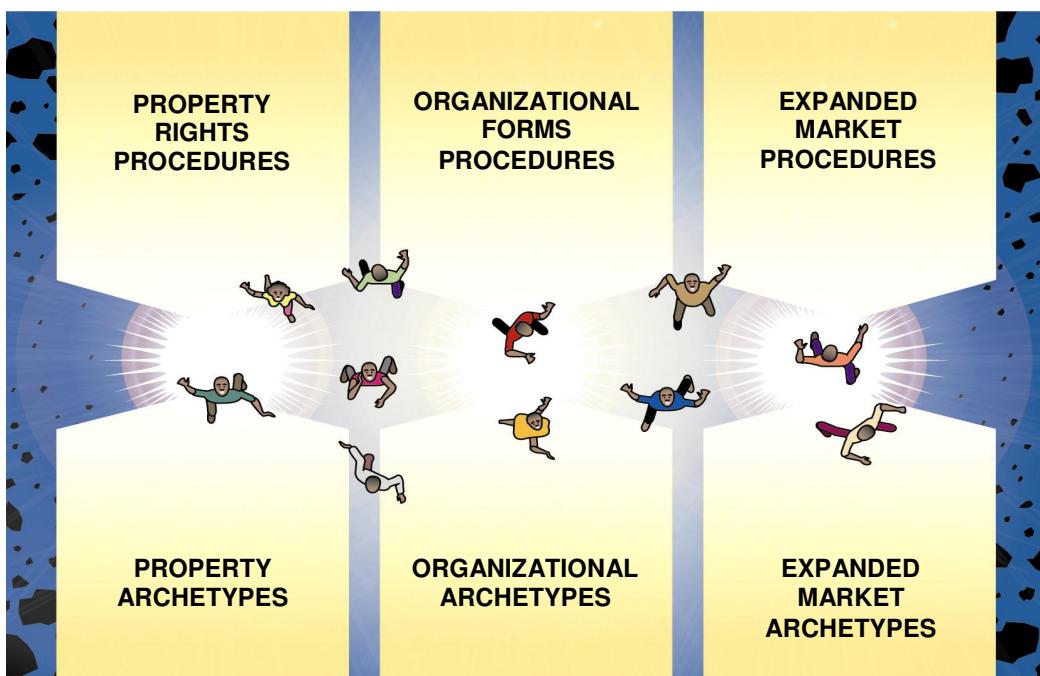
12. IDENTIFICATION
13. REDUNDANCY
14. ATTESTATION
15. REPRESENTATION
16. STANDARDIZATION
17. CONTRACT

## RECOMMENDATIONS

Tanzania has designed a varied, sophisticated legal system that offers its people the possibility of creating and using property, organizing collectives, and operating on a nation-wide scale. The problem is that this system is inaccessible to most Tanzanians. From the point of view of the poor, it is just too burdensome. Tanzania's current legal system has to be simplified and pruned and adapted to local practices —until it fits the needs of the great majority of Tanzanians.

On the other hand, Tanzania's people, working extralegally, are building institutional archetypes that tell us where they want to go, archetypes that are totally in sync with their culture. However, these archetypes lack the standards, systems, information management, and basic infrastructure to allow property to create good credit and capital, business organizations to divide labor productively, and identification and contractual systems to enable Tanzanians to operate all throughout national territory. The archetypes they have produced — those that have been discovered and those that are yet to be discovered — need to be built up and formalized.

The facts contained in this report provide material sufficient to outline some recommendations and to begin building a strategy and a program that will help Tanzania create a modern rule of law that fits the culture of its people —and in the process creates a constituency for change. The challenge is two-fold: to tailor existing legal institutions to suit the poor, a top down exercise, and, then, to harmonize, professionalize, and formalize the extralegal archetypes of the poor, a bottom up exercise, so that the Government of Tanzania can eventually have its two institutional realities meet somewhere in the middle.



This would allow the formal legal system to remain stable and macroeconomic growth and other formal development efforts to continue, while the poor quickly see their practices being recognized, strengthened, and gradually weaved together to create an effective rule of law — without having to wait for the existing legal system to reach them over the longer term.

The reforms to be designed will have to take into account not only the prevailing local and customary arrangements that exist in Tanzania's extralegal economy (bottom-up), but also the institutional obstacles and deficiencies found in the nation's legal framework (top-down). Some of the reforms will focus on improving the existing legal framework, while others will focus on improving current *extralegal* practices —all in a way that will merge both systems into a single legal framework that will help create a modern, inclusive legal and economic system in Tanzania. Special consideration will also be given to on-going Government reform initiatives. Here follows the principle recommendations (Vol. III has the complete list):

**I. Reforms geared to improving the current legal system until it fits the needs of the great majority of Tanzanians (top-down)**

***Reforms to improve public administration and to defend user rights, such as:***

- Introducing simplification and modernization principles, legislation, and procedures for public administration (e.g. acceptance of applications and statements at face value; decentralization; deregulation; elimination of unnecessary and expensive requirements and formalities, etc.);
- Designing special mechanisms to continually improve and streamline the regulations that govern all the relationships between the government agencies and formalized businesses, as well as to receive and channel user feedback
- Harmonizing the current programs, projects and initiatives that aim to improve specific aspects of the institutional framework to facilitate entrepreneurial activity and assign clear property rights in Tanzania.

***Reforms to improve the property system, such as:***

- Improving the existing formalization procedure, possibly with, among things, a simplified, standardized and low-cost formalization procedure that allows costly and time consuming official surveys to be conducted by private professionals; a simplified, decentralized, massive and low cost registration procedure with a geographical database.
- Establishing simplified, standardized and low cost procedures for the registration of transactions involving formalized real estate assets, and harmonizing current registers in Mainland and Zanzibar.
- Facilitating the economic utilization of properties, eliminating restrictions on transfers and other conditions that, in practice, are no longer in effect in Tanzania.

***Reforms to improve business organizational forms, such as:***

- Allowing access to asset partitioning and risk reduction through entity shields and limited liability facilities for all enterprises, particularly sole traders and partnerships, which constitute the most used organizational forms in Tanzania.
- Establishing decentralized, simplified, standardized and low cost procedures for the entry into (incorporation, registration, licensing) and exit from the market legally (protecting third party rights), for all enterprises and particularly sole traders and partnerships.

***Reforms to facilitate operation in expanded market, such as:***

- Establishing simplified and low cost procedures that allow small and medium sole traders and partnerships to contract with the Tanzanian State and to comply with the legal and administrative requisites to export, import, advertise, etc.
- Establish simplified mechanisms to solve disputes
- Establish simplified procedures to draw up and foreclose mortgages and pledges.
- Design an interconnected business information system to provide all interested parties with a clear, reliable and updated information service.

**II. Reforms geared to improving the archetypes of Tanzania's extralegal economy (bottom-up)**

The Government needs to determine how these dispersed grassroots extralegal procedures can be pulled together, systematized, codified, and harmonized with the existing legal system. But here again is a sample from our list of recommendations, according to each category:

***Reforms to improve Property Archetypes:***

- Classify extralegal documents in a way that they can help create a widespread, inclusive legal property system. (For example: Defining the probative value of documents that formalize property.)
- Design and introduce throughout mainland Tanzania basic rules for standardizing and setting up archives for the records and representations that the Mweyenkitis are now keeping, each in his own way, that could be the building blocks for future registries that will function nationwide. (For example: Organizing the Mwenyekiti archives under a genuine *folio* system, with a unique number for each real estate unit and owner; standardizing registration books and providing efficient mechanisms to store them; standardizing forms to record transfers and contracts; facilitating access to this archive and delivery of copies of the documents stored in it; establishing legal mechanisms requiring the out-going Mwenekiti to pass on the registration book to his successor.)
- Introduce ways to protect the rights of women and minors in extralegal practices for the administration of property received through inheritance. (For example: Information Programs, the availability of a local authority, such as a mediator.)

***Reforms to improve Organizational Archetypes:***

- Provide more easily accessible legal options for poor people to form business associations, allowing the separation of their personal assets from the assets of their businesses. (For example: Standardizing forms for bylaws or statutes for companies, partnerships, etc.)
- Introduce simple rules and legal mechanisms to promote good management. (For example: Standardizing rules for simple, transparent accounting practices that could be the basis of a national accounting system.)
- Design mechanisms to make most citizens and business organizations accountable. (For example: Putting all extralegal arrangements in a standard, written form that can be enforced according to available documentation.)

***Reforms to improve Expanded Market Archetypes:***

- Design mechanisms that will help authorities monitor and simplify the use of redundancy to control mistakes and fraud. (For example: Clarifying the legal effects and the hierarchy of documents created to prove something, such as land transfer contracts and wills.)
- Determine the constraints of extralegal arrangements for enabling effective representation and its enforcement. (For example: Perfecting or standardizing the powers of attorney and liability arrangements based on extralegal practices to help make representation less risky and more widely acceptable.)
- Determine how contract and company law can take advantage of the increasing clarity of extralegal contracts to provide norms and standards that will make it easier to monitor and interpret the duties and obligations of each contracting party. (For example: Creating simple, standard forms for different kinds of written contract; evaluating the need of the Village Council's role in approving contracts and mortgages.)

Implementing these reforms will benefit, we believe, all Tanzanians and not only the small minority that already uses the present legal system. The prospect of such widespread benefits will, in turn, not just inspire equally widespread support for reform but also silence the naysayers and other opponents of institutional change. When the Government of Tanzania first asked the ILD to shine a light on the nation's informal sector, the hope was that we might find among the extralegal practices of ordinary Tanzanians the building blocks of a modern, legal economy. We have done exactly that, surpassing, in fact, even our own optimism about complying with the Government's mandate. As a result, we believe that all the facts laid out in this Diagnosis report, along with its recommendations, provide the necessary elements for a major Presidential address stating the pillars of a new program that will draw up concrete institutional reforms aimed at reducing poverty and creating wealth in Tanzania.

## **HOW TO MAKE IT HAPPEN**

As is the case in all countries facing the challenge of integrating their two parallel economies, there is not one government entity in Tanzania that can complete the collection of the necessary information and build a multifaceted program to handle the task of identifying and pruning onerous legal procedures, while simultaneously developing the grass-root archetypes required to build the law.

Existing government entities have their own separate specific goals, such as surveying, mapping, recording property and businesses, collecting taxes, insuring compliance with health standards, etc. But not one is in a position to see economic emancipation and growth from the point of the legally excluded. Nor is there an existing government entity with the capacity to structure the consensus required to change the *status quo*. Like other developing countries, Tanzania has no existing government entity geared to pull together the functions of property, the facilitation of organizing business, and the documentation of collective and individual identities on a nation-wide basis in a way that will make it irresistible for the poor to cross over into the formal economy.

Tanzania, therefore, needs to create a specialized and independent organization to spearhead the creation of this formalization process to guide Tanzania into a *terra incognita* and be able to create a new inclusive order —one that will be able to face the vested interests that may try to block or water down the radical initiatives that will be required to transform deep-seated poverty.

The task of building up institutions that the poor of Tanzania have already spontaneously created and integrating their interests into the legal economy is a revolutionary act that can be accomplished only at the nation's topmost levels of authority. To change the *status quo* and to still be able to get along with those who have different agendas —and will try to neutralize change— needs leadership of the highest moral authority. Peaceful transformations throughout world history have always required the creation of new leadership institutions —the kind that led, for example, to the democratization of legal rights in the United States and Germany in the 19<sup>th</sup> century, and those of Switzerland and Japan in the 20<sup>th</sup> century.

For all of the above reasons, we are proposing that a private foundation be created. The Government should give this foundation all the means, including ILD support, to create a master plan to integrate the extralegal economy. This should include: the collection of information that needs to be completed, the design and eventually the implementation of a formalization program; coordinating all the research, analysis, and proposals for legal reforms that allow the poor to obtain surplus value from their assets and business organizations; increasing awareness of the programs so as to obtain feedback and to build a nationwide consensus nationwide for formalization; coordinating and reporting to the President of Tanzania; assisting the Government in obtaining funds to support the program.

The foundation could be a non-profit organization created under the Trustees' incorporation ordinance that can receive funds from both national and international sources. Such an entity, with a specific mandate received from Government, would guide, instruct, and work with the ILD. Eventually, the foundation could be the basis for the creation of a public entity to achieve inclusion through formalization.

## **THE NEXT STEP**

The above recommendations are the beginning point for continuing the Program, step-by-step, phase-by-phase. This report provides us with all the information necessary to proceed on various fronts simultaneously and as quickly as working in the uncharted waters of the extralegal sector permits. Any detailed program would be misleading; proposals can be made only according to what is found on the ground. The crucial benchmarks will be established gradually, as we progress with the help and guidance of the Tanzanian foundation.

In order for the ILD to keep moving ahead in the coming months, according to the milestones originally agreed upon by the Government of Tanzania and the ILD, President Mkapa would have to:

- Approve the Diagnosis Report and communicate his position to the Tanzanian authorities and the Norwegian Embassy.
- Decide on the organization that will manage the program – supported by the ILD.
- Instruct the Minister of Finance to use the bridge financing authorized by the Norwegian Embassy to fund the first 3 months of the Reform Design phase – and thus allow the Program to continue without further delay.

The ILD will then prepare the design and implementation plan for the supervising organization within one month after approval – and, simultaneously, draw up the detailed work plan for the next stage to:

- Enter into detailed discussions with the appropriate Tanzanian authorities – within the first month after the go-ahead – to define specific directions of research based on our recommendations.
- Deepen the analysis of the potential of all the archetypes we have found – as well as the barriers they run into.
- Deepen the analysis of the barriers of the current legal system.
- Carry out a series of cost-benefit analyses aimed at prioritizing administrative and legal reforms.
- Start the process of outlining bottom-up and top-down proposals for reform that will be ready by month 7.
- Produce – within the next 10 months – the basis for a Master Plan to identify the policies to include the extralegal economy under the rule of law by providing it with

the indispensable legal tools to create wealth: organizations that enable Tanzanian entrepreneurs to cooperate productively with each other, a property system to protect their assets and build capital if they so wish and legalize identity and contracts to gain access to all of their own country.

## **REVIEW OF THE DIAGNOSIS**

According to the Agreement between the Government of Tanzania and the ILD, the Reform Design Stage is to start immediately after the finalization of the Diagnosis Stage, upon delivery of the Final Report and the Presentation and Dissemination of the results.

- The official delivery of the Final Report will take place in Dar es Salaam on 13 September 2005.
- The public presentation to Tanzanian authorities and representatives of the international community in Dar es Salaam is planned for early October 2005.

According to the Agreement between Tanzania and Norway, a review/evaluation of the Diagnosis phase should be undertaken as a prerequisite for the Tanzanian-Norwegian Annual Meeting, also planned for sometime in October. This review is to be the main trigger for the Embassy's second installment to the Program.

- A Norwegian Evaluation Team will be arriving in Dar to work between 12 and 22 September – and will have the report in hand upon arrival
- Representatives from the ILD will be available for consultations and discussions with the Evaluation Team.

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**ANNEX: LIST OF PARTICIPATING TANZANIANS**