

A thousand and one nights of land tenure

The past, present and future of land tenure in Zanzibar

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Abstract

Land tenure in Zanzibar originates in Shirazi custom and slavery of the 19th century. The turning point was the abolishment of slavery in 1897 forcing the labour system in clove farms to transform from slavery into wage labour. This action created a squatting tenure.

The squatting tenure was based on a mutual benefiting of the landholders, who cultivated clove trees, and the squatters, who cultivated the soil under them and did harvest. Due to various reasons in the beginning of the 20th century the landholders became deeply indebted to moneylenders. Being troubled they began to evict the squatters causing insecurity among them, who started to demand more permanent rights instead. Ethnic groups and land tenure borders started to melt, land became commoditised and the balance in tenure was gone.

A change came in the 1964 revolution and a land reform that followed it. Clove and coconut farms were confiscated from big landholders and distributed to peasants in three acre pieces. In the 1980s, the clove world market value collapsed and restrictions in the use and transference of the Three Acre Plots caused the land to be vested into the hands of people who did not trust in their right or could not transfer their unutilised properties. The Three Acre Plots had over the years turned out to be an obstacle for a proper utilisation of the land. This research remarks that the Three Acre Plots share of the total cultivation area, and therefore their significance for the whole economy of Zanzibar, is considerably bigger than realised before.

In Shirazi strongholds, coral rag areas, previously a strong communal administration, based on a rather typical customary land tenure of Africa, had started to break down and by the 1990s individualisation, commoditization of land had totally reached them. It resulted in violations in land use and, together with an increasing population, made areas struggle with declining soil fertility and deforestation.

Shamba land is the base of today's rural land tenure in Zanzibar. The land is cultivated and transferred on an individual ownership basis. The interests on land still consist of a complex set of variations. However, throughout the history in Zanzibar the strongest interest on land has been the permanent tree owners' right. Illegal occupation exists in state farms, towns and their fringes. The government's land delivery mechanism has not been able to respond in the growing demands on residential land and therefore an informal set up has replaced it. Land records in Zanzibar cover allocated urban parcels, Three Acre Plot grantee data and some voluntarily registered deeds from rural areas.

Agriculture and land policies in the 1980s formalised the present land reform. The targets were: land tenure statutation, security of tenure, adjudication of all land, state land and resource monitoring, improved transactions and dispute handling, effective land use, natural resource conservation, public acquisitions and improved revenue collection. The Commission for Lands and Environment was created to respond to all land questions. A new land legislation: the Land Adjudication Act, the Registered Land Act, the Land Survey Act, the Land Tenure Act, the Land Transfer Act and the Land Tribunal Act passed the House of Representatives in change of 1990s, but their enforcement has been weak. The principle of the Land Tenure Act, which is the main land law, is: all land is public land and individuals and groups can get holdership rights to it either through lease or by a Grant as a Right of Occupancy.

Presently the Commission for Lands and Environment is to be reorganised due to its

ambiguous structure and increased set of activities. The systematic adjudication started in September 1994. The work is going on in one area on Unguja and one on Pemba, priority being in staff training and procedure testing.

The land tenure has to be able to serve all needs of agriculture, industry, tourism and other alternate sources of jobs, food and survival. The implementation of new tenure through land registration requires huge education and information campaigns. The ambiguous situation in Zanzibar land tenure has not yet changed. The question is, whether it will?

Key Words

Land tenure, land reform, land policy, land management, land registration, Zanzibar, the developing world.

Part 1: Introduction

1 Introduction

1.1 Background for the research

I wrote this research report in spring 1996 during my work as a researcher in the Land Management in the Developing Countries research at the Helsinki University of Technology (Leväinen *et al* 1994). The final corrections were made in March 1998. The research on Zanzibar land tenure was part of my Licentiate³ program and this report provided first part of my, now completed, Licentiate Thesis⁴.

This report presents my research findings of:

- 1) a literature study on Zanzibar land tenure before and after the revolution in 1964
- 2) few field researches on land tenure
- 3) fieldwork results on launching the Pemba pilot area adjudication and surveys in Zanzibar.

1.2 Scope, aim and hypothesis of the research

The land tenure history review in this report starts on one hand from slavery and the clove plantation tenure and on the other hand from the land tenure of the Shirazis. The transformation of clove plantation tenure from slavery into the squatting tenure and thereafter into wage labour and customary Shirazi tenure and its break up has been investigated as a base of today's land tenure pattern.

The 1964 revolution being very much a land property revolution is a crucial part of land tenure development in Zanzibar. The nationalisation of the land, the confiscation of all large clove farms, and the land reform that followed the revolution have been investigated in terms of aims, effects and effectiveness. The era of liberalisation that started in the 1980s and led to the formation of new land tenure and agricultural policies, was clearly the start of a second reform in the long development story of land tenure in Zanzibar. The land policy crystallised into the form of a new land legislation the main land law of which, the Land Tenure Act of 1992, was designed to define all land relations in Zanzibar. This research has carefully reviewed the Land Tenure Act of 1992 and its suitability to land tenure of Zanzibar and its ability of meeting the requirements.

Finally, research memoranda from a systematic parcel by parcel adjudication test area on Pemba island is reviewed with the scope being: the launching of a systematic registration in a developing world context.

The aim has been to investigate, and to write a comprehensive record about the history, the present and the future of land tenure in Zanzibar from a land management specialist's point of view. The following hypothesis will be tested with qualitative methods: Constant and radical changes in land tenure of Zanzibar have caused such confusion in land relations that a new land management system will face difficulties when aiming to unify tenure.

³ Licentiate Decree = a predoctoral decree in Finland.

⁴ *Land Tenure Confused; Past, Present and Future of Land Management in Zanzibar*. Helsinki University of Technology 1997.

1.3 Study objectives

The following tasks formed the structure of this research and framework for the report. They can be considered as self created terms of reference for this study. Issues to be clarified and analysed:

- the present status of land tenure in Zanzibar
- the history of Zanzibar before the 1964 revolution in terms of land tenure development
- the practise and outcome of:
 - ⇒ the confiscation of land property and
 - ⇒ the land reform that followed the 1964 revolution in Zanzibar.
- land tenure development between 1964 and the beginning of liberalisation in the 1980s
- the background and true influence of the liberalisation process in the 1980s and the creation of the land policy
- the present status and influence of the Land Tenure Act of 1992 and the whole legislative land reform of the 1990s
- the status of the present security of tenure and the security of tenure provided by the new legislation
- the stage of conflicts and confusion, if any, created by various land tenure patterns and statutes over the history in Zanzibar
- the contribution of the latest land reform in the latter sense
- key elements in the land registration process in a developing society that ensure or inhibit sustainability
- the key elements of the success in the adjudication, demarcation, surveying and documentation as parts of land registration.

2 Existing knowledge

The main work concerning land tenure in Zanzibar is by John Middleton (1961) called *Land Tenure in Zanzibar*. During the following three decades land tenure was researched only as a target of secondary interests. Next primarily land tenure researches took place in the 1990s by several researchers with different scopes. Following is a list of main land tenure studies/work reports after Middleton's research:

- Shao 1978. *Land Tenure System and Land Reform in Zanzibar (1830 - 1978)*
- Yahya and Associates 1982. *Land Policy for Zanzibar and Pemba; Final Report*
- Larsson and Stoimenov 1983. *Land Information Systems and Land Control in Zanzibar*
- Lawrence 1985. *Report by Land Tenure Advisor on Preparation of Draft Legislation for Establishing System of Land Registration in Zanzibar*
- Singer, Norman J. 1991. *Report on Land Use Planning, Soil and Water Conservation and Land Tenure in Zanzibar Including a Draft Land Tenure Act and Forest Resources and National Park Conservation Act,*
- Shao 1992. *The Political Economy of Land Reforms in Zanzibar: Before and After the Revolution.*
- Törhönen 1993. *The Adjudication Planning Process in Zanzibar; Investigations of Three Land Tenure Types,*
- Singer, Shambie 1993. *An Investigation of Land Tenure in Zanzibar; Shamba Lands, Squatting, Gazetted Forest Reserve Land, Government-run State Farms, and Shifting Agriculture on Coral Rag Land,*
- Krain *et al* 1993. *Farming Systems of the Coral Rag of Zanzibar,*
- Krain 1994. *National Coconut Development Programme Farming Systems Research Zanzibar; Land Tenure in Zanzibar*
- Donkerlo and Aboud 1994. *Women and Land in Zanzibar.*

Each of the above land tenure studies has a very limited area of interest and nobody has tried to compile their data into one review. This has been one of the justifications for doing this compiling research. The land registration and statutory legislation of Zanzibar has been ill documented throughout the history. Since the new land legislation has been introduced, little consideration has been given to clarifying the suitability of the new legislation to the conditions of Zanzibar and overall research made in Zanzibar by land management professionals has been rare. Lawyers have conducted few studies in the eighties and nineties paying little attention to necessary technicalities.

3 Material and method of the research

The first part of the research was a literature review on the land tenure history of Zanzibar. There is quite a comprehensive record in the literature about Zanzibar before the 1964 revolution from both anthropological and historical points of view. The literature review has utilised all existing land tenure and related data that was found.

The post-revolutionary era of Zanzibar is generally worse documented than the pre-revolutionary era, but some records can be found. However, the nationalisation of land property and the confusion that followed it have never been researched properly. There is very little in the literature about this. Therefore, for this research the literature study had to be amended with a review of my earlier research findings. I have also relied on notes and findings gathered over the years I spent in Zanzibar.

For the 1980s liberalisation and development that followed it, I have been able to utilise the Commission for Lands and Environment library records. The same goes for the legislative reform that followed the creation of the land policy.

The second part of the research combines the literature and the qualitative field research findings when investigating the present development of Zanzibar land tenure. I have been personally involved in the preparatory and implementation phase of a systematic land registration in Zanzibar having carried out several studies in the field. Collected material from interviews, land registration staff brainstorming sessions, law review and target group meetings and other qualitative data are selectively analysed.

The final conclusions, written in Part III of this study, are based on four records written in Part 2 of this paper (Figure 3.1):

- a comprehensive land tenure history before the new legislation
- new legislation and land tenure reform
- land registration and its implementation
- evaluation of potential success of Zanzibar land registration process tested with two different methods.

Figure 3.1. Research structure and methods

Part 2: Research findings

4 Zanzibar

Zanzibar forms the union of states with Tanganyika called Tanzania (Figure 4.1, 4.2). It has a highly autonomous government and it lies immediately south of the equator on the East Coast of Africa. It is essentially a collective of two main islands, Unguja (1,600 km²) and Pemba (980 km²). The population estimate, based on the 1988 Census and the current annual population growth 3% (Zanzibar 1993), is about 700,000 causing the average population density to be 271 people/km² that is one of highest rural population densities in the world.

Figure 4.1 Tanzania

According to the estimates by the Zanzibar Department of Statistics (1993) the annual population growth is slightly over 3%. The bigger of the two sister islands of Zanzibar, Unguja, is mainly flat having a raised trip in the central area that elevates up to 105 meters.

Figure 4.2. Zanzibar Islands.

On the West Coast, in the middle of the island is situated the famous stone town, called Zanzibar Town or the Stone Town. The soil is mostly clayey sand surrounded by alluvial terrain along the coast. The other existing main soil is thinly vegetated reef limestone (Figure 4.3).

The Pemba island, on the other hand, is very hilly, however attaining only the height of 75 meters. The soil consists partly of marine clay and sand and on eastern coasts of limestone reefs. There are three towns on Pemba: Mkoani in the South, Chake in the middle and Wete in the north.

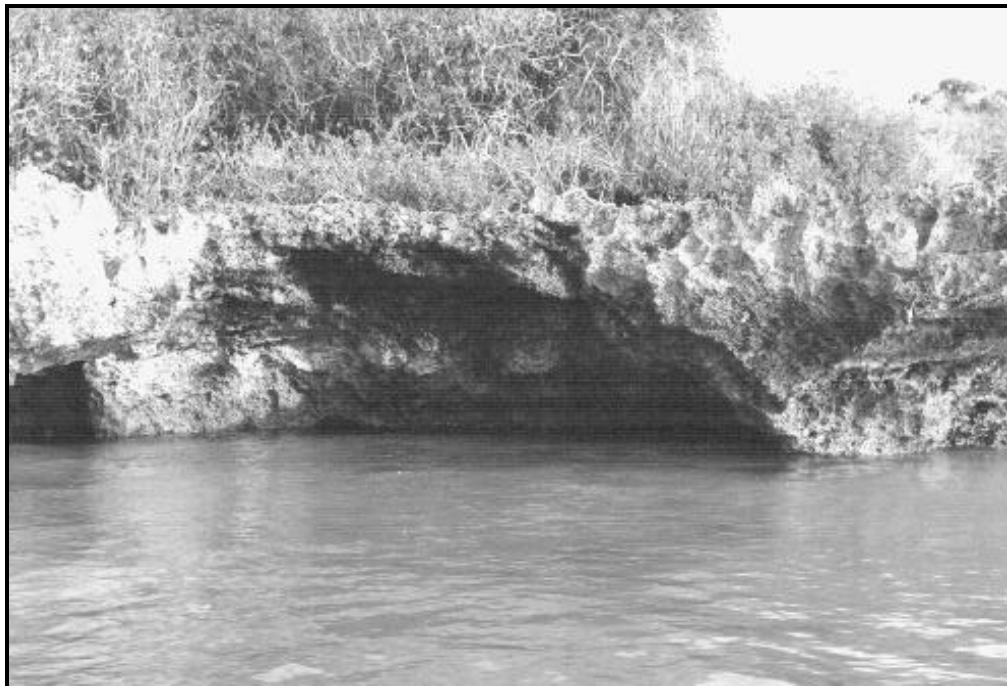


Figure 4.3. Bawe island, a vegetated coral reef.

All the towns on Pemba are close to the west coast that faces mainland Tanzania. The most fertile lands are on the west coast of both islands. The normal temperature in Zanzibar is between 30-35°C, but during the cool seasons, the coolest time being from June to October, it may drop down to 20°C. Humidity exceeds 80% over nine months of the year on Unguja, being slightly lower on Pemba. The main rainy season is in March-May varying significantly by strength and length between the years. The other strong rains come in November with less length and strength. (Zanzibar 1993, Yahya 1982)

In Zanzibar, agriculture is dominating the economy, with clove and coconut plantations traditionally accounting for more than 90% of domestic export. The majority speaks Swahili, which is the official language. Arabic is widely spoken and English is spoken especially in urban areas. The Muslim religion is a dominant part of the Swahili culture as the estimated percentage of population to be Muslims was over 90 in 1993. (Zanzibar 1993, Britannica 1989)

Figure 4.4. Main ethnic groups of Zanzibar in twentieth century.

The population of Zanzibar is largely ethnically mixed (Figure 4.4). Nowadays, all the population can be called Swahili, which traditionally meant the mercantile population of the east African coast under arabic influence. There is still a strong Arab and Arabic oriented population, Pemba being their stronghold. However, the great majority of the population is of African origin. The biggest African group that still distinguish themselves from the Swahili are the Makondes originating from Southern Tanzania and Northern Mozambique. One of the smaller groups is the Indians who have great influence in business in the Zanzibar town area. Other detectable groups are Goans, Comorians and Europeans. The Europeans populate the islands with large numbers but only few settle in on a permanent basis beyond the termination of their work contracts. Increased tourism has also introduced a large amount of backbaggers and organised tourist groups, having become very loud and visible during the last few years in Zanzibar. Tourism has hardly reached Pemba concentrating on Stone Town and on the eastern coast of Unguja.

Zanzibar is the target of massive donor aid programs. The United Nations through mainly FAO, UNICEF, ILO and UNDP and other significant donors such as the European Union, the Nordic Countries, the Netherlands, the United Kingdom, Germany, the Gulf states and some Islamic Organisations like the Aga Khan foundation are all giving strong assistance on a scale that has made Zanzibar heavily dependent on it.

4.1 A brief history of Zanzibar

Throughout its history Zanzibar has acted as a major trading place between eastern Africa and the rest of the world. It has been the passage-way of all sorts of goods imported to Africa and the export of ivory, slaves and later cloves and coconuts. The first human settlements were there before the Christian era, but when and who the first settlers were is not quite clear, however they are believed to have been of African origin (Ingrams 1967).

Zanzibar has faced many kinds of colonising from various parts of Arabia and Europe throughout its history, which has been closely tied to that of East African coast⁵. It has experienced major Arabic influence far back in history (Figure 4.5).



Figure 4.5. The ruins of a Arab palace

In the more recent history, at the turn of the 16th century (1498) came the Portuguese to east Africa. Their rule ended in 1729 when they were overthrown from their last resorts by the Arabs of Omani origin (Middleton 1961, 1992). I have witnessed a peculiar type of bullfight taking place on Pemba in every clove harvesting season. This is said to originate from the Portuguese era (Zanzibar 1993, Pearce 1967). The following ruler was the Imaam of Oman, but the real power was in the hands of the local Arab families. A remarkable notice about Zanzibar was that for a long period Unguja and Pemba were ruled by a different master. In 1745 the Yorubi dynasty was replaced by the Busaidi dynasty as the ruler of Oman and this was immediately recognised in Zanzibar by expelling Pemba that was linked with the Mazrui family that ruled Mombasa. The Mazruis gave up Pemba in 1823 tying the destiny of the sister islands of Zanzibar together up to these days (Middleton 1961). In 1832 the capital of Oman was moved from Muscat to Zanzibar Town (*Ibid.* 1992) (Figure 4.6). The Mazrui rule over Pemba has been described as being rather weak and the real power was in the hands of local kin with no one being dominant. It seems to be characteristic of Pemba that the government is rather weak and the island has been the target of only secondary interests.

Zanzibar town became the capital of half of the Oman Sultanate when the Oman domain was divided into Oman and Zanzibar in 1856. A British consul was established in Zanzibar in 1841 and in 1890 Zanzibar was declared a British protectorate.

⁵ See Middleton 1992 The World of the Swahili.

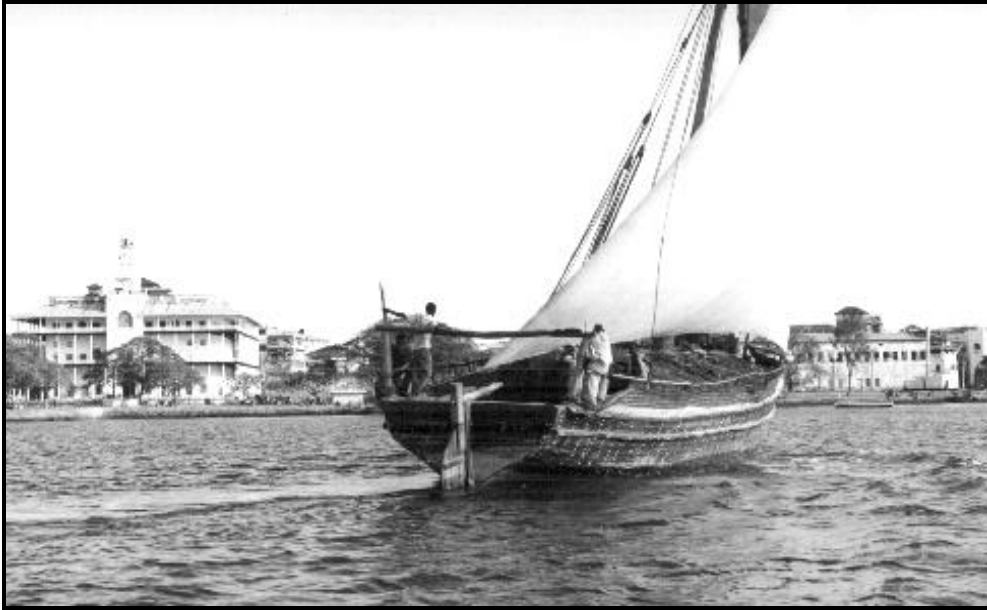


Figure 4.6. A traditional Dhow in front of the Sultan's palace

After that the governing in Zanzibar was organised by a strange combination of the British Protectorate and the Oman Sultanate (Fair 1994, Sheriff and Ferguson 1991, Middleton 1961). The British rule that had given the Sultan only titular power ended in November 1963 when the Zanzibar Sultanate gained independence. Just a good month later in January 1964, ethnic and land ownership conflicts unleashed the revolution that ended the Sultanate era. Multi-party elections that had followed the independence declaration had ended in a situation where an African oriented party called the Afri-Shiraz Party, ASP, had won the majority of votes, but mainly due to a seat distribution of British type⁶, it did not get majority in the House. The Africans suspected fraud and on 12 January 1964 overthrew the Sultan. (Ayany 1970, Lotchie 1965, Clayton 1981, Lodhi 1984, Okello 1967, Sheriff and Ferguson 1991)⁷

Zanzibar adopted a Marxist ideology soon after the Revolution. Zanzibar and Tanganyika formed a union in 1964 named Tanzania. Mr. Abeid Karume became the first President of Zanzibar and Mr. Julius Nyerere became the President of the Union. Karume, who ruled in a strong manner, was in power up to his assassination in 1972. In 1977 the Tanganyika African National Union (TANU), Julius Nuyrere's party in the mainland and the ASP party of Zanzibar merged into one party called CCM⁸. In the nineteen eighties Zanzibar slowly started to liberate its economy and its closed political atmosphere. This development led to new economic ideas, new policies and growing tourism, which the government wishes to be the saviour of the declining economy. Democratisation crystallised into the multi-party elections that took place in November 1995, where the ruling revolutionary party CCM got the presidency and 26 seats in the parliament, while the biggest opposition party CUF⁹ got 24 seats and only barely lost in the contest for presidency. Characteristic of these elections, and probably of whole history of Zanzibar, was the fact that CUF won all the seats on Pemba and CCM all but three on Unguja. The Pemba channel that separates Zanzibar islands from each other has always been both physically and politically very deep and rough. (Karisi News 26.10.1995, Reuter 26.10.1995)

⁶ Only one representative is elected per area.

⁷ See more about the land issue and the revolution in Section 5.3.

⁸ Chama Cha Mapinduzi = Party of the Revolution.

⁹ CUF = Civic United Front.

4.2 Slavery

The reason why so much attention in this research is paid to slavery is the significant connection that the set up of slavery has to the land tenure in Zanzibar. In Africa slavery was traditionally used between tribes as a fine for settling various crimes. Very often prisoners of war were forced to serve capturers as slaves for a certain amount of time. East-African Arabs learned about this habit and became interested. According to Lodhi (1974) Zanzibar Arabs first bought prisoners of war from a winning tribe to be slaves in Zanzibar. This was found ineffective since many slaves escaped and returned to their home areas. Therefore, the Arabs soon started to buy children who were easy to raise to be slaves. After some time buying turned out to be capturing. The Arabs also fought against the tribes up-country and forced the prisoners of war to slavery. During those wars some tribes wanted to join the Arabs. The Arabs generously agreed in the first place and made them slaves in the second. Slavery in Zanzibar was inheritable. A child born from slave parents or whose mother was a slave became automatically a slave. If a free woman had a child with a slave man, the child was born free (Lodhi 1974 p.5). The Arab settlers had slave women as concubines and their children had equal rights with the children of an 'official wife'. One descendant of a concubine child even became Sultan¹⁰.

Zanzibar acted as passing place for the slave trade that exported slaves mainly to the Persian Gulf and to the Reunion island. The British used pressure on the Omanis to stop that during the 19th century. According to Othman (1992) this pressure started soon after slavery became uneconomic for the western countries. The trade continued up to 1873 when it was banned in Zanzibar and domestic slavery was abolished in 1897. A detailed record about the transformation period in 1897-1925, when slaves became squatters, was studied in *From Slaves to Squatters* by Frederick Cooper (1980). Illegal trade continued up to the beginning of the 20th century and the vestiges of slavery were clearly visible in the society at least up to the Revolution of 1964. (Fair 1994, Sheriff and Ferguson 1991, Middleton 1961)

The slaves had many ranks and many different kinds of tasks to fulfil. Three major classes were: house slaves, agricultural slaves and ships' slaves (Lodhi 1973). In Sheriff and Ferguson (1991 p.23) the three categories were: group working for wage outside the household, domestic slaves (the households) and agricultural slaves. This research is concerned with agricultural slavery that was for a while a prominent feature of landholding in the large and most fertile part¹¹ of Zanzibar.

¹⁰ Seyyid Halifa bin Harub 1911-1960.

¹¹ The clove plantation areas.

5 The land tenure history of Zanzibar up to the 1964 revolution

Throughout its early history Zanzibar was organised by native kingships. People lived in self ruled villages. Shao (1992) suggests that before the arrival of the Arabs in Zanzibar, land was never treated as a commodity. The indigenous land tenures were characteristically communal. The first form of ownership was group ownership, where people got usage rights to land that their society owned.¹² Indigenous groups of Africans consider themselves as Shirazi (Figure 5.1) identifying themselves with the descendants of the early occupants of the Zanzibar islands who were of Persian origin. The other group of Africans originate from the slave trade and immigration that followed it being mostly of mainland origin. However, the distinction has vanished over the last thirty years and the Africans and the Arabs, not so much the Indians in that sense, have emerged together as the Swahili group.

However, the oldest existing land rights originate from the Shirazi group (Middleton 1961). Without considering the many variations of land tenure of Shirazi it can be categorised as the first main type of pre-revolution land tenure.

Figure 5.1. The shirazi groups and their strongholds

The second main type, the land tenure of the plantations, emerged from slavery and clove farming (Middleton 1961 p.69). The main land tenure types and their brief history (Figure 5.2) are presented in the next two chapters.

¹² A piece of land cultivated within a community's joint land area on a usage right basis is often referred to as Konde. See Middleton 1961 or Shao 1992.

Figure 5.2 The history of Zanzibar and the land tenure

5.1 Shirazi land tenure

The most comprehensive record of Zanzibar land tenure has been written by John Middleton in 1961, called *Land Tenure in Zanzibar*. I have used that book as the main source in this chapter. In Middleton's other books (1965, 1992) he has used mainly the same field work material that he had gathered in 1958 in Zanzibar for the 1961 book. In order to have also other aspects presented a few other references are used.

Prinns (1961) mentions that other than plantations land was primarily possessed customarily through clan, village or members of the Shirazi nation. According to Middleton (1961) land tenure in the Shirazi areas, mainly coastal fishing villages and coral rag areas, had remained the same for generations. It seems to have been a rather typical customary land tenure system of tropical Africa. The village administration was formed by groups of elders to administer issues like building or tree-planting-site allocations. However, during the time of Middleton's investigations, the elders' rule was primarily ritual and the real power was vested in the hands of a government official called Sheha. A farmer might have had full ownership of trees but not of the land where it grew (Middleton 1961 p.21). Traditionally there were no contradictions caused by this, but already in the 1960s Middleton (1961) found some conflicts especially when valuable clove trees were involved. The farming was mainly subsistence agriculture supported with subsistence fishing.

To sum it up, it can be stated that Shirazi tenure was traditionally never a freehold tenure, but based only on user rights. However, Middleton mentions that there were exceptions found to this principle. The Shirazi rights on land had a very weak recognition in the pre-revolutionary statutory law¹³.

Shirazi tenure was mainly existing in remote areas, such as coral rag areas that had no cloves. Farms were possessed and strongly guarded by the descendants of the founder of such property i.e. a person who first planted trees on it. There were systems of strong protection of this type of holding (Middleton 1961 p.24). The group did not lose its possession even when moving away from the area in question. The land was also transferable through anonymous sale and in fact that was common in cases where the descendants moved away. The properties were not static and new ones were formed according to the need. The farming area was open for new settlements to be established. Only residential and graveyard sites were customarily to be kept solid (Figure 5.5). The inheritance and administration of this kind of properties was done according to the custom of Islam. In practise it meant *the dispersal of rights in a piece of land or in trees among a wide range of kin at every generation* (Middleton 1961 p.27). Together with the increasing population this led to a fragmented land holding structure. In principle, the descendants had equal rights to the property, but according to Middleton, men were more 'equal' than women. In the case of inheritance of 'kin' land, the brothers received twice as big a share as the sisters. However, if the heirs rented or sold out the property, the sisters got an equal share. The sisters were commonly persuaded to sell their shares to their brothers. In practise this meant the selling of trees. In other words, in Shirazi custom, land rights are defined according to trees. Ingrams made the same conclusion in 1920 (1967 p.274-275).

The structure of Wahadimu¹⁴ tenure is presented here as a sample of Shirazi tenure. The Wahadimus traditionally settled in eastern and southern Unguja. The second main group is called Watumbatu that settled mainly in Tumbatu island, northern Unguja and southern Pemba and the third group is called Wapemba that originate from Pemba (Middleton 1961, 1992, Shao 1992 and Ingrams 1967). In this report they are all referred to as Shirazi and in the post-revolution era description they are part of the Swahili group that also includes other African groups and Arabs.

A typical hadimu¹⁵ settlement structure and their pattern of land tenure is presented below. It mainly existed in the coral rag areas outside clove plantations. The basic units of a Shirazi settlement are (Middleton 1992 p.70):

- 1) Towns¹⁶, that consist of.....
- 2) Moieties, that consist of.....
- 3) Villages, that consist of.....
- 4) Wards¹⁷. (Figure 5.3)

¹³ See Section 5.4 a Colonial Approach.

¹⁴ A group of Shirazis originally settling in the southern parts of Unguja.

¹⁵ Hadimu - singular, wahadimu - plural.

¹⁶ Often referred to as Mji in Swahili.

¹⁷ Often referred to in Swahili: Kiambo, a homestead and Viambo, several homesteads forming a village (Shao 1992, p.3).

Figure 5.3. Hadimu (Shirazi) town structure

Each of these residential areas (Figure 5.5) had their own name. They were surrounded by (Figure 5.4):

- 5) Gardens (Figure 5.8) and
- 6) Bush land (Figures 5.6 and 5.7).¹⁸

Figure 5.4. Hadimu (Shirazi) settlement area zones

¹⁸ I see no point in explaining all the variations of the land tenure in Shirazi areas, since for background knowledge, principles rather than details are important in terms of their effects on land tenure of today. Anybody who is more interested in the topic should read Middleton's (1961, 1992) books for covering and detailed record of Zanzibar's land tenure in the 1950s.

Figure 5.5. Hadimu (Shirazi) ward

Shao (1992) defines the Shirazi tenure into two types: the family ownership type and the group ownership type. The bush and the garden lands were traditionally communally held and owned by a group whereas the wards were always family owned.



Figure 5.6. A school in a bushland area on Pemba

According to Middleton (1961, 1992), in shifting cultivation a bush land area¹⁹ was held in common. The right to clear bush for cultivation was open to everybody. According to Ingramms (1967 p.275) in the 1920s no less than sixty years of continuous and undisputed possession proved ownership, otherwise rights were only to improvements on land.

¹⁹ A coral rag area.



Figure 5.7. Subsistence farming on a coral rag area on Pemba.

However, he had found that a coconut tree growing on fertile land was twice as valuable as a coconut tree on infertile land. So land had some value in people's thinking. Bush lands close to a town may have had areas divided between wards. Sheriff (Sheriff and Ferguson 1991 p.113) describes the traditional shifting cultivation pattern to have included five years of farming followed by a 2 to 25 year-fallow-period depending on the distance from village centres. Walls, usually built to protect a field against wild pigs, were considered individual property, but did not define ownership of land. If there were signs of farming, the previous cultivator had to be agreed with before new cultivation could take place. Trees should not have been cultivated too close to old trees, but seasonal crops were allowed to be cultivated under them. Even the ownership of trees in a coral rag area gave no right over the soil underneath the trees. The town areas were open for all inhabitants for well digging, wood collection for fuel and construction, lime gathering and burning, collecting the fallen coconuts and palm fronds, grazing livestock, collecting wild fruits, hunting, cutting mangroves and exploiting to the sea. (Middleton 1961)



Figure 5.8. Settlements and garden land in a coral rag village on Pemba.

Sheriff mentions some sort of tributes paid to village elders and to rulers of Shirazi groups often consisting of farm products (Sheriff and Ferguson 1991 p.116). He does not clarify the pattern very clearly and it seems not to have been very organised, but however it can be considered a hint of a historical property tax on land in Zanzibar!

5.2 Land tenure of plantations

The Omani Arabs brought the cultivation of cloves in plantations in the 19th century.²⁰ According to Middleton (1961, Middleton and Campbell 1965 p.28) the first clove plants were brought from Mauritius in 1818. Lofchie (1965) mentions that the year was 1818, but the place was Reunion. Othman (1992) mentions sources, which indicate that they may have come already earlier from Reunion. Sheriff (Sheriff and Ferguson 1991 p.112) mentions that cloves were introduced *about 1810*. Cooper (1980) writes that Oman Arabs introduced cloves in Zanzibar in the 1830s. Pearce (1967 p.295-297) presents various sources and possible origins and concludes that, according to most traditions, cloves were brought from Mauritius in 1829. Sheriff (Sheriff and Ferguson 1991 p.112, Sheriff 1987 p.49) presents probably the most detailed record and sources on how and why the cloves were introduced and mentions that they were brought and planted about 1810 by an Omani Arab called Saleh.

Middleton mentions (1961 p.12) that according to the local tradition the Sultan had ordered the Arabs to plant one clove tree to every coconut tree. The Arabs had made a deal with the local leader²¹ that “...*forest lands could be granted to Arabs who cleared them and planted them mostly with cloves and coconuts using slave labour*” (Lodhi 1973 p.22, Othman 1992). According to Middleton (1961), clove trees were introduced to Pemba soon after they had come into Unguja. A hurricane in 1872 that destroyed most of the clove trees on Unguja

²⁰ Clove, *Eugenia caryophyllata*, belongs to the Myrtaceae group (Pearce 1967).

²¹ An agreement between Sheikh Seyyid Said bin Sultan and Mwinyi Mkuu (the spelling varies which is typical of the Swahili language) of Zanzibar. Middleton (1961, 1992) translates Mwenye Mkuu = the Great Owner.

missed Pemba causing cloves to become more important on Pemba than on Unguja. For example according to Middleton and Campbell (1965 p.35) Pemba produced 85% of all clove production of Zanzibar.

Figure 5.9. Mwinyi Mkuu (Pearce 1967 p.175).

John Okello, the Ugandan revolutionist who led the 1964 revolutionary groups called Freedom Fighters, describes Arabs, in his book '*Revolution in Zanzibar*' (1967), as squatters on land that traditionally belonged to Africans. Also the Afri Shiraz Party, led by Karume, used the slogan in rallies before gaining independence in Zanzibar: *the trees are yours, the land is ours* (for example Middleton 1961 p.77). But taking into account the highly political status of the land issue during the colonial era in Africa, the statement can to be considered based more on a politically oriented judgement than historical facts. For example, Middleton concludes that most of Arab owned clove plantations were not used for farming, by the indigenous population prior to arrival of the Arabs (1961 p.41). Middleton and Campbell (1965) describe the hills of Unguja as being covered with forest and hardly cultivated before the introduction of cloves. Forest was so thick that it was troublesome even to keep patches clean. However, there have been a few exceptions where force or purchase had been used as a medium of getting possession. Middleton mentions that some evidence of forcible acquisition of the Shirazi land has been found in the Shirazi tradition. Middleton and

Campbell (1965) seem to have concluded that these forcible acquisitions concerned only rice lands in valleys while clove trees were cultivated on hills (Figure 5.8). However, according to Middleton's findings (1961) most of the clove trees were planted under a direct grant by the Sultan on unoccupied and unplanted land. Shao (1992) criticises that kind of conclusion and points out that even unoccupied land was communally held. Despite very few cultivations, forest areas were not abandoned and their full utilisation was just a question of time. Middleton's research was made, in the late fifties, by the time of increasing uneasiness in the relationships between landholders and squatters. It would be interesting to find out about Middleton's, as a British scientist, probably political motives. Shao does not hide his political views that could be considered strongly socialist. In any case, Middleton had a clear belief in Arab rights on clove trees that they had planted and possessed over a century by the time of his research. Squatter rights that are described later, get however equal recognition from him. In all plantation areas since the introduction of cloves, land tenure has been based on freehold tenure. There has always been a clear owner to be found for each clove tree. Of course, trees could have been jointly owned but, remarkably, never communally.

The opposite view for acquiring land for clove farming has been presented by Cooper (1980 p.146). He points out that land in coral rag areas where the Shirazis resided was much more infertile than land in plantation areas. According to his logic, it would have been natural for the Shirazis to reside in fertile instead of infertile areas and he concludes, without presenting any further evidence, this to mean that there must have been force involved when acquiring the clove plantation areas.

As mentioned above plantation tenure was a freehold tenure since its introduction. Inheritance was conducted according to the Muslim law of inheritance. Middleton (1961 p.69) describes that plantation land may have been: sold, rented, loaned, mortgaged, disposed in any way the owner wanted, however recognising the traditional rights of slaves/squatters.



Figure 5.10. A typical clove valley on Pemba.

A question concerning whether the ownership right reached the soil only or clove and coconut trees only or both, is

complicated. The problematic owner-slave-squatter relation is explained below. It is vital background knowledge for understanding the manner in which the Swahili people of today consider land property.

During the era of slavery, a large amount of the imported slaves served as farmers. According to Lodhi (1973), agricultural slaves worked 2-5 days a week for their masters. According to Jacques Depelchin (Sheriff and Ferguson 1991 p.24) they were required to work five days a week. The other days they could work for themselves, many of them cultivating their own plots. They were not allowed to own trees (Middleton and Campbell 1965 p.33). According to Pinns (1961) a new slave was normally given a small plot of his own for growing his own food. This land was not in the areas of cash crop cultivation and it was usually very infertile. Lodhi mentions that a slave could gain ownership on land, through marriage, for a residential plot. It is characteristic for Zanzibar to have very small fragmented residential areas.

According to Lodhi (1973) the slaves had a customary cultivation right on their master's land, to so called plantation areas, but the right was limited to soil under the trees that were producing cloves, coconuts or such for the master. The release of slaves did not take place automatically after the abolition of Slavery in 1897. Many slaves had to buy their freedom with a 'present'. This present was often a large piece of a slave's personal residential parcel. Consequently the abolition of slavery actually increased the Arab influence on land (Lodhi 1973). Otherwise the Arabs' ways of gaining new land possessions were limited as they were not allowed to buy land from original Zanzibaris (Public Land Decree of 1921). According to Middleton (1961) the Arabs considered the Shirazis as the indigenous people of Zanzibar, i.e. originals. As mentioned before, apart from recognising the Arabs' rights for clove plantations, Middleton strongly recognised the squatters' rights.

After the abolition of slavery, the invaluable clove and coconut plantations remained under the ownership of the former slave masters, who were still all Omani Arabs, according to Lodhi (1973). There were, before the Revolution of 1964, also some peasants of Indian origin that had gained land mainly through money lending as a medium of settling unpaid loans. Later it was banned to happen²². The Arab landowners had become heavily indebted to Indian financiers (Middleton 1961 and 1992, Sheriff and Ferguson 1991 p.30, Cooper 1980 etc.). There were also some Shirazi plantation holders. Plantations were transferable and in the case of a purchase the value was determined according to the value of trees.

Lodhi (1973) and Middleton and Campbell (1965) mention that there were a few exceptions where land was transferred to an ex-slave as WAKF land²³, which is an Islamic trust land. "*Wakf is an institution permitting the dedication of property by its owner in support of religious and charitable objects*" (Middleton 1961 p.24). Some Christian missions bought land for ex-slaves. However, according to Lodhi (1973, also Middleton and Campbell 1965, Sheriff and Ferguson 1991 p.36, Middleton 1992, Fair 1994) the great majority of slaves remained on the properties of their former masters as squatters. They never received ownership of plantation land, only the cultivation right remained for the soil under the trees (Lodhi 1973, Pinns 1961, Middleton 1961 p.42). It is obvious that the double cropping system that is presently still utilised²⁴ (Krain 1994, Törhönen 1992, Singer S. 1993), originates from both slavery and the Shirazi land tenure.

²² See Section 5.4 for a Colonial Approach.

²³ See more in chapter 5.4 Colonial Approach

²⁴ See Section 6.2

Figure 5.11. The plantation settlement area zones

Depelchin (Sheriff and Ferguson 1991) describes that a landowner gave a squatter a small parcel for cultivation and for residing in order to tie the squatter to his land and work (Figure 5.11). He describes them as forced labour and tells about a three/four system where a squatter worked three days for the landowner and three days for themselves. Sheriff (Sheriff and Ferguson 1991, Mlahagwa and Temu also in Sheriff and Ferguson 1991 p.118, p.160, Cooper 1980 p.85) describes how after the abolition of the slavery landowners introduced a system where former slaves were allocated a cultivation against four days work per week. In practise this system was the same as slavery and was soon realised to fail. After that, in the beginning of this century, landowners started to pay wages for squatters when they were picking the cloves. An ex-slave, then a squatter, did all the harvesting for the landholders' cash crop²⁵ trees against a small payment.

According to the Middleton (1961 p.44, Middleton and Campbell 1965, p.35) the harvesting was not part of the squatters' deal and clove pickers were always hired for the job, although a squatter would probably take the task, when asked to (Figure 5.12).

²⁵ Clove and coconut trees.



Figure 5.12. During the harvest the cloves are dried under the sun.

The deal between a squatter and a landholder was to keep the soil clean from the fast growing weed that would have inhibited the growth of the cloves. The landholder considered it valuable to have somebody to keep the ground clear. I found this principle and practise still in use in the 1990s (Törhönen 1992, 1993)²⁶. No rent was ever paid by a squatter concerning the field he was farming. A squatter had also enjoying rights regarding palm fronds, grazing and such other benefits as did not affect cash crop production. A squatter did not have to ask permission for settling in a plantation area. Everybody was always welcome where ever place existed. They were allowed to build a house anywhere. However, a squatter had to be in good terms with the owner and a landholder also had the right to get rid of 'trouble makers' (Cooper 1980 p.282). Arab and Indian owners usually lived in towns and had left the administering of the plantations to overseers. Shirazi headed plantation holdings had been bought from the Arabs in small pieces²⁷. Inheritance was usually handled as distribution of trees between heirs²⁸. On Pemba, Shirazis owned clove plantations were much more common than on Unguja, but, even there, large parcels were owned by the Arabs (Middleton 1961 p.53).

Squatting rights were inheritable but not marketable. The inheritance of the harvest was obvious but the inheritance of a field and a house needed the landowner's permission. Sheriff (Sheriff and Ferguson 1991 p.118) writes that a squatter was allowed to plant permanent trees but they were inherited by the landowner in case the squatter died. Middleton (1961) had understood that a squatter would farm one place for about five years and move then to another area. This is the only mentioning of some kind of shifting within the plantation area that I have come across. However, no other squatter could take same place under cultivation without a permit from the first cultivator.

²⁶ See Chapter 6.

²⁷ See Section Pemba for a different practise.

²⁸ Again proof of what was really considered property or valuable interest in pre-revolutionary Zanzibar: trees not land.

After the slave trade was abolished immigration from mainland started to fulfil the increased demand of clove pickers. Depelchin (Sheriff and Ferguson 1991, Sheriff in Sheriff and Ferguson 1991, also in Fair 1994, Cooper 1980, Shao 1992) describes the transition from slavery to a squatting system and speaks about a labour problem as an immediate creation of the abolition. The labour problem made some landowners change their cultivation product from clove to coconut since coconuts required much less labour. The mainland immigrants that the government actively started to recruit in 1903 (Fair 1994, p.224) joined the group of former slaves. This immigration continued through the whole colonial era. Also the Shirazis moved in large numbers to settle in clove areas (Middleton 1961, Cooper 1980). According to Sheriff (Sheriff and Ferguson 1991, also Fair 1994), Shirazis hesitated first to join the clove pickers and that increased immigration. It was in the colonial government's interest to keep the clove economy productive and it for example established a property tax for indigenous farmers in the beginning of the century which of the peasants were freed if they participated in clove picking. The government succeeded in persuading the Shirazis to pick cloves and by World War One they had become the cornerstone of the whole picking process (Fair 1994, p.226).

Fruit trees such as mangoes, oranges, limes, lemons, pawpaws, breadfruits, jackfruit and tropical apples were planted and harvested by a squatter. The harvest was then divided between the landholder and the squatter (Lodhi 1973). According to Middleton (1961 p.42) ownership of such trees belonged to the landholder disregarding who originally planted them and harvesting right was not transferable. He states that in practise the share of this kind of crop was never demanded by the landholder. It is remarkable to notice that in plantation areas only clove and coconut trees defined the area and the owner, never fruit trees. Amazingly, the clove harvest did not decline after the abolition of slavery (also in Cooper 1980). Lodhi concludes that in general the relation between squatters and landholders was rather good (1973, p.25). It was not in the landholders interest to disturb the squatters' land tenure, at least during the first half of the 20th century. Krain writes that in the beginning it was "...*mutually beneficial symbiosis*" (1994, p.15).

Rice valleys were, according to Middleton (1961), farmed by individual owners, the same ones that owned the surrounding plantations. However, the actual work was given to squatters. Between the rainy seasons the squatters were allowed to cultivate other crops in rice fields. Sheriff (Sheriff and Ferguson 1991 p.113) says that on Pemba local peasants were cultivating rice for free, but strangers had to pay a portion of their harvest to the local community. This indicates some kind of communal rule over rice fields, at least on Pemba.

5.3 Pemba

The conditions on Pemba, which the Arabs called *El Huthera* or the Green island (Pearce 1967), have always been worse documented throughout the history than those of Unguja. Middleton (1961) found only very few pure indigenous Shirazi settlements in there and in very remote places like in smaller habited islands²⁹ close to the Pemba coast. Coral rag areas are small and remotely situated and their traditional governing had largely vanished by the 1960s. Significant migration had taken place from traditional Shirazi areas, where clove was not cultivated, to the clove plantation areas. Middleton and Campbell 1965 (Middleton 1961), describe the situation in the plantations to be basically similar to that of Unguja despite geographical differences. The landscape consists of fragmented hills and valleys. The hills are fertile and the valleys are usually covered with rice plantations utilising rivers that provide character to the valleys. The Arabs used Shirazi people for clearing the forests on labour basis and gave portions of plantations as payment to them. These Shirazi

²⁹ For example Panza and Gojani.

holdings were inheritable (Middleton 1961 p.53, Shao 1992, p.8). In a system called *half-half*³⁰ local peasants were used for clearing forests and planting trees and thereafter they got half of the growing trees. In conclusion, it is recognised that there have been both Arab and Shirazi clove plantation owners on Pemba since their introduction and the sizes of parcels have been a lot smaller than on Unguja. It also means that there was a significant group of Arab landowners, whose status were more peasant than landlord like, cultivating small fields on a family basis (Sheriff in Sheriff and Ferguson 1991 p.254, Shao 1992). Cooper writes that on Pemba already in the 1920s Shirazi holdings had more clove trees than Arab owned ones (1980, p.145). The Pemba Shirazis³¹ were cultivating clove trees everywhere and they had bought small parts of Arab holdings over the time. In general, on Pemba the number of individual Shirazi land holdings was significant while on Unguja it was not. However, the Arab holdings were much bigger than those of the Shirazis', who instead were many more than the Arabs. Sheriff (Sheriff and Ferguson 1991 p.128) describes how after the hurricane in 1872 Pemba was paid more attention for clove planting.

Both the Shirazis and the Arabs used slave labour for clove production. The rice valleys were mainly not individually owned and the valleys were occupied by mainland Africans and Shirazis (Middleton and Campbell 1965). The social distinction between the Shirazis and the Arabs has always been less significant on Pemba than on Unguja. The Mazrui Arabs and later Muscat Arabs had possessed the most fertile farming areas, but had been mixed by the time of Middleton's research. He reports a higher number of purchases between the Shirazis and the Arabs than on Unguja. After the abolition of slavery, the former slaves integrated more into the Shirazis than on Unguja, since they all lived together while on Unguja the traditional Shirazi towns were still separately existing. Arabs also married Shirazis in order to gain access to Shirazi land holdings. As a result, before the revolution the Pemba population was much more ethnically mixed than the population of Unguja.

5.4 Colonial approach

This research does not get very deep into this matter for various reasons. The pre-revolution statutory land legislation was soon replaced after the 1964 revolution and my opinion is that the custom has been a stronger influencer in land tenure over the centuries than any codified tenure. The other reason is that the colonial land law in eastern Africa was modelled after the British system and that system was totally replaced after the revolution. Consequently, although the colonial land legislation would be a very interesting topic to get into I, while in need of prioritising targets, will leave it at this stage for lighter notice.

Middleton says about the British Protectorate Administration of Zanzibar's approach to land tenure (1961 p.69): *"In the past much legislation has been introduced on the assumption, apparently, that the system of land tenure in Zanzibar is identical with that in England. It has also been assumed that Muslim land law has been adequate to deal with the situation as found in the Shirazi areas. Neither assumption is correct."*

According to Fair's (1994, p.61) sources the British Protectorate Administration was intentionally devoted to replace systems of communal tenure into systems of private tenure. The British were devoted to maintain big plantations and strongly objected the creation of a small peasant based structure. In the areas where the British bought or confiscated land from the landholders, they tried to establish and collect ground rents from the recognised squatters, but faced very strong resistance and managed to gain only marginal success. The squatters could not understand how they could be asked to pay rent for their houses and cultivations which were based on mutual benefiting and which, according to their

³⁰ In Arabic Nus-bin-nus.

³¹ Wapemba.

understanding, were rights that they owned, not rented³².

Fair (1994) describes the British attitude well by presenting their action towards the WAKF-issue. WAKF and is a "...form of permanent trust available for Muslims" (*ibid.* 1994, p.70). Three fourths of people's property could be declared as WAKF, which then could not be transferred or mortgaged any longer. The purpose of such a trust was to support religious, pious or charitable institutions. A WAKF trust could also have been targeted to support a dedicator or other beneficiaries but in such a case should ultimately revert to charity. The WAKF trust is still a very common way of supporting mosques in Zanzibar and according to Fair it was an important medium for religious Zanzibaris in the change of the century as it was used for preserving the family status and influence. A WAKF trust was also used to ensure inheritance rights for someone who would not have such a right otherwise. When the daughters were expected to inherit less than the sons some parents changed this via a WAKF trust so that all the children would benefit equally. Even some slaves inherited land from their masters this way. However, Fair (1994, p.72-73) describes how the Protectorate government ignored the WAKF beneficiaries' rights and many times ruined the intent of the dedicators. The British encouraged people to transfer WAKF properties freely and that then started to happen. They also confiscated areas that were not transferred and took them under straight government control³³. The reason behind all this was that the WAKF dedications decreased the Government's revenues.

Middleton (1961) found out that the Koran and the practise of Zanzibar land tenure were in contradiction in a few matters, for example in inheritance. However he had not found conflicts based on this contradiction. The Muslim law is more than just the Koran as it is also strongly based on custom (Mehdi 1994) or consensus as long as custom does not contradict with Koran. Therefore in Zanzibar, having being a strong islamic culture for long, it must have been difficult, at least for a foreigner non-muslim, to draw a line between the Muslim law of inheritance and other inheritance. Ms. Mehdi said in discussion that the rules of inheritance emerge mainly from custom in Islamic societies.

Decree No. 10 of 1954 recognised the following tenures: freehold land in urban and plantation areas, waste land, unoccupied land, and land occupied according to local or tribal custom (Middleton 1961 p.71). In Middleton's opinion the existence of waste and unoccupied land was a misconception. He reckons them mainly to have been areas controlled by the Shirazi tenure. In public lands the ultimate ownership lied in the hands of the Sultan. The Public Land Decree of 1921 defined public land to consist of: any land disposed by the Sultan or His Highness's government, waste land, unoccupied land and all land occupied by natives³⁴. In practise, that means all areas, except few towns and clove plantation areas. In Middleton's opinion all land in the Zanzibar protectorate was held by either an individual or a corporation and he suggested the laws to be changed accordingly (1961 p.72). He noticed the possibility of recognising the Shirazi rights to inhibit the spreading of individual ownership, but was not pro the entirely individual ownership in any case. In general, Middleton was impressed about the inhabitants' knowledge of land laws and decrees as well as their responsibilities and duties according to statute.

After the abolition of slavery the plantations had faced severe labour problems causing considerably declining clove income for the landlords. As a result, they had become largely indebted and therefore during the first few decades of this century the landlords were forced to mortgage their properties to the Indian moneylenders. According to Fair (1994), large debts had already appeared in the late 19th century. Consequently, the clove and coconut plantations had begun to be transferred to the Indians. The British having being

³² See Fair (1994, p.88-138).

³³ See above for ground rents.

³⁴ Shirazis.

devoted to maintain the Sultan's rule and the political stability of the isles, tackled the land issue by introducing the Land Alienation Decree in 1934. It was aimed at retaining the landlords' power. The Decree created a board for monitoring the transactions. In 1938 the Land Protection Decree enabled the British to settle the landlords' debts and made the landlords government debtors with an easy pay-back program (Shao 1992, 12-16).

According to Cooper (1980) the Colonial government issued titles for landowners and land sales and mortgages were registered. The freehold title did not separate soil and trees anyway, it was to land. In the 1990s, I found several maps about pre-revolutionary plantations and no hints of written records whatsoever, (Törhönen 1993). The sales between different races were controlled by officials through registering, but not otherwise. Therefore a complete property register concerning plantations did not exist, but Middleton mentions that there had been considerations for a complete survey to be conducted. A Zanzibari surveyor, Shaibu Juma (1995), presents records showing that a proper cadastral survey had already been proposed in the very early years of the 20th century. The first one to have officially supported the cadastral survey is said to have been Lord Ketchner. Juma quotes the Official Gazette of the Zanzibar Protectorate from 1936 that calls for security of tenure through land registration. The 1936 proposal emerged from increasing pressure towards plantation tenure³⁵ areas in both islands.

Middleton commented on recommendations for the cadastral survey and complete registration of titles in Zanzibar. He mentioned that the present system/practise does not have so many problems and major conflicts in ownership rights and disputes over the boundaries are not occurring. However, he considered it valuable to register plantation area sales to cover sales within the same race³⁶ and to register inheritances as well. The transaction methods should have been standardised in legislation, according to him. The Zanzibar Protectorate officially recognised the squatters' rights by a statement made by the Senior Commissioner in 1958, but it did not make the rights inheritable (Middleton 1961 p.77).

The Registration of Documents Decree 1919 created the register of deeds in Zanzibar (Krain 1994). The basic principle in it is that registered deeds take priority over unregistered or subsequent deeds. It does not affect the legal force of any deed. The registering was voluntary and the register did not contain other than deed information.

In Zanzibar, the land was mainly utilised for clove farming and other crops were neglected and as a result grain and rice and such were mainly imported. Clove picking was much more lucrative for peasants than any other type of farming.

³⁵ Described in Section 5.2.

³⁶ Earlier only necessary in case of interracial transactions.



Figure 5.13. Cassava cultivations

Landowners had good bargain possibilities since more labour was available than needed when the atmosphere had changed in the late forties. When the clove harvesting season was on the farmer was needed full time usually for forty to sixty days. This fitted badly with for example rice farming that requires constant tension. Therefore the British started to encourage other seasonal crops such as cassava (Figure 5.13), which requires very little overseeing, to be cultivated despite their "...*nutritional deficiencies*" (Bowles in Sheriff and Ferguson 1991 p.90). Cooper remarks the risk that the clove and coconut based economy provided. He describes the clove markets of Indonesia and India, where Zanzibar cloves primarily ended, as "...*highly vulnerable*" (Cooper 1980 p.280).

5.5 Change

In the 1950s Arab and Indian landowners determinedly wanted to change the squatting system into wage labour for cultivating cash crops (Lodhi 1973). As already presented above this was an idea that had strengthened since the abolition of slavery (Sheriff and Ferguson 1991 p.30, p.98). It increased insecurity of the squatters' tenure rights causing high tension between landowners and squatters in the early 1960s. The Arab landowners had become largely indebted to Indian money lenders and they were generally broke (Shao 1992, Cooper 1980 p.280, Pearce 1967). The indebted landholders wanted to increase their crop variety from cash crop trees to chillies and such on ground. They saw the time spent in food production by a squatter as wasted effort in terms of the landowners' interest. The Indians instead were troubled because their possibilities for acquiring land had been largely forbidden in the Alienation of Land Decree 1934 (Larsson and Stoimenov 1983 p.9, Shao 1992, Krain 1994 p.15) that controlled alienation of land. It was clearly aimed at preventing the landlords from transferring land on a large scale to the Indians. Therefore the Indians got inadequate security for loans that they had issued. Consequently the tenure situation was non-satisfactory for all the three groups (Figure 5.11): the Arabs' concern was a proper utilisation of their property, the squatters desired for a secure share of land for subsistence farming and the Indians called for settlement of unpaid loans.

Figure 5.14. The transition of land tenure balance along the 20th century

Also Middleton tells about the depersonalisation of relationships between squatters and landowners (1961 p.43). Middleton blames the appearance of Indian overseers and landholders to have increased the tension between squatters and landholders. In the late fifties squatters were denied to plant new fruit trees. Same time squatters had began to claim for more permanent landowning rights (Okello 1967, Othman 1992 p.16, Clayton 1981 p.47, 59). An ASP slogan, as already presented, was *the trees are yours, the land is ours* (also in Cooper 1980 p.283). The squatters' fruit trees were interfering with clove trees of the owner, an action that went beyond the original deal (Middleton 1961). Consequently, landlords accepted no claims and began to evict squatters (Bowles in Sheriff and Ferguson 1991 p.99, Cooper 1980 p.284).

Bowles (Sheriff and Ferguson 1991 p.80) mentions that peasants were forced to start to move from fertile plantation areas to less fertile areas. It was not such a big problem on Pemba where the island was very fertile throughout, but on Unguja areas that were not growing cloves or coconuts were mainly infertile coral rag areas. According to Bowles more and more squatters started to utilise coral rag shifting cultivation areas, the above described Shirazi tenure areas, and therefore the periods when land was left fallow became shorter and the soil poorer. Consequently, the harvests got smaller and the risk for famine after the harvest bigger (*ibid.* p.89). This created a situation on Unguja where there were times that groups of peasants and the new labour class suffered from food shortage and famine³⁷.

While the demand on land grew higher, the administration increasingly acquired land. Bowles has found sources describing acquisitions that took place in the 1940s for the extension of the Zanzibar airport. It had received very little understanding by the peasants (Sheriff and Ferguson 1991 p.94, p.135). This is presented as one of the openings of the Arab political movement towards independence (*ibid.* p.100). The land issue was not just between Arab landholders and African squatters, it was also problematic between landowners and the colonial government.

Finally, after series of strikes, elections and clashes the British withdraw the colonial government and allowed independence in 1963. Only a month after that the squatter-

³⁷ See Section 5.4 for a Colonial Approach.

landholder conflict³⁸, among others, unleashed the revolution on January 12 1964³⁹. The Sultan was displaced, most of the big Arab and Indian landowners, if not killed during the burst of violence that followed the overnight revolution, left the country and the African oriented majority took rule.

Clyde Sanger (Okello 1967 p.16, also in Lodhi 1984) states that Arab led government just after the independence was not interested in solving the growing desire by Africans for more permanent land holding rights, and had no plans for land reform or redistribution that were strongly demanded by the Karume led Afri Shiraz Party. The land issue was clearly one of the major issues that caused the revolution. Of course, it was not the only cause, but of major importance. I do not want to comment on the politically oriented debate on whether the 1964 revolution was a typical class struggle⁴⁰ or rather an ethnic one. It is clear, however, that supporters of both theories have considered the troublesome, insecure, land tenure as being one of the crucial factors causing the revolution.

³⁸ The cause supported by Sheriff in Sheriff and Ferguson 1991 p.135, Cooper 1980 p.286.

³⁹ About the revolution by Babu in Sheriff and Ferguson 1991, Lodhi 1984, Clayton 1981, Rey 1972, Lofchie 1972, Official 1972, Ayany 1970, Okello 1967 and Lofchie 1965.

⁴⁰ Land tenure development in Zanzibar as part of a class struggle is suggested primarily by Shao (1992) The Political Economy of Land Reform in Zanzibar.

6 Revolutionary land reform

Soon after the Revolution the socialist ideology was adopted by the new rulers of Zanzibar (Shao 1992). According to Clayton (1981, p.117-154 about Karume's Zanzibar) all power was soon vested into the hands of a new president, Sheikh Abeid Karume. All connections with the British were soon terminated and close ties with the socialist countries established, specifically with East Germany, the USSR and China (Middleton and Campbell 1965). Trained people from all ethnic groups fled the country in large numbers. Large plantations, many buildings and a good share of business were nationalised (Lodhi 1984 p.20, Anyany 1970 p.126, 147, Shao 1992 p.49). For example the electricity production and clove trade organisation were nationalised immediately after the Revolution.

Since the land issue was one of the most crucial factors in the Revolution it needed to be dealt with in order to respond to the desire of people. According to Clayton (1981) land reform was President Karume's own personal hallmark. However, Anyany (1970 p.136) presents that complete nationalisation was pushed by John Okello at the early days of the new government and that Karume would have wanted to nationalise only unused land.

"In order to fulfil Afro-Shirazi Party pledges to the people, His excellency the First Vice President⁴¹ declared on 8th March, 1964 that all land was nationalised and that it would be distributed to land-less peasant families for their well-being and the nation as a whole" (Zanzibar 1971 p.36, Zanzibar 1970 p.11).

Presidential Decree No. 13 1965 vested all land in the government, excluding existing rights and interests, to improvements on land. The valuable clove areas were confiscated from the landlords, i.e. the big Arab and Indian landholders. The decree made the President own all land on behalf of the government and to distribute it to the public. The basic idea was that an individual peasant producer would be the base of a new land order. *"This great step has subsequently put into the hands of the majority the key economic progress of the country"* (Zanzibar 1970 p.11). According to Clayton (1981) it was a successful idea in the beginning and would have remained as one, if a peasant grower had received a better price for his products.

6.1 Three acre plots

A land decree was issued in 1966⁴². The government granted land, which was confiscated according to the Confiscation Decree⁴³ as three acre pieces. Later an amendment authorised the distribution of urban plots with the Presidential Decree 1/1969. (Singer N. 1991 p.112, Khalil 1993 p.4, Larsson and Stoimenov 1983 p.11, Krain 1994, Yahya 1982 p.11)

According to Sheriff (Sheriff and Ferguson 1991 p.135) the land reform from 1965 to 1972 that was considered popular distributed 22,210 peasant families the 'Three Acre Plots'. According to Shao (1992, p.51), the distribution lasted from 1965 to 1974 and the total number of farmers was 22,251 and the total land area distributed 66,573 acres. Clayton (1981 p.138) presents the figure of 71,145 acres of land confiscated from feudalists and distributed to 23,715 peasants. Exactly the same figures can be found in the Government's publication which mentions what could be considered the truth that most land in Zanzibar had been under the ownership of 46 families (Zanzibar 1971 p.36). Shao (1978 p.113-114, 1992 p.50) had found official sources saying that the total number of landholders whose

⁴¹ Means in this the first vice president of the Union, i.e. the President of Zanzibar.

⁴² Presidential Decree 5/1966, the Land Distribution Decree.

⁴³ Presidential Decree 8/1964, the Confiscation of Immovable Property Decree.

land was confiscated was 7,241 on Pemba and 31 on Unguja and the total number of farms confiscated was 745,181 on Unguja and 564 on Pemba.

Shao (1992) tells about complaints against the plot distribution. According to him the process seemed to have been corrupted from the beginning. The other problem was that many people who received land were not officially recorded and therefore never received an official grant for their land. Mr. Duchi Abdullah Duchi, the director of the Three Acre Plots office on the Commission for Lands and Environment on Unguja, gave the following information when interviewed in May 1992 (Törhönen 1993). His figures are based on the existing official records so they can be considered, rather than absolute, a recorded fact. According to Duchi, since 1965 up to 1972, around 24,000 Three Acre Plots were allocated to people. 13,364 in Unguja and 8,898 in Pemba⁴⁴The same figures are supported by Yahya (1982): 22,262 grantees who got an area of 66,786 acres⁴⁵. All the grant receivers are registered into proper register books. The register data consist of: the grantee's name and identification number, the neighbours' names for boundary information, the grant's number and the date of issuing. The information on who the land was confiscated from is also available in the register. No graphical information was ever properly stored, and in most cases never existed. All the grants were to be surveyed before allocating them to an individual. They were ordered to be done either by the farmers themselves using a liner tap or by an ASP official using rope (Törhönen 1993). Shao (1992) describes how, in the beginning, there were surveyors from mainland brought to carry out the actual distribution, but it was soon realised that they could not manage to do it fast enough and therefore the government had to introduce the system described above that utilised party officials' labour. However, many allocations were not surveyed at all and even when they were, the farmers' skills were not adequate for proper surveying. Therefore, only few grants had any kind of map in the register on Unguja (Törhönen 1993). Shao (1992) mentions that some people managed to enlarge their 'three acres' unofficially. I confirmed this in my test survey outcome in 1992 (Törhönen 1993).⁴⁶

Land was allocated to people for free and neither rents nor taxes had to be paid. According to Shao (1992, p.52), each grantee received a title deed and 500 shillings in a public ceremony. Clayton (1981) writes that in some areas crops were required to be divided among villagers. Some properties were reserved for the Zanzibar Revolutionary Council members (Clayton 1981 p.138). The main peasant beneficiaries were Hadimus and mainland immigrants of the first half of the century, groups that had formed the major part of supporters of the Afri Shirazi Party. Many of the grant receivers were the same that had been share-cropping, i.e. squatting the parcel in question earlier. In other words, Clayton seems to have found that to some degree the squatters received grants for their earlier cultivations. Officially, according to Duchi, grant receivers can be classified into three groups (Törhönen 1993):

- 1) Old government workers. They got a grant as compensation for their services for the government. At the same time they were given some money for pension.
- 2) Big families who had six or more children. This was the biggest group. Families were mostly chosen by a local ASP branch.
- 3) Anybody whose application was accepted.

The ASP membership seems to have been an essential requirement according to Clayton's

⁴⁴ Total 22 262 in records.

⁴⁵ Note: 22 262 * 3 acres = 66 786 acres.

⁴⁶ See also Section 6.2 for accurate size and status information concerning the Three Acre Plots of today.

(1981) and Shao's (1992) research and Duchi's (Törhönen 1993) interview and it seems obvious that group three in Duchi's list was more theoretical than potential chance. Officially the Government spoke about "...citizens irrespective of race or religion" (Zanzibar 1970 p.11). All the Three Acre Plots were allocated to individuals and no joint ownership existed. Titles for grants were given for the lifetime of the grantee and his spouse (Presidential Decree 5/1966). Clayton (1981) correctly noted that a grant title did not establish a freehold title in the western sense. He considered the Three Acre Plot tenure to have been based on usage rights mirroring the Islamic tradition. However, the Zanzibar government's official printout included news about peasant families who by grant had been made the "...rightful-owners" (Zanzibar 1971 p.36) and a year earlier about State-owned land that had been distributed to citizens (Zanzibar 1970). The pattern of the new land tenure seems to have been confusing since its introduction even within the government.

Larsson and Stoimenov (1983 p.10) define government as landlord and grantee as tenant, holding a government lease on land but owning the cash crop trees. Their theory is correct when judged totally according to the statute. The government according to the PD 8/1964 is the landlord of all land and a grantee can only be considered a tenant. However, a grantee acts towards a squatter⁴⁷ as a landholder to a tenant. The landholder is not paying any rent to the Government. The only restrictions that separate the Three Acre Plot tenure from a freehold system are the transaction and usage limitations. Therefore, Larsson and Stoimenov's view that disregards practice and respects statutory rule is a bit simplistic. Post revolutionary land tenure has to be considered a mixture of custom and statutory regulations; otherwise the amendments developed upon it are likely to fail in recognising all rights on land.

I conclude that the exact and absolutely correct figures of amounts and area of the Three Acre Plots allocated cannot be gathered since the confiscation moved forward rapidly following lightly the official procedures set in PD 8/64. This resulted for example in court cases up to today. For example, on Pemba some land has been returned to pre-revolution owners due to violations of PD 8/64 in the confiscation procedure (Törhönen 1993)⁴⁸. However, it is clear that land was confiscated mainly from big Arab and Indian landowners and distributed to peasant ASP supporters of mainly African origin.

The use of the Three Acre Plots was restricted strongly to agriculture only. According to Presidential Decree 5 of 1966 section four:

- a) grants should be occupied by grantee and maintained in good and proper condition
- b) grants should be cultivated with crops directed by authorised officer
- c) grantee should not commit or permit any waste, spoil or destruction on the land
- d) grantee should not do, cause, permit or suffer upon the land granted anything which may effect to occupiers of adjoining land
- e) grantee should not assign, subdivide, sublet, mortgage, charge or part with the possession of the land granted
- f) grantee should let an authorised officer to enter upon land the granted for the purpose of ascertaining whether the covenants are being complied with and the grantee will *comply with any lawful direction given by any authorised officer.*

⁴⁷ Often a borrower.

⁴⁸ See Section 6.2. for litigation on Pemba.

The idea had been that if a Three Acre Plot was abandoned or poorly maintained land would go back to the government and thereafter to be reallocated. The Three Acre Plots, according to Presidential Decree 5 of 1966, were not to be inherited. However, the idea was that the heirs could apply for reallocation after the death of their parents (Törhönen 1993). Clayton (1981) seems to have understood this more as an automatic action, but this was neither judicially nor in practise the case.

The boundaries of the Three Acre Plots were not cornermarked and separate ownership of trees was not mentioned in the decree. The Three Acre Plots were not allocated in coral rag areas because the confiscation had been clearly targeted to the clove and coconut plantations. By 1972 all confiscated land, except in areas which were very infertile, had been allocated. After that grants have been allocated only in very limited numbers, the last new Three Acre Plot being given in about 1976 (Törhönen 1993). Shao (1992, p.53) tells that in 1974 the government had decided not to distribute any more land for a permanent occupancy, but just for cultivating food crops and some cash crops. They excluded clove and coconut trees, since those indicated permanence. People were encouraged to return to the squatting system, i.e. to cultivate temporary crops under permanent trees that belonged to somebody else. Ten years after the revolution people were encouraged to return to a system similar to pre-revolution time due to the concern of the declining food production. The revolutionary land reform could be said to have finished then. The players of the land tenure game had changed a bit but the game was still much the same. However, the Three Acre Plots were still desired throughout the years and even in 1992, by the time of my field investigation, people were still making applications for the Three Acre Plots.

6.1.1 Pemba Three Acre Plots

Said Omar Said, the director of the Three Acre Plots on Pemba, gave the following information in July 1992 (Törhönen 1993). The Three Acre Plots on Pemba were allocated from 1966 up to 1968. Some documents have been given later but the distribution took place only in the above mentioned period. The areas were mainly clove plantations confiscated from the landlords, i.e. big Arab and Indian landowners. Some of the plots were surveyed with a compass and a rope, some with quick hands and a cheerful mind, by a local ASP branch. The Three Acre Plot register is kept and updated in three books, one for each old district and their contents are equivalent to those used on Unguja. There were some maps prepared on Pemba, but I found no evidence of their existence in the Three Acre Plot office in Wete (Törhönen 1993).

6.2 The effects of the land reform

I carried out a comprehensive research on the present status of the land tenure systems and the manner in which the land is held and utilised on the Zanzibar islands in 1992 (Törhönen 1993). My research concentrated on the Three Acre Plots, irrigated rice fields and coral rag areas. Although it was carried out in the early nineties, I surveyed the situation before the effects of the new land policy of 1982. The new legislation was only started to be implemented in 1994. Therefore, these results are presented as background for the land policy creation that actually took place ten years prior my study. This structure emerged for two reasons: the research was eventually carried in quite a late stage compared to the action, but one could also ask what kind of preparatory investigations were carried out when preparing a land policy in the 1980s?

The other main sources of this chapter are Shambie Singer's (1993) and Eberdhard Krain's

(1994) land tenure studies. Singer's research concentrated on shamba lands, squatting⁴⁹, gazetted forest reserve land, government-run state farms, and shifting agriculture on coral rag land. Krain's research provided quite a covering record of land tenure from an agriculturist's point of view. Other supportive material were utilised when found necessary.

6.2.1 Three Acre Plots

My Three Acre Plots research (Törhönen 1993) was divided into two parts. In the first part Three Acre Plot registers were investigated in both main islands and the main Three Acre Plots officers were interviewed. The second part was the fieldwork in a hundred Three Acre Plots. During the field investigations all plots were surveyed by area using a tape and chain survey method. Every plot was carefully studied throughout its area and landholders were usually personally interviewed. The main information gathered was: the size, ways of possession, documents, boundaries, seasonal and permanent crops, development of the plots in terms of farming, transferring, fragmentation, abandoning, buildings in a plot and all other relevant data concerning the land tenure system in the Three Acre Plots.

Although, according to the PD 5/1966, the Three Acre Plots cannot be sold, that had happened as observed also by Krain (1994, p.29-30). In urban areas the Three Acre Plots in many cases were no longer in cultivation use and they had become strongly fragmented. Due to the increasing population and urbanisation in town areas, people had sold parts of their grants for building sites. On Pemba in 1992 (Törhönen 1993), a building site on a Three Acre Plot close to Chake Chake town was said to cost about 250 US\$. The government workers' average wage was around 15 US\$ per month at that time. Singer S. (1993), in his research on urban squatting⁵⁰ in the great Zanzibar town area, seems to have found that 99% of the squatters would have been settled in without any transfer of land property. However, he mentions a few squatters who had claimed to possess a bill of sales. Generally, according to Singer S., a newcomer would only acquire permission from an adjacent squatter and then build his home next to it⁵¹. Even though Chake Chake on Pemba and the great Zanzibar Town area cannot be compared, the squatting in the fringes of these towns (Figure 6.1) are very similar. The scale of appearance is, of course, different. When I investigated a Three Acre Plot that had turned out to be a bunch of residential plots in Chake Chake, the Three Acre Plot grant holder repeatedly denied any transfer of land having taken place in any of the construction cases. Still I got detailed information from other villagers including price estimates for parcels. The conclusion was that the grant holder knew that subdivision and sale of a Three Acre Plot was against the law (PD 5 1966). Therefore, he had denied any such action when asked by a researcher who was known to work in the Government organisation. In the great Zanzibar town area, the desire for new residential parcels is much higher than in Chake, and therefore it is unbelievable that land utilisable for residential purposes, and therefore land with significant value, would be considered public domain in terms of a new development. I do not buy that and I suggest that also in Singer S.'s (1993) research the landholders' answers relate to a presumption that a transfer would have been illegal and it was therefore considered advisable not to admit it.

To sum it up, it can be stated that the Three Acre Plots attached to urban areas are to some extent, subdivided into residential parcels and therefore have lost their tenure status. The commoditization of access to housing in squatter areas has been researched globally and it has been commonly noticed that it is a strongly existing phenomenon (Smart 1986).

⁴⁹ Squatting in this means illegal housing.

⁵⁰ Squatting in this means illegal housing.

⁵¹ See more about Singer S.'s findings in Section 6.3.

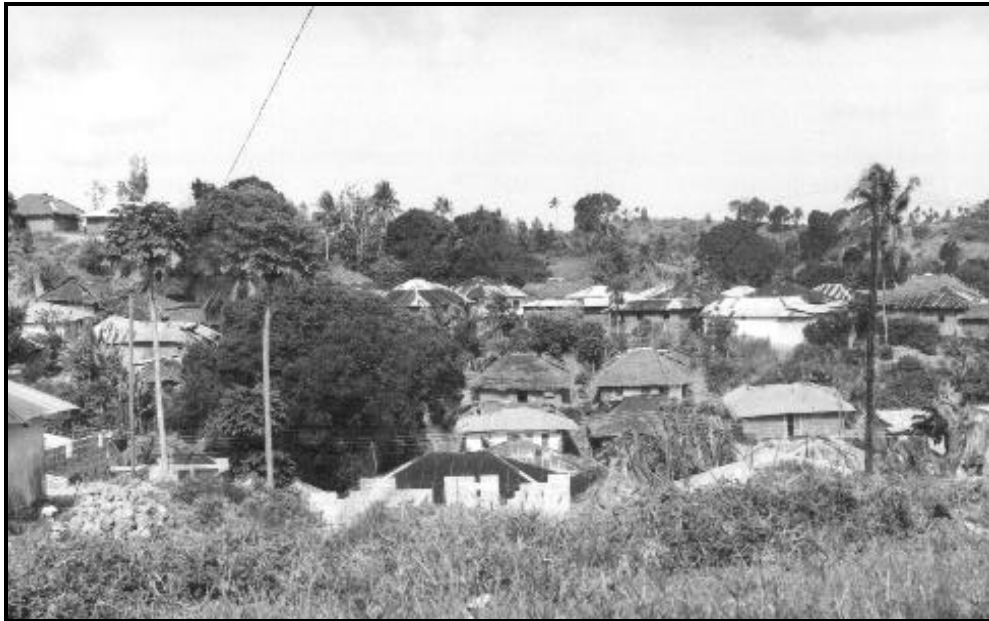


Figure 6.1. Fringe settlements of Chake Chake town on Pemba.

In rural areas a fragmentation problem does not exist, the Three Acre Plots are still mainly the same as they were when allocated and mostly in the hands of either an original grantee or an heir (Törhönen 1993). Rural squatting in Zanzibar was investigated in Singer S.'s report (1993) and he found no rural squatting on individual holdings.

In 1992, the practise of the government was to reallocate the Three Acre Plots to an applicant who proved that he/she was a legal heir of a grantee. Another possible reason for reallocation emerged from long and undisputed possession by a third party. If that could be proved, a grant could be created in his/her name by reallocating the land. This has happened in very few cases. My research was carried out in rural areas on both islands. However, almost all the surveys were carried out in areas that were close to either Stone Town or Chake Chake on Pemba. Most of the Three Acre Plots surveyed were still held by the original grantee, who in most cases still possessed the original document and considered it to be of extreme value. Equally, those who had lost it, were paying much effort in explaining which kind of disaster⁵² had caused this great loss. The rest of the holders were heirs of the original grantees, except in very few cases where the land had been borrowed for a long period or reallocated to the heirs, usually not by the Three Acre Plots office, but by another 'official'. The problem, which had made reallocations rare, if happening at all, was that the heirs of an original grantee did not apply to register their holdings. Remarkably I noticed that borrowed plots or plots possessed by someone else than an original grantee were generally worse maintained than those with an original grantee present.

Shao (1992, p.53) remarked that the land area that was distributed to peasants as The Three Acre Plots include only a small portion of the fertile land in Zanzibar. According to him 36.6% of land area was distributed on Unguja and 15.3% was distributed on Pemba. Is Unguja's 36.6% a small portion? Shao remarks that the rice valleys were not distributed. However, as presented below (Figure 6.2), in my research I found that the share and significance of the Three Acre Plots in Zanzibar is actually a bit higher on Unguja and smaller on Pemba than Shao considered. In my test surveys of a hundred Three Acre Plots in Zanzibar I concluded that the sizes of the parcels varied recklessly. The biggest plot

⁵² e.g. Rains.

found was almost 14 acres and the smallest 0.3 acres. In the Unguja test area the average size of a Three Acre Plot was 3.7 acres and on Pemba 2.0 acres. Using officially registered numbers of the Three Acre Plots on both islands and my average size surveys, the areas possessed under this type of tenure can be estimated:

- Unguja 13,364 Three Acre Plots * 3.7 acres = 49,400 acres, i.e. 19,800 hectares
- Pemba 8,898 Three Acre Plots * 2.0 acres = 17,800 acres, i.e. 7,100 hectares
- The total of the Three Acre Plots in Zanzibar in acres = 67,200 acres
- The total of the Three Acre Plots in Zanzibar in hectares = 26,900 hectares.

Figure 6.2 Three Acre Plots in Zanzibar

The total land area on Unguja is 1,660 km²⁵³ and on Pemba 980 km²⁵⁴. Consequently, 12% of the total land area on Unguja and 7% on Pemba, is possessed through the Three Acre Plot tenure. Bearing in mind that on Unguja a significant part of the land is covered with infertile coral rag areas where the Three Acre Plots do not exist, it is clear that on Unguja the Three Acre Plot area covers most of the fertile land. According to Yahya (1982 p.7) only 42% of the land area on Unguja is cultivated. Consequently, 28% of all the cultivated area of Unguja is held through the Three Acre Plot tenure! On Pemba a relative amount of the Three Acre Plots is less significant since most land is fertile. According to Yahya 81% of the land on Pemba is under cultivation, therefore less than 9% of the cultivated land on Pemba is held through the Three Acre Plot tenure. The total tree crop plantation area on Unguja is 49,700 hectares and on Pemba 67,900 hectares. Consequently the Three Acre Plots share of the total tree crop area is almost 40% on Unguja and around 10% on Pemba.

Even knowing that the above figures are only my estimations due to significant varying in sizes, unreliable records and a simple surveying method used, the information is valuable. Especially on Unguja the Three Acre Plots cover a huge share of the cultivated area. If they are not utilised properly, it effects negatively on the economy of the whole society. There were no possibilities of checking whether the area was still the same that had been allocated after the revolution due to inexistence of area documentation. Some areas surveyed were clearly too big to be survey errors and some far too small. The obvious conclusion from the latter figures is that the reallocation was done ineffectively without a hint of surveying skills or even that the size factor never paid any role in the procedure.

⁵³ 166,000 hectares.

⁵⁴ 98,000 hectares.

Some people had apparently managed to grab some land during the allocation.

The Three Acre Plot grantees who were interviewed could in all cases, without hesitation, show their boundaries. This was the case even when, according to my judgement, the boundaries were physically noticeable in only 2/3 of the cases on Unguja and in a bit more than half of the cases on Pemba (Figure 6.3). (Törhönen 1993)



Figure 6.3. Demarcation on a thick bush of Pemba

The double cropping, squatting⁵⁵ system was strongly existing, specifically on Pemba, where only one third of the grant holders cultivated seasonal crops themselves. In my earlier research on land tenure that included all land tenure types randomly (Törhönen 1992) I found that in the landholders' opinion soil and trees belonged almost always to the same person. However, in that research seasonal crop cultivators were not interviewed. Land renting did not exist but grantees had rented out their clove trees in many cases on Pemba. I defined this phenomenon as renting since a landholder got a certain share of the crops after each harvesting season.

Remarkably, in one third of the cases within the Three Acre Plot ownership on Pemba no-one was utilising the soil under the permanent crops. Inevitably, on both islands only the trees were considered valuable and the soil, sort of, public domain, which is also supported by Yahya (1982 p.7). The situation was of course different in areas that had become part of a growing town, where a plot was valuable as a residential parcel⁵⁶. The idea of double cropping was still the same as before the revolution. The seasonal crop cultivator was considered valuable for a permanent crop holder since the soil was kept clean. On both islands the Three Acre Plots overall were not well developed⁵⁷. The level of investment, meaning new products or new plants, was generally low. In terms of both development and investments parcels were in poorer condition on Pemba than on Unguja. There might have been several reasons for this. However, when speaking about Pemba the key word is always clove. Pemba is still depending on clove farming and clove prices have fallen

⁵⁵ Squatting, soil cultivating in a double cropping system, has a different meaning than in SINGER S. 1993 and KRAIN 1994 who both call this phenomenon borrowing. See Section 6.3.

⁵⁶ See above for fragmented fringes of towns.

⁵⁷ The author is not a professional in the field of agriculture, therefore this judgement was based in the outlook of trees and soil and the opinion of local peasants who assisted in the surveys.

drastically over the eighties making cultivation much less lucrative than before. The possibilities for changing products were rare since no system of mortgaging rural land existed. Farmers based their survival on subsistence farming which left no resources for investing in land (Törhönen 1993). Also Yahya (1982) reported the neglecting of the Three Acre plots, which had dropped the productivity of cultivations, and a lack of a proper credit system. The Three Acre Plot was to be revoked in case of violations against usage regulations, but according to Yahya it had never taken place.

On Pemba the Three Acre Plot holdership was sometimes disputed and court cases were regular (Törhönen 1993 p.44-45). The cases were normally targeted against the confiscation procedure. The PD 8 1964 regulated that all confiscated parcels had to be gazetted and registered. On Pemba some cases were handled in court where gazetting had not taken place and at the time of my research many new cases were said to be under consideration⁵⁸. Obviously the Three Acre Plot grant was not adequate proof of secure tenure resulting in poor maintenance of the holdings. Emigration from Pemba was rather high resulting to land idling and borrowing and that, according to my findings, leads to poor maintenance. On both islands the Three Acre Plots' restrictions in transfers and complicated inheritance procedure had created a situation where land had been vested into the hands of people who did not trust their title and could not transfer property in case they did not utilise it (also supported by Yahya 1982). Also Shao (1992, p.55) describes how there are Three Acre Plots that someone else than the grantees are living on and cultivating. He presents various reasons for this, for example that pre-revolution squatters were not used to owning land and could not take post revolution allocations seriously. They could not believe that it was possible to get land for free. Shao also mentions that on Pemba certain people had considered living on somebody else's land a tremendous sin, considering the forcible confiscation in which the land was made available.

The Three Acre Plots that still primarily are clove plantation parcels have affected the whole economy of Zanzibar crucially. According to Sheriff (Sheriff and Ferguson 1991 p.135) after the revolution clove farmers were paid 10% of the clove's world market value and that, being considered very little, resulted in a situation where farmers were forced to neglect clove farming and to put more emphasis on subsistence farming utilising seasonal crops.

Clayton (1981) had observed that even less than 10% of the overseas price was paid to producers. He remarks that the clove production suddenly decreased towards the end of the 1960s. He explains that to have been caused by three possible factors (Clayton 1981, p.137):

- 1) neglecting of planting and tending for some years that followed the revolution
- 2) a poorer year following a good one which is typical of clove farming
- 3) poor payment for the producers which decreased the emphasis paid to clove farming and increased smuggling of cloves to mainland Tanzania and to Mombasa.

Shao (1992, p.63) presents figures based on the Zanzibar president's statement from 1978 saying that instead of the targeted 11,000 tons clove harvest they had managed to pick 3,000 tons in that particular year. The reasons he presents for that are similar to those of Clayton's. Due to various problems in labour and administration even 40% of the clove harvest was not picked during the harvests in the 1970s, Shao writes. The clove economy obviously had started to fall apart already in the seventies. The government, when getting desperate, even ordered school pupils to participate in clove picking. Shao makes an

⁵⁸ See Section 8.1 how the Land Tenure Act terminated possibilities for new litigation's in this matter.

interesting point by saying that in 1976 in order to get all cloves picked the government even allowed any person to pick cloves anywhere. The government seemed not to be worried about the security of tenure at all. If anybody can harvest my cloves before me, why would I grow them? The market value of cloves started to decline drastically in the end of the 1980s strongly suffocating the whole economy of Zanzibar. The transfer stagnation of the Three Acre Plot tenure did not enable peasants to react to the changed conditions. My conclusion is clear, the Three Acre Plot tenure had over the years turned out to be an obstacle for the proper utilisation of land.

6.2.2 State farms

The other main tenure type that was created in the Karume's era was state farms that were farmed by the former squatter group. The Chinese assisted in creating two big irrigated rice farms in 1966. Other state farms such as dairy farms, sugar plantations and poultry farms of a smaller scale were also introduced (Clayton 1981). Singer S. (1993) has researched the present status of state farms and forests⁵⁹. He reported some squatting having taken place in state farms. The farms were generally poorly utilised mirroring the overall poor economic situation of the Zanzibar government. Otherwise, in terms of land management, state farm tenure is less complicated than other types of tenure in Zanzibar, since the statutory ownership interest exists and the boundaries are known and largely demarcated.

In Zanzibar the land tenure discussion about state farms has largely concentrated on irrigation rice fields. When the irrigation project started in Zanzibar the aim was to transform rain-fed rice fields into irrigated fields. Rivers, planned to be a source of water were noticed to be too seasonal for this purpose. On Pemba the situation was better because of the hilly landscape but still seasonal rivers were not enough for regularly cultivated land. Therefore, presently irrigated rice fields almost entirely get their water from ground water with either hand pumps or electric pumps. Presently many pumps are out of order and maintenance funds or spares are not available. (Törhönen 1993, Boggs *et al* 1993)⁶⁰

Rain-fed rice fields used to be possessed by the same families for ages. Inheritance was a normal way of transfer. The irrigation project started in 1978 with consolidation and reallocation in chosen rice areas. The aim was to sub-divide the rice fields into 0.1 hectare parcels. On Unguja 318 ha of rice fields are irrigated. On Pemba the total area of irrigation is much smaller. Consolidation caused lot of troubles and on Pemba it was not effectively finished. It was soon noticed that the fields were not effective enough to pay for the costs of equipment and labour needed to cultivate effectively. Peasants did not consider rice very important or economically good. The price of rice was subsidised so strongly that one could buy rice with nearly the same amount as wasted when producing it. That kind of subsidising is over but still irrigated rice areas are not effectively utilised mainly due to poor water distribution. (Törhönen 1993, Boggs *et al* 1993)

Irrigated rice fields on Unguja produce two crops a year, following the rainy seasons. The farmers have annual agreements with the government giving them the right and duty to cultivate rice on a certain plot. A regulation defines improper cultivation or selfish utilisation of water as reasons of termination of the occupancy of the parcel in question. It doesn't happen in very big numbers, but some holders change annually. Farmers are required to pay a seasonal rent for the government. Plots are not to be inherited, although some heirs continue to cultivate same plots as their parents used to. The conclusion is that in irrigated rice fields on Unguja holdings are not considered as owned as rice parcels cannot any more be claimed to have belonged to the same families for centuries. On Pemba the situation is

⁵⁹ In my research forests are considered as type of state farms.

⁶⁰ See Shao 1992, p.83-89 for the government's aims and actions concerning the state farms.

mainly opposite to that of Unguja due to the ineffective consolidation in the 1960s. Consequently rice parcels on Pemba can mainly be held in a manner that can be considered as individual tenure. (Törhönen 1993)

On Unguja, in principal all plots are the size of 0.1 ha. It seems usual that farmers have more than one plot in their control even though it is against the regulations. A detailed study was carried out in Zanzibar in 1993, in order to evaluate irrigated rice field tenure and the farmers' performance (Boggs *et al* 1993). The findings clearly indicated what the problems of the present system are. Many individuals and family members had more than one plot that were often spread throughout the scheme (Figure 6.4). The situation is handled so that one plot belongs to the holder's wife/husband, one to his/her son/daughter, one to his/her sister/brother... The bigger the family holdings seem to get, the more spread out the parcels are. Harvesting and clearing of canals require help from the family. According to the present set up, irrigation canals and pumps are taken care of by farmers' associations⁶¹, and practically all families have members in every association. The conclusion is that the association system cannot work effectively in this way. As a result, cultivation is not properly executed. (Boggs *et al* 1993, Törhönen 1993)

Figure 6.4. A Mtwango rice field on Unguja. Two sample families' 0.1 hectare plots in black (Boggs *et al* 1993 p.10-11).

The idea, which has been widely discussed in Zanzibar, was to bring individuals' and their families' plots together surrounding the same canal. It would create a situation where one canal could belong to one family or a few families ensuring better co-operation in cleaning the canals, following the crops calendar, maintaining pumps and in other association duties

⁶¹ See Singer N. 1990 for Water Users' Associations.

(Figure 6.5). The fact that this has already voluntarily happened in some families tells about the farmers' desire to have their holdings together (Boggs *et al* 1993). So far, it has not been possible on a large scale because of the old policy which did not allow people to have more than one plot. This has caused a need for the landholders to hide their holding network. The Commission for Lands and Environment has been actively researching and planning this reallocation and even further, consolidation where plot sizes would be increased and the number of farmers decreased. The procedure includes a system which evaluates each farmer's performance and capability as a farmer, selecting the best families and allocating bigger parcels for them. The principle of increasing the parcel sizes has been widely approved. It is essential to get the rice fields effectively utilised, but consolidation alone is not going to do it. The water pump system is collapsing and it, together with other improvements in farming facilities, has to be dealt with, otherwise things will remain the same.

Figure 6.5. Mtwango, consolidation considerations (Törhönen 1993 p.67).

Consolidation would force quite a few subsistence farmers to lose their rice holdings. The effects have not been discussed enough. Even a small rice parcel can play an essential role

in the families' tough struggle for sufficient food production. There are many problems that have to be dealt with and solved when carrying out consolidation in the rice fields.

6.2.3 Coral rag

The land reform did not tackle the former Shirazi stronghold areas, the coral rags, at all. Without specifying it, Middleton (1992 p.69) writes that life in Hadimu and Tumbatu settlements have changed drastically after the 1964 revolution. On the contrary, Shao (1992) noted that the forms of Shirazi tenure had survived through all historical changes up to today. In 1991 (p.16), Singer reported that coral rag areas struggle with declining soil fertility and deforestation. This was due to the increasing population. The growing urban population had created a greater demand for firewood production and that together with a shifting cultivation practise where vegetation is burned after the period of fallow, had resulted in deforestation and the disappearance of bushes. The fallow periods had become shorter due to the increased demand and that has left soil less time to recover. According to Singer's view there is a considerable difference found in these areas on how much people pay attention to their land possessions. The lack of secure tenure has created a situation where tenure inhibited the proper utilisation of land resources. Yahya (1982) had also found that communal administration had started to break down and found this resulting in violations in land use.

Singer N. (1991 p.17) reports problems in soil erosion caused by the wrong practises used for seasonal cropping that had resulted in increasing erosion and even the fall of clove trees. Krain *et al* (1993) found the great majority of farming in coral rags to be subsistence oriented farming. According to Mohammed Ghassan (Törhönen 1993) there are areas in coral rag where both shifting cultivation and communal holding still exist and he claims shifting to be the only effective way to cultivate on coral rag land. The growing density of population has not fully affected it and space to exercise shifting cultivation still exists. Otherwise, the situation in the coral rag areas is bad. People emigrate in large numbers, fences which protected the fields against wild animals are taken away to use as ground material for construction work. Many of those who used to cultivate on coral rag areas are nowadays growing seaweed (Figure 6.6) for export resulting in land being abandoned. Seaweed gives relatively decent alternative income for coastal area peasants. (Törhönen 1993)

Shifting cultivation truly exists in southern Unguja but I found no areas which could be classified as communal land. Communal land here means an area which is cultivated by the community and ruled by village elders, wise men or other organs based in custom. All the areas where shifting cultivation was exercised no evidence or testimony about significant administrating by anybody was found. (Törhönen 1993)

Shifting cultivation takes place in the areas remote to the village centres that Middleton (1961) called bush lands. In Kidawa and Kizimkazi villages it is practised in groups. That was said to happen because the bigger complex of cultivations can be more effectively protected from the wild animals. Villagers are shifting within a village's bush land area.

Occupancy is open to everybody living in the village, even unmarried women, said the farmer. There are no restrictions in the number of holdings per person. Some farmers mentioned that if one is not a resident of the village one has to ask for permission from a local party branch before occupying. When the fallow season is over, and the land is taken again into use, the farmer is usually not the same as before (Supported also in Vikman and Mohammed 1990 p.14).

People do not consider their shifting cultivated plots their own in this area. Therefore inheritance or any other kind of transferring of these cultivations does not exist. (Törhönen 1993)



Figure 6.6. Seaweed washed to the shore

Both Kidawa and Kizimkazi village centres are situated in the area which is more fertile than the southern Unguja area on average. The villages are surrounded by individually, permanently held farms⁶². Those holdings people consider their own and they are transferred like any shamba land. Many people gain possession of their land through inheritance or purchase. It was reported that when selling these individually held plots, permission from the local party branch is needed. After my research the political pattern has changed affecting the village administration. The CCM party branch and the local government are no longer the same due to the multi party system. An administrative unit called Shehia, which is ruled by a Sheha, is in place. It consists of one or a few villages. It is unlikely that any party office plays any role nowadays in the village administration. (Törhönen 1993)

Singer S. (1993) carried out a comprehensive analysis on shifting cultivation in Kizimkazi village. He also found shifting cultivation existing in the area. The shifting cultivators were mainly residing in the Kizimkazi area. Land was cleared or bush burned before cultivation. Cultivation lasts from one to five years and then it is left to fallow for twelve to twenty years⁶³. The last farmer or his heir comes back to the parcel. This is somewhat contradictory to my findings, but Singer S. did not separate garden and bush lands in his study. His findings indicate individualization of shifting cultivation practise. On the contrary, the report states that land is usually acquired during the last three years. That would indicate that fallow land is idled and ownership interest would not be evident. As mentioned above, Singer S's review does not separate former garden lands and bush land. It is visibly notable in Kizimkazi that both still exist. The village is surrounded by a fertile shamba area and it is fragmented with small seasonal cultivations and permanent trees. The boundary where bush land starts is somewhat visible (Törhönen 1993). Singer S. (1993) concludes that the land tenure pattern in the Kizimkazi area is basically the same as in Shamba lands in Zanzibar. I accept that when it comes to garden and residential areas, but in a bush land area where the shifting cultivation practise is strongest, even when the power of communal tenure has waned, doubt arises. When visiting the area and talking to farmers, I found that shifting tenure in Kizimkazi bush land was not based on individual ownership like Shamba lands, but more on usage rights. However, bush lands are largely non-utilised and the target of very little interest despite shore areas that have value as tourist attractions.

⁶² Garden lands, which Middleton wrote about in 1961.

⁶³ See Krain *et al* 1993 Farming Systems of the Coral Rag Area of Zanzibar for more details.

In Nungwi, northern Unguja, a former stronghold of Tumbatu people, communal lands had largely disappeared. Three fourths of the Nungwi villagers are said to be fishermen. Men take care of the fishing, at the same time women do the farming. One women interviewed said that the true landholders in Nungwi village are all women, since men are mainly fishing. At least the people I saw working in the farms were, with few exceptions, women. All the plots in Nungwi are individually held and many families possess several plots. People leave plots fallow every few years but afterwards the farmers return to the same plot, burn down the bushes and start to cultivate again. Cases where the plots are abandoned when shifting are rare. The plots are mainly acquired through inheritance and they can be transferred without restrictions. A local party official was said to control the cultivation but not the transferring. Some abandoned areas exist there and they were said to be so infertile that they are not utilised at all. All the fertile land in the village is in individual use. The farmers in Nungwi told me that communal land in the area exist only on Tumbatu island and in Pwani Michangani village. It was said that shifting cultivation in the areas works by special regulations unique for both places. (Törhönen 1993)

In Pemba coral rag areas, I have carried out investigations in the Micheweni district (Figure 6.7) and on Kojani island. In Micheweni that is a very infertile area fields were permanently cultivated without any shifting or fallow land. The plots were mainly acquired through inheritance.



Figure 6.7. The research team in one of the numerous beaches of Pemba coral rags. Picture by Norman J. Singer 1992

There is a big shortage of fertile land and that has caused individualisation of land holdings. In less fertile areas shifting cultivation procedures were detected. People shift within their own lands and they move in groups. There is said to be a group of elders who decide which areas are to be cultivated and which are left to fallow. In these areas people are usually

both farmers and fishermen (Figures 6.8 and 6.9). (Törhönen 1993)

In Micheweni, Kiuyu village, I was introduced to communal land. Krain had earlier (*et al* 1993) found clan held communal lands in there. The detailed cultivation procedures and allocation systems were explained to my team. The villagers told us that the lands were left fallow years ago and soon there would be another cultivation season.



Figure 6.8. Fishermen on Vumavimbi village on Pemba

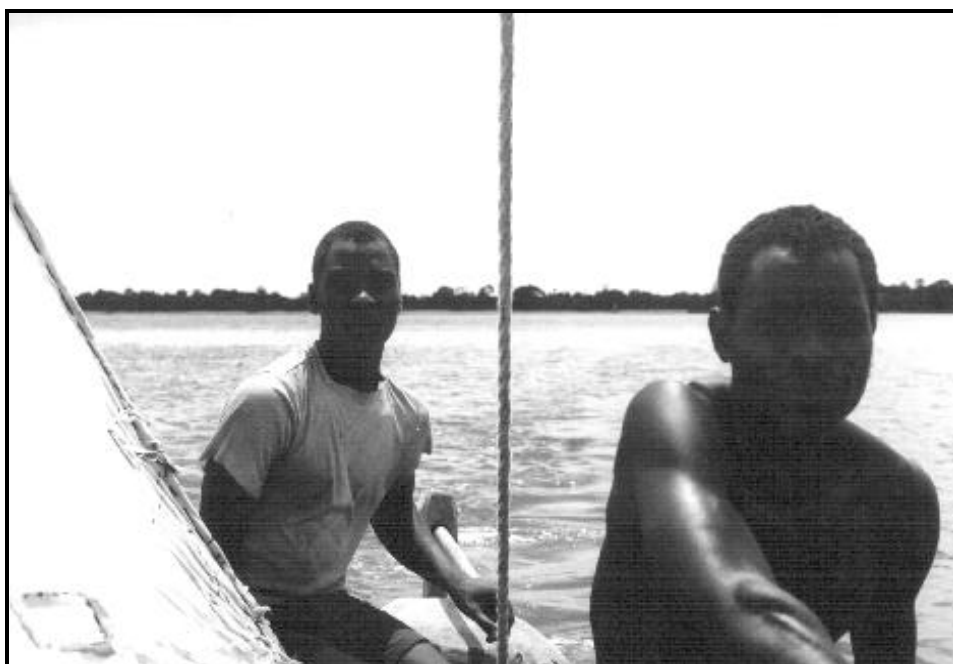


Figure 6.9. Fishermen and a traditional Ngalawa canoe

After visiting the area I and the others in the team found no sign of any kind of utilisation of the land. The soil was not covered by any kind of vegetation despite a few small bushes. There were doubts whether the area was utilised for cultivation purposes at all and whether the team was presented with historical information or an actual procedure of today (Törhönen 1993). The Kiuyu area was depending on fishing and seaweed cultivation (Figure 6.6) and the land was largely idle. Nothing had happened

in the area of communal land when I visited the area again in 1995.

On Gojani island, which Middleton (1961) mentioned to be a place where Shirazi tenure still existed strongly in 1958, people have cultivation plots on the main island. There the plots, which were mainly rice cultivations since rice cannot be cultivated on Gojani, are all held individually like any Shamba land⁶⁴. On Gojani island the land is used through the shifting cultivation system and the whole island's land area is jointly held by the villagers. Nobody has an individually held cultivation plot. The soil is not fertile enough for effective cultivation. A farmer cultivates approximately ten years in the same place leaving the land then to fallow until it is covered by the bush. Thereafter, somebody can come and burn it down and start to cultivate. A farmer does not usually come back to the same place and no permission is required when starting up a new cultivation. However, a group of elders is said to control cultivation in terms of crop selection. The only existing permanent crops are coconuts and they can be cultivated anywhere on the island. Residential parcels situate all tightly in the same area, a pattern that is said to have something to do with superstitious beliefs that inhibit people from moving further on the island. All kinds of old beliefs and superstitions are still affecting peoples' lives on Pemba on a scale that cannot be ignored when trying to understand any pattern of behaviour (Törhönen 1993).

To conclude, it can be said that individualisation has reached the Shirazi tenure strongholds. The evidence shown implies that shifting cultivation still takes place but communal land holding exists, if at all, in only very remote areas and on land with very low fertility and value. A good share of the shifting cultivation practise has also been carried out on an individual holding basis. Also Krain (1994) concluded that communal lands and therefore indigenous tenure had become very rare.

6.2.4 Shamba land

Part of Singer S.'s (1993) research concerned rural areas under individual ownership called shamba land⁶⁵ that included the Three Acre Plots and other land cultivated on an individual or joint holding basis. Singer S.'s findings and Krain's (1994) creditable work on Zanzibar land tenure are the basis for this section. My own qualitative findings are added.

Shamba land is the base for today's rural land tenure in Zanzibar. It originates from the fringes of former plantation areas and Shirazi holdings. The move towards individualisation of tenure, already indicated by Middleton (1961), has over the years turned almost all land to fall under this category in Zanzibar. The remnants of communal holdings exist only in village centres, in very remote coral rag areas and in some shoreline areas (Törhönen 1993, Krain *et al* 1993). Shamba land consists of land that is cultivated and transferred on an individual ownership basis. In statutory legislation the ownership of land belongs to the government and improvements on land to their implementor. Singer S. (1993) found that Shamba land is acquired through: inheritance, purchasing, clearing, borrowing and giving. Some landholders also possessed documents on land by local party leaders, the WAKF commission and by other 'formal' institutions. I found very similar types of acquisition and document types in my research in 1991 (Törhönen 1992).

Shamba lands are transacted frequently in Zanzibar. The sale of improvements on land is legal and such a sale can be recorded in the Register of Deeds. Shao (1992, p.62) writes about land sales and peoples' motives for them. Land leasing, which he had found of being common in Shamba lands, often had, in due course, led to transfer of land from an owner to a lessee.

⁶⁴ See the next Section for Shamba lands.

⁶⁵ Referring to the Kiswahili word Shamba, which means a parcel of land for cultivation.

6.2.5 Separate ownership of trees

Singer S. (1993) found a relatively low amount of borrowing and instead a significant amount of separate ownership of trees. The approach of his investigation was clearly to find out about the landholders' and the other cultivators' relationship to permanent trees and not about the permanent tree owners' relationship to seasonal crop cultivators, which I think would be the point. It is a common problem in land tenure discussion of Zanzibar. It is presumed, without investigation, that there is a 'landowner' to be found in each and every parcel without paying much attention to what kind of interest on land creates the landownership right. To sum up:

- What kind of possession creates the land owning right and what kind of possession creates the right to improvements only?

According to the historical review of Zanzibar land tenure pattern of this study, it is evident that ownership of permanent trees has in most cases been evidence of strong interest in the land. Even today, a permanent tree holder can get rid of a 'trouble-maker'. Consequently, permanent tree holders have the strongest claim to land of all interest holders. This is also supported by Krain (1994 p.22, 26-41) who writes about primary, secondary and tertiary occupancy. A primary occupant has the right to plant permanent and seasonal crops. It is a fully transferable right that includes individually held land⁶⁶, family land⁶⁷ and the Three Acre Plots. In all other land tenure studies in Zanzibar, a primary occupant is considered and called a landholder. A secondary occupant has the right to cultivate and enjoy seasonal crops. Tertiary occupation, according to Krain, establishes the use right only and not the right to plant new plants. Other studies classify secondary and tertiary occupation as different ways of borrowing land and this study often refers to them as squatting according to the name used to describe pre-revolutionary double-cropping system's soil cultivators.

Therefore, according to my logic, if a landholder states that there are somebody else's trees (Singer S. 1993) on his land, it is somewhat peculiar. That would mean that in Zanzibar it is possible to own land individually without owning the permanent trees at all. I (Törhönen 1992) found very few landholders that would in interview say that there are somebody else's trees on their holdings. On Pemba in 1995, I found cases where a land holder in a surveyed parcel⁶⁸ would possess dozens of trees in a parcel and the landholder's relative one or two in a corner. I suggest that this has been the case in Singer S.'s findings as well. Krain (1994) describes the right to a separate tree as a form of tertiary occupancy. The other possible explanation for separate ownership of tree claims could be that clove and coconuts are still considered different from other trees such as fruit trees. The landholder would get his⁶⁹ right through cloves and coconuts and fruit trees could well belong to somebody else. As learned before in plantation tenure, clove and coconut trees belonged to the landowners, while fruit trees could have belonged to a squatter. Separate tree ownership might also indicate that boundary demarcations are not very clear between the landholders (supported by Törhönen 1993) and the trees on the fringes of a parcel could be considered to have 'changed side'. However, whatever the possible reason for separate ownership of trees, the land ownership right would be clearly definable and undisputed. Consequently, in Shamba land the dominant permanent tree possessor is the landholder and seasonal crop cultivations under the trees are implemented with his/her direct or tacit approval.

⁶⁶ Shamba land.

⁶⁷ Jointly held land.

⁶⁸ See more about Pemba pilot area adjudication in Chapter 11.

⁶⁹ Land owning.

6.2.6 Jointly held land

Krain (1994) had found that even more than one fifth of the parcels and one fourth of the area⁷⁰ would have fallen into a category of family land. He considers individual property different from family land. Individual land is possessed by one single person, instead family land is possessed by an extended family through a pattern that relates to Shirazi tenure. In Middleton's (1961) research the 'family land' category consisted of a clan's residential and graveyard areas. They were not to be subdivided or transferred other than under exceptional conditions. According to Krain *et al* (1993) this type of holding⁷¹ was still found in some very traditional Shirazi stronghold areas. In 1994, Krain wrote that presently family land⁷² can be sold, even though it is troublesome since all the members of the family have to agree.

However, I would categorise all shamba land property under the same class. The question is, whether family land, which I would rather call jointly held land, in Zanzibar could still be classified as land under communal tenure? Krain says that family land in Zanzibar is transferable. If family land in Zanzibar is commoditized, there is nothing left to differentiate it from individual property. The fact that owners are many and therefore administering of property is troublesome, is just an ordinary problem of joint holding, not a sign of communal tenure. According to test adjudication on Pemba⁷³ a holder or group of holders to all parcels, residential or farm land, could easily be found. Neither Zanzibari surveyors nor inhabitants differentiated individual property from family land in any way. I suggest that, despite possibly some relict residential and grave yard parcels in remote communities, there is only one form of individual land tenure in Shamba land. Shamba land can be held through a single person, a group of heirs or another joint group. Krain's figure that one fifth of all land holdings would be family land could be taken as a figure of the amount of joint holdership in Zanzibar. Considering that parcel structure in Zanzibar is heavily fragmented and new subdivisions rare, the amount of joint holdings could even be bigger. Dramatising the issue with communal tenure connections is only academically interesting. However, it is clear that these big joint holdings inhibit the proper utilisation of land. On the other hand, the tight family structure is the base for the whole survival strategy in Zanzibar and even very limited access to land can play an absolutely crucial role in an individual's life.

6.2.7 Land borrowing

The concept of land borrowing is equally complicated. Singer S. (1993) correctly found land borrowing to exist in both Unguja and Pemba. He presents it as a pattern where a farmer would acquire a parcel under agreement with the original holder. The weakness of this logic is again the same: no seasonal crop holders and tree holders are separated. One has to presume that landholder is evident. What is it that he is loaning then: trees, soil under the trees or both? According to my findings on Pemba the double cropping⁷⁴ system is still strongly in use. The logic behind, as stated earlier, is that a permanent tree holder is the landholder and a seasonal crop holder could be called a borrower. However, a more correct definition could be that a borrower is a person who has got the role of an overseer and a beneficiary to permanent crops while the original owner probably had moved away. Seasonal crop growing under the trees, which is a different issue, should then be called, for example, soil borrowing. Also Shao (1992, p.70-71), who calls the soil borrowers squatters as they were called in pre-revolutionary plantation tenure, found the phenomenon still

⁷⁰ Area information is based on a questionnaire. In my experience, farmers in Zanzibar have a very weak knowledge concerning the size of their holdings. For example all the Three Acre Plot holders said that their parcel's area is three acres while it actually varied significantly. See section Three Acre Plots.

⁷¹ Kiambo.

⁷² Kitongo See Chapter 5.

⁷³ See more in Section 11.

⁷⁴ Squatting tenure.

strongly existing.

More accurate is Krain's definition (1994, p.3, p.31-33), where he stresses the importance of land borrowing in a Zanzibar context and describes it as arrangement between primary and secondary occupant. He notes the similarities to a landlord-tenant relationship but without involving payment. The mutual benefiting through clean bush-free soil and a free cultivation right is presented as a motive for the arrangement. The very same motive was presented already as being behind the pattern of slavery. However, also in Krain's logic borrowing meant borrowing the soil not the whole land property or permanent trees. He mentions sources that indicate conflicts between lenders and borrowers. Land borrowers were alleged to sabotage permanent tree cultivations in favour of their own seasonal crops.

In conclusion, the tenure system in Shamba areas is still ambiguous and provides inadequate security to all right holders. The seasonal crop holder's rights, if any, are very insecure and the permanent crop holder's power over the whole property unclear. Nobody has to be reminded what happened the last time when seasonal crop cultivators on a large scale felt insecure in their land tenure. For a western surveyor, even after some experience in Zanzibar, the low amount of land related disputes reported in all studies in Zanzibar is an unbelievable mystery (For example Krain 1994, Törhönen 1992, 1993, Singer S. 1993). In spite of the good willed nature of Zanzibari people, it indicates that in Zanzibar the value of land property has still not been clearly understood and the main value in people's minds still lies on improvements on land.

6.2.8 WAKF-land⁷⁵

Krain (1994) found some cases of WAKF-land in his survey. The pattern is still the same as in Middleton's (1961) survey. The ownership stays with the donors, but usage rights are handed to the object of the endowment. A WAKF-land review (Pandu 1993) defined two motives for establishing a dedication: to support religious charity and to secure holdings from public interference⁷⁶. The review found only 49 WAKF parcels registered in the WAKF-commission on Unguja and 17 on Pemba (*ibid* p.9). Pandu remarks that people did not always register their WAKFs. A deed that was prepared in each new dedication seemed to be trusted without official registration. On Pemba, I was told about cases where the land was changed into WAKF in order to avoid public acquisitions. However, present WAKFs, even including the non-registered ones, are very few, and mainly created for mosques and such religious purposes. WAKF-houses are more common.⁷⁷

A dedicator of a WAKF-land has to name a trustee for it. The WAKF Commission can also act as a trustee and in such a case it receives 10% percent share of the crops. Pandu (1993) describes disputes that arose when the government had confiscated WAKF-land. After serious litigation the Government had agreed to pay compensation but had then failed to follow the pay schedule. However, at present disputes are very rare.

⁷⁵ The WAKF-trust system is explained in detail in the chapter 5.4.

⁷⁶ Also Fair (1994).

⁷⁷ See also the chapter 5.4 Colonial Approach for the concept of WAKF-land.

6.2.9 Squatting

The term squatting in S. Singer's (1993) research has nothing to do with squatting in former plantation areas or double cropping of today. He uses the term squatting in a more traditional way: land holding without permission from the landholder or holding that has no legal base. His conclusion was that squatting in rural individual holdings does not take place. However, the phenomenon existed in state farms, and in forests, for seasonal cultivation purposes. The same phenomenon on individual holdings is usually considered land/soil borrowing.

Singer S. (1993) researched urban squatting that he considered to include all possessions in urban areas that had no officially sanctioned right to occupancy. According to this very strict classification, all land occupied through purchase or through any other means of transfer than government parcel delivery would be called squatting. He distinguishes rural and urban holdings in a sense that in rural areas the land acquired through any transfer provided sort of an official status and in urban areas only governmental action would create such a status. This approach is problematic since cities, specifically Zanzibar Town, are expanding rapidly and they expand to shamba areas, as Singer S. correctly notes.

Parcels in squatting areas are very small; on average 250 m² (Singer S. 1993 p.48). The boundaries were well known and disputes very rare. Parcel holders considered in most cases to own their holdings and renting occurred in only few cases. The land was usually acquired through construction on an empty piece of land by agreement with adjacent dwellers⁷⁸. Singer S. concluded that informal rules for handling land in greater Zanzibar Town were existing and obeyed. I presume that latter rules cover land transfers. A governmental land delivery mechanism has inevitably not been able to respond to the growing demands on residential land in the greater Zanzibar area and an informal set up has emerged to replace it (supported in Larsson and Stoimenov 1983 p.13).

6.2.10 Records on land

The situation of land right records has remained poor. Vikman and Mohammed (1990) describe a registration situation in urban areas. Officially allocated parcels for industrial, commercial and public parcels were surveyed and recorded in the Department of Town Planning. The Municipal Council also kept records of houses and owners, but due to administrative changes in the 1970s registration had stopped. In rural areas the only existing official form of registration was the Register of Deeds⁷⁹ that does not provide any proof of title. The register has separate books for sales, mortgages, leases, WAKFs, declarations, deed polls and gifts and discharge of mortgages (Yahya 1982). All transactions relate to improvements on land, since all land belongs to the government and therefore cannot be transferred. Yahya mentioned that the deed system caused lots of litigation after the revolution and suggested a proper register of titles to be created and even a computerised system to be established. No mortgaging was taking place by the time of Yahya's report.⁸⁰

According to Pandu (1993) the WAKF commission keeps records of WAKF-lands. The register includes: the serial number, the name of the dedicator, the date of the dedication, the registration number, the location, the adjoining neighbours, the boundary descriptions, the crop data and the estimated value of the parcel. Having visited both I observed that the Register of Deeds and the WAKF commission are situated in the same building on Unguja

⁷⁸ I commented on this in Section relating to the Three Acre Plots.

⁷⁹ Still according to the Registration of Documents Decree of 1919.

⁸⁰ The Three Acre plot records were described in Section Three Acre Plots.

and the WAKF commission records and the Register of Deeds are inevitably integrated, if not the same.

6.2.11 Land and women in Zanzibar

The main study that has recently been carried out in gender issues related to land in Zanzibar is Donkerlo and Aboud's⁸¹ (1994). Also Krain's (1994) report discussed land tenure and women in Zanzibar, strongly using the latter as a source. There is no doubt that in the Zanzibar context this issue is important. In Zanzibar men are clearly the head of households. Divorces are very common and that is the moment when women are in a very vulnerable position in terms of access to land. However, Krain found that single woman households got *enough* land for their upkeep. The amount of borrowed land⁸² seemed to increase from couple headed households towards single head households. Both Krain and Donkerlo and Aboud found that about one third of cultivations for women came through borrowing⁸³. Krain included single men households in his research and found the amount of their borrowed land to be a little bit less than that of women. In general, the Swahili society, even though from a northern European point of view essentially a society of men, seems to distribute access to land relatively evenly between different genders.⁸⁴

6.2.12 Land and ethnic origin in Zanzibar

Krain (1994) also researched distribution of land in terms of ethnic origin. Over 80% of households interviewed were classified as Zanzibari Africans, the other two small groups being mainland Africans and Arabs. He found that Arabs, who formed only around 5% of the households interviewed, generally held bigger parcels than both groups of African origin. It would have been interesting to know how Krain has classified the latter groups. On Pemba, which I am more familiar with, the ethnic structure is largely mixed, as already notified in Middleton's (1961) research. The border between African and Arab origin is anything but clear, therefore Krain's figures are not very informative when such clear groupings are used. The Arabs in his study most likely consist of a group that is clearly an Arab group with no connection to Shirazi origin. They have usually very strong connections and family ties to Oman. Due to these connections they are generally wealthier than other groups in rural areas as many receive significant support from Oman. In conclusion, their bigger holding sizes mirror more their higher living standard than unchanged landlord structure of the pre-revolution era. Despite some Arabs still wanting their confiscated holdings back on Pemba there is very little tension between the ethnic groups in Zanzibar.⁸⁵

⁸¹ Women and Land in Zanzibar.

⁸² Soil borrowing.

⁸³ Their land tenure categorisations varied and therefore findings are not fully comparable.

⁸⁴ About women and adjudication on Pemba - see Chapter 10.

⁸⁵ Lately there has been alarming news about growing tension between Ungujans and Pembans following the multi-party elections of November 1995. According to my friends in Zanzibar, the conflict relates partly to land areas on Unguja that are held by Pembans.

7 New policies

In the early 1980s the Government of Zanzibar started to tackle the problems of agriculture. The first implemented action, Act No 3 of 1982 tackled the under-utilisation of granted land and bound grant holders to follow usage regulations and duties set for the Three Acre Plot holders in PD 5 1966. Consequently, it extended the rules for proper maintaining to cover all occupants of land in Zanzibar (Larsson and Stoimenov 1983 p.11).

As presented before, the post revolutionary land tenure system had proved ineffective both in providing secure tenure and serving the needs of the government. In the 1980s the Government of Zanzibar found it necessary to renew its land policy and administration.

7.1 The agriculture and livestock policy of Zanzibar

The agriculture and livestock policy of Zanzibar (Singer N. 1991 p.23-26) listed the problems of Zanzibar agriculture in the early 1980s as follows:

- limited land resources
- dependence on one cash crop - cloves
- low yields
- strong importation of food products.

Consequently, the Agriculture and Livestock Policy of Zanzibar, published in 1984, called for: higher self-sufficiency in agricultural products, increased diversity of cash crops with new products, increase of the rural population input in farming and livestock keeping, maximal use of rural land for farming and livestock purposes, increase in the use of livestock for agriculture related activities such as transport and finally the production of bio-gas to decrease dependence on petrol. Together with agricultural policies there was an obvious need to tackle the land issue. In order to fulfil the above presented goals a land policy was required to be created with the following principles:

- land was to remain national property
- re-registration of land and the creation of a national land use plan
- a land commission to be established
- the commission to be represented in local governments for controlling proper land use and cultivation
- a new land and conservation legislation to be produced.

The ownership of land and the use of land were given special notice. The principles for the ownership of lands were:

- the Three Acre Plot allocation to be revised
- abandoned, neglected or illegally possessed land holdings to be reallocated to those who would treat them more properly
- a policy for reallocating land for landless young people
- the Commission for Lands and Environment to be responsible for reallocating land
- to stabilise land ownership by legal allocation⁸⁶. (Singer N. 1991)

So, the agriculture and livestock policy of Zanzibar called for a land policy preparation cautioning that ownership of land and land use was to be tackled with a strong hand. In

⁸⁶ Irrigated rice as 0.2 ha and rain-fed rice as 0.4 ha for 33 years, traditional holdings as 3 acres for 200 years.

reality, the Three Acre Plot the allocation would have required confiscations before reallocation, or redistribution of state farms, since all confiscated land had been allocated already ten years earlier. Consolidation of rice lands and reallocation of badly maintained land are both very strong actions requiring a lot of technical work and political will. In general, a land policy was required to deal with a very ambitious list of goals. For example, land for landless young people is a noble goal, but not realistic since there is no land to be reallocated. The most peculiar goal is the size limit of three acres in "traditional holdings". The implementation of such an goal would have required total land consolidation, since most parcels are much smaller. It would have changed the structure of Zanzibar land tenure drastically and therefore it would have affected the whole set up of the society.

The agriculture and livestock policy of Zanzibar also included land use planning targets (Singer N. 1991 p.23-26):

- recognise each areas' own social and economic values
- the preparation of land use plans for different cultivation practises
- the importance of all farmers with arable land to cultivate
- the development of an inter-cropping system
- and called for improved extension services and proper land management.

The self-sufficiency program of 1987⁸⁷ (Singer N. 1990 p.26-27) included mentions that land would be allocated to those who did not possess it and title deeds issued for allocations. The minimum sizes were to be: 0.4 ha in rain-fed rice, 0.2 for irrigated rice, 0.8 for other crops with the obligation that a farmer should keep poultry, 10 dairy cows and possibly other livestock. A farmer's holdings would be limited to the size allocated under the program. These principles were similar to those in the Agricultural policy but they had started their way towards a more realistic framework at least in terms of size limitations.

7.2 Land policy for Zanzibar and Pemba

Already, by the time of the Agriculture and Livestock Policy, in 1981, the Government of Zanzibar had decided to establish a steering committee for reviewing current land administration problems in Zanzibar and to propose new land policy approaches for Zanzibar and Pemba. Together with the land policy preparation, the Government also prepared a housing strategy paper and by related parts it supported the land policy (Yahya 1982b).

Following is the scope that the committee formed for the creation of a land policy (Yahya 1982 p.9-10⁸⁸):

- to establish a range of tenures and a variety of methods for holding land that will give expression to the community goals, traditions and values
- to give secure tenure to those nationals who wish to invest in the land and promote development
- to define public and private rights in land, as well as the responsibility for stewardship of the land
- to spell out the guiding principles and the machinery for administering Government or state land
- to facilitate an equitable distribution of land resources; this means that subdivision and transfers need to be reasonably easy to execute under state supervision and control

⁸⁷ The National Program for Food Self-Sufficiency.

⁸⁸ See also Singer N. 1991 for commentary.

- to facilitate transactions in land and to establish an appropriate machinery for recording and enforcing transactions as well as for settling disputes
- to promote the efficient utilisation of land for the purpose of settlement, agriculture, forestry, mining, recreation and other necessary activities
- to protect the interests of future generations by conserving soils, water, nature, forests and energy sources
- to make sufficient land available for public purposes as and when needed
- to anticipate and accommodate popular aspirations as manifested through squatting and uncontrolled settlement
- to enhance public revenues through land taxation and to enable the recovery of public expenditure on land development and the provision of services.

These principles may have been adopted from professional literature and international donor related statements. They differ from the latter only by not mentioning the stimulation of land markets⁸⁹. The socialist ideology did not allow such wordings in 1982, even though these objectives are clearly supportive to free land market.

As a result of its work the committee proposed a 32 item list of actions and proposals as land policy. Following is a summary of that list (Yahya 1982 p.43):

- 1) a land bill preparation
- 2) the principles of the bill: land vested to government, grants for individuals and groups, duties of nationals, registration of titles, transaction regularisation, conversion of existing titles, restrictions of transfers, development areas, administration of state lands, duties of the Director of Lands, revenues, public land and miscellaneous
- 3) the establishment of the right of occupancy (RO) for long and short term holdings
- 4) a machinery for converting the existing titles to the RO's
- 5) communal and traditional rights over public land should be catered for by means of administrative rules and orders under the main act. Alternatively they could be treated as licences. There is a need to recognise these rights as title to land
- 6) special attention to indigenous people specifically shifting cultivation areas
- 7) a study for an appropriate land registration system
- 8) mortgages for urban purposes
- 9) evaluation of the land distribution programme
- 10) the establishment of the agricultural credit institutions
- 11) improvement of rural extension services
- 12) improvement of the enforcement of covenants
- 13) grants for non-residential development

⁸⁹ See for example Williamson 1986, Larsson 1991 p.11.

- 14) ground rent for urban plots
- 15) improvement of the plot allocation procedure
- 16) total size limits of individual holdings
- 17) local community participation for land distribution
- 18) title revocation
- 19) reserves for public land
- 20) the Ministry of Agriculture's approval in public acquisitions of agricultural land
- 21) the Ministry of Land's approval in transfers of land
- 22) land owning restricted to nationals
- 23) recognition of customary rights to forest products
- 24) the recreation use of forests
- 25) necessity of a land inventory
- 26) necessity of Stone Town conservation
- 27) recognition of the urban squatter rights and the issuance of title
- 28) urban master planning
- 29) the establishment of regional and physical planning
- 30) a property tax legislation review
- 31) a land professional training programme
- 32) the functions of the Director of Lands.

The proposal stressed the role of the local government in land administration, plot allocation, enforcement of covenants and settlements of disputes. Officially the land policy statement was approved by the Inter-Ministerial Committee on Land in 1990 (Singer N. 1994a). Remarkably it mentioned the establishment of an agricultural credit system for rural areas and the introduction of an urban ground rent that were not mentioned in the agricultural policy. Again the list, the land policy, cannot be blamed for having an unnecessary modest approach. The only thing that is not there and that every donor would have included, is the gender issue. The land policy does not mention women at all and therefore does not recognise the difference in men and women headed land holdings. Otherwise, it is covering and could be introduced into any country. Perhaps, that is why it looks a bit suspicious.

7.3 Creation of Commission for Lands and Environment

According to the Agriculture and Livestock Policy of Zanzibar (Singer N. 1991 p.23-26) a

land commission was to be established. Consequently the Commission for Lands and Environment (COLE) was created in 1989 (Commission for Lands and Environment Act of 1989). It was designed to respond to all administrative and management tasks related to land. In the beginning the COLE was placed under the Chief Minister's Office, but in 1990 it was transferred into the Ministry of Water, Construction, Energy, Lands and Environment. The Commission presently consists of three departments:

- lands
- surveys and town planning
- environment. (Singer N. 1991 p.18-21)

Along with the official structure in the COLE there has been a development co-operation project with the National Land Survey of Finland since 1989. The project has been divided into four components:

- 1) *Institutional support* for general upgrading of the COLE through a massive staff training program and equipment modernising.
- 2) *Land management* for improving geodetic, cartographic and cadastral facilities. This component was established in 1991 in its primary goal being the creation of a land information system.
- 3) *Land use planning* primarily for National Land Use Plan preparation and general improvement of land use planning activities.
- 4) *Environmental management* that supports the department of environment in its activities.

The land management component functions in practise as a separate department although the original idea was to integrate it to the department of lands. The land use planning component established a separate 'department' called the Integrated Planning Unit (IPU). Since 1994 there has also been a new long term donor project in the COLE. It is called the Netherlands' Assistance to the Department of Environment (NADE) and it concentrates on toxic waste disposal, environmental education and coastal erosion management.

Following are the duties of the three departments of COLE according to the COLE Act of 1989:

The Department of Lands

- land administration
- land distribution
- tenure dispute handling
- land and property valuation
- acquisitions
- land registration.

The Department of Surveys and Town Planning

- land information
- regional land use planning
- participation in National Land Use Plan preparation

- urban surveys
- town planning
- urban mapping.

The Department of Environment

- environmental policy formulation
- implementation of environmental policy. (Singer N. 1991)

8 Present development on land in Zanzibar

8.1 New legislation, second land reform

After the creation and acceptance of the new land policy, preparations towards a new land tenure system started in 1985 resulting in three new laws:

- the Land Adjudication Act
- the Registered Land Act
- the Land Survey Act.

These laws passed the House of Representatives in 1989. At the same time all land issues had been gathered under the same roof by establishing the Commission for Lands and Environment. The ZILEM-project assistance has since then resulted in the preparation of three new laws:

- the Land Tenure Act
- the Land Transfer Act
- the Land Tribunal Act.

The latter three acts passed the house of representatives in 1992. The Land Tenure Act is the main land law in Zanzibar and the Land Transfer Act and the Land Tribunal Act are its necessary amendments. The Land Transfer Act was designed to establish control on land market. It was a politically oriented action by the government in order to prevent the Three Acre Plots from becoming freely marketable. There were still voices within the government that considered the commoditizing of the Three Acre Plots flushing the achievements of the revolution down the toilet. As correctly noted by McEvan (McEvan *et al* 1995) approval of the legislation does not necessarily mean that all acts would be enforced. In fact the whole set is neither publicly distributed nor adopted in the COLE's daily activities. McEvan commented that for example the Land Survey Act created a Land Surveyor's Board, but in practise there is not a hint of its existence in Zanzibar. Presently the new legislation that is actually the beginning of a new land reform, has managed only to increase the ambiguous situation on land tenure in Zanzibar by introducing a new set of statutory on top of the old formal and informal tenures. However, the approval of the Land Tenure Act was a turning point that has made it possible to actually start to implement the new legislation.

8.1.1 The Land Tenure Act

The Land Tenure Act was drafted in early 1991. It was composed by a committee of Zanzibari land professionals⁹⁰. Singer N. (1991 p.136) wrote that the Act is "...*designed to define all land relationships on the islands of Zanzibar.*" It was to replace the decrees given right after the revolution in 1964 and to supplement the acts passed at the end of 1989. Finally in 1992, it passed the House of Representatives as Act number 12. The President of Zanzibar signed it later, but the version he assented had some wordings changed compared to the version that had passed the House. This has caused contradictions in the law. Without commenting on the manner in which the passage of the Act was carried out, it can be stated that the Act has to be amended in order to ensure its viability. Meanwhile, the only option left for the Zanzibari land management professionals is to cope with the Act as it presently is.

The Land Tenure Act of 1992 is the main land law as it was designed to define all land

⁹⁰ Under advice of Professor Norman J. Singer from the Faculty of Law in the University of Alabama

relationships in Zanzibar. It regulates mortgaging and leasing, inhibits fragmentation and sets rules for the transactions. It is divided into eight different parts: I Preliminary, II Public land, III The Right of Occupancy to Land, IV Right to Ownership of Trees, V Grants of Public Land, VI Leases, VII Termination of Rights to Occupancy and VIII Miscellaneous Provisions. The ownership of land is vested in the Government. All land in Zanzibar, occupied or unoccupied, is declared as public land, held by the President of Zanzibar. Part II, paragraph 4 declares all confiscations that took place after the revolution in 1964 legal, *no matter what procedures were used*. It cuts down complaints raised specifically on Pemba about illegal confiscations. The concept of public land according to the Land Tenure Act remains very theoretical. The Government is the owner of all land but the Right of Occupancy (RO) gives to an individual a very strong possessing right.

Public land may be leased and the RO entitles people to hold land, like in freehold. The Act regulates leases of public land and leases of the ROs. The invaluable tourism areas are usually handed over to investors through a lease. That is the case always if an investor is an expatriate. The unified system of leasing is important since there have been all kinds of leases made, lease revenues have been poorly collected and termination of the allocations that have not been developed have been difficult (Dahlin and Stridh 1996). Through a unified system the Government's control and revenue collection will freeze corruption possibilities by clarifying land issues and increasing control.

The Right of Occupancy can be gained through (LTA Part III Paragraph 7):

- a) a grant
- b) adjudication as a rightful interest
- c) inheritance
- d) purchase
- e) a gift.

In c,d and e cases a transaction is valid only when concerning a lawful registered interest. The RO is restricted to Zanzibaris over the age of eighteen. It is inheritable and transferable providing it being registered within sixty days from a transaction. A registered RO is guaranteed by the Government. It is not to be subdivided without permission and the minimum size of a RO of agricultural land is restricted to three fifths of a hectare. Remarkably, the size limits regard only transactions of registered parcels, not the adjudication procedure. This makes sense, since otherwise there would have been a need to organise a huge consolidation effort accompanying the adjudication and that would have been a very unrealistic plan. Paragraph 36 stipulates that there are no restrictions in the sale of interest on land, 41 provides that urban grants after the provisional grant period can be sold, but paragraph 44 denies the sale of any agricultural grant! Paragraph 44 did not include this provision when it passed the House of Parliament in 1992⁹¹. This amendment, despite destroying the viability of the Act, killed free land markets in Zanzibar. Other amendments considered the status of the Three Acre Plots that were not to be sold or subdivided, but Paragraph 44 expanded the limitations to cover all agricultural land. The intention of these amendments was apparently targeted towards the transactions on the Three Acre Plots and unintentionally it turned to cover all agricultural land. The Three Acre Plot issue that is highly political was also tackled in the Land Transfer Act that established a committee to approve all land transactions.

When reading the LTA it remains somewhat unclear what the relationship between the term Grant and the term Right of Occupancy is. According to my own judgement, in Zanzibar all land is considered public land and individuals and groups can get holdership rights either

⁹¹ I was present in Zanzibar by the time and know this as a fact.

through a lease or by a Grant as a Right of Occupancy (RO).

The total size of the agricultural holdings may not exceed eight hectares, unless the land is considered communally held or held under WAKF. It makes sense not to include communal holdings in restrictions since bush land areas, where some communal land might be found, are huge. However, there are various reasons why the total size limits are almost impossible to control. The problem lies in the identification of a landholder which is difficult in Zanzibar since there are no identity papers, no recorded dates/places of birth and the names are very similar⁹².

Part V of the Act consists of detailed regulations about the allocation of new grants on public lands. However, there will hardly be land on which these new grants could be formed, since most of land will be registered as RO's during the adjudication. If state farms are to be consolidated and distributed to peasants, then this procedure could be utilised. This will perhaps be the case with the irrigated rice land.

The Act notices customary land tenure by allowing the separate ownership of trees and allowing RO's to be granted to a community such as a village. Land can be jointly or communally held, both meaning however only a RO held by a group of people with no recognition of communal rights as such. Trees can be held separately and tree ownership rights will be registered as separate interests. If no other interests are registered, trees in agricultural areas belong to grant holders and in urban areas to the Municipality or to the Ministry of Agriculture according to tree type. Trees are inheritable and transferable. However, when a tree owner that does not own a grant, sells a tree, he/she is obligated to offer to sale primarily to the grant holder. So the separate ownership of trees is recognised in this statute, but borrowing rights are not. The soil borrowers' confusing and insecure situation will remain as it is. One of the main findings of this research has been that throughout history in Zanzibar the strongest interest on land has been the permanent tree owners' right. The permanent tree owner has always been in control over the parcel compared to others. According to this logic, when a tree owner is also the actual landowner, the right to own trees on some other's grant is not very important and its importance will only lessen in the future.

A registered RO can be mortgaged in institutions that are approved by the Government. Private money lending is illegal. Default on loan repayments may entitle a lender the right to use the land in question until repayment is completed (LTA paragraph 13.1-13.4), but this should not serve as a reason for acquisition. This is to prevent property ending up being owned by banks on a large scale.

Part VIII of the LTA regulates the termination of the RO. The RO, having the Government's guarantee, is very strong, even towards the Government. Public interference has been made very difficult. The national interest, apart from violations and such as a non-Zanzibari holder or abandoned cultivations., is the only case where public acquisition is possible, and even then always requiring the Land Tribunal's decision. In case of national interest compensation, like in all other cases of compensation, has to be settled according to the full market value of the land or strictly speaking full market value of the holder's interest in the RO. This is new since according to the old system the compensation would have meant full market value of the improvements on land only.

8.2 Reorganisation of the Commission for Lands and Environment

⁹² See more in Chapter 10.1 on identification on Pemba adjudication.

In late 1994 the Executive Committee of the COLE recommended the reorganisation of the COLE due to its ambiguous administrative structure and significantly increased set of activities. The structure had been ambiguous since the first days of its existence both internally and externally towards the Ministry⁹³ and other government organisations. The highest official of the commission has been an Executive Chairman, who has the status of a Minister but not clearly defined duties, and therefore the post's position has been somewhat unclear even within the Commission. The real executive has been an Executive Secretary, who has the status of a Principal Secretary and is responsible for running daily activities. His position is clear within the Commission but not towards the Ministry (ZILEM 1995). Overlapping and interest conflicts, caused by undefined command routes and task distribution, between the Commission leaders and the Ministry have been an awkward routine on a daily basis. On Pemba, the highest administrator is a Deputy Executive Secretary who is in direct contact with the Executive Secretary on Unguja, but has rare if any connection to the Ministry. The directors of each department or unit are executing the actual implementation of work. The government of Zanzibar has fallen into a deep financial crisis in the 1990s and has been able to allocate only very limited resources for the COLE's use. Therefore, the commission's activities and interest areas have had to follow those of the donor and not necessarily the main interests of the government.

Figure 8.1. The structure of the Commission for Lands and Environment

The ZILEM (1995 p.3) report listed other agencies that are also acting within the portfolio defined for the COLE:

⁹³ The Ministry of Water, Construction, Energy, Lands and Environment.

- 1) Stonetown Conservation and Development Authority within the Ministry of Water, Construction, Energy, Lands and Environment
- 2) Joint Building Authority of the Municipality of Zanzibar Town
- 3) Zanzibar Investment Promotion Agency (ZIPA).

I would amend the list at least with:

- 4) Commission for Tourism, which is playing an active role in tourism area developments together and separately with the ZIPA and the COLE⁹⁴.

The overlapping interests of all levels have clearly formed an obstacle for smooth operation within the COLE. It is evident that the pattern of tasks and duties the commission needs to fulfil on a daily basis are very different now from 1989 when the original Act was introduced. The debate surrounding the new structure of the COLE has been going on for a few years, at times very intensely, with various main debate topics. The two most difficult topics have been:

- 1) where the COLE should be placed within the government administration
- 2) what should be the future status of the environment unit?

Other than these main points, reorganisation is mainly a matter of formalising the existing practise. The COLE has been proposed to either be placed under the Chief Minister's office or to form a separate Ministry of Lands and Environment (ZILEM 1995 p.9-10). Within the department of environment there has also been a certain desire to separate from the COLE to form a separate commission for environment, or a national board of environment, if not to establish an entire Ministry of Environment. The COLE's mutual interest is to get the administrative structure clearly defined which is, of course, of great importance. However, it should not be forgotten that the government of Zanzibar is in transition. The recently adopted multi-party system is just one of the causes of confusion. I do not think that the ambiguous situation within the COLE is by any means unique and therefore reallocating the COLE within the government will hardly be a salvation for the COLE's administrative problems. The real change must grow from inside the COLE. Each departments' duties have to be clearly defined and command routes made clear. The constant competition between individuals, departments and donors has to stop and the main emphasis has to be put on the work itself.

The latest proposal (ZILEM 1995 p.13) recommends the future COLE to consists of five departments:

- 1) land administration and registration
- 2) surveys and mapping
- 3) finance and administration
- 4) urban and rural development planning
- 5) environment.

The proposal responds to the need of clearly clarified duties better than the old structure. The structure of the Department of Environment would remain as present. The Department of Land Administration and Registration would consist of the present Department of Lands and registration parts of the Land Management Component of the ZILEM-project. These sections were meant to be integrated in the first place but the practise turned out to be different. The Department of Surveys and Mapping would consist of geodetic and

⁹⁴ More about the tourism in Zanzibar in Dahlin and Stridh 1996.

cartographic parts of the present Department of Surveys and Urban Planning as well as the LIS-parts of the Land Management Component of the ZILEM-project. The Department of Urban and Rural Development Planning would bring together planning parts of the Department of Surveys and Urban Planning and the Integrated Planning Unit of the ZILEM-project. Its tasks would consist of land use planning and land use plan management. The Department of Finance and Administration would handle administration and maintenance duties of the COLE.

One of the biggest tasks that the COLE is undertaking is systematic parcel by parcel adjudication and a cadastral survey that has started in test areas in 1994⁹⁵. It is a big task requiring major emphasis, lots of skilled manpower and years to complete. It has started by the Land Management Component of the ZILEM-project ensuring proper monitoring of all activities through solid organisation. The current proposal would correctly try to integrate the land management component into the official structure of the COLE. It is a pity that the intended integration would mean a total disintegration of the land registration team. The Land Register would be located in the Department of Land Administration and Registration which would be responsible for adjudication and documentation. The Cadastral works unit⁹⁶ would be located in the Department of Surveys and Mapping as well as the Land Information System Services. Latter units would also be in separate sections within the department. On the other hand, the reorganisation proposal mentions that the land register and mapping units should be physically situated as close to each other as possible. However, the need to reorganise the COLE grew from administrative conflicts, not from the units' physical locations. I think that there is no point in dividing the land registration activity into two departments⁹⁷ and three sections. The kind of title land registration system prepared in Zanzibar is planned to cut down official overlapping and repeated actions, requiring flexible implementation, in order to function in a customer friendly manner. It is essential that the binding connection that inevitably exists between the Land Register, the Cadastral Works and the Land Information Services should be codified into statute in order to avoid future administrative conflicts. One might also ask whether there is a need for a separate administration department or would the leading officer's office be enough for such duties? The establishment of a new administrative section with the status of a department forms a danger of creating more borders for co-operation than tearing the old down. The reorganisation proposal was strongly supported by the ZILEM-project's first phase evaluation team with recommendations for immediate action (McEven *et al* 1995).

⁹⁵ See more in Section 10.

⁹⁶ i.e. surveys and register mapping required for land register.

⁹⁷ Even three if all public relation duties are transferred into the Department of Urban and Rural Development Planning as written in the proposal. That's, however, hardly the intended case.

9 Land registration

As an implementation of the new legislation, Zanzibar is presently facing the systematic adjudication that started in September 1994. The studies made during the preparation phase of the land tenure reform indicated that the people had very little faith in the tenure system, yet had a great desire to secure their holdings (Törhönen 1992).

During the preparation of the new legislation, dozens of Zanzibari land professionals have been trained both in Tanzania and overseas. For the registration, the systematic parcel based approach was selected at an early stage. The records and technical data are planned to be kept in the computerised LIS, specifically developed for Zanzibar.

Presently the work is going on in two adjudication areas, one on Unguja and one on Pemba. the work started in Jumbi shehia⁹⁸, a 16 km² village situated around 12 kilometres south east of Zanzibar Town, in October 1994.

Figure 9.1. The steps of the beginning of a title land registration (Larsson 1991 p.75). Zanzibar has followed similar lines

⁹⁸ Shehia, a local government unit consisting of one or a few villages.

In Kwale shehia, which is the pilot area on Pemba being 12 km² and situated 5 km north of Chake Chake, the work started in May 1995. McEven (*et al* 1995) classified the pilot area procedures into five steps:

- presentation of ownership claims
- ownership and boundary adjudication
- boundary demarcation
- boundary survey
- registration of titles and interests.

The preparatory work had started much earlier. The long era of policy and legislative actions have been presented earlier in this report. The technical preparations included geodetic network surveys, traverse surveys, cartographical designing, recording and documentation designing, staff training and organising and Land Information System evolution. Perhaps the most significant part of the preparatory work was done in the field of public information. It started with seminars for the government's higher officials and for the members of parliament. Two video films were prepared for public information purposes and pamphlets, radio programs and songs were planned. Both pilot areas are divided into adjudication sections for claim recording and demarcation work scheduling.

In the pilot areas, priority is now in staff training and procedure testing. Before the claim recording started, a public information campaign was carried out in the villages. The campaign continues with radio spots and letters. On Pemba, women were informed by the "women to women" campaign that was conducted together with the Ministry of Women⁹⁹. The claim recording takes place in sub-offices, consisting of two containers, with a temporary roofing and base structure, which are transferred to pilot areas.

At this stage different survey techniques have been tested. In 1992, the new geodetic network had been surveyed on both main islands with a Finnish GPS-team consisting of around three hundred double points spread around the islands in reasonably accessible places. Zanzibar that has both very fertile and infertile areas and very small fragmented parcels will be surveyed using several different techniques. The fertile areas with thick flora have to be surveyed by combining the compass and total station surveys. The GPS-technology has been assumed to provide a cheap solution for massive cadastral surveys. The technology for cadastral surveys was tested in Zanzibar by the ZILEM-project in December 1995 (Tättilä 1996). The tested equipment was, according to manufacturer's printout, capable of 30 cm accuracy with a portable unit on the mark and a pace station on a known base point. Communication between the two stations was organised with two radio modems. A PC-recorder carried out on-line calculations for coordinate data with accuracy estimations. In theory it would have required a field worker only to write down the number of each corner mark and push a button in the receiver. In practise, it was soon noticed that the technology was not quite ready for developing world conditions having far too many technicalities to take care of while observing. Despite the opposite advertisement by the manufacturer the equipment did not function through tree leaves, an option essentially required due to thick vegetation in the fertile areas of Zanzibar. In conclusion regarding test surveys it was noticed that there was no hurry in adopting new GPS-technology for daily use in Zanzibar, since the present stage of equipment did not yet meet the requirements smoothly enough to provide a revolutionary alternative to the traditional methods. However, the test team had a positive feeling about the technology in general and they were very eager to wait for the next generation of equipment to come. In principle the GPS-technology

⁹⁹ See more in Chapter 10 for Pemba pilot area surveys.

is already capable of the task, but practise is still a bit different.

In the infertile coral rag areas, the parcel boundaries will be drawn on the base map or on the aerial photographs. The boundaries and corners are going to be fixed by relying on landholders to clean the boundaries and plant the corner marks. The registration is expected to take approximately ten years to cover all the land area.

9.1 Pemba adjudication pilot area

I worked in the COLE's Pemba office between July 1994 and August 1995. The main emphasis of the job was to advise and assist in the preparatory stage of the pilot area adjudication in Kwale. This chapter is based on my¹⁰⁰ qualitative findings and six staff brainstorming sessions that I guided and documented in the Kwale pilot area between November 1994 and July 1995 (Pemba I-VI 1995). The idea was to analyse each step undertaken in terms of development and obstacles when launching a parcel-by-parcel adjudication and survey in Zanzibar, as a developing country. The sessions turned out to be useful as a medium of structuring the findings and planning in order to improve the procedure. It was also a useful way of giving all staff members a view on what was happening. The sub-office construction finished in November 1994. The office is in Gombani village close to the boundary of the Kwale shehia, that is the pilot area shehia.¹⁰¹ It was considered necessary to have a claim recording done by the pilot area, since it would have been difficult to get all the claimants to come to the main office in Chake Chake.



Figure 9.2. A temporary office on the Pemba pilot area

It was also considered beneficial that the sub-office staff would then be on the spot every day, available flexibly for arising work issues. For some remote villages with difficult access, there might be a need to camp by the office for most intensive work periods. The Kwale

¹⁰⁰ Memoranda.

¹⁰¹ Shao (1992) mentions that Kwale was one of the main villages on Pemba where the Arabs introduced clove plantations in the beginning of the 19th century. It is still characteristically a clove area.

sub-office was constructed in the two containers lying on a concrete base (Figure 9.2). It is covered with a coconut thatch roofing to protect it from the extreme heat. The office is connected to a close-by electricity line and it has its own water tap. Having been furnished as a proper office including a couple of laptop computers for recording, a printer, a copy machine for copying the deeds, fans, writing desks and chairs for claimants use, it is self sufficient. It also has radio facilities to communicate with the field units and the main office. The idea was to have a simple and cheap, temporary office constructed that would be as transportable as possible. It was considered better to have the containers utilised for this than to rent an office in each of the adjudication shehia. This was due to for example the storage facilities that the containers provided where all valuables such as the field equipment and recording stuff had a proper lockable place for storage.

The staff had been sent for training along the years on various levels and by the time of the launching up the project most of the students were still in school and the Pemba office was lacking qualified surveyors (Figure 9.3).

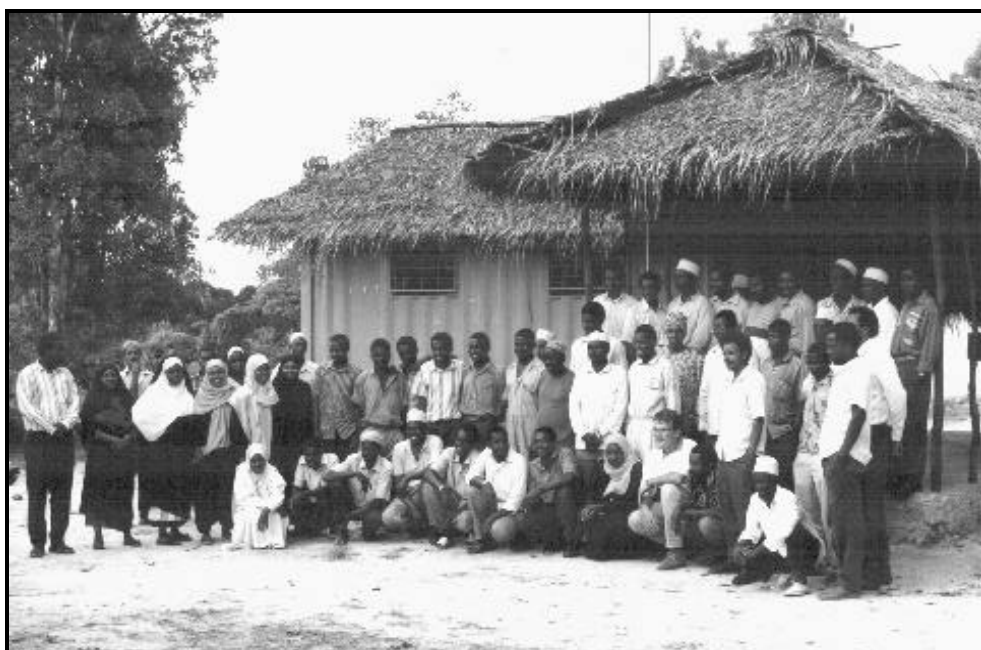


Figure 9.3. The staff of the Commission of Lands and Environment staff by the temporary sub-office in July 1995

A surveyor, a surveyor technician and a dozen field assistants were required to carry out all the surveying work on the island of about three hundred thousand people. They had been fully occupied by government site allocations or other urban surveys and now they were required to adopt other full time tasks in a systematic parcel by parcel adjudication. However, quite a few new surveyors were expected to graduate during 1995 and some of them would be joining the Pemba office.

The Sub-Office staff in the Kwale pilot area in July 1995:

- Adjudication Officer
- Surveyor
- Surveying Technician
- Public Information Officer
- 4 x Demarcation Officer
- 3 x Recording Officer

Secretary
11 x Field Assistant
2 x Driver.

So there was a need to consider simple sustainable solutions, due to inadequate Zanzibar government resources, and consequently all technical work had to be planned to be as quick, simple and cheap as possible. A few field assistants were trained to work as demarcation officers, the idea being that each parcel would be visited by a very small group, if not by a single officer, who would demarcate the boundaries with the adjoining neighbours, plan and possibly plant the corner mark locations and finally survey them. All the boundaries would be surveyed during the demarcation by a compass and tape combination and when the accuracy achieved would have been adequate, only minor other surveys would be conducted for tying the surveyed parcels to the Zanzibar-Pemba coordinate system. The idea had been to make the farmers clarify and clear the boundaries themselves as well as to assist in the surveys. The idea of fixed and cleared boundaries was adopted in the beginning without really considering the whole issue. It was soon realised that the boundaries on Pemba do not always follow geometric lines and are quite often only approximately defined. In cases where the boundary line was in thick bush clearing the boundary would have required only a little bit less time than the vegetation would have required for growing back. So, clearing the boundaries was not seen as a top priority.

The actual work started with defining the shehia¹⁰² boundaries according to pre-revolution demarcations. Amazingly, old people still knew the shehia boundaries relatively well and most old beacons were found, even though the shehia structure had not played any role in post revolution times. The lost corner marks were defined by a group of adjoining Shehias' Shehas¹⁰³. After the Shehia boundaries had been surveyed, the area was divided into adjudication sections utilising the natural boundaries of the landscape such as rivers, footpaths and roads. Since the Kwale shehia consisted of several small villages, each adjudication section was to consist of one village and its surrounding plantations. The Sheha and an assistant Sheha had participated in the section distributions (Pemba I 1994) and each village head was informed about the coming activity. A meeting was organised by the sub-office at an early stage. There they were presented with the land registration video and afterwards informed about the legislation and the practical aspects of the activity.

After the shehia boundary clarification, section division and village head information it was time to move inside the area. The public information campaign was planned in participatory brainstorming (Pemba II and III 1994) and meetings with the sheha and the village heads.

¹⁰² Shehia, a local government unit consisting of one big or few small villages.

¹⁰³ Sheha is the head of Shehia.



Figure 9.4. A public information meeting in Kwale village



Figure 9.5. Villagers gathering

The idea was that each of the eleven villages was visited with a group that had loudspeakers and video equipment with them. The village head had informed the villagers about the meeting. Between the last

two prayers of the day, a video was turned on with a loud film on to attract people. Attendance turned out to be good and after half of the film it was stopped and a short land registration video was presented to the villagers. After a short information speech the villagers were engaged in discussions and questions, which were usually raised concerning inheritance, lost documents and so on, were answered. Finally as the questions waned the rest of the film was played to the end. The main point was to inform the people that registration is coming up and it is important for everybody to claim their rights and specifically to stress why it is important to so do. People were requested to wait for an announcement and then come to the sub-office with all the possible documentary evidence. Pemba is a traditional stronghold of the opposition in Zanzibar and it was realised in the beginning of the campaign that a major effort had to be made in order to convince people

that this was in their own interest instead of the government's. Without proper information and emphasis, it would not be possible to get any co-operation from the people. However, the outcome of the information tour was good and the system was found functional. The only other media that could be utilised on Pemba would be the radio. The television worked in a few towns only, and due to a very unreliable electricity distribution, was completely unpredictable. However, the public information campaign in the villages was filmed and showed on TV together with the land registration video. Newspapers on Pemba reach very few places and very randomly. The radio announces deaths every morning telling people about coming funerals that are of extreme importance in the Swahili culture. A radio spot attached to death announcements would have the best possible coverage on both islands and would even reach the emigrants living in mainland Tanzania, since they are said to listen to the announcements in the mornings to find out about possible deaths among the relatives. The radio spots started to be utilised by the time that the claim recording started. The other very popular programs on the radio are football matches, and they were considered to be utilised but their coverage towards women remained unclear. Women, who were a bit hesitant to attend and express their views in public meetings, were to be reached by a women's group (Pemba IV 1995). A 'Women to Women' campaign was launched some while after the village meetings. A COLE staff member together with a Ministry of Women official, both ladies, went to each village calling women together and discussed with them. It was found a good way of distributing information and they received good attendance and long discussions. In fact, when the actual recording started it was soon realised that women had a broader knowledge of what is going on than men and they were more eager to put in their claims.

The claim recording started finally after an extremely frustrating waiting period that was due to the heavy bureaucratic administration of the government. The COLE was able to start the claim recording for the systematic parcel by parcel adjudication on Pemba in May 1995. The claimants were called through the Sheha and radio spots to come to cast their claims, one adjudication section at a time. Soon it was realised that the most effective way of getting people to come was a public information officer's personal visit to the area, a day or so before, with a bunch of letters describing the procedure (Pemba VI 1995). A personal letter would guarantee the presence of a landholder the next day. The village heads knew most of the landholders. After realising this the claimants were reached well. The problem was that many farmers lived in other Shehias than the one in question. Those we tried to reach through the radio, but it was considered inadequate. On Unguja, having had similar problems, the public information team had started to do public information tours all around the island, even though on Unguja the media are much more useful than on Pemba. One of the first problems occurred when it was noticed that there were no proper ways of finding out who is who in Zanzibar. People had no identification numbers or anything except their names. The same names can be spelled in several different ways, even by the people themselves. If there are many Mohammed Ali Saids in the records, as there definitely are, it is difficult to find out whether we are dealing with only one farmer or a few or many. The recorders had to rely on the shehia administration's word in each case, which however was not considered a problem by the staff. Anyway, it is not realistic to think that there is a way of controlling total land holding sizes in Zanzibar. There isn't.

By the time I left the area in July 1995, the demarcation work had just started (Figure 9.6). In the Kwale Adjudication area in July after two months of recording there had been 408 recorded claims from the first three adjudication sections. The demarcation started a bit slowly for various reasons.



Figure 9.6. Demarcation of parcels in Kwale village

The demarcation teams had faced some problems in calling people to the spot. However, after some reconsideration and new methods of information, the co-operation had improved. The idea was to start slowly and speed up the process when the right procedures were found and adopted in use. In the beginning, people did not quite understand why they would need to put their own labour into the process (Pemba VI 1995). They did not always turn up at the parcel even when they had agreed to come and never seemed to come if a neighbour's parcel was the one to be surveyed. In Zanzibar, government services have always been free, even water, and the connection between sweating by the parcel and getting the title document was not clearly understood. The sub-office staff was still busier in the information and organisation work than in the technical operations. Even though, it was going better each day, the amount of information work was expected to remain high throughout the process. Oral messages cannot be totally replaced in this kind of indigenous society. All fancy media are OK, but in practise, on Pemba, the days of their strong influence are still far away. However, the Pemba office staff prepared their own video film for public information purposes that stressed that demarcation was to be done by the farmers themselves, so that from the very first information meeting people would be informed about their share. For the Kwale shehia another set of group meetings was planned to emphasise demarcation utilising the new film. The Pemba staff also prepared songs for the film describing the procedure and those were also played on the radio.

It was soon also realised that some staff members had given out contradictory information to the farmers during the claim recording. This was, of course, partly because the system was still in evolution and it was still difficult to see the whole picture of the procedure. But it also indicated that the public information had to start from the staff itself. The staff's knowledge was clearly inadequate in the beginning. On the other hand, major emphasis in the pilot areas is on training. However, it would be essential to get an adjudication and a demarcation manual available for the staff. Those have been under preparation for a long time, but have not been considered very important. They are most important, since the staff have to understand the process beyond their immediate responsibilities as they are the ones to educate the farmers. The same goes with staff training courses, it is still not too late

to have a complete course on the topic organised.

A couple of boundary disputes had occurred as well as one ownership dispute. The boundary disputes were easily solved in each case and they were more a matter of demarcation than real disputes. The first serious ownership dispute was between a man who said he owned a piece of land and a long time occupant of the piece, who had built houses there and was completely settled in with his family (Pemba VI 1995). It seemed to be a typical dispute arising from the question:

- 1) when does land owning without any cultivation or attention turn out to be idling
- 2) when does land borrowing turn out to be owning?

According to the Land Tenure Act of 1992 the answer is that idle land is a lost piece of land and twelve years of occupancy proves the right of occupancy. These are the facts that an adjudication officer has and he will have to make his judgement accordingly. The disputes about overlapping interests on different levels had not occurred by the time I left the area, i.e. there was always a landholder to be found. The soil borrowers knew that their right was not an automatic right but was based on an agreement. However, I did not carry out a comprehensive study about this matter, but it should have to be done if I return to the, then finished, pilot area for a follow-up study or by another researcher.

The aim of the COLE Pemba office has been to establish at least three demarcation teams and one surveying team. With the new surveyors the number of teams could have been increased even up to seven. Somebody representing the shehia administration has been present at the office every day and their input has been invaluable. Larsson and Stoimenov (1983 p.44) had also utilised local leaders¹⁰⁴ for public information purposes when carrying out field surveys and had found it a good way of gaining trust by the villagers.

One of the field workers permanently prepares beacons against a small payment. The farmers were requested to pay some fee for the beacons, the idea being that in the long run beacon preparation and distribution might become a business for somebody and the government would not be directly involved in any other than the controlling task ensuring that the beacons would meet some requirements. Similar actions towards privatising parts of the process should be considered. It is clear that too little emphasis has been so far put on planning the sustainability aspect of the procedures. In the long run, there has to be a surveying/adjudication payment collected, otherwise the presently planned system is too expensive for the Zanzibar government. Along with the payment introduction, the actions have to be tuned to a level that is realistic given the existing resources. I'm afraid that if this is not done, the procedure developed will become too fat and result in more harm than benefit.

The adjudication activity needs constant follow-up and support from Unguja, where the adjudication has progressed further. For example the computerised LIS-program and the geodetic calculation programs are not well adapted on Pemba while on Unguja they are constantly used.

¹⁰⁴ CCM party officials. In 1983 the CCM party branches and local government were practically the same thing.

10 Post-revolutionary Zanzibar in terms of potential success in land tenure reform and land registration

This chapter aims to evaluate the success of the land registration procedure in Zanzibar. I stress that this is a very theoretical chapter and its results are at best only estimations of what is going to happen. This is due to many reasons, for example the registration in Zanzibar is still searching for its final form and everything in Zanzibar depends very highly on the overall development of the economy. However, I wanted to include this Chapter in order to bring up issues that could probably receive more attention than is presently the case.

10.1 Evaluating the potential success of the cadastral project in Zanzibar according to Williamson's criteria

The following is an attempt to develop a list of questions and to analyse a method based on Williamson's (1986) list of general principles that should be considered when designing a strategy for a land titling project. I have modified Williamson's statements to questions in order to use them in evaluating a land tenure unification exercise at the planning stage or in the beginning of the implementation stage (Annex 1). In principle, the answer to each question should be positive in order to completely match with Williamson's idea of a proper cadastral project. There are two sets of questions at different levels and I answer them basing my answer on the findings of this research.

Strategic Design

- 1) *Are the new developed systems incremental and evolutionary based as much as possible on the existing operational administrative structure?* **No**, they are not. The operational administrative structure is completely reformed and will continue to be under reform for some time. All official procedures are renewed as the barely existing system for Register of Deeds is replaced with the new system of Register of Titles.
- 2) *Is there a socio-economic evaluation component in the project?* **Yes**, there is. There is a socio-economic team within the COLE staff, which has made a pre-registration survey in the test registration area and will do a comparative survey when the pilot area surveys are finished. However, so far its impact on anything has been zero, but after a second review it may be able to contribute to the process.
- 3) *Are the existing technical and administrative procedures utilised as much as possible?* **No**, they are not. All planned systems are new despite some utilisation of existing maps and urban surveys. However, it has to be remembered that very little of the administrative procedures had not collapsed by the time of the land tenure reform started in the 1980s. However, in terms of registration the existing administrative structure has been totally replaced.
- 4) *Has there been only minimal legislative changes made?* **No**. The whole land legislation has been rapidly replaced by a totally new set of legislation. It is clear that this new system needs different legislation than the present one, but due to recent changes in legislation the existing tenures did not change so much in the end. However, the legislation is completely renewed.
- 5) *Has the project been planned so that it receives full public support?* **Yes**. Public information has been one of the biggest targets of emphasis. All surveys done among

the local peasants indicate that there is a huge desire for securing land holdings and all steps towards that receive mutual acceptance. However, this is the area with big challenges as well. The people of Zanzibar have been separated into two political groups and public information has to battle constantly to keep politics out of the daily work in order to gain mutual support by the people.

- 6) *Are appropriate procedures and technology utilised?* **Yes (no)**. This question has several levels. First of all, in the very beginning very ambitious goals were selected for example towards creating a modern computerised Land Information System. It could be claimed to have been too advanced an aim in terms of technology required in Zanzibar conditions. However, as the procedure has been on-going, the scope has become more realistic utilising cheap and simple technology. On the other hand, the latest technology may also be more appropriate than the old one. That together with an increased consideration of the resources made the answer to be yes.
- 7) *Is the credit available for small scale farmers?* **No**. This is one of the issues that has clearly been paid too little, if any, attention to so far. This is probably due to the preparatory stage of the process where it would have been difficult to convince the banks that they should develop such a system for nothing. It would have, however, been beneficial for the whole process if, together with test registrations, there had been test credit allocations introduced as well. It would have helped the people, as well as the Government, in seeing the real benefits of the registration. I have heard of rumours that it would have been possible to get a credit against landholdings in Zanzibar, but only to land with significant value and at a very high interest rate. Small scale farmers need small credits at a reasonable rate for improving their cultivations. This is highly important for achieving one of the main targets, the increased agricultural productivity.
- 8) *Are there public legal services available for small scale farmers?* **No (yes)**, there are not. However, in terms of adjudication there are people who help in terms of claim preparation and similar matters. However, their legal training is non-existent. There is no public legal aid system for the peasants' use and as a matter of fact, in Zanzibar there is a shortage of lawyers overall. For example, in the COLE there is no qualified lawyer in the staff at all. However, this is an issue that has been noticed and it is going to be changed.
- 9) *Are the planned administrative systems decentralised?* **Yes (no)**. According to the legislation all land register activities are centralised in the COLE. However, Zanzibar is a small place and in any other country in Africa, Zanzibar would only be a small district and the land registry as in Zanzibar is going to be, would be considered decentralised. As a matter of fact the system is decentralised by providing different registries to Unguja and to Pemba.
- 10) *Are large charges avoided for titles?* **Yes**. So far the farmers have to pay a subsidised price, only for their beacons. However, the problem of financing the project is clear. Government resources are not going to be sufficient to fund the complete registration activity. So, the answer is yes only because of donor funding at the moment. On the other hand, for the future there has been no calculations made for the payments. Due to the present stage of the process they would be highly speculative at this point. Therefore, yes is a bit of an undeserved answer at this stage.
- 11) *Is it a simple system?* **Yes (no)**. The complete system will be simple by reducing the number of officials and procedures, time, and legal assistance involved to a minimum.

However, presently the adjudication and cadastral surveying methods are still looking for more simple forms. Presently field surveys, demarcation, adjudication and public information require a lot of people and many actions with very low productivity, but this is very understandable since the procedure is by no means yet in its final form.

- 12) *Has the separation of planning and implementation been avoided?* **Yes.** All activities are planned within the COLE and that is also the implementing agency.
- 13) *Is there computerisation introduced on top of the proven, operational and efficient system?*¹⁰⁵ **No.** Computerisation has been introduced as a first step towards the land register. The paper component has also been planned but only side by side with major computerisation. The adjectives chosen, operational and efficient are hopefully adjectives relevant in the future. In this preparatory stage it is very understandable that those are not words of today.

Designing and Implementing

1) Legal and Land Tenure Issues

- a) *The necessity of an effective conveyancing system, is there a need?* **Yes.** There is clearly a need since the ambiguous and insecure land tenure and transfer systems provide obstacles for land markets.
- b) *Should title be guaranteed?* **Yes,** absolutely. The desire for securing land rights is concrete among peasants.
- c) *Appropriate forms of tenure planned for both existing and developed land rights, i.e. have customary tenures been recognised?* **Yes and no.** The Land Tenure Act recognises separate ownership of trees and allows the Right of Occupancy to be issued to a community. However, the soil borrowers' position has not been considered at all and customary tenure as such has not been recognised in new statutes.
- d) *The role of land tenure in ensuring the maximum utilisation of land, does it play a role?* **Yes.** This and other studies indicate that in Zanzibar land borrowing, as an insecure possession right, results in the poor utilisation of land and other insecure tenures do the same.
- e) *Legal aid, should it be provided?* **Yes.** It should be provided in cases of disputes arising during the adjudication since peasants will hardly be able to cover the costs of a lawyer. However, no such system has been developed.
- f) *Western influence versus customary rights: is there a conflict?* **Yes and no.** Historically there have been a conflict in plantation tenure that did not recognise squatter rights and it resulted in problems. However, the influence of the indigenous tenures on land in Zanzibar is vanishing and its significance presently very low. Therefore, the western type of land holding structure will now fit in Zanzibar better than ever. However, the soil borrowers' position is going to stay weak and it may provide a threat to the viability of the new land tenure.

¹⁰⁵ According to Williamson it should not be introduced otherwise.

2) Technical Issues

- a) *Mapping procedures and technology. Time and costs vs. accuracy requirements, have they been considered?* **Yes.** These issues have played some role all the time and their role in the future development will only get bigger. The final solution for land surveys and register map production is still yet to come, therefore these are very much the issues of today.
 - b) *The use of advanced mapping techniques, have they been used?* **Yes and no.** Many systems have been and will be tested starting from very simple compass and tape surveys into advanced GPS-technology. The balance between different methods will certainly be found in the future. Still the cost aspect has to be considered further.
 - c) *The use of computers, was it ever questioned?* **No.** It was not questioned and maybe it should have. However, in terms of land registration computers have been utilised in a sustainable manner by utilising simple software and hardware solutions. Still it is clear that the paper component has to receive more attention since it has to be developed into total independence from computer technology. This is due to serious problems in electricity distribution in Zanzibar, for instance.
 - d) *The use of microfilming in securing records, Have microfilm been introduced or discussed?* **Yes,** they have been discussed, but maybe time has passed them by. The security of records has been guaranteed through rewriting CD-roms and through a paper copy. The solution has not met the required sustainability yet.
- 3) *Has the decision between a systematic and a sporadic approach been made? If yes, based on what facts.* **Yes.** Based on international experience and on the inefficiency of people utilising the existing register of deeds.
 - 4) *Is the approach flexible in terms of a continued adoption of the outdated and inappropriate technologies and procedures that may be the result from the colonial era?* **No,** not at all. It is replacing both pre- and post-revolutionary systems totally. However, one has to bear in mind that no functioning system existed but a collapsed official system and an ambiguous unofficial system.
 - 5) *Has the procedure been considered through a business-risk approach? Is there an adequate correlation between costs and benefits?* **No,** it has not. There is a need for that inevitably. Right now the cost benefit correlation is likely to be low when comparing with Zanzibar Government resources, but high when comparing with donor introduced resources. The question is what the right focus should be?
 - 6) *Has there been efficient and appropriate institutional arrangements made?* **Yes.** Institutional arrangements have been made since the beginning and the reorganisation of the COLE will continue to do so.
 - 7) *Has the maintenance and updating of the system been realistically planned?* **No (yes).** It has not yet been adequately planned yet and its updating will be a big problem. Technical solutions have been planned a little, but the main problem will be getting the public and the officials to adopt the new system and follow up procedures are not developed yet.
 - 8) *Is there a constant lack of skilled manpower, especially for technology transfer and*

training? **Yes.** However, this has been tackled with a strong hand by the donor and the situation has drastically improved. The question is how the government can ensure that the trained staff stay in their low paid jobs or utilise their skills in other ways. The possible privatisation of the registration would in the long run provide a lucrative answer for both the government and individual professionals through reduced costs, improved efficiency and a decent income.

- 9) *Is there a lack of qualified management personnel?* **Yes.** There is a lack of experienced trained staff, but as mentioned above it is drastically improving day by day.
- 10) *What kind of role does the education, training and technical assistance have?* **A big role.** The problem is that it is relying too much on donor assistance, but so does everything in Zanzibar.
- 11) *Has the decentralised approach been introduced successfully, "taking the system to the public"?* **Yes,** in terms of adjudication in test areas it has been done. However, in terms of a final system, it is still to be done in the future, but the system is not yet at that stage.
- 12) *Have the monitoring and reviewing projects been organised or scheduled?* **Yes.** The donors have organised evaluation missions, but their role has been mostly formal, assessing spent donor money instead of being real constructive contributors into the process itself.
- 13) *Has it been recognised that it is difficult to separate land titling projects into a rural and urban component? Have such components been introduced?* **No,** there has not been a such division. However, in practise the Zanzibar Town area will have to be dealt with differently, because of its large area of 'squatting' settlements. However, the principles are the same.
- 14) *Has it been recognised that an effective cadastre complements an effective land administration system?* **Yes.** It has been recognised to be the reason behind the incorporation of the land management component into the donor project that originally had the main focus on land use planning. It was soon realised that no plans could be implemented without proper means of monitoring land use and development.
- 15) *Have institutional arrangements been made to facilitate access to credit especially for small peasant farmers?* **No** they have not, as mentioned above.

Summary, conclusions and interpretation of findings

Thirteen questions on the strategic design of the project were answered Yes or No. The Yes answer was considered positive concerning the success of the process and No negative. The answers were:

Yes 2,5,6,9,10,11,12

No 1,3,4,7,8,13.

Consequently six times No and seven times Yes. However, if those two Yes answers that were considered to be close to a No answer were given only half a point it would have been a draw. In conclusion it can be said that relatively many aspects of the strategy of land

registration in Zanzibar have been well considered, but some clear omissions could be found. For example the credit and legal services for small peasants have been forgotten, it seems, even though they were mentioned in earlier policies. However, it is not too late at all to tackle these issues in the future.

The following fifteen questions on designing and implementing the cadastral work were not clearly Yes and No answers, so I have in each case decided whether the answer is more promotive to the success of the cadastral project than destructive and gave plus or minus accordingly. Legal and land tenure issues had five (1a - 1f) aspects and technical ones four (2a - 2d). Results were:

Positive in 1a, 1b, 1d, 1f, 2a, 2b, 2d,3,6,10,11,12,13,14

Negative in 1e, 2c, 4, 5, 7, 15

Neutral in 1c, 8, 9.

The results were very positive: fourteen positive, six negatives and three neutral answers. They indicate that the design and implementation are very successful at least in terms of the right direction followed.

In conclusion, based on a comparison between Zanzibar land registration and Williamson's ideal cadastral project, it can be said that the designing and implementing of the work has been going on much better than the strategic designing according to Williamson's criteria. The overall status of Zanzibar land registration is positive despite many problems and a few clear discrepancies. Of course this is just one model and there are others, for example Williamson does not mention anything concerning women's rights that are however considered very important in many other instances. The value of these kind of models lies mainly, in forcing the researcher to think about different aspects, and not guessing the future.

10.2 Evaluating the potential success of the cadastral project in Zanzibar according to Larsson's system for calculating the benefits

The other model used in here is abstracted from Larsson (1991 p.70-72, Annex 2). He stresses the importance of comparing the costs and the benefits when establishing a cadastral or land registration system. Having said it, he however concludes that the benefits of land registration can hardly be described in monetary terms.

The answers to Larsson's list should be compared with the estimated costs of the registration and the running costs of the system. Larsson concludes that despite the fact that all benefits cannot ever be reliably estimated it is recommended that some monetary calculations be used for a greater understanding of the possible benefits of the system and the necessary inputs for the introduction of a cadastre or land register.

Considerations Utilising Larsson's Model

- 1) *Specify the current situation.* This report has shown that the present land tenure and land registration systems are ambiguous and provide little security of tenure for any land utilisers. The government's administrative control has lost its efficiency and the land property throughout the country is not properly utilised. Most land is held in a manner close to the individual property tenure but some overlapping interests can be found.

- 2) *Define the proposed new system or alternative systems.* The new proposed system has been a parcel based land register that will be introduced through systematic parcel by parcel land adjudication and cadastral surveys. The records are intended to be kept in a parcel based computerised land information system. The land legislation has been and will be totally replaced by new land laws. There are very good small scale maps available in Zanzibar, but no register map what so ever. There is no publicly available land interests data. Land markets function in informal terms and are hindered by a lack of secure tenure. No land related revenues are collected. Land leases are neither properly registered nor is development controlled.
- 3) *Express the benefits one by one in verbal terms.*¹⁰⁶
- 4) *Finally evaluate the listed benefits with a selected scale: weak, moderate, strong. Define also whether the benefit is of public or private type.*

A unified land tenure system. **Strong.** The system that would alleviate the ambiguous situation would be a real benefit to society. Both private and public benefits.

Increased security of tenure. **Strong.** Absolutely essential to any development on land. Both private and public benefiting.

Increased government monitoring. **Weak.** There is a long way to go before one can really expect the Government to be able to monitor land development. Public benefit.

Increased public revenues through the introduction of a property tax. **Weak.** It is apparently a very strong benefit for a country, but relating to its introduction that would require a legislative change, a complete cover of a land register and machinery to collect and control the tax; one cannot think anything else but weak in this sense since its introduction cannot be seen. Public benefit.

Increased public revenues through better monitoring of land leases. **Strong.** The land leases are going to increase and improved data for land and property valuation will give possibilities to handle the land lease data better and to ensure that revenues are set on the right level. Public benefit.

Decreased possibilities of corruption in land related matters. **Strong.** It will cut down the possibilities of violating records, rules and plans by making them clear and public to all. An individual landholder will be treated on a more equal basis and the government's interests will be handled according to the regulations.

Improved implementation of land use plans. **Moderate.** Without land interest data no plan implementation is possible, but plans are not enough without some inputs into the infrastructure, and again, the resources are very limited. Mainly public benefit, of course affecting also individuals through improved infrastructure, i.e. living conditions.

Improved map production. **Moderate.** This is true in terms of the registry, since it did not even exist before, however, other maps are adequate for the time being and the cadastral system creates no systems for other than cadastral mapping. Public benefit.

Improved transactions procedure. **Strong.** With only one office, only one official, it will

¹⁰⁶ The answers for the items three and four are combined: the benefits are underlined and classification is in bold.

certainly have a major impact on transaction pace when they are made so easy and clear to all. However, it takes a long time before this is reality. Both public and private benefits.

A decreased amount of litigation. **Weak.** The new system will leave much less room for litigation by making the system much clearer than the old one, however, surprisingly, there is a very low amount of land related disputes in Zanzibar although they are likely to increase when land value thinking is really adopted in use. Individual benefit.

Boost of land market. **Moderate.** After all, land markets have been there all the time and the new system can only improve them, not establish them. Public benefit.

Higher agricultural productivity. **Strong.** The population in Zanzibar is increasing every day and Zanzibar literally needs more food as well as income generators. However, many issues such as credit system introduction and agricultural campaigns have to be involved before this, apparently very strong benefit can be expected to be gained. Both will benefit from increased food production.

Conclusions and Interpretation from Larsson's model

Zanzibar land registration systems get encouraging scores with Larsson's model. However, it is not a real model for estimating the potential success of a land registration activity. It is a list for justifying the land registration process and it is hardly questioning anything. In the developing world context, it is simplistic to compare the existing, usually bad, conditions with abstract benefits to be gained. In the case of Zanzibar, with Larsson's model one ends up comparing a no-system to a proper system, and of course it is clear that the benefits of such comparison to the present situation are stunning. However, I would amend this thinking with possible obstacles and realistic estimations of what is to be gained with the existing resources. With the above list it is too easy to go for major operation, without really considering how huge the task will be before the benefits start to appear. As Larsson correctly stated the monetary calculations are difficult to carry out. A cost-benefit study of Zanzibar land registration sounds like a good idea, however, the benefits to be gained cannot be valued at this very early stage in monetary terms in any reasonable way. Any figure in order to value any benefit would be as likely correct as wrong.

10.3 Krain's alternative approach and its evaluation

The following is Eberhard Krain's (1994) alternative approach proposal and my comments on it. The comments are related to Professor Williamson's list of the benefits of land registration. The above presented models are not utilised because of relatively small amount of data concerning the idea, however it is considered enough for this principle level evaluation.

Krain (1994, p.65) criticises the goal of the implementation of the Land Tenure Act for being a systematic parcel by parcel adjudication. The criticism is based on the poor success of such an action in Kenya in the 1960s. Kenya is often presented as a horrifying example of a titling programme (For example Birgegård 1993). However, there have also been critics of that conclusion. Borges (1993) points out that in Kenya the substitution of the land titling project was too advanced. There is always a need to analyse the present system and its capacity of development. Kenya was not ready for the land titling program in the 1960s. Borges concludes that the Kenya of the 1960s is not comparable to the Sub-Saharan countries of today.

Krain proposes (1994 p.65) that land registration should remain a voluntary and sporadic process (Figure 10.1). He proposes that there should remain two different levels for the right of occupancy. The highest level would be called the *full right of occupancy*. That would include a whole process of adjudication and surveys and a title could serve as a basis for mortgaging land. The logic behind that is that those in need of higher tenurial security could afford to pay for surveys and title investigations. The lower level possession right could be called the *presumptive right of occupancy*. It would create a document for each landholder guaranteed by local elders and certified by the local government. The document would be registered nationally and it would include: location, estimated area and names of adjoining neighbours.

Figure 10.1. A sporadic versus a systematic approach (Larsson 1991 p.81)

Voluntary registration has been tried for example in the Territory of Lagos in Nigeria with poor success. The system was intended to be largely voluntary except in some areas where registration was made obligatory whenever dealings in land took place (Ebong 1993). The system has been found problematic and voluntary registrations have been rare. Voluntary registration of deeds have been ineffectively utilised in Zanzibar for over a century, why would it work in another form?

Krain writes that a voluntary and sporadic system would be cheaper and could be self-financing. How much cheaper would it actually be? Since there would be no need for detailed surveying work the costs would be reduced. As a matter of fact that is significant because the surveying work has required a team of skilled manpower and quite an effort to be accurate. However, surveying technology is advancing rapidly. The most recent methods have decreased the amount of time and workers involved. These systems are going to get cheaper and better every day. With a proper system the need of staff, time and therefore costs will decrease rapidly. The time when the cadastral surveys are no longer the bottle neck for titling is close, if not present yet. The ZILEM-project tested the GPS-technology in cadastral surveying during the year 1995, with positive expectations in the near future.

The clear benefit of Mr. Krain's proposal would be that no part of the islands would be lacking a formal land tenure system. This is something that really needs to be discussed.

Does the new land tenure inhibit a free land market in the areas that have not been facing the systematic adjudication? The system should be so flexible that it would provide a legal way for transfers located in areas where the registration has not yet reached. But as an permanent solution, doubt arises.

Let us look at Professor Williamson's list of benefits of the land title register and consider that how many of them would be achieved with this presumptive right of occupancy. Here is Williamson's (1986) list of the benefits of land registration in third world countries amended with my comments on whether each benefit would be gained through Krain's alternative proposal:

- a) *Certainty of ownership.* I think that Krain's model would increase the certainty compared to the present system but not make it solid.
- b) *Security of tenure.* In many countries the register is supported by a State guarantee of the title to the land. However, when the title is provided according to the application without public announcement, like proposed by Krain, it does not consider all the possible claimants for the parcel in question. Therefore the security provided with such a title cannot be very strong.
- c) *Reduction in disputes concerning land and boundaries which give rise to expensive litigation.* In Krain's model, boundary disputes would not be handled and all the possible ownership disputes might not arise during the registration. So potential disputes would not be solved before their actual appearance, a change from the present situation would be small.
- d) *Improved conveyancing.* A title registration system would decrease the costs and delays in transferring property rights as the repeated investigation of titles would be avoided. In Krain's system the repeated investigation would be avoided to a certain extent. However, since the certainty of ownership would not be 100% there would still be need for clarifications.
- e) *Stimulation of the land market.* A cheap, secure and effective system for recording and transferring interests improves the operation and efficiency of the land market. Krain's model would not stimulate the market since the transactions would still be troublesome and the registration action would involve several officials¹⁰⁷. However, it would not inhibit transactions.
- f) *Monitoring of the land market.* A cadastral system may be used to monitor land transactions and ownership. Krain's model would to some extent be able to monitor the transactions, if people bothered to register their transfers. Transactions in land could not be controlled in the areas where people fail to register.
- g) *Facilitation of land reform.* The information on who currently owns what rights in what land is the crucial information when doing land consolidation for development. Consolidation is not possible without complete and accurate information as would be the case in Krain's alternative.
- h) *Management of state lands.* A register will benefit the state, which in many cases is the biggest landowner in the country, in administering its own land effectively. The status of government land will hardly be different in either system developed.

¹⁰⁷ Local elders, the local government and the registry officials.

- i) *Support for land taxation.* Often the cost of improvements in the cadastral system are offset by greater efficiency in tax collection. However, the land revenue collection has to be based on equity. In Krain's model, who would register their land knowing that it would put them on the list of taxpayers and without registering there might be a possibility of avoiding taxes.
- j) *Improvements in physical planning.* Both urban and rural sector planning needs a proper cadastral system to be effective. An improper register, like Krain's register of incomplete cover, inhibits the implementation of any plans. In Tanzania hardly any land use plans are implemented in practise.
- k) *Recording of land-resource information.* The large-scale cadastral plans can lead to the creation of an efficient land information system which can service various land-resource-management activities. The sporadic system, like Krain's, will inhibit all the future useful dimensions of land information systems, since the base information would be inadequate.

Conclusive comments on Krain's alternative model

The need to develop Zanzibar's land management system arose from the inadequacies of the present system. The presumptive right of occupancy that Mr. Krain proposes would not change much. It would give the landholders the possibility to secure his/her holdings, but on the other hand it would be much more bureaucratic for an individual than the complete title system, where the transactions and registration would be done at once in the same place. It would not serve the government's land administrative needs at all. Mr. Krain says that it would be self-financing. It requires some government official work, no matter how simplified the process. The registration costs would be reduced, but not significantly. It would not provide a way for revenue collection and its impact on land markets would be limited. If this kind of approach is accepted then there is no need to present any kind of title system. The presumptive right of occupancy cannot be the basis of a title, since the whole idea of the title lies in the absolute security of holding. The real alternative for the Registration of Titles is in Zanzibar's case the improvement of the Registration of Deeds. By improving the accessibility, identification of the properties and completeness of the register, a deed system could be very useful. That should have been considered by the time the Government of Zanzibar made decisions for the land policy. Now the decisions have been made and the implementation takes place. Therefore Krain is probably a bit late with his alternate method. However, Zanzibar needs alternatives in its struggle towards a more functioning administration and proposals that raise discussion and questions, as Krain's in here, are always very beneficial. Zanzibar has faced two total land reforms in this century and I think that might be enough for now.

PART 3: Conclusions

11 Summary of conclusions

Figure 11.1. Thousand and one nights on land tenure in Zanzibar

11.1 The history of land tenure

In Zanzibar traditional land tenure is based on two phenomena: Shirazi custom and slavery. During the 19th century some kind of balance existed in land tenure when the Shirazis, i.e. 'indigenous' Zanzibaris, cultivated coral rag land under customary rules and Arabs of Omani origin cultivated cash crops, cloves and coconuts, under freehold tenure utilising slave labour. The slaves lived in their masters' holdings and had the right to cultivate food crops under their masters' trees. Traditional Shirazi holdings whose tenure mainly consisted of use rights on land had detailed procedures of communal rule. A critical turning point came in the end of the 19th century when slavery was abolished. That forced the labour system of the clove farms to transform from slavery into wage labour. Consequently the so called squatting tenure was created. In that system a former slave, or an immigrant from the mainland, of African origin would cultivate and occupy the soil under the cash crop trees that belonged to a landowner. The owners were first only of Arab origin but in the 20th century also of Indian origin. In the middle of the 20th century the Shirazis had managed to gain some small clove holdings, specifically on Pemba.

It took some time before the squatting system gained a similar balance as slavery had provided before. In its best squatting tenure in plantation areas resulted in a situation where tenure functioned based on mutual benefit. Towards the middle of the century the Arab landholders were affected by a couple of bad clove harvests and changes in the world market value of the cloves. The landholders became deeply indebted into Indian money lenders. The troubled landholders were forced to tackle the tenure for serving more solely their income generating activities and the squatters' existence in the parcels were no longer clearly justified. This caused insecurity among the squatters and they started to demand more permanent rights on land. With the support of the British and the Sultan, government wanted to ensure the status quo in clove production and, for example, regulated that Indians were not allowed to become landowners. Many landholders had failed to pay back their loans, therefore losing their holdings to Indians as settlement. Some landholders evicted the squatters forcing them to settle in traditional Shirazi areas and that resulted in confusion in Shirazis' customary tenure. Instead the Shirazis had started to move closer to lucrative clove picking possibilities in plantation areas. As a result the ethnic groups started to get mixed, land became more commoditised than before and the balance between all land tenure types was gone. Not one single group's land tenure provided adequate security of holdings. The situation caused many conflicts until it crystallised into the 1964 revolution where the Arab rule was thrown out and all land was confiscated from big landholders. One month before the revolution, the British had withdrawn the Protectorate status of Zanzibar and handed over the Government to the Sultan, for one month only as it turned out.

11.2 The 1964 land reform

The land reform that followed the 1964 revolution distributed confiscated land in three acre plots for peasants. The basic idea was that an individual peasant producer would be the basis of a new land order. The Three Acre Plots cover 42% of cultivated land area on Unguja and 9% on Pemba. The revolutionary government had nationalised all clove business. However, protected clove farming had already started to lose its profitability. During the following two decades the Three Acre Plot tenure was noticed not to function properly and plantation areas still faced occupation on various levels. Their use was restricted to original grant holders and to agriculture only. When the clove world market value collapsed in the 1980s these restrictions caused the Three Acre Plot tenure to be unable to respond to change. As a result the Three Acre Plots were improperly utilised and security of tenure did not reach all the cultivators. The squatting tenure was still existing in a

form of soil borrowing where a landholder's relative or neighbour would cultivate the soil under the permanent trees. The Three Acre Plot restrictions on the transfer, usage and complicated inheritance procedure had created a situation where land was vested in the hands of people who did not trust in their right and could not transfer the property in case they did not utilise it. The Three Acre Plot tenure had over the years turned out to be an obstacle for proper utilisation of the land. This research has observed that the Three Acre Plots share of the total cultivation area is 28% on Unguja and around 9% on Pemba and the share of the total tree crop cultivation area is almost 40% on Unguja and 10 on Pemba.

The 1964 land reform also created large state farms: irrigated rice farms, dairy farms, sugar plantation, poultry farm, gazetted forests and so on. In the irrigated rice fields on Unguja, holdings are not considered an ownership interest. On Pemba the situation is contradictory to that of Unguja due to the ineffective consolidation attempt of rice fields. There, parcels are mainly held in a manner that can be considered individual tenure. The seasonal tenure in irrigated rice fields allows an individual to have one small parcel in a field. Multiple parcels are not allowed, but people still have them hidden under their relatives' names. It has caused a situation where each rice cultivating family have their holdings spread throughout the rice farms resulting in poor maintenance of canals and problems in water distribution. The land consolidation that has been planned, would bring the individuals' and their families' plots together surrounding the same canal. In principle also the need of increasing parcel sizes has been widely approved. It is essential to get rice fields effectively utilised, but consolidation alone is not going to do it. It requires improvement of farming facilities, otherwise things will remain the same. This approach, of course, involves some political but difficult actions. For example the increase of plot sizes would lead to a decrease in the number of farmers.

The 1964 land reform did not tackle the former Shirazi stronghold areas, the coral rags, at all. However, over the years communal administration had started to break down and this resulted in violations in land use. Together with the increasing population it made the coral rag areas struggle with declining soil fertility and deforestation. By the 1990s individualisation and commoditization of land property had totally reached the Shirazi tenure strongholds. Shifting cultivation was still taking place but communal land holdings existed, if at all, in only very remote areas and on land with very low fertility and value. Most of the shifting cultivation practise had also been carried out on an individual basis.

11.3 The land tenure practise of today

Shamba land is the base of today's rural land tenure in Zanzibar. Shamba land consists of land that is cultivated and transferred on an individual ownership basis. In statutory terms the ownership of land belongs to the government and improvements on land to their implementor. On Shamba land the dominant permanent tree possessor is considered to possess the strongest right on land and seasonal crop cultivations under the trees, which are common, are implemented under his/her acceptance. Shamba land can be held through a single person, a group of heirs or another joint group and is freely transferable. However, officially transactions only involve improvements on land, not the land itself. In practise the value of the improvements mirror the value of the land.

Most land in Zanzibar is nowadays possessed by landholders of African origin, but also Arab landholders exist. Land leases in tourist areas are in many cases held, with a local partner, by an international investor. The Swahili society seems to distribute access to land relatively evenly between different genders, although women's rights are in some cases weaker than men's.

Squatting, meaning the possession of land without legal base, does not exist in individual

holdings in rural areas but state farms have experienced some squatting. The case is different in towns and their fringes. The governmental land delivery mechanism has inevitably not been able to respond to the growing demands on residential land in the greater Zanzibar area and other towns. Therefore an informal set up has emerged to replace it. The land records in Zanzibar cover only officially allocated parcels in urban areas. In rural areas the only existing record is the voluntary register of deeds despite a long desire for a more comprehensive register.

11.4 The second land reform

In the 1980s the Government of Zanzibar found it necessary to renew its land policy and administration. The Agriculture and Livestock Policy of Zanzibar and the Land Policy for Zanzibar and Pemba in the 1980s formalised the need for a second land reform. The objectives were set for the desired development in both rural and urban areas. The main targets were: land tenure legislation, security of tenure, adjudication of all land, state land monitoring, resource monitoring, improved transactions and dispute handling, effective land use, natural resource conservation, public acquisitions and improved revenue collection. The stimulation of land markets was not mentioned as one of the targets, even though the objectives were clearly supportive of free land market, but the government had only started the liberalisation process and a move towards a market oriented land order was something not to be presented in verbal terms.

The Commission for Lands and Environment was created in 1989 to respond to all land questions in Zanzibar. It consists of three departments: the Department of Lands, the Department of Surveys and Town Planning and the Department of Environment. The first part of the new land legislation that is the Land Adjudication Act, the Registered Land Act and the Land Survey Act passed the House of Representatives in 1989. And the second part: the Land Tenure Act, the Land Transfer Act and the Land Tribunal Act in the early nineties. But their enforcement has been weak. The main act is the Land Tenure Act that was designed to define all land relationships in Zanzibar. It regulates mortgaging and leasing, inhibits fragmentation and sets rules for the transactions. The ownership of land is vested in the Government. The principle of the Act in a nutshell is: all land is public land and individuals and groups can get holdership rights either through a lease or by a Grant as a Right of Occupancy. All land in Zanzibar, occupied or unoccupied, is declared as public land, held by the President of Zanzibar. Individuals can possess land through the registered Right of Occupancy that is a very strong holding right. The Act also regulates leases of public land and leases of the ROs. The invaluable tourism areas are usually handed over to investors through a lease. The registered ROs were meant to be fully transferable, but the final version of the Act contains contradictory regulations in this matter causing an immediate need for amending the newly passed Act. The Act recognises customary land tenure by allowing the separate ownership of trees and allowing RO's to be granted to a community such as a village etc. Throughout the history of Zanzibar the strongest interest in land has been the permanent tree owners' right. Since a permanent tree owner is usually the actual landowner the recognition of separate ownership of trees is less of an issue than considered in the Act. A registered RO can be mortgaged in institutions that are approved by the Government. The termination of the rights to occupancy has been made very difficult and it always requires a court decision.

11.5 Implementation

In late 1994 the Executive Committee of the COLE recommended the reorganisation of the COLE due to the ambiguous administrative structure and significantly increased set of activities. The structure had been ambiguous since the first days of its existence both

internally and externally towards its host-ministry¹⁰⁸ and other government organisations. One largely supported proposal recommends the future COLE to consist of five departments: 1) Land Administration and Registration, 2) Surveys and Mapping, 3) Finance and Administration, 4) Urban and Rural Development Planning and 5) Environment. Administrative and legislative reforms seem to be characteristic of and continuous in Zanzibar's land administration.

As implementation of the new legislation, Zanzibar is presently undertaking the systematic adjudication that started in September 1994. The systematic parcel based approach was selected at an early stage. The records and technical data are planned to be kept in the computerised LIS, specifically developed for Zanzibar. Presently the work is going on in two adjudication areas, one on Unguja and another on Pemba. In the pilot areas, the priority now is in staff training and procedure testing. Before the claim recording started, the public information campaign was carried out in the villages. The campaign continues with radio spots and letters. On Pemba, women were informed by a "women to women" campaign that was conducted together with the Ministry of Women. The claim recording takes place in sub-offices, consisting of two containers with temporary roofing and base structure transferred to the pilot areas. Each parcel will be surveyed using technology that is presently being tested. Boundaries and corners are going to be fixed relying on the landholders to clean the boundaries and plant the corner marks. The registration is planned to take approximately ten years to cover all the land area. The Pemba pilot area experience has shown that the key factors in the success of land registration lie in gaining the public's trust and co-operation as well as in sustaining the technology and practise utilised. The public information was recognised to be the most important component of the work, which has to start from the staff itself and continue towards the public.

The Zanzibar land tenure registration according to two different models of estimating the potential success of a cadastral survey was considered relatively capable for the task. However, the overall development of Zanzibar may not be stable enough for a proper land management system to be sustainable.

11.6 Critical considerations and recommendations

A few problems raise questions. For example, the new land legislation or the adjudication procedure do not recognise the seasonal cultivators' rights on the soil they utilise. It is actually impossible to do so since the whole title tenure is based on undisputed landholdership. If a landholder has no absolute power over the land he possesses, there is not a title tenure at all. However, when permanent landholders are given statutory secure for their holdings, does it actually mean that some people lose their land rights? The question is whether they had any in the first place? There are different kinds of conclusions to be drawn varying between different tenure types. However, there is a danger that through an increased knowledge of land value and its potential, a lot of poor peasants, the poorest class that hardly have any trees of their own, will lose access to land, i.e. become landless. Subsistence farming together with subsistence fishing is the base of a survival strategy for Zanzibar's poor peasants. They are the group most endangered due to this land reform. However, their position has been similar throughout the history. The problem will only get bigger through an increasing population and a higher desire to access to land. There is no way to secure their rights without declining the landholders' possibilities to develop their property. A good thing in Zanzibar is the strong bond between family members that enable the fruits of the land to be distributed throughout the society. However, land alone is no longer enough for Zanzibar, or each Zanzibari. Together with the proper utilisation of cultivation resources alternative income possibilities have to be created.

¹⁰⁸ The Ministry of Water, Construction, Energy, Lands and Environment.

Land administration has to be able to serve the needs of industry, tourism and other alternate sources of jobs, food and survival.

The implementation of the tenure unification will be done through a systematic parcel by parcel adjudication. According to the Land Tenure Act, the Right of Occupancy that is not registered is not valid. Also all transactions have to be registered to be valid. Needless to mention that only urban Zanzibar is some how covered by a parcel register. The adjudication process that has just started is expected to continue for approximately ten years. What law and regulations will be enforced in the area that is not covered by any kind of register?

The implementation of the new Act requires a huge education and information campaign. Presently the Act is technically in power but at the same time hardly known at all among the public and even Government land professionals do not know its regulations well. The official copy of the Act, or any other law in new land legislation, has not been produced. The ambiguous situation in Zanzibar land tenure has not changed. The question is whether it ever will?

11.7 Summa summarum; answers to hypothesis

The constant and radical changes in land tenure in Zanzibar have caused such a confusion in land relations that the new land management system will face serious difficulties when aiming towards unified tenure.

This research has clearly shown numerous obstacles and difficulties to overcome when trying to unify Zanzibar land tenure. It has also shown that so far constant and radical land tenure reforms have only managed to confuse things more. However, this research does not claim that the present reform will fail in reaching its targets. The evaluation shows that its principles are healthy and correct, but one has to be bear in mind that the road towards a successful end is very long and rough and concerns many dimensions that are not under the land management professionals' control.

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Annex 1: Questions for Evaluating the Potential Success of the Cadastral Project in Zanzibar According to Williamson's (1986) Criteria

Strategy Design

- 1) Are the new developed systems incremental and evolutionary based as much as possible on the existing operational administrative structure?
- 2) Is there a socio-economic evaluation component in the project?
- 3) Are the existing technical and administrative procedures utilised as much as possible?
- 4) Has there been only minimal legislative changes made?
- 5) Has the project been planned so that it receives full public support?
- 6) Are appropriate procedures and technology utilised?
- 7) Is credit available for small scale farmers?
- 8) Are there public legal services available for small scale farmers?
- 9) Are the planned administrative systems decentralised?
- 10) Are large charges avoided for titles?
- 11) Is it a simple system?
- 12) Has the separation of planning and implementation been avoided?
- 13) Is there computerisation introduced on top of the proven, operational and efficient system?

1. Legal and land tenure issues:

- a) The necessity of an effective conveyancing system; is there a need?
- b) Whether a title should be guaranteed, Should it be?
- c) Appropriate forms of tenure planned for both existing and developed land rights, i.e. have customary tenures been recognised?
- d) The role of land tenure in ensuring the maximum utilisation of land, does it have a role?
- e) Legal aid, should it be provided?
- f) Western influence versus customary rights, Is there a conflict?

2. The technical issues

- a) Mapping procedures and technology. Time and costs vs. accuracy requirements, have they been considered?

- b) The use of advanced mapping techniques, have they been used?
- c) The use of computers, was it ever questioned?
- d) The use of microfilming in securing records, has a microfilming system been introduced or discussed?
- 3) Has the decision between systematic and sporadic approach been made? If yes, based on what?
- 4) Is the approach flexible in terms of continued adoption of the outdated and inappropriate technologies and procedures that may be the result from an colonial era?
- 5) Has the procedure been considered through a business-risk approach? Is there an adequate correlation between costs and benefits?
- 6) Has there been efficient and appropriate institutional arrangements made?
- 7) Has the maintenance and updating of the system been realistically planned?
- 8) Is there a constant lack of skilled manpower, especially for technology transfer and training?
- 9) Is there a lack of qualified management personnel?
- 10) Does the education, training and technical assistance have any role?
- 11) Has the decentralised approach been introduced successfully, "taking the system to the public"?
- 12) Have the monitoring and reviewing projects been organised or scheduled?
- 13) Has it been recognised that it is difficult to separate land titling projects into a rural and urban component? Have such components been introduced?
- 14) Has it been recognised that an effective cadastre complements an effective land administration system?
- 15) Have institutional arrangements been made to facilitate easy access to a credit especially for small peasant farmers?

Annex 2: Larsson's (1991) system for calculating the benefits of a land registration project

The following system could be utilised for estimating the benefits of a land registration activity:

- 1) specify the current situation
- 2) define the proposed new system or alternative systems
- 3) express the benefits one by one in verbal terms
- 4) finally evaluate the listed benefit with a selected scale. Larsson's sample scale was weak, moderate, strong or alternatively unimportant, noteworthy, considerable and very substantial. Also the nature of the benefits should have to be described as either being public or of private type.

Larsson would include some monetary estimations when necessary. Monetarily could be estimated:

- the price of legal aid in transaction multiplied by average number of transactions
- saved costs due to a decreased number of court cases
- the estimated growth of revenue collection through taxation or ground rent collection
- the decrease in administrative costs through lessen duplication
- income from map and other information sales
- the effects on agricultural productivity
- the effects on national income.

The above list should then be compared with the estimated costs of the registration and the running costs of the system.