



# The distribution of powers and responsibilities affecting forests, land use, and REDD+ across levels and sectors in Tanzania

A legal study

Lawrence Mbwambo





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This report is not intended as legal advice.

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# Abbreviations

AIDS	Acquired immune deficiency syndrome
CAG	Controller and Auditor General
Cap.	Chapter (for an act of law)
CBFM	Community-based forest management
CCRO	Certificate of customary right of occupancy
FAO	Food and Agriculture Organization of the United Nations
JFM	Joint forest management
JMA	Joint management agreement
LGRP	Local Government Reform Program
MDGs	Millennium Development Goals
NCCSC	National Climate Change Steering Committee
NCCTC	National Climate Change Technical Committee
NEP	National Environmental Policy
NSGRP	National Strategy for Growth and Reduction of Poverty
PES	Payment for ecosystem services
PFM	Participatory forest management
PMO	Prime Minister's Office
PMO-RALG	Prime Minister's Office-Regional Administration and Local Government
RAS	Regional administrative secretary
R.E.	Revised edition (for an act of law)
REDD+	Reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries
TFAP	Tanzania Forestry Action Plan
TFS	Tanzania Forest Service
UNESCO	United Nations Education, Scientific and Cultural Organization
URT	United Republic of Tanzania
VAT	Value added tax
VLFR	Village land forest reserve
VPO	Vice President's Office

# Synopsis

Reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks in developing countries (REDD+) is intrinsically a multilevel process that cuts across different land-use based sector ministries. It builds on existing land-use and management policies and legal frameworks. Issues related to benefit sharing are emphasized under REDD+ mechanisms, but this is not addressed by most of the existing laws. The legislative framework lays more emphasis on issues of compensation when the government revokes land ownership from certain land owners for national development projects. This report is intended to help improve the design of multilevel institutions and processes to overcome economic and policy barriers to REDD+ implementation and other low carbon land-use options. It reviews the powers of key government spheres, especially the relation between local and central governments in forest and related natural resource sectors.

This report is divided into six sections. The first is the introduction, providing a brief overview

of forest resource endowment and methods, an overview of REDD+ in Tanzania, and REDD+ associated policies and legislation. Section 2 gives an overview of the different levels of government and the powers provided by the current legislation, as well as a review of the government control machinery under a decentralized governance system, the decentralization process, and citizens' participation in decision making on land use. Section 3 presents the mechanisms for distributing financial resources at different government levels, briefly highlighting the forest fee and royalty charging system and the possibility of payment for ecosystem services being used as forest revenue sources for a REDD+ project. The roles of the different government levels in decision-making processes affecting land use and forests are highlighted in Section 4 of this report, while Section 5 presents laws pertaining to community land use, tenure and management, including Tanzania's participatory forest management (PFM) experiences and the PFM legal issues facilitating or hindering community participation. And finally, the roles of the relevant ministries in relation to land-use decisions are explained in Section 6.

# 1 Introduction

This report covers the Tanzania mainland, but not Zanzibar. This is because Chapter 2 of the Constitution of the United Republic of Tanzania (R.E. 2002) states that forests and natural resources do not correspond to the Union and Zanzibar therefore has different laws and policies for these sectors.

## 1.1 Forest resources in Tanzania

Forests and woodlands in mainland Tanzania cover 48 million ha, which is about 55% of the country's total land area (National REDD+ Strategy, 2013). It is recognized that forests are essential resources, especially for the disadvantaged sections of society, the majority of which live in rural areas (Kaushal and Kala 2004). Forests and woodlands support the livelihoods of over 80% of the over 40 million people in Tanzania. The trends in the management of forest resources in Tanzania are a result of the implementation of macroeconomic policy frameworks, sectoral policies and programs. The evolution of forest management policies dates back to colonial times when large areas of forests were put under protection in the 19th century (Nshubemuki 1998). The history of forest governance and utilization in Tanzania can be divided into the following periods: 1) the pre-colonial period, dominated by hunting and gathering for household consumption with limited commercialization; 2) the colonial period, dominated by gathering forest products, state control, state timber exploitation, clearing natural forest for the establishment of plantations and the formulation of the first forest policy and law; 3) from independence to the 1980s, characterized by state control, increased encroachment and timber exploitation; and 4) the period of market economy and democracy from the 1980s to the present day, characterized by increasingly open access and increased timber harvesting. The decentralization of forest governance supporting

community participation was introduced in the 1990s (National Forest Policy 1998; Malimbwi and Munyanziza 2004) due to government failure to control forest resources through the exclusion of the communities around protected forest reserves<sup>1</sup> (Kajembe et al. 2003).

Estimated at 1.1% annually (FAO 2010), deforestation is one of the major environmental threats in Tanzanian forests and woodlands. Reported factors driving deforestation include: charcoal production, firewood for curing tobacco, overgrazing, unplanned settlements, timber harvesting, forest fires and clearing land for agriculture (Angelsen et al. 1999). Illegal logging and forest encroachment are among the main forest resource-use problems the Forest Department has failed to control. With the exception of a few forest reserves exclusively designated for catchment and conservation purposes, most are exploited under licenses issued by the Tanzania Forest Service agency but with limited control of license movements, leading to timber harvesting in excess of the allowed volumes. It is becoming increasingly clear that the public sector simply does not have the resources to effectively manage extensive woodland areas in view of the large human populations already dependent on them (National Forest Policy of 1998). Forestry services are not well established and often have limited staff and means and it is difficult to manage vast stretches of low- to average-productivity woodlands. In an effort to curb deforestation, Tanzania introduced the decentralization of forest management through the Participatory Forest Management Program with the aim of improving forest management, governance and livelihoods (National Forest Policy of 1998; Blomley et al. 2008). Decentralization is any act in which a central government formally

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<sup>1</sup> This includes all timber and non-timber forest products (National Forest Policy of 1998).

cedes powers to actors and institutions at lower levels of the political-administrative and territorial hierarchy (Ribot 2002b). Tanzania has seen this as an ideal approach to rural and urban development as it gives people more decision-making power (Ngwilizi 2001).

## **1.2 Methodology and structure of the report**

### **1.2.1 Methodology**

The information gathering methodology has been entirely desk-top, involving an extensive review of the available literature. Information was collected from government documents (policies, legislation), publications, reports and other documents related to land use and REDD+ in Tanzania. Further information was also obtained from internet sources. The main focus was on synthesizing information on the powers of the lower levels of government in relation to the central government in forest-related sectors in Tanzania. The study analyzed issues associated with the different levels of government that have legally-conferred powers to make resource decisions in different spheres related to forests, land use affecting forests, and/or benefit sharing, including REDD+. It also examined issues related to the key actors in each sector and their differences. Also emphasized was the extent to which local governments can be said to have power with regard to those powers vested in the central government. The analysis of the data obtained from the study mainly involved content analysis.

### **1.2.2 Structure of the report**

This report is a legal and policy review of the powers corresponding to the lower-level governments in relation to the central government in forestry and related sectors in mainland Tanzania. In principal, in line with the terms of reference provided, it deals with land use in general, as well as describing the powers and responsibilities of different government levels that are relevant to REDD+. It traces the decentralization initiatives following Tanzania's independence where possible, although in most cases the report concentrates on the current policy and legal reforms that are likely to affect REDD+ initiatives and strategies.

The report is divided into six sections. The first is the introduction, providing a brief overview of forest resource endowment and the data collection method, while an overview of REDD+ in Tanzania and associated policies and legislation is also highlighted in the latter subsections. Section 2 gives an overview of the powers and responsibilities held by each of the different levels of government in Tanzania. It also reviews the government control machinery under a decentralized governance system, describing the decentralization process, and discussing citizens' participation in decision making on land use. Section 3 presents the mechanisms for the distribution of financial resources among the different government levels, highlighting the forest fee and royalty charging system and the possibility of payment for ecosystem services being used as forest revenue sources for REDD+ projects. The roles of the different government levels in land-use decision making affecting forestry are highlighted in Section 4, while Section 5 presents laws pertaining to community land use, tenure and management, including Tanzania's participatory forest management (PFM) experiences and the PFM legal issues facilitating or hindering community participation. Finally, the roles of the relevant ministries in relation to land-use decisions are explained in Section 6.

## **1.3 Overview of REDD+ in Tanzania**

In response to the global discourses on climate change and in collaboration with other development partners, Tanzania has developed a strategy on the fight against climate change through the international initiative on reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD+) for post-2012. The National REDD+ Strategy advocates activities related to reducing emissions from deforestation and forest degradation, including conservation, sustainable forest management and the enhancement of carbon stocks. Decentralized forest management is one of the strategies to address drivers of deforestation. With limited resources to manage forests, REDD+ provides an opportunity for Tanzania

to obtain funding to support sustainable forest management aimed at reducing emissions and increasing forest carbon sequestration to mitigate climate change and its impacts (National REDD+ Strategy of 2013). Under the REDD+ policy, communities practicing PFM can benefit from carbon credits.

Tanzania has the potential to implement REDD+ as the Forest Act provides secure forestland tenure rights to forest-adjacent communities. The land tenure systems have implications for the management of forest resources. Sections 32–34 of the Forest Act define how a village government can declare a “village land forest reserve” and apply for its gazettelement. Furthermore, Section 42 permits the establishment of “community forests” owned by a group of people within the village. However, REDD+ requires accurate baseline data on carbon stocks and deforestation rates obtained through methodologies approved internationally through the Intergovernmental Panel on Climate Change (IPCC), which is a challenge for Tanzania. The literature highlights a number of complexities related to implementing REDD+ including: establishing baselines, monitoring changes, accounting for leakage, ensuring permanence, and clarification of carbon ownership (Robinson et al. 2013). The Tanzania Forest Service (TFS) agency, under the Ministry of Natural Resources and Tourism, has just completed the National Forest Resources Monitoring and Assessment and this provides an important platform for reporting baselines.

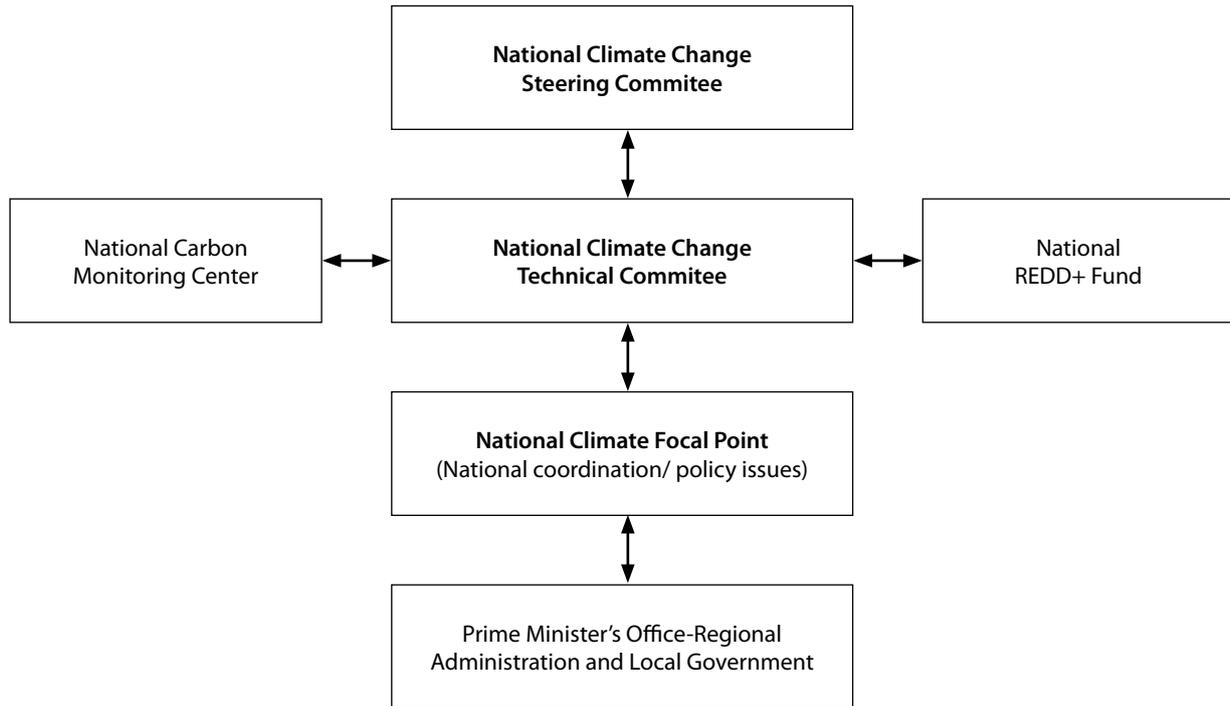
Managing forest ecosystems requires an understanding of political, socioeconomic and ecological dynamics, from decision making to benefit sharing and monitoring, reporting and verification. REDD+ is a multilevel process cutting across multiple actors and institutions. As such, it faces both the challenges and opportunities related to cooperation and integration across government levels and among the different sectors, such as agriculture, forestry, energy, finance and rural planning. Nevertheless, land-use decisions are currently based on a poor understanding of the tradeoffs related to the carbon effects of different land uses. With effective governance institutions and better scientific information at the landscape scale, REDD+ can be used to align development and poverty reduction imperatives while sustaining landscapes and reducing carbon emissions.

## 1.4 Institutional framework for REDD+ activities

### 1.4.1 National level

The institutional structure for REDD+ implementation and reporting in the Tanzania mainland is presented in Figure 1 below. Despite the fact that REDD+ is anchored in the forest resource base, at the national level all climate change issues, including their adaptation and mitigation, are coordinated by the Division of Environment of the Vice President’s Office (VPO), as established in the Environmental Management Act. A National Climate Change Steering Committee (NCCSC) and National Climate Change Technical Committee (NCCTC) are in place, overseeing and guiding the implementation of climate change activities in the country. As shown in Figure 1, overall guidance and supervision on the implementation of REDD+ will be provided by the NCCSC, which in turn advises the government on all issues related to climate change. The NCCSC is an inter-ministerial committee comprised of the permanent secretaries from the VPO’s Division of Environment, the Zanzibar First VPO’s Division of Environment and the sector ministries responsible for energy, water, gender, fisheries, investment and economic empowerment, agriculture, natural resources, finance, industry, justice and constitutional affairs, land, livestock development, and foreign affairs and international cooperation. The NCCTC is made up of the directors of the divisions, departments and agencies of the ministries represented in the NCCSC (National REDD+ Strategy of 2013).

There are further plans to establish a national REDD+ fund responsible for consolidating funds and distributing them to different stakeholders. The fund will operate at the national level and there are claims that it will oversee issues of transparency and accountability. Furthermore, the performance of past forest revenue management systems and benefit-sharing and incentive schemes will be assessed to provide lessons for REDD+ (National REDD+ Strategy of 2013). The National REDD+ Strategy proposes the establishment of a National Carbon Monitoring Center (NCMC) that will provide technical services for the measuring, reporting and verification of REDD+ activities across the country. According to the strategy, this center will be a repository for all data and information concerning REDD+ and is envisaged as being semi-autonomous, jointly overseen by the ministries responsible for forests and the environment.



**Figure 1. The institutional structure for REDD+ implementation and reporting in Tanzania.**

Source: National REDD+ Strategy, 2013

### 1.4.2 Regional and district coordination of REDD+ activities

The regional- and district-level REDD+ coordination follows the established local government institutional structure. At the regional level, the Regional Administrative Secretary (RAS) is the link between the ministries and the district councils. The RAS mainly plays oversight and advisory functions for local governments, which in principle are the main implementers of local service delivery. The environmental management committees established under the Environmental Management Act serve as the coordinators of REDD+ activities at the district and municipal levels in their respective areas of jurisdiction (National REDD+ Strategy of 2013).

## 1.5 Enabling policy environment and legal framework for REDD+ in Tanzania

An enabling policy environment and legal framework are very important for the implementation of REDD+ policy. The REDD+ strategy recognizes the need to consider a number

of relevant policies and legislations during its implementation. Those relevant to REDD+ implementation in Tanzania include the National 2025 Development Vision, the National Strategy for Growth and Poverty Reduction (NSGPR), the National Environmental Policy, the Forest Policy and the Land Policy. Other relevant policies are those for energy, agriculture, livestock development, water resource management, gender, fisheries, investment and economic empowerment, while other natural resource-related sectors also have a bearing on REDD+.

### 1.5.1 National Development Vision 2025

The government of Tanzania believes that the 21st century will be characterized by competition in the area of technological capacity, high productivity, modern and efficient transport and communication infrastructure, and highly qualified manpower. The National Development Vision 2025 was therefore developed to address these development challenges, establishing that by the year 2025 the country will have graduated from a less developed country to a middle income country with a strong, competitive economy by improving socioeconomic opportunities, public sector performance and

environmental management. Furthermore, it is envisioned that the economy will be transformed from a low productivity agricultural economy to a semi-industrialized one led by modernized and highly productive agricultural activities that are effectively integrated and buttressed by supportive industrial and service activities in rural and urban areas (National REDD+ Strategy of 2013). The Development Vision emphasizes sustainability in the use of natural resources for the present and future generations.

### **1.5.2 The National Strategy for Growth and Reduction of Poverty (NSGRP)**

The NSGRP I was adopted by the Cabinet and Parliament in early 2005. This Strategy was reviewed in 2010 to create the NSGRP II for the period 2010–2015. It is very closely linked to the Development Vision 2025 and is committed to the Millennium Development Goals (MDGs) as international agreed targets for reducing poverty. In Tanzania, the MDGs are encapsulated in the NSGRP, which envisaged reducing rural poverty (defined as income of less than \$1 per day per head) by 50% by 2010 compared to the 1990 baseline (NSGRP 2005). The global goal was, however, to reach this level of reduction by 2015. A second MDG relevant to REDD+ is the one on environmental sustainability, particularly its first two targets: the integration of sustainable development principles into country policies and programs, including reversal of the loss of environmental resources; and the reduction of biodiversity loss. The NSGRP aims to reduce poverty through three broad outcomes: growth and the reduction of income poverty; improved quality of life and social wellbeing; and good governance and accountability.

### **1.5.3 National Environmental Policy (1997)**

The National Environmental Policy (NEP) was promulgated in 1997 to provide guidance on the sustainable management of the environment and natural resources. This policy recognizes the importance of forests in relation to climate change mitigation and calls on other sector ministries to implement measures to address climate change. The minister of state for environment, whose ministry is part of the Vice President's Office, is also mandated to issue guidelines to address the impacts of climate change resulting from global warming. The policy further seeks to

ensure the sustainability, security and equitable use of resources. The NEP encourages a holistic multisectoral approach to environmental management by incorporating environmental concerns into sectoral policies, strategies and decisions. It also notes that Tanzania's forest and woodland heritage is being reduced year by year and identifies six major environmental problems: land degradation, lack of access to quality water, environmental pollution, loss of wildlife habitat and biodiversity, deterioration of aquatic systems, and deforestation. All of these problems have a bearing on the implementation of REDD+ in Tanzania.

The NEP outlines six policy objectives, two of which are more relevant to REDD+: raising public awareness and understanding of essential links between the environment and development; and the promotion of individual and community participation in environmental actions. Another NEP objective relevant to REDD+ is the promotion of international cooperation on the environment agenda and the expansion of Tanzania's participation in and contribution to relevant bilateral, sub-regional, regional and global organizations and programs, including the implementation of treaties.

### **1.5.4 National Forest Policy (1998)**

The first National Forest Policy was proclaimed during the colonial period in 1953 and then reviewed after independence in 1963. In 1988 Tanzania initiated the preparation of the Tanzania Forestry Action Plan (TFAP) with the objective of addressing deforestation and opening up opportunities for forest-based sustainable development. The implementation of the TFAP started in 1990, stimulating a review of forestry-, wildlife- and land-based policies, strategies and legislation. The revised National Forest Policy was approved in 1998 with the overall goal of enhancing the forestry sector's contribution to Tanzania's sustainable development and the conservation and management of forest resources for the benefit of the present and future generations. The policy advocates community empowerment and private sector involvement in the management of forest resources in Tanzania. It also emphasizes improved forest conditions through sustainable management practices; improved livelihoods as a result of increased forest revenues and securing the supply of subsistence

forest products; and improved forest governance at the village and district levels through effective and accountable natural resource management institutions. The National Forest Policy encourages linkage with other sectors, including agriculture, livestock, mining, energy, wildlife, beekeeping, the environment and land. However, the lack of effective implementation of the policy's directives and the law's provisions has greatly contributed to deforestation and forest resource degradation. The forest policy is currently under review to accommodate emerging issues such as climate change and REDD+. Although the National Forest Policy and the subsequent National Forest and Beekeeping Program of 2001 do not explicitly mention climate change issues, they recognize and promote sustainable forest management and utilization. In addition, the three policy objectives of improved forest conditions, livelihoods and forest governance link very well with REDD+ initiatives.

Among other things, the policy encourages the use of forest reserves under participatory management arrangements as a way of encouraging local communities to participate in forest management. However, the forest policy also has major flaws, including public ownership that creates open access areas, insecure land tenure, and property rights that are either weak or not properly defined. These have contributed to excessive illegal harvesting and a lack of investment incentives for forest activities. The above flaws have also led to an unregulated and uncontrolled trade in wood and non-wood forest products, instigating the uncontrolled exploitation of these products and thus accelerating forest destruction and degradation (Kajembe and Marageri 2009). Under public ownership, the control of resource use remains in state hands (Bromley and Cernea 1989; Vatn 2005), but the State does not have enough human resource to manage forests, thus effectively generating open access. Examples of state property regimes include national parks, national forest reserves and some water bodies (Bromley and Cernea 1989; Masomera 2002).

The National Forest Policy advocates participatory forest management with different property rights under both joint forest management (JFM) and community-based forestry management (CBFM) regimes. Under JFM, for example, people have the user rights to activities such as collecting firewood, fetching water, and collecting wild

fruits, while under CBFM they have the right to the land and its products. However, such property rights are not secure because the President still has the power to change them (see section 1.5.5). Although the policy encourages CBFM and private ownership, a large proportion of forests are on central government-owned general lands, which the government has failed to put under proper management, as mentioned above. The nature of property rights over forests and their economic value has been identified as a major cause of deforestation in developing countries (de Oliveira 2008).

### 1.5.5 National Land Policy (1995)

The National Land Policy of 1995 clearly stipulates that the President owns the land in trust for present and future generations. The commissioner of lands administers the land on behalf of the President. The main form of tenure in Tanzania is "granted right of occupancy" which can be acquired either through a grant from the commissioner of lands or through customs and tradition. Customary right of occupancy is another important form of land tenure. In areas where village land-use planning has taken or is taking place efforts are also being made to issue individuals or groups with "certificates of customary right of occupancy" (CCROs) (or "*hati miliki za kimila*" in Kiswahili). The objectives of the National Land Policy of 1995 include promoting and ensuring the wise use of land, guiding land allocation, preventing degradation and resolving land-use conflicts. This policy is one of the main guiding principles for local authorities, which urgently need decision-making mandates on land use and resources. The Forest Act of 2002 establishes that forest resources in Tanzania are managed under four types of forest land tenure: central government; local government; village land; and private and open access (unreserved forests on general lands). Forest land tenure is a combination of legally- or customarily-defined forest ownership rights and arrangements for the management and use of forest resources (Reeb and Romano 2007). According to the Forest Policy, forest resources include all timber and non-timber forest products. Land tenure issues are fundamental to the sustainable utilization of land resources, with the security of land tenure and forest resources influencing the level of investment in land and the conservation of land-based natural resources. Forest resource management therefore depends on land tenure and local community

tenure rights. However, the National Land Policy of 1995 has been found to favor centralized land administration, resulting in a land regime that relies on discretionary decision making by politicians and land officials (Sundet 2004), thus increasing insecurity in relation to land tenure and land rights. The National Land Policy has two objectives that are relevant to REDD+: ensuring land is put to its most productive use to promote the country's rapid socioeconomic development; and protecting land resources from degradation for sustainable development. The policy also aims to protect sensitive areas including water catchment areas, mountains, forests and wildlife seasonal migration routes.

### 1.5.6 National Water Policy (2002)

The National Water Policy recognizes the linkage between water and socioeconomic development, including environmental requirements. Its main objective is to develop a comprehensive framework for the sustainable development and management of the nation's water resources. It advocates community participation at all stages of water resource development and establishes the importance of water for domestic use, agriculture, livestock keeping, mining, energy, fisheries, the environment, human health, wildlife and tourism, and forestry. The policy proposes several measures to ensure the sustainable conservation and utilization of water resources, including the conservation of catchment forests of interest for REDD+. In catchment forests, most of which are under JFM and have a logging ban, use is limited to non-timber forest products (fruits, medicines, vegetables, firewood and fodder). Communities are likely to benefit more under REDD+ arrangements in catchment forests if favorable benefit-sharing mechanisms are put in place, which is something still being debated.

### 1.5.7 National Energy Policy (2003)

The National Energy Policy of 2003 takes into consideration the structural changes in the economy and political systems at the national and international levels. Increased investments following economic liberalization – especially in mining, tourism, manufacturing, finance and communication – demand reliable and cost-effective energy, while rises in the human population and urbanization have also increased pressure on energy (National REDD+ Strategy

of 2013). The main policy objective is to improve the welfare and living standards of Tanzanians and the policy also aims to contribute to the country's development process by establishing reliable and efficient energy production. Activities planned to achieve this policy's main objective include: developing domestic energy resources; promoting economic energy pricing; improving energy reliability and enhancing energy efficiency; encouraging commercialization and private sector participation; reducing forest depletion; and developing the human capacity for the management of energy resources. One major challenge to REDD+ initiatives is that over 90% of the energy consumed in Tanzania is from fuel wood and charcoal that come from the forests. Although the National Energy Policy advocates the use of alternative energy sources to wood, this is far from being realized, and in most cases such sources have ended at the experimental stages without scaling up. In 2014 and 2015, Parliament passed several pieces of legislation with implications for natural gas whose provisions may incentivize rural households to shift from fuel wood to natural gas for cooking.<sup>2</sup>

### 1.5.8 Agriculture and Livestock Policy (1997)

The Agriculture and Livestock Policy has implications for REDD+ as it is geared towards poverty alleviation through agriculture and livestock development. This includes the attainment of basic food security, improved nutrition standards and increased standards of living in rural areas, as well as increased foreign exchange earnings and labor productivity. This policy emphasizes that environmental issues cut across different sectors and advocates a coordinated approach to the conservation of environmental resources because they have a bearing on the development of the agriculture and livestock sectors. The policy points out that agriculture depends on land, water, forests and air. Forests are therefore an important natural resource for agriculture and livestock development and REDD+ must integrate these sectors.

2 The Gas Policy is available at: [http://www.mem.go.tz/wp-content/uploads/2014/02/THE\\_NATIONAL\\_NATURAL\\_GAS\\_POLICY\\_OF\\_TANZANIA\\_-\\_20131.pdf](http://www.mem.go.tz/wp-content/uploads/2014/02/THE_NATIONAL_NATURAL_GAS_POLICY_OF_TANZANIA_-_20131.pdf). The Petroleum Bill can be accessed at: <http://www.parliament.go.tz/assets/uploads/files/e69ca-petroleum1.pdf>.

### 1.5.9 Wildlife Policy (2007)

The Wildlife Policy of 2007 focuses on the conservation of wildlife and the resources that support it, including forests. One of the policy objectives that have a bearing on REDD+ initiatives is enhancing the conservation of biodiversity by administering wetlands. Among other things, the Wildlife Policy's objectives seek to achieve the preservation of aquatic habitats and their environment and the conservation of water catchment areas and soil resources. Major strategies set out in this policy include the creation and upgrading of a series of protected area networks and important wetlands in order to safeguard the country's biological diversity; and the incorporation of important wetlands into the network of wildlife protected areas. From the above it is clear that wildlife competes with other land uses. The fact that human-wildlife conflicts are common land-use problems facing Tanzania needs to be considered while implementing REDD+ projects. This policy further calls for the joint management of sustainable wildlife resources with adjacent communities through the establishment of "wildlife management areas," most of which are outside protected areas and on general land, thus creating conflicts with agriculture and livestock given the absence of clear village land-use plans.

## 1.6 Legal framework for REDD+ in Tanzania

Tanzania has several laws aimed at regulating the use and management of natural resources. The legal framework supporting environmental management in Tanzania promotes sustainable forest management and protection, which are important for the implementation of the REDD+ policy. There have been legislative changes following policy changes in the 1990s from a command and control approach to more participatory natural resource management approaches. Furthermore, most of the legislation enacted after the Rio Conference in 1992 provides for the conservation of biodiversity. Although it does not adequately reflect specific issues related to climate change mitigation, the legal framework in Tanzania promotes sustainable forest management and protection, which are important for the implementation of the REDD+ strategy in the country (National REDD+ Strategy of 2013). The Constitution of the United Republic

of Tanzania contains articles that provide the basis for the protection of natural resources, and this is linked to REDD+ initiatives. According to Article 27 of the Constitution, it is the duty of every citizen to protect the property of the United Republic of Tanzania (URT), including the environment and natural resources such as forests. A review of the legal instruments relevant to REDD+ in Tanzania is provided below.

### 1.6.1 Environmental Management Act of 2004

The Environmental Management Act of 2004 provides an environmental management framework for Tanzania. It establishes environmental management offices in local governments down to the village councils and town streets. The act emphasizes the management of forest resources, promotion of energy conservation and tree planting, conservation of biological diversity, management of rangelands, environmental land-use planning and climate change measures.

### 1.6.2 Forest Act No. 14 of 2002 (Cap. 323)

After the review of the National Forest Policy in 1998, the government enacted the Forest Act to put the policy into operation. The act provides the legal framework for the involvement of communities and the private sector in forest management. It establishes two forms of participatory forest management: community-based forest management and joint forest management. JFM is a collaborative management approach that divides forest management responsibilities and benefits between the forest owner and forest adjacent communities and it corresponds to land reserved for forest management, such as national forest reserves and local authority forest reserves. It is formalized through the signing of a joint management agreement (JMA) between village representatives and the government (either the district council or the Ministry of Natural Resources and Tourism). JFM can also be applied in private forests where private owners enter into management and use agreements with adjacent communities. CBFM is implemented in forests on surveyed village land as per Village Land Act No. 5 of 1999. Ownership and management of the declared and registered village land forest reserves is vested in the village council (Blomley et al. 2008; Community Based Forest Management Guidelines of 2007). This legal transfer of ownership, use rights and management responsibilities to the village governments enables villagers to harvest timber and other forest products,

collect and retain forest revenues, and arrest and fine offenders. These forest management models provide different benefit-sharing mechanisms that affect the implementation of REDD+ when it comes to carbon payments. Under CBFM all revenues and other products accrued from the village land forests remain within the village and are shared based on agreed mechanisms (Community Based Forest Management Guidelines of 2007), while the benefit sharing mechanisms under JFM in Tanzania are still being discussed.

The Forest Act prohibits some activities in protected forest reserves unless people hold legal concessions, licenses or permits. Prohibited activities include cutting down, felling, digging up or removing any tree. The act also permits licenses to be granted for certain activities in production forest reserves, including felling or extracting timber for domestic use; for commercial, export, or mining purposes; or for prospecting and exploration for mineral resources.

### **1.6.3 National Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999**

The Land Ordinance of 1923, which used to be the main statute governing land tenure and management in Tanzania, was repealed in 1999 and replaced by two pieces of legislation that are now the legal instruments for land management and use in Tanzania: National Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999. They establish the legal framework for land acquisition and allocation to different types of land use in relation to three land categories: general land, reserved land, and village land. General land is residual land that is available for other uses; reserved land denotes land set aside for special purposes, including forest reserves; and village land constitutes all land under village jurisdiction. The latter category corresponds to the Village Land Act, while the Land Act deals with the management of reserved land and general land. There is strong linkage between forest and land legislations. The Village Land Act of 1999 and the Land-Use Planning Act of 2007 establish relatively simpler and participatory procedures for establishing village forest reserves. Part V of Forest Act No. 14 (2002) establishes different types of forest reserves. Procedures for the creation of village land forest reserves (VLFs) are stipulated under Sections 32-41 of Part V of that act, starting with the

desire to turn village land into a forest reserve and followed by an application to the director of forestry for gazettelement and the eventual development of management plans as described in Part III, Section 14. Lands are also declared to be reserves under the provisions of other laws, including: the Local Government (District Authorities) Act, Cap. 287 (1982); the Ngorongoro Conservation Area Act, Cap. 413 (2000); Wildlife Conservation Act No. 5 (2009); the Public Land (Preserved Areas) Act, Cap. 338 (1966); the Environmental Management Act (2004); and the National Parks Act, Cap. 412 (2003).

Villages are registered under the authority of the commissioner of lands. However, it is claimed that most of the villages in Tanzania are not registered and their lands therefore fall under the category of general land. This creates land insecurity because by definition general land means public land which is neither reserved nor village land. This definition is raising concerns about freeing surplus land from villages, including forest lands, for public investments such as REDD+ activities (National REDD+ Strategy of 2013).

### **1.6.4 Wildlife Conservation Act of 2009**

The objectives of the Wildlife Conservation Act of 2009 include enhancing the protection and conservation of wildlife resources and their habitats (mainly forests and waters) in game reserves, game-controlled areas, wildlife management areas, dispersal areas, migratory route corridors, buffer zones, and of all animals found adjacent to these areas. The act applies to all central and local government bodies and to public institutions and agencies, as well as private and local communities which deal with wildlife issues. It provides for the establishment of wildlife management areas (WMAs) on village lands, normally beyond game reserve boundaries. This is done in recognition of the intrinsic relationship between wildlife, people and forest resources and the need to cooperate and coordinate conservation activities to ensure their sustainable utilization. According to Section 31(5) of the Wildlife Conservation Act, the activities undertaken in the WMAs must conform to the Forest, Beekeeping, Fisheries, Environmental Acts and other relevant laws. Other pieces of legislation that govern the management of wildlife in Tanzania and have a bearing on REDD+ include the Ngorongoro Conservation Area Act and the Tanzania National Parks Act. The Ngorongoro Conservation Area Act governs the conservation and management of natural

resources in the Ngorongoro Crater highland areas, while the National Parks Act governs the establishment, management and control of national parks. As stipulated in the Forest Act, all forests located in national parks are conserved and managed by the Tanzania National Parks Authority (TANAPA) under the National Parks Act. In addition, regulations passed under the Wildlife Conservation Act, Cap. 283 (R.E. 2002) devolve rights and duties to local communities next to WMAs, requiring them to develop resource-use plans.<sup>3</sup>

### **1.6.5 Local Government (District Authorities) Act of 1982 (Cap. 287) (R.E. 2002)**

This act gives the local authorities powers to make by-laws that may have a bearing on the management of environmental resources, including forests and forest land. Section 118 stipulates some of the powers that may be exercised in managing REDD+-related activities, including taking necessary measures for the prevention of soil erosion and the protection of crops; regulating the use of agricultural land; and establishing, preserving, maintaining and improving the use of forests and forest produce. In the same vein, the local authorities may declare any area of land to be reserved for purposes of natural regeneration; prevent the pollution of water and any river, stream, waterway or other water supply; and regulate or control the use of swamps or marshland (Section 5, points 91 and 95, of the First Schedule).

### **1.6.6 Local Government (Urban Authorities) Act (Cap. 288) (R.E. 2002)**

Some urban authorities own forests and REDD+ activities can also be carried out in these areas. The provisions of this law need to be considered while planning for REDD+ projects in Tanzania to ensure effective implementation. This act establishes the urban authorities and their functions and duties. It empowers them to make by-laws on controlling and regulating natural resource conservation and management activities, among others. One of the functions stipulated in Section 55 of the act is that urban authorities may

declare any area to be reserved land and control the use of swamps and marshlands. As REDD+ will involve revenues and fund management from carbon credits, the relevant provisions of Cap. 290 of the Local Government Finance Act (R.E. 2002) would have to be taken into account. This act basically governs local government revenue sources and funds.

### **1.6.7 National Land Use Planning Commission Act of 2007**

This act establishes the National Land-Use Planning Commission and its powers and functions. Among other functions, the commission is responsible for overseeing the effective protection and enhancement of land quality and encouraging better land-use plans. Together with the Land Act, this law sets out the main principles of land use aimed at putting into effect the basic principles of the National Land Policy. As a new land-use activity in Tanzania, REDD+ needs to be guided by the provisions of this legislation and other relevant laws. Section 22(1) of the National Land Use Planning Commission Act of 2007 recognizes every village council as the land-use planning authority for its respective village land. The village councils are obliged to promulgate village-use plans in accordance with the Village Land Act of 1999 and the Guidelines for Participatory Village Land-Use Planning. The village land-use plans are approved by the village assembly, making them legally valid.

The legal basis for village land-use planning is found in the Local Government (District Authorities) Act of 1982, which enables village governments to pass local by-laws. Village by-laws are a central component of the participatory land-use planning process because they provide the land-use plans with a legal basis for enforcement. These by-laws are based on sector legislation (e.g. forestry, wildlife, agriculture, water, and livestock) and must be passed by the village council and the village assembly. By-laws approved by the village assembly must then be approved by the respective local government authorities and the minister responsible for the sector involved, and once approved they have legal force equivalent to other laws in Tanzania. The village assembly comprises all adults aged 18 or older and is the highest village-level decision-making body. The village council, which is elected by the village assembly every five years, is the community's main

<sup>3</sup> The WMA regulations are available online at: <http://www.tnrf.org/files/WMA%20regulations%202012.pdf>.

executive body, headed by a village chairman and with committees on finance, development, environment and natural resources, education, and water, among others (UCRT 2010). From the above, it is clear that VLFRs are an integral part of the village land-use plans because all sectors are represented in the village council. Furthermore, the VLFRs are recognized by the National Land Act (1999), Village Land Act (1999), Forest Act (2002), Local Government (District Authorities) Act (1982) and other natural resource-based laws. However, in their study on land-use planning and resource assessment in Tanzania, Kauzeni et al. (1993) noted problems related to a lack of integration and to confusion and disagreement among different sectors on the roles to play in the planning process. Thus, to be successful, REDD+ must build on the existing legal structures and be an integral part of village land-use planning as a new natural resource use product.

#### **1.6.8 Water Resources Management Act of 2009**

Water Resources Management Act No. 11 of 2009 establishes an institutional and legal framework for the management and development of water sources. This act is based on promoting the principles of the National Water Policy and also addresses water source ownership and management. It establishes the National Water Board with the power, among others, to regulate water catchment areas and put water management plans in place. The Forest Act also recognizes water catchment forest reserves as important protected areas. The definitions of national and local government forest reserves in Section 22 (2 and 4) of Forest Act No. 14 of 2002 include forest reserves for protecting watersheds, soil conservation and the protection of wild plants. This definition is in line with provisions in the Water Resources Management Act on managing water sources.

# 2 overview of different levels of government

## 2.1 The decentralization process in Tanzania

During the past two decades, extensive policy reforms have transformed the institutional conditions for natural resource governance in most developing countries, including Tanzania. After independence, the centralized governments in such countries took it upon themselves to govern all the valuable resources under their territorial control (Andersson 2006). The first 30 years of independence in Tanzania was an era of one-party state socialism. Only people belonging to the ruling party participated in decision-making processes and the majority of people were excluded. Decentralization programs in Tanzania in the 1970s were largely about the top-down deconcentration of central government institutions and failed to empower local people (Junge 2002). There are several forms of natural resource governance decentralization, but democratic decentralization is the strongest one, increasing grassroots participation in local decision making and theoretically providing the greatest benefits (Ribot 2002b).

Decentralized natural resource management in Tanzania revolves around the idea that the State's failure in managing natural resources is attributable to the concentration of decision-making powers and ownership in the central government (Mniwasa and Shauri 2001). The first Tanzania National Forest Policy was produced during the colonial period in 1953 and reviewed in 1963 after independence. For the past five decades, Tanzania has adopted several decentralization programs geared towards promoting rural and urban development. These included the decentralization of government administration in 1972, aimed at giving administrative, executive and judicial decision-making powers to the people at the grassroots level on matters affecting their welfare and of local importance and providing

them with the personnel and finances for their implementation (Ngwilizi 2001; Conyers 1981). The structure developed for decentralized government administration consisted of regional development committees, district development councils and ward development committees (Ngwilizi 2001; Mniwasa and Shauri 2001). However, the administration structures introduced in 1972 basically functioned as local branches of the central government (deconcentration) and thus failed to be downwardly accountable to the local people.

Decentralization by devolution initiatives started in 1982 with the reintroduction of local government administration (Mniwasa and Shauri 2001), re-establishing rural councils and rural authorities as a result of the failure of the decentralized government administration structures to deliver goods and services to the local people (Mniwasa and Shauri 2001). Consequently, local government elections took place in 1983 and the functioning councils were established in 1984. Decentralization in the 1990s can be viewed in light of the economic, social and political changes that have taken place in Tanzania since independence. The introduction of multi-party democracy in 1992 expanded the potential space for respecting human rights, basic freedoms, the rule of law, political transparency and good governance (Mniwasa and Shauri 2001). Tanzania is implementing decentralization by devolution through the Local Governments Reform Program (LGRP). The decentralization of government and reform of local governments includes political, financial and administrative decentralization and changes in central-local relations. Through the LGRP, the government intends to strengthen local authorities and transform them into effective instruments of social and economic development at the local level. The program's main goal is to contribute to the government's efforts to reduce the proportion

of Tanzanians living in poverty. Its purpose is to improve the quality, access and equitable delivery of public services, particularly to the poor (Ngwilizi 2002).

The decentralization of forest management in Tanzania is implemented under participatory forest management in the form of joint forest management (JFM), community-based forest management (CBFM) and privatization (URT 2006). Under JFM, the government owns the forest and involves local communities in management activities. This form of PFM takes place on reserved land such as national forest reserves and local government reserves or private forest reserves (Kajembe et al. 2008). The villagers typically enter into JMAs that share management responsibilities with the owner (Blomley and Ramadhani 2007). In CBFM, on the other hand, communities are the owners, right holders and duty bearers in the forest management (URT 2006). This form of PFM takes place on surveyed village land as per the Village Land Act (1999) and is managed by the village council (Blomley and Ramadhani 2007). In CBFM, villagers have full ownership and management responsibility for an area declared as a village land forest reserve (VLFR), as stipulated in Forest Act No. 14 of 2002. All the costs and benefits related to the management and utilization of the VLFRs correspond to the village government. After the village forest reserves have been established and are functioning, the central government plays a minimal role in this form of PFM and the role of the districts is limited to monitoring (Blomley and Ramadhani 2007). PFM can be applied to all types of forests including montane forests with high biodiversity values and lowland miombo woodlands with high levels of use and disturbance (Blomley and Ramadhani 2007). Under the two arrangements, Forest Act No. 14 of 2002 advocates the decentralization of forest management with an emphasis on clear forest land tenure<sup>4</sup> and tree tenure<sup>5</sup> rights.

4 Forest land tenure refers to the right to own, use and control land or the forest resources on that land.

5 Tree tenure refers to the right to own and use tree resources on the land owned.

## 2.2 Local and regional government autonomy

The goal of decentralization is to promote democratic, accountable and autonomous local government authorities with discretionary powers and a strong financial base. The government is administratively divided into regions, districts, divisions and wards, right down to villages/streets. The local government is divided into urban and rural authorities. Urban authorities consist of city, municipal and town councils, while rural authorities include district, township and village council authorities. The rural and urban authorities have autonomy in their areas of jurisdiction. In the rural system, the “*Vitongoji*” (smallest unit of a village) is the lowest level of administration, while the smallest administrative unit in an urban authority ward is the “*Mtaa*.”

Articles 145 and 146 of the Constitution of the United Republic of Tanzania state categorically that the National Assembly must provide for local government through legislation. Article 146 further states that one of the objectives of local governments is to consolidate democracy in their areas of jurisdiction and to apply it to accelerate the development of the people. Local governments are the level of government closest to the people and are therefore responsible for serving the political and material needs of the people and communities in specific local areas. They provide opportunities for local citizens’ democratic participation in matters affecting them directly. Local governments are meant to be accountable to their citizens through regular elections held in rural areas from the district to village levels. The elections are managed by the National Election Committee and PMO-RALG. The candidates must be nominated by a political party. Table 1 below shows the name of the executive body and its means of recruitment for each level of government.

The main legislative texts bestowing autonomy on local governments include the Constitution, the Local Government (Urban Authorities) Act of 1982, Local Government (District Authorities) Act of 1982, the Local Government Finance Act of 1982, the Urban Authority (Rating) Act of 1983, the Regional Administration Act of 1997 and the Local Government Laws (Miscellaneous Amendments) Act of 1999. The principal local government acts have been amended since 1999 as part of the LGRP. The specific powers of district and village governments are described in Section 2.3 below.

**Table 1. Governance levels and their means of recruitment.**

Governance level	Executive/legislative body	Form of recruitment
National	President	<b>Elected</b> as per Chapter 2, Part I, Article 38(1) of the Constitution of the United Republic of Tanzania.
	Vice President	<b>Elected</b> as per Chapter 2, Part I, Article 38(1) of the Constitution (elected in the same election as the President).
	Prime Minister, Cabinet and the Government	<b>Appointed</b> by the President as per Chapter 2, Part III, Article 51(1) of the Constitution, subject to parliamentary approval.
	Ministers and Deputy Ministers	<b>Appointed</b> by the President under Article 55(1-5) of the Constitution.
	Parliament	Chapter 3 of the Constitution concerns the legislature of the United Republic of Tanzania, which is defined in Article 62(1-3). Members are <b>elected</b> from different political parties in various constituencies as per Articles 76-78 of the Constitution.
	Minister for Lands	<b>Appointed</b> by the President under Article 55(1-5) of the Constitution. The Minister exercises powers over land on behalf of the President as stipulated under Section 8 of the Land Act of 1999.
	Commissioner of Lands	Appointed under Section 9 of the Land Act of 1999, with functions provided under Section 10 of the same act.
Regional level	Regional Commissioner	Regional commissioners are <b>appointed</b> by the President under Article 61(1-2) of the Constitution.
	Municipal Director	<b>Appointed</b> by the President under Article 36(2) of the Constitution.
District level	District Commissioner	<b>Appointed</b> by the President under Article 36(2) of the Constitution.
	District Executive Director	<b>Appointed</b> by the minister responsible for local governments.
	District Authority	Established under Article 145(1) of the Constitution and Section 5(1) of the Local Government (District Authorities) Act of 1982. Members of the District Council are <b>elected</b> as per Section 35(1)(a-f) of the Local Government (District Authorities) Act of 1982.
	District Council Chairman	The District Council Chairman is <b>elected</b> under Section 36(1-3) of the Local Government (District Authorities) Act of 1982.
Township level/ division	Township Authority	Established under Section 13(1) of the Local Government (District Authorities) Act of 1982.
	Township Authority Director	<b>Appointed</b> by the minister responsible for local governments
	Township Authority	Members of the Township Council are <b>elected</b> as per Sections 46 and 47 of the Local Government (District Authorities) Act of 1982 and Section 22 of the Local Government (Urban Authorities) Act of 1982.
Ward level	Ward Development Committee	Established under Section 31(1-2) of the Local Government (District Authorities) Act of 1982. Members are the <b>elected</b> village chairmen and village executive officers
	Ward Executive Officer	<b>Appointed</b> by the district executive director
Village level	Village Authority	Established by registration under Section 22(1) of the Local Government (District Authorities) Act of 1982. The executive organ is the village council, established under Section 25 of the Local Government (District Authorities) Act of 1982. Village council members are <b>elected</b> by the village assembly.
	Village Assembly	Established under Section 24 of the Local Government (District Authorities) Act of 1982. The chairman of the village assembly is <b>elected</b> by village adults aged 18 or older.
	Village Executive Officer	Appointed by the district executive director

## 2.3 Central and local government powers

Tanzania has a two-tier system of government, consisting of the central government and local government (regional administrations and district councils).

### 2.3.1 Central government powers

The central government oversees the functions of all ministries and has over-riding powers within the framework of the Constitution of the United Republic of Tanzania. All laws in Tanzania are enacted and approved by the Parliament in its representation of the people. Parliament's legislative powers are stipulated under Article 64(1) of the Constitution, while the procedures for enacting legislation are established under Articles 97-99. Most local government finances come from the central government. Salaries for the local government and other ministry staff are funded directly by the central government, which also transfers to local governments recurrent grants – for agricultural extension, education, health, water, roads and administration, among others – and development expenditure grants. The review of policies and legislation in Section 1 of this document showed that most of this legislation preserves centralized state control, meaning that regulations need to be put into place to protect the rural poor from being exploited by financially strong potential land buyers. The central government continues to exercise excessive control over local governments, such as approving their revenue sources, budgets and by-laws. Despite the decentralization efforts, most rural development activities in Tanzania are still coordinated centrally. The changed central-local relations that require central government agencies and ministries to concentrate on policy making, support and facilitation, monitoring and quality assurance and control within the law leaves the central government with more powers over the local government authorities (MRALG 1998).

Central government powers in relation to land, forests, planning, budgeting and revenue collection, among others, are established under different pieces of sector legislation. Table 2 below provides a few examples. As explained above, the central government has over-riding powers in relation to the local governments in terms of policy making and legislation.

### Parliament's powers

Tanzania's Parliament is the country's supreme legislature, consisting of the President of the United Republic and the National Assembly. Parliament grants funds for running the country's administration and is a very effective instrument for overseeing government programs and plans. It can also oversee the executive branch's actions by acting as a watchdog to make sure that government is accountable for its administration. Parliament's most important function is to enact laws and, in accordance with Article 64(1) of the Constitution, it is sovereign in the sphere of legislation. As the constitution establishes Tanzania as a United Republic, the Tanzanian Parliament is a Union Parliament and exercises autonomous powers in the sphere of both union matters and non-union matters not under the purview of the government of Zanzibar. Union matters are restricted to defense and security forces, as stipulated in Article 147 of the Constitution. Land and forestry are among the non-union matters administered through line ministries in the Tanzania mainland. Parliament has the following roles: to pass laws for good governance; to provide the means for carrying out the work of government; and to scrutinize government policy and administration, including expenditure proposals.

### Prime Minister's Office-Regional Administration and Local Government (PMO-RALG)

According to Article 52 of the Constitution, the prime minister is responsible for supervising and controlling the activities of sector ministries and is the leader of government business in the National Assembly. The prime minister is also responsible for: regional administration and local government through the respective minister of state; the Government Press; disaster preparedness and coordination of the management of civic contingencies (relief); national festivals and celebrations, the Tanzania AIDS Commission; the Office of the Registrar of Political Parties; the National Electoral Commission; the Drugs Control Commission; the Tanzania Investment Center; and the Tanzania National Business Commission. The role of the PMO-RALG is to coordinate operations related to regional administration and local authorities. As a proponent of decentralization by devolution, the PMO-RALG encourages funds for the implementation of development activities in local government authorities to be budgeted and channeled directly to that level.

**Table 2. The relation between central governance levels and land and other natural resources.**

Governance level	Executive/legislative body	Powers/functions in relation to land
National	President	Articles 35 and 36 of the Constitution establish the President's powers to discharge government business and authority to create offices and appoint officers. All land in Tanzania belongs to the President as its trustee under Section 4(1) of the Land Act of 1999.
	Vice President	The President's principal assistant as per Article 47(1a-c) of the Constitution.
	Prime Minister, Cabinet and the Government	Article 52(1-3) of the Constitution establishes the prime minister's functions and authority related to the control, supervision and execution of day-to-day government functions and affairs. Article 53(2) establishes the power to determine the policy of the government in general.
	Ministers and Deputy Ministers	In their respective sector ministries, ministers discharge their executive functions on behalf of the President as per Article 35(1) of the Constitution.
	Parliament	All laws in Tanzania are enacted and approved by Parliament in representation of the people. Parliament's legislative powers are stipulated in Article 64(1) of the Constitution and the procedures for legislation are established in Articles 97-99.
	Minister for Lands	This minister exercises powers over land on behalf of the President, as stipulated in Section 8 of the Land Act of 1999.
	Commissioner of Lands	The functions of the commissioner of lands are established under Section 10 of the Land Act of 1999. The Commissioner is the principal administrative and professional advisor to the government on all matters related to land administration.
	Regional level	Regional Commissioner

### 2.3.2 Local government powers

#### District government legal functions and powers

In 1982, the Parliament of the United Republic of Tanzania passed the District Authorities Act and the Urban Authorities Act. These two pieces of legislation give the minister responsible for local government the mandate to establish local government authorities. Local governments are either urban authorities (cities, municipalities, and town councils) or rural authorities (district councils), including small towns (township authorities) and village councils. At around

the same time, Parliament passed the Local Government Finance Act of 1982. Table 3 below shows the legal functions and powers of the district and village governments in relation to forest and land management and the associated legislations that have a bearing on REDD+ initiatives. However, although these functions are legislatively assigned to the local government, most services and infrastructure are still provided by the central government or its executive agencies. Furthermore, most of the funding, for managing public roads for example, comes from the central government through the Road Fund or development partners.

**Table 3. The relation between local governance levels and land and other natural resources.**

<b>Governance level</b>	<b>Executive/legislative body</b>	<b>Powers/functions in relation to land</b>
<b>District level</b>	District Authority	The basic functions and duties of local government authorities are established in Section 111(1-2) of the Local Government (District Authorities) Act of 1982. One of the functions stipulated in 111(1)(a) is to further the national policies and plans for rural and urban development. Also stipulated in the same act are the powers to acquire land in Section 114(1-3), the specific powers of the District Authority in Section 118(2) and the power to make by-laws in Section 148(1). Section 14 of the Land Act of 1999 prohibits local government authorities from offering or granting any right of occupancy unless specifically authorized by the commissioner of lands. District-level land-use planning is administered by the commissioner of lands through district advisory committees, as stipulated in Section 4 of the National Land Use Planning Commission Act of 1985. Section 115 of the Local Government (District Authorities) Act of 1982 empowers local governments to sell, let and mortgage land and charge rents or fees. District authorities charge forest royalties and fees as prescribed by the minister responsible for forests under Sections 77 and 78 of the Forest Act of 2002.
<b>Township/ division level</b>	Township Authority	Sections 132–140 of the Local Government (District Authorities) Act of 1982 establish various functions and powers for the township authorities related to land and other resources. Section 155(1) empowers the township authority to make by-laws.
<b>Ward level</b>	Ward Development Committee	Section 32(1)(a-e) of the Local Government (District Authorities) Act of 1982 stipulates the authority corresponding to the ward development committee, including the formulation and submission to the district council of proposed by-laws related to the ward's affairs.
<b>Village level</b>	Village Authority	The village council is the organ with all of the executive powers in relation to all of the village's business. Its functions and powers are established in Section 142(1-3) of the Local Government (District Authorities) Act of 1982. Section 163 of this act vests legislative powers in the village council, while Section 8(1) confers village land administration on the village council. Section 8(5) of the Village Land Act of 1999 allows the village council to issue customary right of occupancy following approval by the village assembly. Under Section 33(1a) of the Forest Act of 2002, the village council can declare a village land forest reserve following approval by the village assembly. Powers to gazette village land forest reserves are vested in the director of forestry under Section 33(1b) of the Forest Act of 2002, while Section 11 of that act allows local authorities to develop management plans as part of land-use planning. Section 9(2,3) of the Local Government Finance Act of 1982 empowers the village council to make by-laws on fees and charges for licenses issued.
	Village Assembly	The village assembly is the supreme authority on all general policy-making matters related to the affairs of the village, as established in Section 141 of the Local Government (District Authorities) Act of 1982. Customary rights of occupancy must be approved by the village assembly under Section 8(5) of the Village Land Act of 1999.

### Legal mandates of village governments

The principle of subsidiarity emphasizes that decisions should be made at the lowest level where the relevant competencies exist. This principle can guide the division of powers related to decision-making, rule-making, implementation, enforcement and the resolution of disputes among different levels of government and institutions (Ribot 2002b). The local government decision-making system is well established with the residents of a given area and linked to the *Vitongojis* in rural areas and the *Mtaa* committees in urban areas, which are designed to mobilize citizens' participation in local development. Citizens' participation in local government decision-making is encouraged by the amendments of the Local Government (District Authorities) Act of 1982, which allow councils to organize public hearings for people to question political leaders and staff. The councils have also been empowered to establish special kinds of service boards, open to all citizens in the area and providing an opportunity to influence service provision. Participatory budgeting is another crucial means of increasing citizens' powers in local government decision making. This is enabled by bottom-up budgeting through the ward development committees and the democratic structures above them.

Central to the empowerment notion is the concept of delegation and decentralization of decision-making powers (Ribot 2002b). Management theory scholars have related empowerment to delegating or sharing power with subordinates (Conger and Kanungo 1988) and it can also be considered as a motivational construct in cases where power and control are used as motivational conditions that are internal to individuals (Conger and Kanungo 1988). Decentralization involves both the transfer and redistribution of powers (Larson et al. 2007) to lower-level actors representative of and downwardly accountable to local peoples (Larson and Ribot 2004) and there are claims that devolution can improve efficiency, equity, democracy and resource management (Larson and Ribot 2004). It is expected to promote local empowerment and decision making over natural resource use (Larson et al. 2007). Under the appropriate legal framework, the right motivation, bottom-up interventions and clear definitions of property and forest land tenure rights, the local people have real potential to become the strongest and most cost-effective

guardians of forest resources (Kajembe et al. 2003). Decentralization, in whatever form, affects how local people value, access, use, manage, and voice their claims to forest resources (Ribot et al. 2006). It is, however, important to note that there are elements of domination in all organizations and communities, as well as forms of differentiation, struggle and distinction between different classes of individuals. Thus, contrary to their objectives, institutions and organizations may become important instruments of control and domination and may not necessarily bring about more power and freedom for the excluded or the poor.

Although central governments are allocating powers to local institutions to assess whether local institutional choices will lead to effective decentralization, the key question is whether the selected institutions represent and are accountable to the populations for which they are taking decisions (Ribot 2002a). In some circumstances joint forest management in Tanzania has been found to benefit leaders and more powerful village members in terms of access to benefits and the power to control the access and benefits of the majority of villagers who are less powerful and more vulnerable (Vyamana 2009).

### 2.4 Financial sources for central, regional and local governments

The three government levels receive their finances from national budget allocations through different ministries. Apart from the Prime Minister's Office-Regional Administration and Local Government, other ministries such as agriculture, health, infrastructure, natural resources and tourism carry out activities using their approved budgets. Local government funds and resources are well stipulated in the Local Government Finance Act. Apart from the national budget allocations, local governments can raise funds from different sources, including fees (e.g. on forest products), licenses, property taxes and rents, charges and fines. Generally speaking, the local authorities have a weak revenue base. To strengthen this, the Local Government Finance Act of 1982 was amended in 1999 to appoint local governments to be licensing for commission agents, manufacturers' representatives, brokers, travel agents, motor vehicle sales, import trade, regional trade, and companies' co-operative societies. Section 9(1) of the Local Government Finance Act of 1982 establishes the sources of

revenue for village councils, including charcoal and timber businesses. In Section 9(2,3) of this act, the village council is empowered to make by-laws to prescribe reasonable fees, charges, and tariffs for any license or permit it issues. The Annual Finance Act empowers the minister of finance to raise money by imposing taxes, levies, fees and charges to mobilize funds to finance the budget, while the Annual Appropriation Act empowers this minister to draw money from the consolidated fund and allocate it to various votes.

Broadly speaking, the Local Government Reform Policy (LGRP) states that the government's objectives are to:

- Improve local government revenue generation
- Promote transparency and fairness in the allocation of sufficient funds
- Encourage equity in access to services
- Ensure efficient use of resources for service delivery at all levels of government.

Overall, the LGRP has yet to lead to significant improvements in the local governments' own revenue collection. However, there have been reforms in terms of the fiscal transfer from the central government to the local governments of both recurrent and development funds (Kajembe and Marageri 2009).

The Tanzanian government's overall revenue, expenditure and financing are managed by the Ministry of Finance and Economic Affairs. This ministry advises the government on the broad financial state of affairs in support of the government's economic and social goals and oversees budget preparation and execution, while also presenting the budget speech to Parliament each year. The ministry monitors fiscal developments during the year and reports to Parliament, as well as formulating and managing revenue policies and legislation that are presented to Parliament. Ministry of Finance responsibilities include preparing the central government budget; preparing tax policies and legislation; managing government borrowing on financial markets; proposing expenditure allocations for different government institutions; transferring central grants to local governments; and developing the regulatory policy for the country's financial sector in cooperation with the Bank of Tanzania. The ministry is also essentially concerned with the performance of the Tanzanian economy, international trade, monetary affairs and other

aspects of the global economy that affect Tanzania's domestic performance. The ministry works in close collaboration with other ministries due to its wide-ranging advice and policy role to ensure that the government's overarching poverty reduction strategies are implemented and its objectives attained. This is an important ministry for REDD+ revenues and benefit-sharing discussions as it encompasses all of the country's revenue and expenditure issues. In this regard, the ministry recognizes the importance of an open, accessible budget-planning process, which plays an important role in more effective and responsive decision-making (<http://www.mof.go.tz>).

## 2.5 The stages of the decentralization process

Decentralization in Tanzania is seen as an ideal approach to rural and urban development. This is based on the idea that it encourages local initiatives in the development process by giving people more decision-making power and involving them in the planning, implementation and evaluation process.

After independence, the government of Tanzania adopted several decentralization measures geared towards promoting rural and urban development, including:

1. The introduction of the Regional Development Fund in 1967, aimed at promoting self-initiatives in the development process.
2. Re-organization of the Ministry of Economic Affairs and Development Planning between 1968 and 1969, posting regional economic secretaries to selected regions to coordinate the planning process.
3. Ministerial reorganization in 1969, which brought changes to the cooperatives and the creation of the Ministry of Regional Administration and Rural Development
4. Decentralization of the government administration in 1972. The period 1972-1982 is known as the decentralization period in Tanzania because the move was designed to "give power to the people." The enactment of the Villages and Ujamaa Villages Act of 1975 established village councils that further strengthened the decentralization process (Ngwilizi 2001, 2002).

The deconcentration of the 1970s and early 1980s did not culminate in increased public participation in the development process and accelerated rural development. Instead, there was rapid deterioration of service delivery in both rural and urban areas. The local governments were therefore reintroduced in 1984 following the approval of a set of local government acts in 1982 (Ngwilizi 2002). In the following year, the Constitution of the United Republic of Tanzania was amended to effectively entrench local government in the country's system of governance. Despite these positive interventions, the re-introduced local government system did not live up to people's expectations in terms of improved service delivery as the new local institutions and governments inherited the problems that had affected the previous deconcentrated system.

Under the ruling Chama Cha Mapinduzi party, the government of the United Republic of Tanzania promised elections in 1995 to strengthen the local government authorities. The overall objective was to improve the quality of and access to public services provided or facilitated by the local government authorities and accelerate development at the local level (Ngwilizi 2002). The vision of local government in the 1990s was a shared one of a new local government system in Tanzania with the following characteristics (MRALG 1998): Autonomous local authorities that are free to make policy and operational decisions consistent with government policies without undue interference from central government institutions.

1. Local authorities with cost-effective service delivery. The strength and effectiveness of the local governments is underpinned by the individual local government authorities having the necessary resources and authority to effectively perform the roles and functions they have been mandated to perform.
2. Democratic local government in which the leadership is elected through a fully democratic process that extends to village councils and other grassroots organizations.
3. Local government that is efficient in delivering services to the people in its area of jurisdiction.
4. Local governments that facilitate the participation of the local people in planning and executing their development programs for poverty reduction.
5. Subsidiarity; political accountability and transparency; ethical conduct; and new relations between the central and local levels.

The formulation of the shared vision was followed by the government's endorsement of the Local Government Reform Agenda and the Policy Paper on Local Government Reform. The Local Government Reform Program (LGRP) was later developed and approved to guide the structured attainment of the declared vision of future local government authorities (Ngwilizi 2002). The LGRP has the following six components aimed at achieving the overall objective of improving the quality of and access to public services provided through or facilitated by local government authorities:

1. *Governance*: to establish broad-based community awareness of participation in the reform process and promote the principles of democracy, transparency and accountability.
2. *Local government restructuring*: to enhance the effectiveness of local government authorities in the sustainable delivery of quality services.
3. *Finance*: to increase the resources available to local government authorities and improve the efficiency of their use.
4. *Human resource development*: to improve the accountability and efficiency of human resource use at the local government level.
5. *Institutional and legal framework*: to establish enabling legislation for the effective implementation of local government reforms.
6. *Program management*: to support the effective and efficient management of the overall LGRP.

The over-arching goal for the reform program and its six components is to create good local governance based on political and financial accountability, democratic procedures and public participation (Ngwilizi 2002).

## 2.6 Public participation mechanisms in the decentralization process

The concept of people's participation has been part of development discourses since the 1970s when top-down approaches were criticized (Chasek et al. 2006). Most policies in Tanzania emphasize the participation of citizens in development activities, including the Agriculture Policy of 1997, which aimed to promote the integrated and sustainable use and management of natural resources such as land, soil, water and vegetation in order to conserve the environment. The National Land Policy of 1995, among others, emphasizes participatory land-use planning; the Forest Policy

of 1998 encourages community empowerment and participation in forest management under JFM and CBFM; the National Environment Policy of 1997 stresses community participation in environmental action; and the Wildlife Policy of 1997 advocates communities and other stakeholders taking joint responsibility for the sustainable management of wildlife and other natural resources. Meanwhile, the Development Vision 2025 favors equal opportunities for all citizens to participate in and contribute to development by empowering people to determine their own lives and manage their own development.

Participatory approaches are said to improve the efficiency and effectiveness of investment and contribute to democratization and empowerment processes (Clever 1999). Efficiency is a measure of how economically various intervention inputs are converted into outputs. Participation was promoted as a means to distance people or communities from the State. The inclusion of those most affected by the proposed projects in decision making is central to this. Effective participation requires people's involvement as a group, such as a village community, and not as individuals. In recent years increasing emphasis has been placed on community participation through group formation in all forms of development interventions. But although such groups are meant to involve and benefit all sections of the community, they can exclude significant sections such as women. In addition to the endowments and attributes of those affected, participation is especially determined by rules, norms and perceptions (Agrawal 2001). Hayes (2006) found that forest protection is influenced by rules used by residents rather than the officially designated protection rules. The justification of participatory development approaches is based on their sustainability, relevance and empowerment. There are two different arguments for participation: as a means of achieving better project effects (an efficiency argument); and as a process that enhances the capacity of individuals to improve their own lives and facilitates social change to the benefit of marginalized groups (equity and empowerment arguments). However, the question of who exactly is to be empowered has been found to be unclear in many policy documents (Clever 1999).

The Government Policy Paper on Local Government Reform published in 1998 presents some principles of the local government reform.

These include letting people participate in government at the local level and elect their councils; bringing public services under people's control through their local councils; giving local councils powers over all local affairs (political devolution); and improving financial and political accountability. The Public Finance Act of 2001 (as amended in 2004) provides a legal framework for the budget system with regard to revenue, expenditure control and accountability.

Citizen participation in local government decision-making is emphasized by the amendments to the Local Government (District Authorities) Act of 1982. This act enables councils to organize public hearings in which people can question their political leaders. It also empowers councils to establish special kinds of service boards that are open to all citizens in the area, providing an opportunity to influence service provision. Participatory budget making has been enabled by bottom-up budgeting through ward development committees and has become a means for increasing resident participation.

## 2.7 Government control

Under the decentralization-by-devolution policy, Tanzania has several ways of controlling and monitoring government development projects, budgets and activities.

### 2.7.1 Budget control

The government budget is a crucial tool for the implementation of policy decisions to achieve social, economic and political objectives. It basically involves determining resources and their use. In addition to being a tool for economic and financial management, it also serves as an accountability tool. A body of laws, regulations and administrative procedures governs the budget system and the allocation of formal powers and rights in the budget cycle. Articles 135–144 of the Constitution outline the provisions regarding the finances of the United Republic of Tanzania, indicating who has the mandate to prepare and submit budgets to Parliament, as well as the type of revenue receipts, accounts and authorization of payments. Meanwhile, the Public Procurement Act of 2004 provides the legal framework for the procurement of goods and services using public funds and Local Government Finance Act No. 9 of

1982 (as amended by Miscellaneous Act No. 6 of 1999) establishes the requirements and procedures to be followed by local government authorities in preparing annual revenue and expenditure estimates. And finally, the Pay Master General's Circulars stipulate directives for the accounting officers to follow in the accounting and control of government revenues and expenditures during the financial year. Although these pieces of legislation may have a bearing on the management and use of finances generated through REDD+ initiatives, it remains rather unclear how such laws will affect benefit-sharing arrangements under REDD+ policies.

### **2.7.2 Controller and Auditor General (CAG)**

The CAG is another government control body centralized under the central government in the Ministry of Finance. There are CAG offices in the regions but they are directly under the Controller and Auditor General and only internal audits are established at the local government levels. The CAG's statutory duties are stipulated in Article 143 of the Constitution of 1977 (as periodically amended) and further emphasized by Public Audit Act No. 11 of 2008 (as amended) and the Public Audit Regulations of 2009. Public auditing is also stressed in Public Procurement Act No. 21 of 2004. Sub-article 5 of Article 143 of the Tanzanian Constitution of 1977 requires the CAG to audit all public authorities at least once every financial year. Section 28 of Public Audit Act No. 11 of 2008 authorizes the CAG to carry out performance auditing (value-for-money auditing) for the purpose of establishing the economy, efficiency and effectiveness of any resource expenditure in the ministries, independent departments, executive agencies, local government authorities and public authorities. The CAG recently produced a performance report on the management of wildlife hunting in game reserves and game controlled areas in Tanzania. This report was submitted to the President and then through him to the Parliament of the United Republic of Tanzania in 2013. Thus, although the chief executive officers of the urban and district local governments are the account holders for their allocated budget, they are centrally controlled and their expenditures are monitored.

### **2.7.3 Prevention and Combating of Corruption Bureau**

In order to ensure tight control of the management and use of resources in Tanzania, the government established the Prevention and Combating of Corruption Bureau following the repeal of the Prevention of Corruption Act (Cap. 329) (R.E. 2002) and the subsequent approval of Prevention and Combating of Corruption Act No. 11 of 2007. The latter act was drawn up to promote and enhance good governance and the eradication of corruption. One of the Prevention and Combating of Corruption Bureau's mandates is to examine and provide advice on the practices and procedures of public, parastatal and private institutions in order to facilitate the detection of corruption and ensure the revision of work methods that appear to aid the efficiency and transparency of the institutions. This instrument is important for the implementation of any REDD+ project as the activities involved may be affected by different types of corruption.

## **2.8 A balance of the decentralization process**

Although the legislation establishing local government authorities clearly stipulates their functions, most services and infrastructure are still being provided by the central government or its executive agencies. The budgeting system is still centralized with funds coming from the central government. The local authorities must produce audited financial reports, which is normally done by the Controller and Auditor General under the Ministry of Finance, which has a controlling influence on the financial management of the whole country. The central government also manages all of the country's road networks, with the Tanzania Road Fund centralized under the minister for works. As a result, and as discussed in Section 2.3, decentralization is clearly still ongoing in Tanzania, with the central government maintaining powers over the local government authorities. It is envisaged that the Local Government Reform Program will make Tanzania a fully decentralized government, achieving decentralization by devolution.

# 3 Mechanisms for the distribution of financial resources

For several years now, revenue collection from forest resources in Tanzania has been based on timber and non-timber forest products, excluding carbon. This activity was previously under the Ministry of Natural Resources and Tourism's Forest and Beekeeping Division. However, following the Public Service Reforms Program, whose main focus is to improve the service delivery and regulatory functions of ministries, independent departments and agencies through a more efficient public service, the Tanzania Forest Service was established in 2010. The TFS was created as a semi-autonomous government executive agency under the Ministry of Natural Resources and Tourism through the Executive Agencies Act (Cap. 245) and Government Notice No. 269/2010. It is managing about 506 forest reserves, while the government also administers about 161 through local government authorities. The TFS is currently the main collector of forest revenues for all central government forest reserves and forests on general land, with local governments also collecting revenues from forests under their jurisdiction. Table 4 shows forest types, land categories, applicable legislation and jurisdiction. The TFS stresses participatory forest management in the form of JFM and CBFM as a policy approach to effectively manage non-reserved forests on village lands. However, while it is clear that forest benefits accrue to communities under CBFM, there is no benefit-sharing formula under JFM, which may not be very good in terms of the process of implementing the REDD+ strategy at this stage in Tanzania. Thus, mainstreaming REDD+ into forest management in Tanzania requires an understanding of the revenue collection and distribution mechanisms in the forest sector and the governing financial regulations.

## 3.1 Forest fees and other royalties

Part X, Sections 77–79 of Forest Act No. 14 (Cap. 323) of 2002 establishes financial provisions and the Forest Fund. Section 77 of the act empowers

the minister to determine and prescribe the services and permits for which fees shall be charged by forest managers and their corresponding charge rates. The royalties for forest produce are based on its potential market value, its accessibility, the profitability of the enterprise, and principles of sustainability related to harvesting the produce. Government Notice No. 433, published in 2013, sets the royalty and fee rates currently charged (Forest Regulations 2013; GN 153 of 2014<sup>6</sup>). Fees for nonplantation forest produce when the produce is cut and removed by the licensee from government-owned forest reserves and general lands are based on classes of species ranging from I to IV. The royalty charged on poles from natural forests is based on the size of the diameter. The government also charges fees on non-plantation processed forest products based on the type of items being processed by registered dealers. All fees for soft wood plantation species are based on diameter classes. Under Government Notice No. 433 of 2013, the government charges Logging and Miscellaneous Deposit Account (LMDA) fees to fund silvicultural activities and road maintenance in forest plantations. The TFS is also contributing to government revenue collection in the form of value added tax (VAT) for the Tanzania Revenue Authority and cess<sup>7</sup> for local government authorities.

The distribution of the fees and royalties from forests is guided by a number of laws. District council authorities are mandated by the Local Government Finances Act of 1982 to collect cess amounting to 5% of the royalty. This is charged over and above the royalty, rather than being deducted from it. The councils retain 100% of the revenues collected from the local government forest reserves. Likewise, the village councils are mandated by the Forest Act to retain all revenues from village land forest reserves.

6 Available online at: <http://www.tfs.go.tz/resources/view/gn-433-mpya-ya-20141>.

7 Cess is a tax on forest products, also charged on other crops.

**Table 4. Forest types, land categories, applicable legislation and jurisdiction.**

Forest type	Type of land	Applicable legislation	Jurisdiction
<b>National forest reserves</b>			
<ul style="list-style-type: none"> <li>Production forests, protection forests and nature reserves</li> </ul>	<ul style="list-style-type: none"> <li>Reserved land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>National Land Act of 1999</li> <li>Environmental Management Act of 2004</li> <li>Wildlife Conservation Act of 2009</li> </ul>	<ul style="list-style-type: none"> <li>Tanzania Forest Service</li> <li>Tanzania Wildlife Authority</li> </ul>
<ul style="list-style-type: none"> <li>Non-reserved forests</li> </ul>	<ul style="list-style-type: none"> <li>General land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>National Land Act of 1999</li> <li>Environmental Management Act of 2004</li> <li>Wildlife Conservation Act of 2009</li> </ul>	<ul style="list-style-type: none"> <li>Tanzania Forest Service</li> <li>Tanzania Wildlife Authority</li> </ul>
<b>Local government forest reserves</b>			
<ul style="list-style-type: none"> <li>Production forests, protection forests and forests reserved for the local authority</li> </ul>	<ul style="list-style-type: none"> <li>All are established on reserved land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>Local Government (District Authorities) Act of 1982</li> <li>Local Government (Urban Authorities) Act of 1982</li> <li>National Land Act of 1999</li> <li>Environmental Management Act of 2004</li> </ul>	<ul style="list-style-type: none"> <li>District councils</li> <li>Township councils</li> </ul>
<b>Village land forest reserves</b>			
<ul style="list-style-type: none"> <li>Declared village land forest reserves, gazetted village land forest reserves and non-reserved forests on general land whose management is vested in the village council</li> </ul>	<ul style="list-style-type: none"> <li>Village land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>Local Government (District Authorities) Act of 1982</li> <li>Local Government (Urban Authorities) Act of 1982</li> <li>National Land Act of 1999</li> <li>Village Land Act of 1999</li> <li>Environmental Management Act of 2004</li> </ul>	<ul style="list-style-type: none"> <li>Village councils</li> </ul>
<b>Community forest reserves</b>			
<ul style="list-style-type: none"> <li>Forests managed by a group of people and sacred/traditional forests</li> </ul>	<ul style="list-style-type: none"> <li>Village land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>Local Government (District Authorities) Act of 1982</li> <li>Village Land Act of 1999</li> </ul>	<ul style="list-style-type: none"> <li>Village council</li> </ul>
<b>Private forest reserves</b>			
<ul style="list-style-type: none"> <li>Forests on village land held by an individual or a group of individuals</li> </ul>	<ul style="list-style-type: none"> <li>Village land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>Local Government (District Authorities) Act of 1982</li> <li>National Land Act of 1999</li> <li>Village Land Act of 1999</li> </ul>	<ul style="list-style-type: none"> <li>Village council</li> </ul>
<ul style="list-style-type: none"> <li>Non-reserved forests on general land whose right of occupancy has been granted to an individual or group of individuals</li> </ul>	<ul style="list-style-type: none"> <li>General land</li> </ul>	<ul style="list-style-type: none"> <li>Forest Act of 2002</li> <li>Local Government (District Authorities) Act of 1982</li> <li>National Land Act of 1999</li> <li>Village Land Act of 1999</li> </ul>	<ul style="list-style-type: none"> <li>Village council</li> </ul>

The district councils also charge 5% of the royalty fees from each approved harvesting application for a special fund for tree planting in the district. The Ministry of Natural Resources and Tourism has established a Logging and Miscellaneous Deposit Account that charges TZS 11,000 per cubic meter as a royalty for silvicultural operations in plantations/forests. The Tanzania Forest Service Agency pays VAT to the central government amounting to 18% of the total revenues collected. Forest Industries Associations also get 3% of the royalty and 3% of the total LMDA charged. The Forest Act provides for the establishment of the Tanzania Forest Fund, with the fund resources coming from a levy of 2% of every fee prescribed in the act, a levy of 3% of any royalty payable under the act and any sums generated by the sale of confiscated forest produce. Other sources include grants, donations, bequests or amounts contributed by private individuals, foundations or international organizations.

### 3.2 Payment for ecosystem services (PES)

The forest sector in Tanzania currently accounts for 3.7% of the country's gross domestic product (GDP), a low contribution to the national economy that is attributed to unrecorded activities (National Audit Office 2012) such as payments for ecosystem services (PES). PES evolved on the grounds that sound forest management practices generate a number of environmental services, and that consumers may be willing to pay for their sustainable generation. These services include carbon sequestration, biodiversity conservation, watershed protection and landscape beauty. Although there are increasing opportunities to secure PES through global markets, to date PES has not been enough to finance sustainable forest management in Tanzania for a variety of reasons. PES initiatives in Tanzania have remained at the project level and are unsustainable. In Tanzania, organizations like CARE International and the WWF have been particularly piloting PES in catchment forests and the Eastern Arc Mountains (Kaczan et al. 2011; Lopa et al. 2012). Although the piloted projects for equitable payments for watershed services in the Uluguru mountains indicated certain possibilities of reducing rural poverty, Tanzania lacks willing buyers with the funding to invest in these schemes, such as hydropower suppliers, large industrial water users,

municipal water suppliers and irrigation water users. High levels of poverty in rural areas are also a hindrance to instituting formal payment systems for the general public and communities lack the capacity to undertake negotiations. While PES has yet to be mainstreamed into Tanzania's taxation systems, Forest Act No. 14 of 2002 establishes that fees are payable on the following services related to the establishment of businesses in forest reserves and plantations:

- i. Installation of telecommunication and mineral extraction facilities.
- ii. Pre-fabricated houses, hydropower and large scale irrigation schemes.
- iii. Piers and landings in forest reserves.
- iv. Establishment of solar salt pans, fish farming and prawn farming in mangrove forest reserves.
- v. Installation of billboards in forest reserves.
- vi. Airstrips in forest reserves.
- vii. Prospecting/ exploration in forest reserves.
- viii. Mining in forest reserves.
- ix. Consulting.
- x. Rest houses, conference facilities, and office accommodation.

Tanzania is piloting REDD+ with trial payments for carbon, but these cease at the end of the project timeframe and the lessons have yet to be mainstreamed into public policy and the financial decision-making machinery. There is inadequate policy and institutional support for PES for both national and private forest reserves. The lack of skills for proper market analysis and development, huge initial upfront costs, heavy dependence on external support in initial years and high transaction costs are some of the hurdles to implementing PES and REDD+. Carbon-related PES mechanisms, including REDD+, are constrained by the complexity of the rules, absence of widely-accepted standards, unclear tenure and property rights, and uncertainty over long-term sustainability.

As discussed earlier, the government of Tanzania advocates forest management under either JFM or CBFM, but so far experience has revealed certain unresolved issues regarding the participation of the majority of community members, ownership, and benefit-sharing mechanisms. It was proposed in the National REDD+ Framework that there was a need to establish an independent National REDD+ Trust Fund with functions related to receiving funds from carbon buyers, distributing them to communities or other REDD+ implementers, and ensuring the performance-based payment of funds.

# 4 Description of the roles of the different levels of government in land-use decision and policy arenas affecting forests

The local government acts (District Authorities Act No. 7 of 1982 and Urban Authorities Act No. 8 of 1982) assign wide-ranging but also very broad and occasionally vaguely-formulated functions. These include the major social sectors such as primary education, primary health care and rural water supply, as well as local government roads, agricultural development and a broad range of natural resource management issues (Kajembe and Marageri 2009). Kajembe and Marageri (2009) further argued that the local government legislation is fairly general and brief on the specific mandate of local governments in relation to the management of natural resources (including forests), although Section 118 of the District Authorities Act of 1982 states that “it shall be the function of every district council to formulate, coordinate and supervise the implementation of all plans for economic, commercial, industrial and social development.” This act also establishes that district councils shall:

- Prohibit or regulate the use of any agricultural land.
- Establish the prohibition or regulation of livestock husbandry.
- Take all measures to provide for the protection and proper utilization of the environment for sustainable development.
- Establish, preserve, maintain, improve and regulate the use of forests and forest produce.
- Prohibit or regulate the hunting, capture, killing or sale of animals or birds.
- License, regulate or supervise in any other way such trades and occupations as prescribed by the minister through notification in the Gazette.

It is, however, important to keep in mind that although local governments have the broad mandates noted above, each key sector – including forestry, fisheries, wildlife and water – has its own sector legislation and

additional provisions regarding institutional arrangements and the specific division of roles and responsibilities, including the degree of devolution to local government authorities (Kajembe and Marageri 2009).

## 4.1 Land-use planning

Before independence, provincial administration in what was then Tanganyika was under the “native authorities.” At that time, the traditional land-use planning and management system was based on the local knowledge and experience of farmers and villagers to identify and earmark land suitable for different uses (Kauzeni et al. 1993). The categories included grazing land, agricultural land and land to provide wood and for other uses. Generally speaking, claims and rights to land were asserted according to internal arrangements accepted by those concerned and administered by traditional institutions. All land was nationalized in 1962 following the independence of Tanganyika in 1961. Centralized planning and administration was exercised by placing the provincial administrations under politically-appointed area commissioners through the Regions and Regional Commissioners Act of 1962. The roles of traditional chiefs in administering local rural affairs were removed in 1963 and transferred to central government appointees. Regional-, district-, and village-level development committees were also created (Cliffe and Saul 1972 *in* Kauzeni et al. 1993). Such changes altered the management of land held under customary land tenure systems, which relied on traditional leadership (Lerise 1993).

After independence, national planning in Tanzania was implemented through periodic development plans. The first three-year plan (1961-1964) included a proposal to establish village settlement schemes in districts with low

population densities. This involved the spatial organization of rural settlements to modernize smallholders' land-use planning and management (Kauzeni et al. 1993). At that time, preparation of the land-use plans for these settlements and the subsequent allocation of land was under the mandate of the Rural Settlements Commission, which was part of the Ministry of Agriculture, and this was the beginning of centralized planning in rural Tanzania (Lerise 1993; Kauzeni et al. 1993). The Village Settlement Scheme was abandoned in 1965 following the withdrawal of the financial support as returns did not match expenditure. Thereafter, the responsibilities of the Rural Settlements Commission were transferred to the Town Planning Division of the Directorate of Urban Development in what was then the Ministry of Lands, Housing and Urban Development, which assumed the responsibility for central physical planning for both urban and rural areas (Kauzeni et al. 1993). The Arusha Declaration of 1967 oriented Tanzania towards socialism and the idea of transforming rural livelihoods through settlements was revived in 1968, with development rigorously pursued through the grouping of rural communities into *Ujamaa* (familyhood) villages. The Arusha Declaration was driven by the philosophy of socioeconomic liberalization based on socialism and self-reliance as a long-term national development goal. The strategy for implementing the Arusha Declaration also aimed to devolve powers to the people (Sundet 2004; Kajembe and Marageri 2009). To facilitate better rural management and planning, the government decentralized bureaucracy during the Second Five-year Plan of 1969 to 1974. The native authorities were abolished in 1972 with the establishment of regional administrations responsible for planning and implementing development projects in each region (Kauzeni et al. 1993).

Until the early 1990s, the land-use planning approaches were top-down. The period 1992-2002 was characterized by reforms to increase the efficiency of the public sector and its capacity to deliver quality services. These reforms centered on the civil service, local government, the financial sector, the legal sector, planning and budgeting, and parastatal organizations, as well as restructuring the regional administrations. The reforms aimed to change the central government's role from direct involvement in production and service delivery to one of policy formulation;

coordination; the provision of advice; strengthening the capacities of local governments, the private sector and non-governmental organizations; and creating an enabling environment for the performance of local government authorities. The local government authorities are required to assume the role of implementers and facilitators of all development activities, service delivery, the rule of law and the strengthening of democracy in order to speed up community development (Kajembe and Marageri 2009). Towards the end of the 1990s, following the decentralization policies adopted in Tanzania, participatory approaches were introduced and the first edition of the participatory village land-use planning and management guidelines was issued (Sundet 2004; UCRT 2010). However, participatory planning faces certain problems related to inflexible and hierarchical institutions, undefined lines of authority and responsibility, and a weak information base (Kauzeni et al. 1993). Although the government of Tanzania has continuously established an environment conducive to community participation, the planning process has continued to be dominated by government planners, economists, bureaucrats and donors who have an illusory feeling of control and efficiency (Kajembe and Marageri 2009). Land-use planning is currently the mandate of the Land-use Planning Commission under the Ministry of Lands, Housing and Human Settlements Development, with local government collaboration. The National Land Use Planning Commission is Tanzania's lead land-use planning institution and has been helping communities prepare village land-use plans for some time now. However, other stakeholders also support village land-use planning, including the district councils, private companies and non-governmental organizations (National Land Use Planning Commission 1998; Kauzeni et al. 1993). Table 5 shows the division of authorities in land-use planning in Tanzania.

In recent years, village land-use planning has become more accepted as a means for resolving land-use conflicts and enhancing the sustainable utilization and management of natural resources. A large proportion of the Tanzanian population lives in villages that depend entirely on agriculture, livestock keeping and forestry. Population growth has resulted in the expansion of agriculture, settlements and grazing, as well as increased deforestation. Most village economic

enterprises are land-based and require the rational distribution and allocation of land resources to ensure the efficiency and sustainability of those resources (Mango and Kalenzi 2011). According to Village Land Act No. 5 of 1999, every village must prepare a village land-use plan for village land development. Approved land-use plans and cadastral survey plans form the basis for the allocation of plots to individual land owners. National Land Use Planning Commission Act No. 6 of 2007 stresses this and advocates the establishment of village councils as the village land-use planning authority. Once different land-use parcels have been allocated for different uses, the next step is to improve the security of land tenure. This is attained by ensuring the district land registry and village land registries are in place and that land parcels are adjudicated, processed

and registered, with the corresponding certificates of customary right of occupancy issued. Programs like the Property and Business Formalization Program, popularly known as MKURABITA, have worked with local communities to ensure land is formally recognized and registered as property. This is done through the issuance of customary right of occupancy to individual land owners. Some of these plans are intended to facilitate the conservation of forests through participatory forest management (PFM). Village land-use planning is currently widely accepted as a tool for the rational allocation of land resources to various uses and for the promotion of the sustainable utilization of resources. These plans have been used in the allocation of land for forest conservation and to tree growers' associations in some districts (Mango and Kalenzi 2011).

**Table 5. Division of authorities in land-use planning.**

Function	Key government institutions	Level	Regulations	Remarks on authority
Policy and norms	Ministry of Lands, Housing and Human Settlements Development	National	National Land Act No. 4 (Cap. 113) of 1999	Authority to declare and classify land uses.
			Part III of National Land Act No. 4 of 1999	Authority to approve regional, district and village land-use plans. Authority to change the category of land from "general" or "reserved" to "village land."
			Part III of Village Land Act No. 5 (Cap. 114) of 1999	Authority to declare "village" land to be/ change its category to "general" or "reserved" land.
	Land-use Planning Commission of the Ministry of Lands, Housing and Human Settlements Development in collaboration with local governments	National	Part IV of National Land Act No. 4 of 1999	Authority to develop and issue national land-use plans. Authority to issue land-use planning guidelines.
	Prime Minister's Office-Regional Administration and Local Government	Regional	Local Government (Urban Authorities) Act (Cap. 288) of 1982	Authority to develop land-use management plans for approval by the commissioner of lands.
	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Local Government (District Authorities) Act (Cap 287) of 1982	Authority to develop land-use management plans for approval by the commissioner of lands.
Village Land Act No. 5 (Cap. 114) of 1999			Authority to implement district/village land-use plans.	

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**Table 5. Continued**

<b>Function</b>	<b>Key government institutions</b>	<b>Level</b>	<b>Regulations</b>	<b>Remarks on authority</b>
Administration	Ministry of Lands, Housing and Human Settlements Development	National	National Land Act No. 4 (Cap. 113) of 1999	Authority to administer and execute national land-use planning.
			Parts III and IV of the National Land Act No. 4 of 1999	Authority to appoint the Commissioner for Lands. Authority to form National Land Use Advisory Council.
			Part III of Village Land Act No. 5 (Cap. 114) of 1999	Authority to declare “village” land to be/ change its category to “general” or “reserved” land.
	Land Use Planning Commission of the Ministry of Lands, Housing and Human Settlements Development in collaboration with local governments	National	Part IV of National Land Act No. 4 of 1999	Authority to develop and administer national land-use plans.
	Prime Minister’s Office-Regional Administration and Local Government	Regional	Local Government (Urban Authorities) Act (Cap. 288) of 1982	Authority to implement approved urban land-use and management plans.
Prime Minister’s Office-Regional Administration and Local Government	District/ village councils		Local Government (District Authorities) Act (Cap. 287) of 1982	Authority to implement approved rural land-use and management plans.
			Part IV of Village Land Act No. 5 (Cap. 114) of 1999	Authority of the village council to administer and manage village land. Authority to administer and manage joint village land-use agreements between villages.
Control/ monitoring	Ministry of Lands, Housing and Human Settlements Development	National	National Land Act No. 4 (Cap. 113) of 1999	Authority to monitor and control implementation of national land-use plans.
			Part IV of National Land Act No. 4 of 1999 (Sections 8-18)	Authority to vest monitoring and control powers in the Commissioner for Lands. Authority to monitor the urban and district councils’ issuing of rights of occupancy.
	Land Use Planning Commission of the Ministry of Lands, Housing and Human Settlements Development in collaboration with local governments	National	Part IV of National Land Act No. 4 of 1999	Authority to monitor national land-use plans and periodically issue guidance.

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Table 5. Continued

Function	Key government institutions	Level	Regulations	Remarks on authority
	Prime Minister's Office-Regional Administration and Local Government	Regional	Local Government (Urban Authorities) Act (Cap 288) of 1982	Authority to monitor land-use planning at the regional and district levels and advise the commissioner of lands accordingly.
	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Local Government (District Authorities) Act (Cap. 287) of 1982  Part IV of National Land Act No. 4 of 1999, Section 14 (1-6)	Authority to monitor land-use planning at the regional and district levels and advise the commissioner of lands accordingly.
Auditing	Office of the Controller and Auditor General (Ministry of Finance)	National	Section 28 of the Public Audit Act	Authority to carry out performance auditing (value-for-money auditing) in ministries, independent departments, executive agencies, local government authorities and public authorities.
Processing/sanctioning crime (compliance issue)	The High Court Lands Division and the Court of Appeal	National	Parts VI and VII of the Land Disputes Courts Act of 2002	Authority to hear land disputes and appeals and to prosecute and convict offenders.
	District Land and Housing Tribunal	District	Part V of the Land Disputes Courts Act of 2002	Authority to exercise original jurisdiction in all proceedings under the Land Act of 1999 and Village Land Act of 1999.
	Village councils and ward tribunal	Village	Parts III and IV of the Land Disputes Courts Act of 2002	Authority to conduct land dispute mediation and compensation processes and approve appeals to the District Land and Housing Tribunal.

## 4.2 Land titling and determining conversion rights

During the villagization program in 1975, implemented on lands held under customary rights, the government nationalized large-scale farms held under leasehold and they were placed under the management of state companies that controlled national crop programs and could provide investment finance through access to foreign exchange (Kauzeni et al. 1993). The powers to define land titles and conversion rights are currently concentrated in the Ministry of Lands, Housing and Human Settlements Development, while the authority to demarcate and register villages lies with the commissioner of lands (National Land Act of 1999). According

to National Land Act No. 4 of 1999, the commissioner of lands is the authority that acts on behalf of the minister in issuing grants of occupancy. Unless authorized, local government authorities are not mandated to offer or grant any right of occupancy. Land Act No. 4 of 1999 addresses general land and reserved land. "General land" is a residual category, defined in the Land Act as "all public land which is not reserved land or village land." This definition does not address unoccupied or unused village land. "Reserved land" means all land set aside for special purposes, including forest reserves, game parks, game reserves, land for public utilities and highways, hazardous land and land designated under the Town and Country Planning Ordinance.

Village Land Act No. 5 (Cap. 114) of 1999 establishes that land administration is vested in the village council and aims to guarantee security of tenure for smallholders. The act vests all village land in the village. The village council administers the land through the authority of the village assembly. Most village lands are under customary rights of occupancy, which according to the Village Land Act is equivalent to granted right of occupancy. The definition and registration of village land is established in Section 7 of Village Land Act No. 5 of 1999. The authority to demarcate and register villages lies with the commissioner of lands under the Ministry of Lands, Housing and Human Settlements Development and the authority over land conversion rights in Tanzania lies with the President. The above-mentioned legislations have implications for the development and implementation of REDD+ projects in Tanzania. All legislation related to land resources may need to be read in tandem to avoid conflicting legal requirements. Since the President is empowered to change land among the three defined categories (general, reserved and village), a REDD+ project on village land is likely to be affected if that land is transferred to one of the other categories for another economic investment. There are huge areas of land around villages that may by definition be categorized as general land because they are not occupied or developed. Any village REDD+ project established on such land is vulnerable to being transferred to another category and may not be compensated, as explained in the following paragraphs.

The Tanzanian Constitution of 1977 (as amended), National Land Act No. 4 of 1999, Village Land Act No. 5 of 1999, Land Regulations 2001 Subsidiary Legislation, Land Acquisition Act No. 47 of 1967 and Urban Planning Act No. 8 of 2007 all address land tenure and ownership in Tanzania. Individual land owners are given letters of offer or titles stating the size of the plot, the use conditions, the land rent payable, the duration of ownership and other covenants. Any change in land use requires an application for that change to the local authorities, which must later be approved by the minister responsible for lands. The same procedure used to allocate land to individuals applies for allocating land for government use. In cases in which the government fails to obtain land through the usual allocation procedures, Land Acquisition Act No. 47 of 1967 gives the President the power to acquire land from private occupants if the land is required for public purposes. Section 4(1) of the act states that land shall be deemed to be required for a public purpose if needed, among other things, for

exclusive government use, for public general use, for any government scheme, for the development of agricultural projects, or for the provision of sites for industrial, agricultural or commercial development, social services or housing.

Section (b) of Part II of the Land Acquisition Act of 1967 establishes the compensation for the acquired land, which may be either monetary or in the form of an alternative allocation. The amount to be paid will depend on the value of the land as assessed according to Section 14 of the Land Acquisition Act. The act further states that compensation can only be provided for occupied land.

#### 4.2.1 Titling of agricultural lands

Tanzania has about 44 million ha of arable land, 24% of which is under crop production. Agricultural land is governed by the Agriculture Policy and Agriculture Act, while the titling of agricultural lands is governed by the Land Policy of 1995. National Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999 establish land titling procedures for agriculture and other land uses. The division of authorities in relation to the titling of agricultural lands is presented in Table 6. The policy and law promote the equitable distribution of and access to land for all citizens. They also emphasize the need to survey and demarcate land, expedite allocation and titling, and facilitate preservation and conservation for sustainable development. Although efforts have been made to formalize agricultural land ownership in Tanzania, most agricultural land is held under customary or communal systems and has not been surveyed.

Only a small proportion of agricultural land users have any documents demonstrating their legal rights to the land (Kauzeni et al. 1993), even in villages where the government initiated projects to issue CCROs. This is due to a number of reasons, including the cost of the certificate and the fact that the Land Reform Program has just started (Kauzeni et al. 1993; Fairley 2012). According to Land Act No. 4 of 1999, all land in Tanzania is vested in the President, held and administered for the direct or indirect use and common benefit of the natives of Tanzania. However, the improvement of the quality of the land crucially depends upon the land user and often demands considerable investment in terms of labor and resources. It is therefore essential for all users to feel confident that their efforts and investments will benefit them and their families. This has a bearing on investment in forest management and its envisaged benefits, such as carbon trading under REDD+.

The National Employment Policy (1997) also influences the titling of lands for agriculture by identifying areas suitable for creating rural jobs and establishing agribusinesses and farming enterprises. The National Environmental Policy (1997) is strongly linked to sustainable agriculture by ensuring sustainable environmental

conservation and the reduction of environmental deterioration. The Forest Policy of 1998 aims to foster sustainable forest management, the preservation of biodiversity and conservation of water catchments, and the prevention of soil erosion. All of these policies have a bearing on the titling of agricultural lands.

**Table 6. Division of authorities in the titling of agricultural lands.**

Function	Key government institutions	Level	Regulations	Remarks on authority
Policy and norms	Ministry of Land, Housing and Human Settlements Development	National	Part VI of National Land Act No. 4 of 1999	Authority to grant rights of occupancy.
	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Sections 22-25 of Village Land Act No. 5 (Cap. 114) of 1999	Authority for granting and managing customary rights of occupancy.
Administration	Ministry of Land, Housing and Human Settlements Development	National	Land Registration Act (Cap. 334)	Authority to keep the land registry and administer and issue land title certificates.
Control/monitoring	Ministry of Land, Housing and Human Settlements Development	National	Land Registration Act (Cap. 334)	Authority to monitor and control the legality of land titles.
			Part IV of National Land Act No. 4 of 1999 (Sections 8-18)	Authority to monitor the conduct of urban and district councils in relation to issuing rights of occupancy.
Auditing	Office of the Controller and Auditor General (Ministry of Finance)	National	Sections 28 and 29 of Public Audit Act No. 11 of 2008	Authority to conduct performance auditing (value-for-money auditing) in the ministries, independent departments, executive agencies, local government authorities and public authorities. Authority to conduct any other audit required by the CAG.
Processing/sanctioning crime (compliance issue)	Ministry of Land, Housing and Human Settlements Development	National	Part XIV, Sections 175 (1b) and 177-178 of National Land Act No. 4 of 1999	Provides for legal actions against unlawful occupation, offences and corrupt land titling transactions.
	The High Court Lands Division and the Court of Appeal	National	Parts VI and VII of the Land Disputes Courts Act of 2002	Authority to hear land disputes and appeals, prosecute and convict offenders.
	District Land and Housing Tribunal	District	Part V of the Land Disputes Courts Act of 2002	Authority to exercise original jurisdiction in all proceedings under the Land Act of 1999 and Village Land Act of 1999.
	Village councils and ward tribunal	Village	Parts III and IV of the Land Disputes Courts Act of 2002	Authority to conduct land dispute mediation and compensation processes and to approve appeals to the District Land and Housing Tribunal.

### 4.3 Government land ownership and administration

The Land Act of 1999 and the Village Land Act of 1999 vest ownership of the land in the President as trustee, meaning that ultimately the Tanzanian government is the owner of all land. After independence, land legislation in Tanzania was used as a means for government initiatives in rural development. Policies and laws were in most cases tailor-made to facilitate planned development policies. Principally, this gave the government all the freedom it could wish for vis-à-vis individual farmers' land rights, particularly since the country's main land legislation, the Land Ordinance of 1923 (with amendments), was unclear on the protection of customary rights (Sundet 2004). Freehold land tenure dominated during the first two years of independence. Soon after independence, in 1961, the government enacted land laws that emphasized the nationalization of land, proposing a government leasehold tenure not exceeding 99 years. The rationale was centered on the need for economic development and for the government to have ultimate control over the land in order to ensure development (Tanganyika 1962). Thus all land was made the property of the State under government administration and legally vested in the President. Major stress was placed on facilitating agricultural development and raising people's living standards. The Ministry of Lands, Housing and Human Settlements Development is responsible for policy regulation and coordinates land-related matters in the Tanzania mainland. According to Village Land Act No. 5 of 1999, land administration matters are handled by village councils, whereas in urban areas they are handled by the commissioner of lands, under Land Act No. 4 of 1999. Both of these acts establish that land in Tanzania is public and remains vested in the President as a trustee for and on behalf of all Tanzanian citizens. They categorize land as either general land, village land or reserved land. The transfer of land from one category to another is provided for in the acts to be given due regard in the process of land acquisition once appropriate compensation and resettlement has been provided. The recognized owner is granted the right of occupancy and customary ownership.

Tanzania's 1977 Constitution, National Land Act No. 4 of 1999, Village Land Act No. 5 of 1999, Land Regulations 2001 Subsidiary Legislation, and Land Acquisition Act No. 47 of 1967 all contain provisions for land tenure and ownership

in Tanzania. Socioeconomic activities are only permitted on general land and village land and are therefore not permitted on land reserved for national parks, protected areas and wildlife or forest reserves. Land ownership is based on customary rights or statutory rights of occupancy. Individuals can also hold land through leasehold right of occupancy for up to 99 years. The second type of landholding is customary rights of occupancy, which must be confirmed by a certificate of customary right of occupancy. Communities are allowed to hold and manage land. Land Acquisition Act No. 47 of 1967 gives the President the power to acquire land from private occupants when such land is required for public purposes. Section 4(1) of this act establishes that land is deemed to be required for public purposes when it is needed, among other things, for exclusive government use; general public use; any government scheme; the development of agricultural projects; or the provision of sites for industrial, agricultural or commercial development, as well as social services or housing. The division of authorities in relation to government ownership and administration of the land is presented in Table 7.

### 4.4 Land revocation

Revocation of a right of occupancy is stipulated under section 49(3) of Land Act No. 4 of 1999. Forest Land Act No. 14 of 2002 gives the minister responsible forestry powers to alter and "de-reserve" a forest reserve. Thus subject to the provisions of Section 29(1), the minister may revoke the declaration of all or part of any forest reserve through an order published in the Gazette. The minister may also alter the status of a production or protection forest reserve; any part of a nature forest reserve; any part of a production or protection forest reserve or a national forest reserve; or any other part of a local authority, village land or community forest reserve. While both the Local Government (Urban Authorities) Act and Local Government (District Authorities) Act of 1982 permit local governments to make by-laws related to forest reserves, the Forest Act requires local authorities to submit them to the director of forestry for review and final approval.

### 4.5 National protected areas

Tanzania has 28% of its total land area under the protected area network. Protected areas include national parks, marine parks and reserves,

**Table 7. Division of authorities: Government ownership and administration of the land.**

Function	Key government institutions	Level	Regulations	Remarks on authority
Policy and norms	Ministry of Land, Housing and Human Settlements Development	National	National Land Act No. 4 of 1999	All land in Tanzania belongs to the President as trustee.
			Village Land Act No. 5 of 1999	
			National Land Use Planning Commission Act (Cap. 116)	The commissioner has the authority to advise on land ownership and tenure.
Administration	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Local Government (District Authorities) Act of 1982  Local Government (Urban Authorities) Act of 1982	Authority to acquire, own and administer land.
Control/monitoring	Ministry of Land, Housing and Human Settlements Development	National	Land Registration Act (Cap. 334)	Authority to keep the land registry and administer and issue land title certificates.
Auditing	Office of the Controller and Auditor General (Ministry of Finance)	National	Public Audit Act No. 11 of 2008	Authority to conduct audits on national assets, including land.
Processing/sanctioning crime (compliance issue)	Ministry of Land, Housing and Human Settlements Development	National	Part XIV, Sections 175(1b) and 177–178 of National Land Act No. 4 of 1999	Provides for legal actions against unlawful occupation, offences and corrupt land titling transactions.
	The High Court Lands Division and the Court of Appeal	National	Parts VI and VII of the Land Disputes Courts Act of 2002	Authority to hear land disputes and appeals, prosecute and convict offenders.
	District Land and Housing Tribunal	District	Part V of the Land Disputes Courts Act of 2002	Authority to exercise original jurisdiction in all proceedings under the Land Act of 1999 and Village Land Act of 1999.
	Village councils and ward tribunal	Village	Parts III and IV of the Land Disputes Courts Act of 2002	Authority to conduct land dispute mediation and compensation processes and approve appeals to the District Land and Housing Tribunal.

species protected areas, game reserves, game controlled areas, the Ngorongoro Conservation Area and wildlife management areas. Each one of these is legally governed by a different law. The International Union for Conservation of Nature and Natural Resources (IUCN) defines a protected area as “An area of land and/or water (lake or sea) especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural

resources, and managed through legal or other effective means.” Although it has been argued that most African forest reserves do not fit this definition, recent changes to forest policy and laws in Tanzania clearly demonstrate that the government recognizes the role of forest reserves in biodiversity conservation. These laws are discussed below and the division of authority in national protected areas is presented in Table 8.

**Table 8. Division of authorities: National protected areas.**

Function	Key government institutions	Level	Regulations	Remarks on authority
Policy and norms	Ministry of Natural Resources and Tourism	National	Forest Act (Cap. 323) National Parks Act (Cap. 282) Ngorongoro Conservation Area Act (Cap. 284) Wildlife Conservation Act (Cap. 283) Marine Parks and Reserves Act (Cap. 146) National Land Act No. 4 of 1999	Authority to establish and gazette protected areas.
Administration	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Local Government (District Authorities) Act of 1982 Local Government (Urban Authorities) Act of 1982 Village Land Act No. 5 of 1999	Authority to establish and propose the gazetting of protected areas
Control/monitoring	Environment Division of the Vice-President's Office	National	Environmental Management Act of 2004	Authority to carry out environmental impact assessments.
Auditing	Office of the Controller and Auditor General (Ministry of Finance)	National	Public Audit Act No. 11 of 2008	Authority to carry out performance audits.
Processing/sanctioning crime (compliance issue)	The High Court Lands Division and the Court of Appeal	National	Parts VI and VII of the Land Disputes Courts Act of 2002	Authority to hear land disputes and appeals, prosecute and convict offenders.
	District Land and Housing Tribunal	District	Part V of the Land Disputes Courts Act of 2002	Authority to exercise original jurisdiction in all proceedings under the Land Act of 1999 and Village Land Act of 1999.

In 1996, the United Republic of Tanzania ratified the Convention on Biological Diversity, whose objectives are the conservation of biological diversity, sustainable use, and the fair and adequate sharing of the benefits resulting from the utilization of genetic resources. Biodiversity is a source of economic and ecological security for present and future generations. During colonial times, emphasis was placed on game control, forest reserves and the preservation of hunting values. Controlled hunting areas and reserves were created in areas where conflicts with the surrounding population were limited or non-existent.

After independence the emphasis shifted to more positive conservation through the planned utilization of resources. The government of Tanzania has enacted

several laws to facilitate the management of protected areas in the country, including the Forest Act of 2002, the Local Government (District Authorities) Act of 1982, the Wildlife Conservation Act of 1974, the Land Act of 1999 and the Village Land Act of 1999. Other acts governing the establishment of protected areas are the National Parks Act of 2003 and the Environmental Management Act of 2004. Forest Act No. 14 of 2002 empowers the minister of natural resources and tourism to declare any area of land to be a national forest reserve or a local authority forest reserve through an order published in the Gazette. A national forest reserve can be a production forest reserve, a protection forest reserve or a nature forest reserve. Socioeconomic activities are not permitted in protected areas, which therefore have potential for carbon trading through

REDD+ projects. When deemed necessary and subject to the approval of the minister of natural resources, the Ministry of Natural Resources and Tourism or a local authority may make minor changes to the boundaries of any national forest reserve or local authority forest reserve. The Forest Act also gives the village council powers to send an application through the local government authority to the director of forestry at the Ministry of Natural Resources and Tourism requesting that an area of village land be gazetted as a “village land forest reserve.”

National Land Act (Cap. 113) No. 4 of 1999 recognizes reserved land as land reserved, designated or set aside under the provisions of the Forest Act (Cap. 323), National Parks Act (Cap. 282), Ngorongoro Conservation Area Act (Cap. 284), Wildlife Conservation Act (Cap. 283), Marine Parks and Reserves Act (Cap. 146), Town and Country Planning Act (Cap. 355), Highway Act (Cap. 167), Public Recreation Grounds Act (Cap. 320), and Land Acquisition Act (Cap. 118). According to the Land Act, other protected areas include land parcels within natural drainage systems from which the water resource involved in the said drainage originates; land reserved for public utilities; or land declared as hazardous. The act defines land as hazardous if developing it is likely to lead to the degradation or destruction of the environment. This includes mangrove swamps and coral reefs, wetlands and off-shore islands, land for dumping hazardous wastes, land within 60 meters of a river bank and fragile lands on higher slopes. The President may also declare general land to be a protected area.

## 4.6 Mining concessions and hydrocarbon rights

### 4.6.1 Mining concessions

Gold was discovered in Tanzania in the 1920s under the British and it was made clear that all minerals were vested in the Governor. The 1929 Ordinance on Mining stipulated that prospecting by private companies was to be done in association with the government. In 1969, following independence, a Mining Ordinance (Amendment) Bill was introduced giving the minister responsible for minerals full control over prospecting licenses. In 1979, the Mining Act vested ownership of all mineral resources in the State. Mining licenses are governed by Mining Act No. 14 of 2010. Under

this act, control of minerals on, in or under the land is vested in the United Republic of Tanzania, meaning that it is vested in the minister responsible for mining.

Mining activities have a negative impact on forests and protected areas and Forest Act No. 14 of 2002 categorically prohibits activities related to taking or removing any rocks, stones, sand, shells or soils and the undertaking of any mining activities. However, powers provided in the Mining Act allow the minister responsible to issue mining licenses for mining in forest reserves. Land rights provided by Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999 are only valid for surface land, while rights to minerals are secured through prospecting and mining licenses. Using this system, mining licenses have often been issued for areas of land where people live and have customary rights to the land. On the other hand, people with customary rights have also undertaken mining activities with or without licenses (Lange 2008).

### 4.6.2 Hydrocarbon rights

The rights to all minerals in Tanzania, including hydrocarbon resources, are vested in the State, as per Mining Act No. 14 of 2010. Specifically, the Petroleum (Exploration and Production) Act of 1980 vests petroleum deposits in Tanzania in the State. The Tanzania Petroleum Development Corporation has the oversight role in relation to the governance of oil and gas matters in the country. In recent years, Tanzania has witnessed increasing petroleum operations and the discovery of huge natural gas reserves that present new challenges in an era of further exploration, production and utilization of petroleum resources (ESRF 2009). The country is now developing a new sector-specific petroleum policy that is separate from the energy policy (Draft National Petroleum Policy of 2014). More than 70 exploration and development wells have been drilled, of which 53 are in onshore basins and 17 in offshore ones. The first natural gas discovery was made in 1974 at Songo Songo Island in Lindi Region, southern Tanzania. Natural gas produced from Songo Songo has been used for electricity generation since 2004. Natural gas discovered in Mnazi Bay in 1982 is currently used to provide electricity for the Mtwara and Lindi regions (ESRF 2009). The construction of a bigger pipeline is underway to transport gas from Mnazi Bay through Songo Songo to Dar es Salaam (Wentworth Resources Ltd 2012; PWYP-Tanzania 2011). Tanzania is also well-known for mineral

deposits such as uranium, which has been discovered in the Selous Game Reserve, leading to a debate as the Selous Game Reserve is a UNESCO World Heritage Site.

The division of authorities related to mining concessions and hydrocarbon rights is shown in Table 9.

#### 4.7 Forest concessions

The National Forest Policy of 1998 defines a concession as a long-term agreement between the government and a forest industry enterprise, entrusting the latter to manage a forest reserve, industrial plantation or part thereof, mainly for timber production. The forest is managed in accordance with an approved management plan. The company is responsible for all harvesting and silvicultural activities, including road construction and maintenance, while the government collects the agreed royalties and concession fees. Section

20(1) of Forest Act No. 14 of 2002 establishes the procedures for forest concession applications. The authority to issue concessions is vested in the minister responsible. In cases where the concession application is for a national forest reserve or forest land on general land the applications are submitted directly to the minister of natural resources and tourism. For applications of more than 200 ha from a local authority forest reserve, a village land forest reserve or forest land under the jurisdiction of the village council, they must also be submitted to the minister responsible for forestry for that minister's decision and approval. For concessions of less than 200 ha from these local authority forest reserves, the application is submitted to either the local authority or the village council. Section 20(5) of the Forest Act gives the minister powers not to accept any recommendations from local authorities and village councils regarding an application. In other words, the final decision lies with the minister responsible for forests, so that decisions are centralized to a certain extent. Important conditions for the approval of concessions include afforestation

**Table 9. Division of authorities: Mining concessions and hydrocarbon rights.**

Function	Key government institutions	Level	Regulations	Remarks on authority
Policy and norms	Ministry of Energy and Minerals	National to local	Mining Act No. 14 of 2010	Authority to develop national mining laws and regulations for mineral, gas and oil explorations.
	Ministry of Natural Resources and Tourism	National to local	Forest Act (Cap. 323)	Authority to regulate mining activities in forest reserves.
Administration	Ministry of Energy and Minerals	National to local	Mining Act No. 14 of 2010	Authority to issue mining licenses
	Ministry of Natural Resources and Tourism	National to local	Forest Act (Cap. 323)	Authority to issue special permits and licenses for mining purposes or the prospecting and exploration of minerals.
Control/monitoring	Ministry of Energy and Minerals	National to local	Mining Act No. 14 of 2010	Authority to control and monitor mining activities.
	Environment Division of the Vice-President's Office	National	Environmental Management Act of 2004	Authority to conduct environmental impact assessments.
Auditing	Office of the Controller and Auditor General (Ministry of Finance)	National to local	Public Audit Act No. 11 of 2008	Authority to conduct performance audits.
Processing/sanctioning crime (compliance issue)	Ministry of Energy and Minerals	National to local	Mining Act No. 14 of 2010	Authority to settle disputes or appeal to the High Court.
	The High Court Lands Division and the Court of Appeal	National	Land Disputes Courts Act of 2002	Authority to hear disputes and appeals, prosecute and convict offenders.

and reforestation plans, the conservation of flora and fauna within the forestland, and the forms of consultation with people living near to the land and relying on it for some or all of their livelihood. If followed by the concessionaires, these conditions may avoid deforestation and can thus promote REDD+. However, the forest harvesting system in Tanzania is based on licenses for different activities in the forest. Forest concessions are not common unless large land-use investments are involved. Forest Act No. 14 of 2002 establishes different

permits that can be issued for activities in national and local forest reserves. Section 49(1) of the act gives the director of forestry in the Ministry of Natural Resources and Tourism the power to issue permits for the felling or extraction of timber for domestic commercial use and sale, for export, for mining purposes, or for prospecting and exploring for mineral resources.

The division of authorities in relation to forest concessions is shown in Table 10.

**Table 10. Division of authorities: Forest concessions.**

Function	Key government institutions	Level	Regulations	Remarks on authority
Policy and norms	Ministry of Natural Resources and Tourism	National to local	Forest Act (Cap. 323)	Authority to formulate policies, norms, guidelines, regulations and procedures for forest concession applications and management.
Administration	Ministry of Natural Resources and Tourism	National to local	Sections 20 and 21 of the Forest Act (Cap. 323)	Authority to receive, consider and make decisions on applications for land concessions in national and general land forest reserves and for applications of over 200 ha in local authority or village land forest reserves.
	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Local Government (District Authorities) Act of 1982 Local Government (Urban Authorities) Act of 1982	Authority to receive, consider and make decisions on applications for land concessions of 200 ha or less in local authority or village land forest reserves.
Control/monitoring	Ministry of Natural Resources and Tourism	National to local	Sections 20 and 21 of the Forest Act (Cap. 323)	Authority to control and monitor forest concessions in national forest reserves and on general land.
	Prime Minister's Office-Regional Administration and Local Government	District/village councils	Local Government (District Authorities) Act of 1982 Local Government (Urban Authorities) Act of 1982	Authority to monitor and control forest concessions in local authority or village land forest reserves.
Auditing	Office of the Controller and Auditor General (Ministry of Finance)	National to local	Public Audit Act No. 11 of 2008	Authority to carry out performance audits.
Processing/sanctioning crime (compliance issue)	The High Court Lands Division and the Court of Appeal	National to local	Land Disputes Courts Act of 2002	Authority to hear disputes and appeals, prosecute and convict offenders.
		National to local	Prevention and Combating of Corruption Act No. 11 of 2007	Authority to investigate and process crimes of corruption.

# 5 Laws pertaining to community land use, tenure and management

## 5.1 Definition of relevant laws

The government enacted the Land Tenure (Village Settlement) Act of 1965 specifically to regulate land tenure in new village settlements established on virgin land. The act clearly declared that rights of occupancy for the villages would be granted to a rural settlement commission. Meanwhile, “derivative rights” could be awarded to individual members of the settlement, while the full legal rights to all settlement land were to remain with the commission. “Derivative rights” were awarded to encourage individualization of land tenure, but the security of tenure provided by such rights was made subject to limiting stipulations. Although it is claimed that the act has not had any impact, it is of some interest due to its characteristic style and content and because it can be seen as the precursor to the current village titles (Sundet 2004).

The government passed another act in 1965 to deal with any customary rights to land that already existed in the settlement areas. This replaced the 1954 Ordinance that gave the government powers to abolish customary rights by declaring the land in a given area to be public land. The amendment stated that only holders that joined the village settlement were entitled to compensation in the form of credit against debts incurred to the rural settlement commission. Granted rights of occupancy would still not be affected by the act (Sundet, 2004).

The publication of the Land Acquisition Act of 1967 greatly increased the government’s power to abolish customary rights for public purposes. One notable provision enables the President to acquire any land for use by any person or group of persons the President considers should be granted it for agricultural development. The wide scope for land alienation provided by the Land Acquisition Act continues to undermine customary holders’ security of tenure (Sundet 2004).

The main types of land tenure in Tanzania currently include:

- i. **Right of occupancy:** This is defined as a title to use and occupy land, including the title for a local community lawfully using or occupying land in accordance with native law and custom (Kauzeni et al. 1993). Right of occupancy includes two forms of land tenure: granted right of occupancy issued by the President, under which land is held for up to 99 years; and deemed right of occupancy, in which the law deems customary landholders to be the lawful occupiers (Kauzeni et al. 1993). Granted right of occupancy is formalized through the offer of a certificate of occupancy issued under the Land Act of 1999. According to this same act, deemed right of occupancy involves land titled to a Tanzanian citizen or a community of Tanzanian citizens of African descent using or occupying land under the customary law.
- ii. **Customary or traditional land tenure:** Traditionally there are customs and by-laws that reflect a community’s consensus about the use of common-pool resources. Individual and family or private property rights over at least some kinds of land are well-developed in Tanzania. These rights may change according to circumstances, but they are generally well understood and complied with. The land in this system of tenure is held in perpetuity. Sections 22-47 of the Village Land Act of 1999 define the granting and management of customary right of occupancy. The Land Act of 1999 also recognizes customary rights of occupancy, as explained in point (i) above. According to Section 27 of the Village Land Act of 1999, customary right of occupancy can be offered for an indefinite period. Section 22(1-2) establishes that can be acquired by persons who are ordinarily resident of a village and citizens of Tanzania, recognized under customary law. Persons or groups of persons who are not ordinarily residents of the

village may also apply for customary right of occupancy to the village council as established in Section 22(1) of the Village Land Act. In Tanzania, customary rights of occupancy are formalized through the issuing of certificates of customary rights of occupancy, as stipulated under Section 25(2) of the Village Land Act of 1999.

- ii. **Communal land tenure:** This involves land held under the control of a corporate unit such as a village that has not been allocated for use to any other community (James and Fimbo 1973 in Kauzeni et al. 1993). Such lands include forest lands, grazing lands, hunting lands and abandoned lands within the control of a land allocating authority (Kauzeni et al. 1993).

## 5.2 Precedence for community land disputes

In practice, the Villagization Act of 1975 had clear legal principles but problems that emerged included land ownership disputes between villages and between households. The Local Government Act of 1982 replaced the Villagization Act and gave district councils powers to make decisions on land allocations to villages. However, these councils were not competent enough to deal with legal and land-related issues, resulting in continued insecurity over land tenure among villagers while the traditional land tenure systems and practices were no longer legal. In the absence of long-term land ownership security, farmers have little incentive to improve the land through labor and investment (Kauzeni et al. 1993).

Land-use related grievances in Tanzania are resolved through the land courts established under Land Disputes Courts Act No. 2 of 2002 and its regulations, including: village land councils, ward tribunals, district land and housing tribunals, the High Court (Land Division) and the Court of Appeal. Village Land Act No. 5 of 1999 and Land Disputes Courts Act No. 2 of 2002 make special provisions for the establishment of village land councils to mediate between and assist parties to find mutually acceptable resolutions to conflicts concerning village land. The village land councils' functions related to land disputes are stipulated in Section 61 of the Village Land Act of 1999. The jurisdiction of the village land councils has been limited to cases related to land-sharing arrangements with other villages or land sharing

between pastoralists and agriculturalists. These councils are not courts, but rather play a role of mediating and assisting aggrieved parties to arrive at a mutually acceptable solution. Where this is not possible, the conflict may be referred to the courts. Section 61(6) of the act states that, "no person, or non-village organization shall be compelled or required to use the services of the Village Land Council for mediation in any dispute concerning village land." If the parties to the dispute are not satisfied with the decision of the village land council it can be referred to the ward tribunal, in accordance with Section 62 of the Village Land Act. The ward tribunals are established under Ward Tribunals Act No. 7 of 1985, while Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999 recognize them as courts with jurisdictions and powers in their established areas. Ward tribunals may also apply existing customary laws when making judgments on land disputes. Higher authority land tribunal courts include the district land and housing tribunals and the High Court (Land Division).

In cases where the village is in dispute with bordering villages or other landholders, the minister of lands appoints a mediator to work with the conflicting parties to find a compromise. If the mediator is unable to find a compromise, the minister calls for an inquiry under Section 18 of the Land Act. According to the Land Act, the inquiry is to be held by a High Court judge selected on the advice of the Chief Justice. This is held as a judicial inquiry that is open to the public and the inquiry report is published. Furthermore, the minister is required to accept the inquiry's recommendations unless there are overriding reasons of public interest to the contrary. According to Land Disputes Courts Act No. 2 of 2002, any person who feels aggrieved by a High Court (Land Division) decision may, with leave from the High Court, lodge an appeal with the Court of Appeal, which has the jurisdiction to hear and determine appeals from lower courts.

## 5.3 Procedural barriers to community land claims

Under the Village Land Act, the village land council only provides the service of arbitration between consenting parties, effectively making these councils powerless in terms of solving land disputes among villagers. The act strips the village

land council of any legal judicial standing, which is a limitation and a barrier to community land claims given the costs involved when engaging with judicial courts from the ward level upwards. According to the act, either party to the dispute can decide to ignore the village land council and continue the dispute, unless taken to court.

The village governments have no power to approve forest by-laws unless they obtain the director of forestry's consent. Section 37(1) of the Forest Act specifically states that "Notwithstanding any provisions concerning the making of village by-laws contained in Local Government (District Authorities) Act No. 8 of 1982, where a village council is managing a *gazetted* village land forest reserve, that village council shall, prior to making any by-laws and following the coming into force of this Act, submit a draft of any proposed by-laws to the director of forestry through the district council that has jurisdiction in the area where the village is situated." Although this process might be costly for the village council, Section 37(3) gives it the power to continue operationalizing the by-laws if no comments are received from the director of forestry within 60 days. So to some extent, decision making is still centralized when it comes to making laws and regulations regarding forest management and use on village land.

#### 5.4 Opportunities for community land claims

Both National Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999 provide opportunities for community land claims. The Village Land Act of 1999, the Local Government Act of 1982 and Forest Act No. 14 of 2002 provide the legal basis for villages in Tanzania owning and managing forest resources on village land in ways that are both sustainable and profitable. As stated earlier, the authority to demarcate and register village land lies with the commissioner of lands. When the minister of natural resources and tourism uses the powers provided under Section 22(1) of the Forest Act to declare any area of land to be a national or local forest reserve, and when such reclassification affects the existing rights of any stakeholders within that forest reserve, the affected stakeholders are entitled to be paid full and fair compensation by the minister. Any person aggrieved by such decisions and who thinks the compensation was unfair may appeal to the High Court (Forest

Act of 2002). In cases where land was taken for government development projects in line with the powers vested in the President under Land Acquisition Act No. 47 of 1967, the act establishes how compensation should be assessed for those whose interest in the land has been acquired and directs the government to pay for all damage done as a result of the exercise.

#### 5.5 Participatory forest management experiences

The decentralization of forest management in Tanzania led to the creation of local institutions popularly known as village natural resource committees (Community Based Forest Management Guidelines of 2007). Decentralized forest management is being mainstreamed in the local government reforms and this has reduced the role of central government from direct implementation to one of oversight, monitoring and policy guidance (Blomley et al. 2008; Community Based Forest Management Guidelines of 2007).

Another important factor that may influence the effectiveness of decentralized forest management in Tanzania is that communities in rural areas are divided into villages managed by village councils. These are elected corporate bodies answerable and accountable to village assemblies. The village assemblies consist of all the adults (aged 18 and older) living within the village area. This local governance system is rooted in the *Ujamaa* (African Socialism) philosophy of the 1970s that organized rural communities into villages for collective agrarian production. Local Government Act No. 7 of 1982 formalized the powers of village governments by enabling them to make their own by-laws, thus providing communities with a powerful tool for creating statutory land and natural resource management rules and procedures at the local level (Blomley et al. 2008; Community Based Forest Management Guidelines of 2007).

Much of the donor funding for PFM is channeled through the government system and uses government structures and procedures. This has reduced the transaction costs involved in maintaining financing flows and built up local ownership as government and development partner systems are increasingly merging. The current emphasis is on introducing a sector-wide

approach in supporting the forest sector through the use of basket funding; joint reviews; common monitoring, evaluation and reporting systems; and increased flexibility in the allocation of finances (Blomley et al. 2008). The government of Tanzania and development partners established a new joint Decentralized Natural Resource Management Program that started in 2013. This will require further institutional rearrangements at the district level and have a bearing on the success or failure of decentralized forest management in Tanzania.

There have been some success stories in terms of improving forest conditions in Tanzania. For example, Persha and Blomley (2009) compared the conditions of forests under centralized, deconcentrated (JFM) and devolved (CBFM) management in the West Usambara Mountains and found significantly less tree removal in the forest under devolved management. The forest under deconcentrated management had the most disturbed forest condition, as manifested in degraded indicators for lower mean tree size, basal area, density of trees with  $\geq 90$  cm diameter at breast height, above-ground biomass, and higher overall stem density. The forest under centralized management was found to be more disturbed by logging and pole cutting in peripheral areas. Subsistence pole-cutting was found to be common across all management regimes. Persha and Blomley (2009) concluded that devolved forest management contributed to more effective management, less illegal logging and the maintenance of forest condition. Their findings underlined the importance of well-designed institutional arrangements in forest management reforms in Tanzania. Success stories related to the impact of CBFM on forest conditions have been recorded in the Duru-Haitemba Village Forest Reserve in terms of recovering flora and fauna (Kajembe et al. 2003). It is claimed that this positive impact has resulted from devolution, democratization, empowerment and sense of ownership, which in turn encouraged local communities to invest their labor and time in forest management activities. Furthermore, Kajembe et al. (2003) found that improved forest conditions under devolved management were a result of community participation and the role of government changing from manager to technical advisor, facilitator and watchdog. Lund and Treue (2008) found decentralized management contributing to the conservation of forest resources, based on tighter control over utilization. However,

while improving forest resource conditions, this tighter control over resources observed by Lund and Treue (2008) may also exclude poor people from benefiting from those resources.

## 5.6 Legal participatory forest management mechanisms

Decentralization of forest management affects how local people value, access, use, manage, and voice their claims about forest resources (Ribot 2002b). The decentralization of forest resources governance in Tanzania is implemented under joint forest management (JFM), community-based forest management (CBFM) and privatization (URT 2006). Under JFM, the government owns the forest and involves local communities in management activities, while in CBFM communities are the owners, right holders and duty bearers of the forest management (URT 2006). Under these two arrangements, the Forest Act advocates decentralization of forest governance with an emphasis on clear forest land and tree tenure rights. The policy further recognizes the growing variety of goods and services that forests provide for community livelihoods (National Forest Policy of 1998). Under CBFM, all revenues and other products accrued from the village land forests remain within the village and are shared based on agreed mechanisms (Community Based Forest Management Guidelines of 2007). Benefit-sharing mechanisms under JFM in Tanzania are still being discussed, which might be a disincentive for community participation in managing forest commons.

The Tanzanian National Forest Policy recognizes forest land as an area of land covered with trees, grass and other vegetation, but dominated by trees. The policy also defines tenure as the holding of land through arrangements such as leasehold, freehold, customary ownership and other such forms of holding. Land tenure during the pre-colonial period in Tanzania was based on common and open access regimes regulated by traditional norms and culture. During the colonial period, all unoccupied land was transferred into state ownership. Customary tenure systems were drastically altered and the colonial governments maintained the authority to grant rights of use and occupancy to different segments of society (Malimbwi and Munyanziza 2004). Researchers, policy makers, development practitioners and

community activists have developed an interest in community-managed forests in recent years as a result of shrinking government budgets and local demands for a greater voice in resource management decision making (Ostrom 1999).

The Villagization Program in Tanzania, in which entire communities were moved from one area to another, had a marked impact on the traditional systems of land tenure within which the present farming systems have developed (Sheridan 2004). Until Villagization Act No. 21 of 1975, the allocation of land for cultivation was the responsibility of the chief or was delegated to the headman of the village concerned. This responsibility now lies with the village councils, which manage village lands as trustees with the villagers as beneficiaries. Village lands are divided into communal lands and village or general lands held under customary rights (Land Act of 1999, Village Land Act of 1999). One very important principle of Village Land Act No. 5 of 1999 is to ensure the participation of all citizens in decision making related to their occupation or use of the land (Land Act of 1999, Village Land Act of 1999). Forest Act No. 14 of 2002 stresses forest land and tree tenure rights (Forest Act of 2002). Rights to the trees are usually intertwined with rights to the land on which the trees stand (Kajembe 1994) and land tenure is of central importance in this respect, especially when proposing sustainable forest management interventions (FAO 2007).

### **5.7 Procedural barriers to participatory forest management**

PFM faces several challenges in Tanzania. First, although the country has a good platform for decentralized governance, one major problem for PFM in Tanzania is that most of the funding has been coming from donors (Blomley et al. 2008). Under such conditions, only villages with funded projects have any knowledge of PFM and their forests showed improvements over the project duration. Thus, not all villages were able to implement PFM.

Second, unclear boundaries, lack of alternative sources of wood, and multiple claims have adverse consequences for PFM forests (Mbwambo 2012). Third, the operationalization of by-laws involves procedural barriers and bureaucratic hurdles. After the village land forest reserve management plan has been drawn up, Forest Act No. 14 requires the village council to submit the proposed plan to the district council, which has to consider it within 60 days of its receipt. Once approved by the district council, the management plan is forwarded to the director of forestry for consideration, before being tabled again at the village assembly (Forest Act of 2002). These legal procedures are too bureaucratic and may turn out to be very expensive for the village government. A study by Mbwambo (2012) in selected forests in Tanzania indicated that the studied forests had draft by-laws and management plans developed at the onset of decentralized forest management, but these by-laws had yet to be operationalized. Thus, the forest committees lacked the necessary management instruments.

Finally, the legal status of forests under PFM can also be a barrier to community participation. For instance, access to forests (natural capital) under JFM and CBFM in the montane and JFM in semi-arid forests in northeast and central Tanzania was found to be limited to the collection of deadwood for fuel and other non-timber forest products because they are essentially protected catchment forests. As mentioned above, government revenues and finances are administered centrally under the Ministry of Finance. This has made the development of benefit-sharing mechanisms a difficult process and it is still being discussed by the Ministry of Natural Resources and Tourism and the Ministry of Finance. In the absence of benefit-sharing mechanisms, communities may not have any incentive to participate in PFM, especially under JFM arrangements in which forests belong to the central government, and this may have a negative impact on REDD+ projects.

# 6 Roles of relevant ministries in relation to land-use decisions

This section reviews the roles of ministries in land-use decision making. It is important to note that all ministries' activities are land-based since their infrastructure is on the land. However, the roles of a selected few relevant ministries are presented here. The Land Act and Village Land Act of 1999 define "land" as the surface of the earth and the earth below the surface, things naturally growing on the land, buildings and other structures permanently fixed to or under land, and land covered by water. The definition in the Land Act further excludes minerals and petroleum substances in the land, which are regulated by the Ministry of Energy and Minerals. Decisions on land use must be coordinated and in this respect, acting on behalf of the President, the Ministry of Lands, Housing and Human Settlements Development plays a leading role in facilitating land allocations for the development of the activities of different ministries. The commissioner of lands plays the central role in relation to land administration.

## **Ministry of Lands, Housing and Human Settlements Development**

The Ministry of Lands has the overall responsibility for formulating land policy and guidelines for sustainable land management in Tanzania. Land Act No. 4 of 1999 defines the formulation of land allocation committees at the regional and district levels to assist the commissioner of lands in exercising the powers corresponding to that post to determine right of occupancy applications. The ministry is responsible for classifying public land into general, reserved and village land uses and land tenure, as per Section 4 of the Land Act. According to Section 5 of the same act, the President may change any area of general land or reserved land into village land by directing the minister to proceed. The minister will then publish a notice in the Gazette specifying the change in land classification.

## **Ministry of Regional Administration and Local Government**

Local governments are responsible for formulating policies and guidelines for the management of land under their area of jurisdiction. However, according to Lands Act No. 4 of 1999, a local government cannot make an offer of occupancy to any person or organization unless specifically authorized. The final decision is taken by the commissioner of lands on behalf of the President.

## **Ministry of Energy and Minerals**

This ministry has the overall responsibility for managing and controlling energy and mineral resources in Tanzania on behalf of the President. Among other functions, it is responsible for formulating energy and mineral policies and implementing them in Tanzania. Based on the above definition of land, the rights of occupancy and use conferred under the Land Act of 1999 and Village Land Act of 1999 do not extend to any minerals and petroleum resources found in the land. The Ministry of Energy and Minerals therefore administers all mining licenses and mineral rights. According to Mining Act No. 14 of 2010, once a piece of land has been identified as containing mineral deposits, the entire property and control over the minerals on, in or under that land is vested in the United Republic of Tanzania and the minister responsible is mandated to make land-use decisions for that piece of land on behalf of the President.

## **Ministry of Agriculture and Cooperatives**

The Ministry of Agriculture and Cooperatives has the responsibility for ensuring food security and poverty reduction in the country. Its duties

also include the formulation of agricultural policies and coordinating their implementation, as well as coordinating the sustainable use of land under agriculture. According to the National Agricultural Policy of 2013, the ministry has the responsibility for bringing about a green revolution that entails the transformation of agriculture from subsistence farming and shifting cultivation to commercialization and modernization through crop intensification, diversification, technological advancement and infrastructure development.

### **Ministry of Natural Resources and Tourism**

The Ministry of Natural Resources and Tourism is responsible for the sustainable conservation of natural and cultural resources and the development of tourism. It is further responsible for formulating policies and guidelines on forestry, wildlife, antiquities, beekeeping and tourism. The ministry oversees management and decision making related to land in forest reserves, game reserves, nature reserves, and conservation areas. Relevant legislation empowering the minister on land-use decisions includes: the Forest Act (Cap. 323); the National Parks Act (Cap. 282); the Ngorongoro

Conservation Area Act (Cap. 284); and the Wildlife Conservation Act (Cap. 283).

### **Vice President's Office-Environment**

The minister responsible for the environment is in charge of formulating environmental policies and guidelines. The Environmental Policy aims to control land degradation, water and air pollution, and plant protection. Part V of the Environmental Management Act of 2004 empowers the minister to declare environmental protected areas, develop environmental management plans for national protected areas and oversee conservation and protection activities in the country in collaboration with other ministries. The minister is also responsible for issuing environmental impact assessment guidelines for the country in all land-related sectors.

### **Other relevant ministries**

Other relevant ministries that play roles in decision making on land use include the ministries for water; livestock and fisheries; industry and trade; and infrastructure development.

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What level of government holds powers over forests – and decisions affecting forests – in mainland Tanzania? Which powers and responsibilities are centralized, and which are decentralized? What role can citizens play?

This report reviews the statutory distribution of powers and responsibilities across levels and sectors with particular emphasis on those relevant to REDD+. It outlines the legal mandates held by multiple levels of government with regard to land use decision and policy arenas affecting forests, as well as community land use, tenure and management.

The introduction describes REDD+ institutions in Tanzania. The second section provides an overview of the decentralization process, including government powers, financial resources and mechanisms for public participation. The third section outlines financial resource distribution mechanisms such as forest fees and PES. The fourth section details the specific distribution of powers and arenas of responsibility related to land use planning, land titling and administration, protected areas and various types of concessions. The fifth section discusses laws pertaining to community lands, land claims and PFM. The final section summarizes the role of key ministries in land use decisions relevant to REDD+.

The study was commissioned under CIFOR's Global Comparative Study on REDD+, as part of a research project on multilevel governance and carbon management at the landscape scale. It is intended as a reference for researchers and policy makers working on land and forest issues in Tanzania.



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