

2010

The Evictions at Nyamuma: Struggles over Land and the Limits of Human Rights Advocacy in Tanzania

Ruth Buchanan

Osgoode Hall Law School of York University, rbuchanan@osgoode.yorku.ca

Kerry Rittich

Helen Kijo-Bisimba

Follow this and additional works at: https://digitalcommons.osgoode.yorku.ca/scholarly_works



Part of the [Human Rights Law Commons](#)

Repository Citation

Buchanan, Ruth; Rittich, Kerry; and Kijo-Bisimba, Helen, "The Evictions at Nyamuma: Struggles over Land and the Limits of Human Rights Advocacy in Tanzania" (2010). *Articles & Book Chapters*. 2633.

https://digitalcommons.osgoode.yorku.ca/scholarly_works/2633

This Book Chapter is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.

CHAPTER 5
The Evictions at Nyamuma:
Structural Constraints and Alternative Pathways in the Struggles over Land and
Human Rights Advocacy in Tanzania

Ruth Buchanan, Helen Kijo-Bisimba and Kerry Rittich*

1. Introduction

The event which gave rise to the inquiry in this paper occurred in a village known as Remaining Nyamuma which was located on the border of the Ikorongo Game Reserve, immediately adjacent to the Serengeti National Park in Tanzania.¹ Sometime in October of 2001, district officials informed the villagers by loudspeaker that they must leave the area and return to their original villages within four days.² Two days after the notice period had ended, the District Commissioner himself set fire to a house belonging to one of the villagers, initiating a violent eviction of the villagers by the burning of their houses and fields. In the course of the evictions, 132 households were displaced; villagers were injured; livestock were killed; and families were scattered in the process. No alternative land or housing was allocated to those evicted. Indeed, officials subverted their efforts to finding housing elsewhere by encouraging neighboring villagers to report their presence

* Ruth Buchanan is an Associate Professor at Osgoode Hall Law School, Toronto, Canada. Helen Kijo-Bisimba is the Executive Director of the Legal and Human Rights Center, in Dar es Salaam, Tanzania. Kerry Rittich is an Associate Professor at the Faculty of Law and the Women and Gender Studies Institute at the University of Toronto, Canada. The authors would like to thank Lucie White and Jeremy Perelman for their work in initiating the larger project of which this is a part, and all of the participants in the 'Stones of Hope' project for their comments on earlier versions of this chapter.

¹ The village was known as 'Remaining Nyamuma' because most of the village of Nyamuma had already been relocated in 1994, due to an extension of the borders of the neighboring Ikorongo Game Reserve at that time.

² Many of the villagers had migrated to Remaining Nyamuma from elsewhere, some as a consequence of land shortages in their traditional villages, others following an earlier eviction from yet another village, Nyanguge, in January, 2000. See LHRC, (2002) "Protection of Wildlife and Human Rights on a Balance Sheet: A Case of Killings in the Serengeti National Parks" (online at: alpha.web2-netshine-hosting.co.uk/~lhrc/index.php?option=com_docman&task=cat_view&gid=44&Itemid=56, accessed on August 1, 2008).

to District authorities.³ Evicted villagers were harassed by officials and prevented from conducting business, effectively becoming internally displaced people.⁴

The case of the Nyamuma evictions is both tragic and illuminating. It is tragic because, despite all the efforts on the part of the Tanzanian Legal and Human Rights Centre (LHRC) to publicize the plight of the affected people in the wake of the burnings and evictions, to characterize both the acts and their consequences as human rights violations, and to use the new institutional mechanism which was expressly designed to address human rights violations for redress, nearly eight years later there is remarkably little to show for it all: 800 people remain homeless and without compensation. The remarkable resistance of the Tanzanian government to sustained and vigorous advocacy efforts in the court of public opinion as well as in various legal arenas sends a daunting message to funders and advocates of human rights throughout the region. However, we do not understand the lesson of Nyamuma simply as a ‘failure’ of the human rights frameworks and mechanisms to redress the harms done in this instance. Rather, we read this event as deeply entwined within a tangled web of issues, some reaching back to colonial times, concerning development and land policy in Tanzania. A study of the evictions also discloses a more recent local history of displacement and a shrinking supply of land, as well as complex interconnections with international actors, multilateral institutions, donors, investors and tourists. For these reasons, the tragedy of the Nyamuma evictions represents an opportunity for broader reflection on which factors enable and which block the realization of the goals that human rights entitlements envision and seek to secure, both within and beyond the state.

In this chapter, we use the Nyamuma case as a starting point for just that type of broader reflection. In the next section, we begin with a general consideration of some of the challenges that face social and economic rights (SER) advocacy in Africa today. In the third section, we return to the Nyamuma eviction through a consideration of the Report of the LHRC on its advocacy efforts in that case. The following three sections seek to deepen our analysis through a consideration of a series of relevant contexts: property law reforms, changing land uses including the growth of both tourism and

³ Multiple actors were involved in the evictions at Nyamuma. Some, such as the District Commissioner and the District Police Commander, exercised authority grounded in formal Tanzanian law; others, the ‘Ritongo’, derived their power from the customary authority of the traditional village security system. The relation between these actors and the different roles that they played – in the events leading up to Nyamuma, during the evictions themselves, and in the aftermath - are complex. Jurisdiction between the formal and the informal systems of rule overlapped, the boundaries between them were uncertain, and how the groups exercised authority ‘in fact’ often diverged from the official account of their actual power. While our account doesn’t investigate these relations in detail, we do note that these issues highlight the limits of analyzing a legal dispute with reference to state actors and institutions and through the lens of formal legal entitlements alone.

⁴We are mindful in the account that follows of the ‘politics of reporting’: the question of what gets told, what is suppressed, why, at what cost and what benefit, and to whom. Both the violations at Nyamuma and the solutions to them implicate the choices and decisions of a number of actors. At the same time, Nyamuma is only one incident among many that will engage these players, some of whom encounter each other on a repeat basis. Because the players do not stand on a level playing field - they have different options, resources, concerns and relations to each other - it is worth bearing in mind that there can be no ‘complete’ account of what has happened.

mining in the area, and issues relating to the funding of the Commission on Human Rights and Good Governance (the “Commission”) and the LHRC. The seventh, penultimate section presents the results of our analysis in the form of a series of further questions about the complex social, economic and institutional embeddedness of human rights strategies. Rather than understanding the eviction at Nyamuma as an unfortunate but isolated incident, our analysis leads us to the conclusion that it exemplifies much that has gone awry with Tanzania’s development policies from the perspective of the poor. Our final section, a postscript on a series of evictions that have occurred since Nyamuma and the responses to them by local communities and advocates, both underscores our argument and provides an opportunity to consider possible strategies for the future.

2. Challenges of Social and Economic Rights Advocacy in Africa

The evictions at Nyamuma and their aftermath exemplify the phenomenon of structural violence in an extreme form, and place the challenges of obtaining structural justice in stark relief. The evictions also demonstrate the complex and contested relationship between human rights and development, particularly in Africa. The focus on civil and political rights that, even up to the present time, dominates the human rights agendas of the international advocacy community, has rarely been seen as either responsive to the predicaments of disempowered groups or well-targeted to the challenges faced by developing states.⁵ While the ‘right to development’ was crafted specifically to respond to these challenges, as well as to the political and economic position that newly-decolonized Third World states occupied within the international order, the status of this right remains contested. Despite receiving formalistic recognition within the international order, the right to development has suffered from its connection to a particular idea of the dirigiste or developmental state that has been under sustained ideological and institutional attack since the end of the Cold War. But social and economic rights, too, often sit uncomfortably within institutional reform agendas in the international order that are designed to further development by enabling foreign investment and facilitating transborder transactions.⁶

‘Rights-based approaches’ to development represent one attempt to both mediate these tensions and to secure a foundational place for human rights within these development and broader institutional reform agendas.⁷ And at least since 1999, it has been uncontested that development itself must be conceived in ways that incorporate human rights. Yet despite the incorporation of human rights into the development agenda

⁵Issa G. Shivji (1999) “Constructing a New Rights Regime: Promises, Problems and Prospects” *Social and Legal Studies* 8:2 253-276 at p. 259 “On the global terrain of social and political discourse, the developmental and the human rights discourses were locked in battle. They were polarized and became mutually exclusive. This meant that the developmental discourse and the human rights discourse ran parallel.” Or later (p. 260): “the liberal theory (of rights) ruled out of court any link between individual rights and economic justice, while developmental theory was prepared to sacrifice individual rights in the pursuit of socio-economic justice.”

⁶For a collection of papers that probes this relationship, see Philip Alston and Mary Robinson, eds., *Human Rights and Development: Toward Mutual Reinforcement* (Oxford University Press, 2005).

⁷ Celestine Nyamu-Musembi and Andrea Cornwall, (2004) ‘Putting the ‘Rights-based Approach to Development’ into Perspective’, 25:8 *Third World Quarterly* 1415.

and efforts to represent the promotion of human rights and development as fundamentally coterminous enterprises⁸, it is clear that many questions concerning the links between social and economic rights and the trajectory of social transformation and economic development policy remain. How economic development priorities are identified, which groups are consulted in the process of formulating them, how policies are implemented and risks and entitlements allocated, and how the associated costs and benefits are distributed are all questions with profound implications for the realization of economic and social rights. Moreover, general assessments and predictions about the relationship between human rights and development, on their own, say little if anything about the prospects for particular groups; as the Nyamuma evictions make clear, they can be dire.

The Nyamuma evictions, particularly when contextualized within broader Tanzanian economic development policies and the recent history of displacement and dispossession from land within the region, illuminate just how complicated and contested the realization of social and economic rights is likely to be. They also provide a sobering check on an increasingly common narrative, which holds that the road to social and economic rights lies through development. By indicating how competing state objectives and pressures are likely to operate on human rights objectives, the evictions also provide a revealing guide to how and where conflicts and human rights violations are likely to arise elsewhere.

Nyamuma provides a number of vantage points from which to consider the relation of the inside to the outside and the national to the transnational and international in struggles for social and economic rights. For example, it illuminates some of the ways in which popular power might be constrained and democratic institutions turned in the service of projects that, while favored by powerful international institutions and forces, have a more uncertain grounding in local or national political choices and priorities. It also provokes hard reflection on what roles, for better or worse, even ‘friendly’ or well-meaning outside groups and institutions play in advancing the HR of those they purport to aid. For the irony of Nyamuma is that outside actors and institutions, some of whom claimed special knowledge and expertise in the field of human rights, seemed at best naïve about what was involved in successfully designing even a marginally effective national human rights regime and at worst ‘part of the problem’.⁹

Nyamuma also provokes reflection on the practice and challenge of SER advocacy itself, in particular what constitutes ‘success’. Is it possible to read Nyamuma in a more positive light notwithstanding the manner in which the campaign has so far unfolded? In addressing this question, it seems important to emphasize that the actors within the LHRC were very sophisticated: in their appreciation of the potential problems

⁸Gobind Nankani, John Page and Lindsay Judge, “Human Rights and Poverty Reduction Strategies: Moving Toward Convergence”, Philip Alston and Mary Robinson, eds., *Human Rights and Development: Toward Mutual Reinforcement* (Oxford University Press, 2005), 475; Roberto Danino, “Legal Aspects of the World Bank’s Work on Human Rights: Some Preliminary Thoughts”, Philip Alston and Mary Robinson, eds., *Human Rights and Development: Toward Mutual Reinforcement* (Oxford University Press, 2005), 509.

⁹David Kennedy, “The International Human Rights Movement: Part of the Problem?” (2002) 15 *Harvard Human Rights Journal* 101-125.

with the human rights machinery at their disposal; in their use of publicity; in their assessment of the strengths and weaknesses of courts versus the human rights tribunal as a venue for litigation; in their knowledge of what was afoot at different levels of government; in their knowledge of customary law and traditional dispute resolution processes and how they motivated the villagers and affected their interactions with officials; and in their knowledge of the international actors and their particular projects and interests. This suggests that they may have had multiple objectives, some of which could well have been furthered in the litigation process even in the face of their inability to prevail on the specific question of relief for the people who had been evicted. It is also important to look beyond the litigation process, however, in seeking to understand the lessons of the Nyamuma eviction. While analyses of social and economic rights often default to accounts about litigation, should human rights advocacy be understood first and foremost in this way? Is advocacy only about courts and tribunals? Or can it be more securely linked both to popular mobilization on the one hand and democratic transformation on the other?

Our aims in this account are three-fold. The first is to expose more fully some of the underlying systemic and structural sources of the dispute at Nyamuma. The second is to consider the constraints on more democratic futures and the obstacles to ‘alternative pathways’ to development, alternatives that might have made the dispute more tractable and avoided some of the problems and abuses already described, even if they did not eliminate the underlying conflicts themselves. The third is to situate Nyamuma in the wider scheme of global governance. We are interested in the events at Nyamuma not only in their particularity; to paraphrase Gayle Rubin¹⁰, we are also interested in their monotonous similarity to and endless variation on conflicts and predicaments that have been documented elsewhere in recent years, particularly those that touch on land.

3. Framing the Issues: The Role of the LHRC

The evictions at Nyamuma stand as an important test case of SER advocacy, one that deserves to be more widely publicized. However, the LHRC has already issued a report detailing all the ways in which the evictions which the LHRC rightly call a ‘calamity’ directly violated human rights.¹¹ This report also documents the extensive advocacy efforts undertaken on behalf of the displaced villagers. Revisiting this story in the context of this project and book, as we’ve noted above, reveals both the structural violence that is a feature of the development landscape in Tanzania, and its inhospitability to human rights advocacy.

The LHRC made a strategic decision to bring the case before the newly created Tanzanian Commission on Human Rights and Good Governance (“the Commission”)

¹⁰ Gayle Rubin, (1975) “The Traffic in Women: Notes on the Political Economy of Sex” in Rayna Reiter, ed. *Toward an Anthropology of Women* (New York: Monthly Review Press).

¹¹ Legal and Human Rights Centre, *The Human Calamity of the Evictions at Nyamuma-Serengeti: Legal and Human Rights Implications* (Dar Es Salaam, 2005)

rather than before the courts.¹² Other options were available—it could have been brought as a criminal case, for the acts involved included arson and assaults, as well as the deprivations of property. However, prosecuting government agents appeared rather too politically risky, and the likelihood of the proceedings being stalled at an early stage seemed high. A second option would have been to pursue a civil case, but this also faced the same set of concerns about the political nature of the proceedings and the possibility that progress would be stalled. Finally, a constitutional case might have been brought, for example, invoking the protections provided by the Bill of Rights against arbitrary deprivations of property without compensation. However, these cases must go to the High Court, which is located some distance away from the Serengeti District where the events occurred, and are certain to be more procedurally involved. A test case for the Commission appeared to be the most attractive option, not least because it promised to be faster and more independent from the government than the court system. The Commission, in addition to looking at the Tanzanian constitution, could also look at international principles, such as those elaborated in the Convention on Economic, Social, and Cultural Rights.

The Commission investigated, and although it dismissed the initial complaint which had been filed in June 2002, after an intervention from the LHRC in May of 2003, it convened a hearing which commenced in August of that year. A report on the evictions was issued in December 2004. That report was highly critical of the government, stating that numerous violations of human rights had occurred and ordering adequate and fair compensation to be paid to the villagers. In particular, the Commission determined that the evictions involved arbitrary deprivation and uncompensated expropriation of property; physical assault, which led in one case to a miscarriage and in another to serious injury; intimidation and confinement of those from the LHRC who initially investigated the circumstances surrounding the evictions¹³; loss of livelihood and failure to provide humanitarian aid to those who were summarily cast out of their homes; denial of education to the affected children following the eviction; and subjection to cruel, inhumane and degrading treatment, which the LHRC concluded amounted to torture, at various stages in the proceedings. The report also described in detail the numerous procedural irregularities and contraventions of quite ordinary principles of

¹² The Commission came into being in 2000 in amendments to Tanzania's Constitution Act, art. 129, and the Commission for Human Rights and Good Governance Act, 2001, Act No. 7 (2001), in operation March 2002. Commissioners are appointed by the President on the recommendation of an Appointments Committee. It is a hybrid institution, having jurisdiction as ombudsman as well as for the protection of human rights and good governance. More details on the Commission's mandate and function are provided in section 4.1 of the LHRC Report, *supra* and the Commission's website www.chragg.org. See also Mambo, Jilde Alois, *The Paris Principles on Establishment of National Human Rights Institutions and Realization of Fundamental Rights and Freedoms - A Case Study of the Commission for Human Rights and Good Governance in Tanzania* (May 15, 2008). Commission for Human Rights and Good Governance (CHRAGG), Forthcoming. Available at SSRN: <http://ssrn.com/abstract=1154642>

¹³ In January of 2002, the LHRC sent out two investigators to Nyamuma. While they were taking photographs and videos of the site, they were arrested and their film and equipment was confiscated by the police.

administrative justice that surrounded the evictions. Finally, it identified the government obstruction of the Commission inquiry as itself a violation of human rights.

The LHRC report documents this series of events, including the complaint, the investigation and the Commission report. However, the LHRC report also repeatedly touches on issues which did not form part of the core of the Commission inquiry but that seem clearly relevant to the evictions and to the human rights violations that ensued. Indeed, woven throughout the account of the evictions are suggestive, even tantalizing, references to issues and policies that both formed the ground out of which the events at Nyamuma emerged and influenced the disposition of the human rights complaint itself. A salient, recurring issue is conflict around land, of which the evictions at Nyamuma are one of the most dramatic but hardly the only instance. Although for lack of witnesses it never formed part of the official complaint to the Commission, the LHRC report mentions two related incidents, the killing of eight ‘poachers’ and the injury of a ninth by game wardens in the Serengeti National Park in 1997 and another shooting in which four hunters were killed that occurred in the same park in 1998.¹⁴ These incidents were intimately tied up with the changing land use and new ‘security’ concerns in the Serengeti and the wildlife management areas.

Another set of concerns that emerges in the LHRC relates to the structure of the Commission and to the role played by outside agencies, whether national development agencies, private foundations or NGOs, as funders and arbiters of human rights policy. These agencies and actors not only alternatively provided and denied funding to the Commission and the LHRC at crucial junctures; some also had competing projects and concerns such as wildlife preservation and the promotion of ecotourism in the Serengeti.

So far, the government has failed to pay the compensation required by the Commission. But it has also refused to accept the findings of the Commission, alleging that they were “based on fabricated evidence”, notwithstanding that they were the product of a public hearing at which the government itself was represented.¹⁵ The Commission then requested the LHRC to take the case before the Courts, in order to enforce the Commission’s recommendations against the government; the case has been mired in appeals and jurisdictional disputes ever since.¹⁶

¹⁴ These killings are documented in another LHRC publication, “Protection of Wildlife and Human Rights on the Balance Sheet” (2003).

¹⁵ LHRC, *supra* note 14, p. 43.

¹⁶ That case was commenced in 2005, in the Tanzanian High Court, Land Division. At trial, it was determined that the Commission’s decisions were not enforceable by the High Court, but that finding has now been appealed. The appeal was finally heard by a three judge panel of the Court of Appeal on April 22, 2008, and a decision, dated October 11, 2008 was released in January 22, 2009. The decision allowed the appeal, finding that the High Court had erred in law in its determination that the decisions of the Commission were not enforceable by the Courts and its refusal to consider the case on its merits. The case has now been referred back to the High Court on the merits.. See Court of Appeal of Tanzania, Civil Appeal No. 88 of 2006, Legal and Human Rights Center vs. Thomas Ole Sabaya and Four Others (Dated Oct 11, 2008, read on January 22, 2009). As of June, 2009, the case has not yet been heard by the High Court and the complainants remain displaced. .

The limits to what has been attained by six years of skilled and sustained advocacy both before the Commission and the courts are revealing and sobering. Our hypothesis is that these limits are most usefully explored not as failures attributable either to any strategic decision that could have been made differently by the advocates or indeed to the decisions made within the Commission and the court system. Rather, the challenges to the effective realization of social and economic rights here appear to emanate from much deeper structural and institutional features of Tanzanian society and economy, as well as to the specific preoccupations of those within the wider human rights community, the international community in particular. Investigating these issues, accordingly, requires longer, and different, histories as well as a broader context than conventional litigation-oriented accounts of human rights advocacy usually provide. For Nyamuma not only suggests that, as Issa Shivji puts it, “a court is not the most appropriate forum for resolving fundamental policy issues such as the problem of land tenure.”¹⁷ When we bring this broader context – development policies and priorities and the path of land reforms, for example – into the foreground, the evictions at Nyamuma and their unhappy aftermath no longer looks like an isolated, disconnected human rights abuse. Instead, they seem inextricably connected both to other disputes and to wider social and economic developments within Tanzania, particularly the forced evictions and growing pressures on traditional villages from development, tourism and land reform projects which are increasingly common in many parts of rural Africa.¹⁸ Similarly, once we consider the preoccupations of the international human rights advocates and funders, the disposition of the case of the Nyamuma evictions within the national human rights machinery no longer looks so surprising nor does it seem unique.

4. Reforms to Property Law

At the center of the Nyamuma evictions is a series of interlinked issues: land shortages; conflict over land and changing land use; growing impoverishment, unemployment and economic insecurity of the people in the Mara region; increasing levels of violence and a deteriorating security situation, some of which is attributed to the return of decommissioned soldiers and an influx of guns; and the intensification and reorganization of traditional activities.¹⁹ These issues themselves are connected to governance reforms in two areas: land reform and development policy centered on attracting foreign investment, particularly in the mining and tourism sectors (which we discuss in the following section). Further, it is possible to identify a relatively discrete set

¹⁷ Issa G. Shivji, (2006) *Let the People Speak: Tanzania Down the Road to Neoliberalism* (CODESRIA: Senegal) at p. 181. While the context for Shivji’s remark was somewhat different—the legal struggles over customary land rights following villagization, in the mid-1980’s, its point is well-taken here. Since many of those legal cases emanated from the Arusha region, they also played a role in creating the historical context of displacements and struggles over land that underlies the Nyamuma evictions.

¹⁸ The wider problem of forced evictions in Africa is documented by Paul Ocheje in “In the Public Interest: Forced Evictions, Land Rights and Human Development in Africa” (2007) 51 *Journal of African Law* 173-214.

¹⁹ See the move to ‘ujamaa’ land described in LHRC, supra n. 14 at p. 9. A further discussion of the history of land conflicts in the Arusha region is to be found in Shivji (2006) supra note 21 at p. 178.

of laws and policies concerning land entitlements and land use, implemented in recent years that in conjunction with other developments such as a rapidly expanding population markedly exacerbated the likelihood and intensity of conflicts and set the stage for the types of violations that arose at Nyamuma.

The roots of the conflicts over land in Tanzania arguably date back to colonial rule of Tanganyika first by Germany and then Britain.²⁰ More proximately, while land shortages seem to originally have been provoked by land reforms beginning in the 1970s²¹, recent land reforms and decisions on land policy have clearly exacerbated the shortages and engendered new conflicts around land use. Beginning in the 1980's, a number of developments, including the expansion of the land reserve surrounding the Serengeti National Park, an influx of international investors in mining, notably the Canadian based Barrick Gold, as well as very recent developments in the privatization of titles to land, provide a wider context for the conflict we document here. We would note also that the growing pressures on governments for land reform come from different sources and pull in different directions. For example "[t]he external donor driven pressures are aimed at facilitating the operation of a market for land, while some, at least of the internal pressures pull in the direction of strengthening the security of tenure of those already on the land."²²

The starting point for the present analysis is set of policy shifts around land in Tanzania that commenced in the early 1990's. At that time, a Presidential Commission, chaired by the well-known academic-lawyer Issa Shivji, was convened to undertake a major investigation into the shortcomings of existing land policies and practices. Although this Commission reported in 1992, the government failed to follow many of its recommendations in its drafting of the National Land Policy, which was enacted in June 1995. The passage of the new Land Policy was not without controversy. After farmers, pastoralists and other civil society groups mobilized in opposition to some of its proposals,²³ a petition was circulated and the process was slowed down to facilitate more careful consideration of issues such as gender and the role of customary law. However, after a U.K. based property law expert with extensive consulting experience in other African countries, Patrick McAuslan, was hired to assist in the drafting of new land law, the process was quickly, and controversially, concluded as Parliament rushed into passage two major new Acts in 1999: the Village Land Act and the Land Act. However, popular reaction was at least partly positive as the reforms promised local power through

²⁰ The enduring legacy of colonial rule often includes problems with democratic legitimacy arising from institutions and rules that are preserved even while rulers change. Some of this is evident in the Tanzanian case, particularly in relation to the regulation of hunting. On hunting, see *infra* p. See generally Mahmood Mamdani *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, N.J.: Princeton University Press, 1996).

²¹ LHRC, *supra* n. 14 at p. 8.

²² Patrick McAuslan (2003) *Bringing the Law Back In: Essays on Land, Law and Development* (Aldershot: Ashgate) p. 249.

²³ The opposition focused around the liberalization of land tenure that would enable land to be owned individually rather than communally, with the aim of promoting foreign investment. Critics were concerned that this would also have the effect of displacing and marginalizing pastoralists and poor farmers. See Shivji (1998) *Not Yet Democracy: Reforming Land Tenure in Tanzania* (London Int. Institute of Environment and Development) p. 105.

village assemblies and recognized land ownership by women. Most important for our purposes is that both Acts expressly direct authorities who have any reason to acquire land to give notice to the people using that land, and provide that the people will be required to move only after an agreement for appropriate compensation is reached and the compensation is actually paid.

Notwithstanding the passage of these Acts, little progress was made in terms of the implementation of land reform until 2003. In April, 2003, Hernando de Soto spoke to the Tanzanian president; a project on the formalization of property, or *mkurabita* in Swahili, quickly followed, funded by the government of Norway as well as the World Bank. Since 2003, however, progress on titling has been slow; although an office was opened in 2005, titling has only proceeded in a few villages since that time. Around the same time, the Norwegian People's Aid, an NGO, began a pilot project to assist in determining how best to ensure that titling benefited the communities into which it was introduced. This organization also conducted a follow up study in a few villages to assess the extent to which individuals understood the implications of the formalization of titles. Its conclusions suggested that generally people did not understand the full implications of the new property rights that they were being granted. The report is consequently critical of the way in which de Soto's model has been adopted and applied in Tanzania.²⁴

It seems important at this point to say something about the specific rationale behind land titling, and to identify the significance of Hernando de Soto to current approaches to land reform, those promoted by the World Bank included. The now widespread efforts to promote land titling rest upon de Soto's argument that titling is a means to convert otherwise 'dead capital' into new sources of wealth.²⁵ Once title is formalized, land can, in theory, be deployed by the owner in service of wealth generation and greater productivity in a variety of new ways. For example, it may be used to secure loans either to improve the land itself and generate higher use values from the land or to engage in other economic ventures. However, land titling is also intended to facilitate the transfer of land and to create new markets in land. Thus, the point of titling is not merely to formalize existing entitlements and establish secure and unambiguous ownership. Rather, it is to move toward a regime of property in which land is largely freed of the encumbrances of complex use rights and the owner is the unchallenged and unfettered sovereign, able to dispose of land and exercise the full panoply of rights in respect of the land under his control. For this reasons, titling typically involves not merely land registration but registration in the name of a single owner.

Both the motivation and the structure of these reforms are deeply familiar, as they echo the dominant approach to land reforms for development within the international financial institutions. The World Bank has made land titling a centerpiece of development policy in recent years, arguing that land titling promotes both growth and

²⁴ Nordic Consulting Group "Review of the First Phase of the Property and Business Formalisation Program (PBF) in Tanzania" (16 October 2005) online at <http://www.npaid.org/filestore/NCGReviewPBFPTanzania-FinalReport.pdf> (accessed on August 1, 2008).

²⁵ Hernando de Soto, (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (NY: Basic Books).

poverty alleviation.²⁶ Indeed, at virtually the same time as the 2003 titling initiatives were introduced in Tanzania, the Bank released a policy research report which contained both a stylized analysis of the question of land reform in developing countries and a template for reforms that has since been widely disseminated. The reform template has three dimensions: formalization of title, individualization of ownership, and the commodification of land. Adopting this strategy, it is argued, will spur economic development that would otherwise not occur; through titling communities can be expected to accrue the full range of benefits that come from the conversion of land into a highly fungible and tradable commodity.

What matters for the purposes of the Nyamuma case study and the other conflicts that are emerging around land in Tanzania is that these reforms are not indifferent to all possible uses of land, nor are they neutral as among the affected parties or actors. They are particularly uncongenial to ‘traditional’ land ownership patterns, entitlements and uses in Tanzania and elsewhere. These include arrangements in which many persons have entitlements to access; land is not designated for a single use but serves multiple different functions; and land may be held an inalienable source of wealth and security for a clan or other entity over generations.²⁷ Indeed, it bears emphasizing that land titling reforms are often explicitly designed to interrupt such uses and entitlements, and for this reason they systematically disfavor subsistence activities and non-tradable production as compared to commercial ventures that are measurably growth enhancing.²⁸

In addition, there is a well-documented set of risks associated with such land reforms, risks that tend to be systemically underplayed by those who stress the benefits of land titling for poverty alleviation.²⁹ These include dispossession of those with interests under customary law; loss of land due to forfeiture for non-payment of loans; and sales of large tracts of land from the economically less-sophisticated or desperate to the financially savvy or well-positioned.³⁰ The net result may be widespread changes to land

²⁶ K. Deininger (2003) *Land Policies for Growth and Poverty Reduction* World Bank Policy Research Report Series (Washington, D.C: World Bank; Oxford and New York City: Oxford University Press); Kerry Rittich (2006) "The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social", in David M. Trubek and Alvaro Santos eds., *The New Law and Economic Development: A Critical Appraisal* (Cambridge, U.K.: Cambridge University Press), 203. It is worth noting that these land reforms bear no relation to earlier development strategies that focused not on reforms to land law but rather on the redistribution of land itself. Indeed, it is significant that even though they almost invariably involve alterations to existing entitlements, projects to promote land titling are almost entirely disconnected from questions of land distribution.

²⁷ See Celestine Nyamu-Musembi, "Breathing Life into Dead Theories about Property Rights: de Soto and Land Relations in Rural Africa", Working Paper 272, Institute of Development Studies, University of Sussex, October 2006.

²⁸ The bias in favor of commercial activities flows in part from the fact that where value is determined by price on the market, wealth generated in non-commodified economies tends to be systematically undervalued or simply is not valued at all, See Lourdes Beneria (2003) *Gender, Development and Globalization: Economics as if People Mattered* (NY: Routledge).

²⁹ Deininger, supra note 32.

³⁰ See the trend toward acquisition of large tracts of land in the developing world to ensure food security for those in the wealthier and more industrialized states. "Buying Farmland Abroad: Outsourcing's Third Wave", *The Economist*, May 21, 2009, available at http://www.economist.com/world/international/displaystory.cfm?story_id=13692889

access and ownership in a relatively short period of time, leading to far-reaching dispossession of groups who have traditionally held land and/or erosion of economic and food security for groups or nations as a whole.³¹ In short, there are risks that rather than assist the most disempowered, land titling will enhance the economic opportunities of those who are already more advantaged.

In the face of such risks, the point is not that traditional land entitlements must reflexively be defended or that traditional uses are entitled to automatic priority over new ones. There may well be a range of arguments to revisit both, and appropriate outcomes will likely be differently configured in different parts of the country. It is clear that in Tanzania there was already a complex and contested process of land reform well underway when titling was initiated, some of which was almost certainly motivated by a desire to facilitate new or different economic activities. Nor, as the events at Nyamuma disclose, is the preservation of 'traditional' entitlements and uses necessarily even an option; entire villages had already been relocated and the evictions themselves emerged out of conflict over land that was already an entrenched feature of the social and political landscape.³² In short, it is not change or the attack on tradition per se that seems problematic about the titling initiative. Rather, what leaps out is the lack of weight given to distributive considerations in the reform calculus and the absence of plans to compensate those who lost out in the titling process; the markedly foreign or external impetus behind the reform and the displacement of local or national imperatives and input into the land titling laws, despite the already extensive debate and study on these questions; and, especially evident in the speed in which the land titling was introduced, a puzzling blindness to the social disruption and upheaval that significant land reform almost certainly entails, and hence to the possibility of conflict and suffering as a result.

5. Changing Patterns of Land Use: Tourism, Mining and Wildlife Protection

In addition to the general aims of land reform described above, in Tanzania, the land reforms are also intended to enable more intensive exploitation of land for tourism and mining; both are designed to attract greater foreign investment and foreign exchange. One key illustration of the 'open for business' approach of the Tanzanian government would be the work of the Tanzanian Investment Center which 'is reported to have identified some four million hectares of land under its Land Bank scheme....' that is deemed 'suitable for investment' and is then made available to potential investors under a type of derivative title or lease found in the new land laws.³³ A seemingly inevitable side effect of the aggressive promotion of land for development by the government of

³¹ See Kerry Rittich, "The Properties of Gender Equality", Philip Alston and Mary Robinson, eds., *Human Rights and Development: Toward Mutual Reinforcement* (Oxford University Press, 2005).

³² While 'tradition' in the usual sense of entitlements based on uses 'since time immemorial' is not in issue here, it is clear that the ongoing conflicts over land implicate multiple 'traditions' of varying historicities on the part of different social groups.

³³ The process works as follows: 'The TIC writes to regional commissioners, who in turn write to District Authorities, who in turn order village executive officers to identify suitable lands in their villages and report back within eleven days'. Shivji, *supra* n. 21 at p. 176.

Tanzania, however, has been the widespread dispossession and evictions of peasant landholders and subsistence farmers or miners in rural areas.³⁴

The land reforms were paralleled in the mid-1990's by the development of a Tanzanian tourism policy. In 1996 a Master Plan for the implementation of the new tourism policy was announced. In 1999, an updated Tourism Policy was adopted by the Ministry of Natural Resources and Tourism and in 2002, an updated Master Plan was published.³⁵ It is noteworthy that the 2002 Plan comments briefly, but critically, on the recent land reforms: "The new land laws in Tanzania will place considerable importance on liaising/getting agreement with local communities regarding land use for tourism purposes. However, there appears to be lack of clarity with regard to the interpretation and implementation of these laws."³⁶

The Serengeti is located within the Northern Wildlife Area, which has long been a focal point of these activities, both because it is an internationally-known tourist attraction and because traditional uses of land are perceived to conflict, or do in fact conflict, with the objective of expanding the revenue generated by tourism. While the policies contain some requirements for community based eco-tourism initiatives, the evidence so far suggests that these provisions have provided little assistance in minimizing these conflicts nor have they lead to significant benefits to communities. Often community benefits are merely cosmetic, such as the building of a classroom or some other small piece of infrastructure. Where communities are given a more meaningful opportunity to be involved in the development of local integrated conservation and tourism programs, these benefits may well increase. However, there are countervailing concerns that the overall trajectory of development, including the privatization of control over the wildlife areas described below, will continue to subvert these efforts or push them to the margins. As the LHRC 2005 report noted, it is 'easier to relocate people rather than animals'.³⁷ Both the structure of the land reforms and the explicit embrace of tourism and mining as development strategies suggest why any conflict over land use has usually been resolved in the animals' favor, and people have increasingly found themselves at the losing end, facing either eviction or punitive measures from officials for engaging in traditional activities such as hunting.

It is unclear that the people in the Serengeti district have ever been unable to live compatibly with wildlife, something that is unsurprising given that their hunting practices

³⁴ As Professor Shivji notes, "In practice, these lands are usually prime lands already used by peasants, which means when they are alienated the inevitable evictions take place, giving rise to perpetual land disputes." Ibid, at p. 177.

³⁵ Both the Tourism Policy and the Plan can be accessed online at www.tourismtanzania.go.tz

³⁶ 'Integrated Tourism Master Plan for Tanzania Strategy and Action Plan Update', p. 35. The Report goes on to identify two Acts of particular relevance, the Wildlife Act of 1974 and the Village Act of 1982, and notes: "These acts were designed to ensure that villages benefit from wildlife utilizations and encourage local communities to support tourism /recreational activities outside national park boundaries. However, lack of clarification in the act as to who actually has the right to authorize or even enter into contracts with regard to the non-consumptive use of an area (i.e. whether the local community or the game department) is inhibiting the full realization of the expected benefits from these initiatives."

³⁷ LHRC (2003) supra n. 14, p. 8.

are largely restricted to hunting small game for food.³⁸ However, as both the local population and the wildlife management areas around the National Park have expanded over the past several decades, access to traditional sources of sustenance and livelihood have been curtailed or eliminated. As part of this intensifying pressure on land use in the area, the Ikorongo Game Reserve on the northwest border of the Serengeti National Park was expanded in 1994, to its current size of 1,867 square kilometers, and its status upgraded from game controlled area to game reserve. The expansion of the reserve (along with other park and reserve expansions in the area) reduced the land available for cultivation and pastorage. It has also intensified the risk of disease transmission from wildlife to people. It was this expansion that originally led to the eviction of most of the village of Nyamuma, for which the former residents continued to seek compensation until the time of the Remaining Nyamuma evictions in 2001. Another eviction, of the nearby village of Nyanguge in January of 2000, also increased the pressures on land in the area as some of those villagers settled in Remaining Nyamuma, and also sought compensation from the government.

Game reserves (GR) and game controlled areas (GCA) are both managed by the Department of Wildlife. However, the residence of people and their livestock is prohibited in game reserves, while local human activities (apart from hunting) are allowed in game controlled areas.³⁹ For this reason, the shift in 1994 of the Ikorongo reserve from a CGA to a GR designation in order to facilitate other activities was a significant step in dispossessing the local communities, hunting in particular. Hunting in GR is allowed by permit issued by the Wildlife Division of the Ministry of Natural Resources and Tourism. Hunting outfitters gain exclusive access (concessions) to specific GR from the Director of Wildlife. The Director of Wildlife exercises considerable discretion in the granting of these concessions, which effectively take the form of leases permitting exclusive access to a specific wildlife management area for a specified period of time (generally five years).

The Ikorongo reserve is located within a unique and globally remarkable migratory corridor --- between the Serengeti National Park and Kenya's Maasai Mara National Reserve. It is this factor that may have prompted its expansion and upgraded status in 1994. Government records from the Wildlife Division Hunting section in 2003 reveal a hunting concession over three areas, Ikorongo, Grumeti and the Fort Ikoa Open Area, registered to a company named VIP Hunting Safaris Club.⁴⁰ VIP Hunting Safaris is the former name of the company Grumeti Reserves, Ltd. which currently is the holder of the concession in these three areas; Grumeti Reserves is wholly owned by American financier/commodities trader, Paul Tudor Jones. Although its access to the land is held in the form of a hunting concession, Grumeti discontinued hunting on the property sometime in 2002, and instead has developed the property as a wildlife viewing area. The three areas over which Grumeti now appears to exercise exclusive access total approximately 340,000 acres, and the area, with its three high end lodges, stables, tennis

³⁸ See generally LHRC (2003) *supra* n. 14.

³⁹ LHRC Report, (2005) *supra* n. 2.

⁴⁰ Baldus and Cauldwell (2004) "Tourist Hunting and its Role in Development of Wildlife Management Areas in Tanzania" Accessed online at: <http://www.cic-wildlife.org/index.php?id=209> (August 7, 2008).

courts and spa, is now being marketed as “one of the world’s most luxurious eco-tourism resorts”.⁴¹

Given the exclusivity of the tourism that is now being marketed in the very site, or very close to the evictions, it is easy to see why these people and their activities might have become an issue for the government in 2001, if this venture were at the proposal stage at that time. Despite the fact that both the people and their subsistence activities have long co-existed with wildlife in the area, the activities are increasingly construed as a threat to both the wildlife and the tourists who come to view them, while the villagers themselves are styled as ‘poachers’, ‘vagrants’, ‘criminals’ or simply a ‘security risk’. These villagers were also sometimes referred to as ‘Kenyans’, a rhetorical move clearly intended to call into question their entitlement to anything at all, despite the fact that their citizenship has never seriously been in issue. It would seem that here, however, the real source of the current conflict is not between the local people and the animals, but rather between outside interests and perhaps national elites, both of whom stand to profit from the abundance of wildlife in the area and the extraordinary spectacle of the annual migrations, and those of the locals. Tanzania’s tourism policies reflect the importance of investors and tourism to its foreign exchange revenue. Yet despite the tendency to conflate such policies with the national interest, the question of whose interest is served by such policies remains: the costs to local inhabitants are clear while it is uncertain that they will derive any countervailing benefits. The representation of locals as alternatively criminals or outsiders is a discursive strategy designed to delegitimize or/ exclude their concerns and opposition in the policy-making process; the effect is to exacerbate their disadvantage.

In addition to tourist development related to wildlife viewing in the Serengeti District, two other significant external drivers of development in this region are gold mining and hunting, and although they don’t appear to be directly implicated with respect to the evictions in this case, they are certainly implicated with respect to a pattern of evictions in the region and in the rest of the country. Recently in Tanzania there have been a number of incidents of forcible dispossessions of locals related to mining operations, and violent conflicts between small-scale miners and residents and multinational companies such as the Canadian based Barrick Gold and Placer Dome. A legal advocacy group based in Dar es Salaam, the Lawyers Environmental Action Team (LEAT), has been investigating the complaints of local communities displaced by mining and advising locals, with some limited successes.⁴²

The most egregious incident occurred in 1996 at the Bulyanhulu Gold mine, now owned and operated by Canadian-based Barrick Gold (then operated by Sutton Resources) where at least 30,000 miners were forcibly evicted, and more than fifty of

⁴¹ The Grumeti Reserves properties are now being managed by Singita, a high-end wildlife tourism company in Africa. <http://www.singita.com/index.php/game-reserves/lodges-and-camps-in-tanzania/singita-sasakwa-lodge/>

⁴² www.lead.or.tz

them were killed, buried by a bulldozer in the process of the eviction.⁴³ No compensation has yet been provided to the displaced in that instance, notwithstanding ongoing domestic and international NGO mobilization concerning the issue.⁴⁴

More proximate, both geographically and temporally, are evictions related to two gold mines located in Tarime District (next to Serengeti District): the North Mara Gold Mine (also operated by Barrick) and the Africa Mashariki Gold Mine (parent company Placer Dome). The North Mara mine commenced operations in 2001, after the forced evictions of local villagers. Since that time, village leaders and prominent locals have been harassed, arrested and imprisoned, further village lands have been appropriated by the dumping of waste and rubble onto those lands (without notice or compensation) and up to six villagers have been shot by company security guards (one was shot on the grounds of the local primary school, after he was alleged to have stolen some gas or oil from the company). The most recent victim was shot in the back by a security guard in June, 2006 after he allegedly entered the mine complex. After complaints at the Mashariki Gold Mine related to inadequate compensation paid to evicted villagers, in 2003, LEAT was successful in obtaining an order for an injunction against the mine from the Commission.⁴⁵

6. Funding Issues: NGOs, Bilateral Donors and the Human Rights Commission

A final set of issues relates to the structure of the Commission and the role of outside funders in its creation and operation and in the work of NGO's such as the LHRC within Tanzania. The Commission was created in 2000 following pressure from the Citizen's Coalition for a New Constitution (the "Coalition"), a group of over 50 Tanzanian NGOs for the creation of a body to address human rights complaints.⁴⁶ The catalyst for the formation of the Coalition was the 50th anniversary of the Universal Declaration of Human Rights. However, it was also greatly facilitated by the provision of funding to the Tanzanian government earmarked for the establishment of just such a commission, including the building to house it. The government originally proposed to simply rename an existing inquiry body, one that was designed to deal with administrative malfeasance and other complaints against government functionaries. Although the body was redesigned somewhat as well as renamed in the face of a counter-proposal from the Coalition, concerns remained about the capacity of the Commission to effectively deal with human rights complaints articulated by the LHRC and others. For example, there were no human rights specialists on the Commission and there was no secure, independent source of funding for its work that could be insulated from government pressure and spending priorities.

⁴³ Corpwatch (2007) "Barrick's Dirty Secrets: Communities Worldwide Respond to Gold Mining's Impacts" (Oakland, CA).

⁴⁴ For a description of LEAT actions regarding the Bulyanhulu Mine and related links see www.lead.or.tz/activities/buly

⁴⁵ www.lead.or.tz/about/pr/2003.11.24.hrc.tarime.injunction.php [We have not yet been able to ascertain whether the injunction was respected by the government, or if adequate compensation has now been paid.]

⁴⁶ LHRC supra n. 14, p. 25

The adequacy of the Commission's structure was a source of dispute between the internal human rights groups and external funders in the Nyamuma case, the first human rights complaint to come before the Commission. At the same time, the reaction of the government to the results of the inquiry suggests that it remained resistant to the mandate of Commission. These disputes and differences provide a point of entry into the question of what the different groups hoped to achieve through the Commission; they also open a window on their possibly diverging aspirations for the human rights enterprise as a whole.

One issue is the degree of naïve 'rights formalism' exhibited by international human rights funders and NGOs. The LHRC was concerned from the beginning about the structure of the Commission and whether it would provide an avenue for real redress for the victims such as those at Nyamuma. The funders by contrast insisted that all that was necessary for the Commission to function well was to staff it with 'good people'. However, the actual path that the Nyamuma case took suggests that the LHRC's concerns about structure and funding were not misplaced: the first 'inquiry' by the Commission, a cursory review that involved no public hearings, determined that there was no factual basis for the claims and that the people had not been evicted but had moved voluntarily. Even when the second, 'real', 'public' inquiry was convened after interventions from the LHRC, the problems were not over. While it was possible to find funding for the Commission itself, it proved impossible to extract resources from either governments or NGOs for basic humanitarian relief to the villagers evicted from Remaining Nyamuma. This was not because the plight of the villagers lacked either urgency or severity – for example, some of the villagers were already dying, some from hunger, others from lack of medical care. In addition, funds were required to enable the villagers to testify at the inquiry. This too was not a minor issue. The villagers who had been displaced from Remaining Nyamuma were located in the far western part of Tanzania. Even when the hearing was convened in a town closer than Dar-es-Salam, considerable funds were still required to enable the villagers to travel the 110 kilometers to the hearings and to ensure them basic accommodation while they were there.⁴⁷ Although the government had been involved in setting up the Commission, it not only failed to provide the funding needed to adequately conduct the inquiry, it rejected the Commission's findings in the Nyamuma case on the theory that it had been 'misled'. Moreover, it refused to provide alternate housing or any other form of humanitarian relief to the displaced people as the Report had required; the LHRC's effort in the Courts to force the government to comply with the Commission's recommendations is ongoing.

Resistance on the part of governments to inquiries that place them in an unsympathetic light and/or cost them money is neither unusual nor difficult to understand. In addition, resistance through bureaucratic and procedural subversion is a common reaction to institutional reforms that are unpopular, especially those that are externally imposed.

⁴⁷The original funding for the complaint came from the Washington, D.C. based World Resource Institute. However, as an organization focused on environmental accountability, it was not in a position to provide funds to enable the Commission to actually hear directly from all of the complainants. These funds were eventually provided to the LHRC by the Swedish embassy.

What of the external funders? Why did the failures – whether measured in terms of the suffering of the affected people or the deficiencies of process that were evident throughout the Nyamuma inquiry - not evoke a more sympathetic response, especially given that such issues typically lie at the center of the concerns of human rights groups? Did the mere *existence* of the Commission constitute a victory for human rights in the eyes of the foreign donors?

Another possibility is that the funders themselves harbored some degree of ambivalence if not conflict of interest around Nyamuma, at least to the extent that addressing the concerns of the LHRC in that case required them to confront government actors directly over their actions and (non)responses. In general, outside funders, especially other national governments do not speak out on controversial issues for fear that they will be perceived as interfering in domestic affairs. Individual ambassadors may be willing to act or to speak out on certain issues; when the LHRC ran short of money, it was the Embassy of Sweden that was forthcoming with some limited funds. The ‘diplomatic’ role adopted by most state funders may also explain why it was so much more difficult to obtain funds for humanitarian relief to provide food and housing for the displaced people than it was to obtain funding for legal actions.

Should the other, non-state outside funders have weighed in at this point on the side of the Commission? On the side of the LHRC? In the name of human rights, on behalf of the villagers themselves? It is worth considering why they might have been reluctant to do so. Outside funders typically depend on the sufferance of the government to remain in the country. Unless they have points of leverage that they are willing to use, this is likely to restrain them from engaging in open conflict with the government. This is especially true if they have a number of projects on the go. In such cases, they may be unwilling to jeopardize them all for the sake of one, no matter how compelling it seems on its own merits.⁴⁸

Foreign funders may also have goals and aims that diverge from or actually conflict with those of local human rights activists, a possibility that emerges especially clearly in the context of the uninvestigated killings of the ‘poachers’ by the wardens in the wildlife management area around Serengeti National Park. These ‘poachers’ were locals who had traditionally relied on small animals in the park as a source of food. With increasing emphasis on the Park as a site for international tourism, however, there was growing pressure at the national and international levels to ‘make the Park safe for tourists’. It is this perceived conflict between tourism and local subsistence activity that seems to have set the context for the shootings of nine alleged poachers in the wildlife management area just outside the park in 1997.⁴⁹ The LHRC had commenced an

⁴⁸ Shivji notes this contradiction precisely in a discussion of human rights abuses relating to the Maasai in the Ngorongoro Conservation Area. “In fact, those who sponsor umpteen human rights seminars on the one hand, also with the other supply the equipment and wherewithal to MNR (Management of Natural Resources).” (who are accused of harassing the Maasai in Ngorongoro Conservation Area) *supra* n. 21, p. 182.

⁴⁹. The shooting described took place on 20 September 1997. See LHRC Report, *supra* n. 2. The Tanzanian tourism policy is available online at www.tourismtanzania.go.tz.

investigation of the shootings, and despite difficulties in obtaining funding for this particular case, did bring the complaint to the newly created Commission. However, the complaint has not proceeded, in part for lack of witnesses but also, it seems, because of political sensitivities. There were only two survivors, one of whom was aged 15 at the time, and their whereabouts are not known. Further, the LHRC received an unprecedented visit from the German ambassador shortly after the killings in which he commented on the negative publicity that had been received by the Frankfurt Zoological Society connecting it to the incident.⁵⁰ In the meeting, he made reference to ‘basket funding’ offered for the election year of 2000, which was essentially a pooled fund available to NGOs from a number of state donors including the Germans, and asked whether the LHRC had applied. Although the LHRC had up to that point generally been successful in its funding applications, following the Ambassador’s visit, the LHRC discovered that it had been unsuccessful in gaining access to that pool of funds.

Domestic NGOs and activist groups are almost invariably engaged in conflict and contestation with governments; indeed, they are often organized precisely for this purpose. However, as is the case with foreign governments, it is not atypical for international human rights or humanitarian groups to try to avoid issues that are perceived to be ‘political’, either on the theory that it will jeopardize their neutrality or out of pragmatic concern for their capacity to continue doing the work they want to do. This may cash out in a variety of ways. Such groups may prefer to focus on one issue and avoid another; they may prefer more narrowly targeted campaigns, rather than campaigns that aim at broad social or political transformation.⁵¹ In addition, they may have an eye on the international stage as much as the domestic audience, if only because they may have donors or backers of their own that they seek to satisfy or placate.

In addition, it may also be the case that external funders simply have different priorities and projects than local human rights groups. Well before they become involved in a particular dispute in a given country, external organizations are likely to be in possession of a well-elaborated sense of what it means to promote human rights or humanitarian goals; they may also have entrenched ideas about how to go about doing so; they may already have a conception of the ‘problem’ that they must address in any given country or context. For example, international actors, whether international NGOs, international institutions, or states, may be as interested in establishing a ‘culture of human rights’ and implementing human rights processes and institutions as in responding to any particular issue or abuse. One reason is that objectives like promoting human rights and the rule of law are increasingly part of broader governance projects to which such actors may be committed. For a range of reasons, outside funders typically come armed and girded for particular types of battles and are prepared to face some enemies but not others. Hence, some human rights issues may register more powerfully on their

⁵⁰ Locals who were interviewed by the media had connected the killings with the presence of some officials from the Frankfurt Zoological Society, which has a longstanding relationship with the Serengeti National Park, in the Park and a perceived corresponding step-up of anti-poaching enforcement activities. While the LHRC had also been concurrently investigating the incident, no LHRC representatives had made such claims to the media.

⁵¹ Sherene Hertel (2006) “New Moves in Transnational Advocacy: Getting Labour and Economic Rights on the Agenda in Unexpected Ways” *Global Governance* 12:3 pp. 263-281.

radar screens than others and, notwithstanding the capacious reach of human rights norms at the formal level, some concerns may not register at all. It may be very difficult to alter or dislodge prevailing ideas and intuitions about how to engage in human rights work, even where evidence on the ground suggests something sharply at odds with these premises. Instead, initial assumptions about what human rights ‘are’, in form and content, are likely to powerfully shape the agenda and may simply function to screen some issues out or render them invisible within the framework of human rights entirely.

This concern is especially salient with respect to social and economic rights. Because they so often touch on distributive conflicts, social and economic rights are often perceived to be either political *per se*, or so inextricably connected to popular and legislative choices and processes as to be the proper province of politics rather than law or morality. Notwithstanding the Vienna Declaration and the supposed indivisibility and interdependence of human rights to which the international community is now committed, the geo-political battles which marked the field of human rights until the end of the Cold War continue to leave their mark. There is still a hierarchy among rights, and Western foundations and HR groups, the source of most HR funding and influence in the international arena, continue to prioritize civil and political rights. As a result, many economic and social conflicts and crises simply do not evoke a response framed in the language of rights.⁵²

It is worth observing that international NGOs and funders are not simply autonomous decision-makers in respect of human rights; rather they themselves may be hostage to some degree to projects, priorities and trends emanating from other institutions and actors. Because they themselves operate in a complex international environment, NGOs and funders may be channeling rather than authoring concerns about corruption and human rights abuses, or reiterating ‘common sense’ about human rights and good governance, now in wide circulation on the international plane. Where the funders are, as in this instance, governments or international institutions, the likelihood that external influences and complex motives are part of the decision-making process is still greater. Even assuming agreement on what constitutes the proper focus of attention, here human rights are likely to be only one concern of many and one moreover that takes a back seat to others. Whatever the reasons, it is clear that in the case of Nyamuma, the LHRC found it much more difficult to get funds for humanitarian relief than it did for human rights advocacy.

7. How Institutions Matter to Human Rights Strategies

If one of the challenges of social and economic rights is securing substantive relief and resources rather than mere ‘process’ rights for those who are dispossessed and disempowered, another is institutionalizing what often seem like fragile and contingent victories. Here the hope is that, rather than merely local and evanescent, success can be structurally grounded in order to carry some promise of broader, and lasting,

⁵² For example, Human Rights Watch, one of the largest and best-known international HR NGOs, only began its forays into social and economic rights less than 10 years ago, and they remain a small part of its mandate to this day.

transformative change. Nyamuma reminds us that in order to realize this aspiration we may be compelled to reflect in the most basic and thoroughgoing of ways on what institutions matter to human rights and why. For many things were indeed being ‘institutionalized’ in the run up to the Nyamuma evictions, including the Commission, a variety of land reforms, and new development strategies concerning tourism and mining. Although the latter two may seem marginal or irrelevant to the realization of human rights and did not, in any event, form any part of the inquiry process, this analysis points to a quite different set of conclusions: land reforms and development strategies set in motion a series of events, and in so doing, appear to have played a significant and sometimes pernicious role in the violations that occurred at Nyamuma. And while human rights institutions are often styled as ‘the answer’ to abuses in cases such as Nyamuma, it is clear that that would be an unsafe conclusion too.

Nyamuma also raises the relationship of critique to reconstruction. It seems fruitless to try to imagine full-scale alternatives that could reliably have prevented the evictions and subsequent violations from occurring. But the institutional discussion need not end here. On the theory that alternative pathways don’t come from Mars, that it is indeed possible to ‘hew stones of hope’ from present conditions and possibilities, part of the task must involve identifying the concrete decisions that were made about institutional design, the alternatives that were available and in some cases even on the table, and the consequences of choosing one route versus another.

There is also the question of who controls or influences the land reform process and how it is that revolutionizing land policy comes to have the priority that it now so often has. How, for example, did it come to pass that land reforms were instituted by the Tanzanian Parliament so shortly after de Soto’s visit in 2003? Where did those reforms engender conflicts with other government policies, and what might have been done differently if those conflicts had been recognized? How carefully, if at all, was the full range of consequences considered? And if such reforms are retained, what might need to be added to the regulatory and policy agenda to forestall or ameliorate problems such as occurred at Nyamuma?

Whether, and to what extent, these reforms and policies will result in any larger benefits for Tanzanians as a whole still remains in question. However, it is already clear that they are creating profound, and growing, disparities among different groups. It is these growing disparities which seem likely to generate ongoing human rights conflicts, conflicts that will not be remedied by attention to conventional human rights norms, objectives and institutions alone. The central issue here is the distribution of the costs and benefits of Tanzania’s path to development. At present, the vast majority of the costs of development are being imposed on subsistence-based local communities in areas such as the West Serengeti, groups of people who can least afford to bear them. Up to the present time, little or no effort has been made to mitigate these losses, either by the government or by the other parties who now benefit from those changes. Instead, beneficiaries of the new policies, whether they are foreign investors or merely better positioned Tanzanians, are now able to call on the state to enforce and sometimes, as Nyamuma illustrates, to assist in the practice of evictions and dispossession.

There are inherent local challenges arising from the limited land base and the growing population that are likely to put continuing pressure on subsistence activities and generate some degree of conflict over access to land. However, it is clear that both the land reform and development policies, some of which were the result of outside pressure from commercial interests and multilateral agencies, have exacerbated the inter-group conflict within Tanzania. As a result, there is an immediate need to deal with the local resentments and distrust bred from years of disenfranchisement, as well as that arising from the generations of resettlements that have occurred. The characterization of particular locals as lawless and dangerous to tourists and animals, or both, covers over a set of conflicts, real and imaginary, over land use and development policy. Efforts to criminalize these actors merely obscure rather than address issues that are likely to persist, generating further human rights concerns and violations and intensifying rather than ameliorating the harm to those who are on the losing side of the deal. It seems unlikely that these conflicts can be successfully addressed without revisiting some of the basic decisions about land reform and development policy and probing the consequences, both expected and unexpected, that they have generated so far.

Land reforms in the style of de Soto are now repeatedly sold as a ‘pro-poor’ policy. Yet as the struggles over land document, the routine experience is that as previously ‘valueless’ land becomes recognized as an investment opportunity, most Tanzanians see little benefit. Despite the promise of both growth and poverty alleviation, such reforms create the very risks of dispossession that are now so clearly materializing in Tanzania, risks that are intensified when particular plots of land are specifically identified for development and banked for future exploitation by outsiders. The consequence is that land reforms persistently generate not widespread empowerment and engagement in more sophisticated and remunerative economic activity on the part of the economically disenfranchised, but the perverse consequence of greater concentration of wealth and power in the elite.

There are alternatives, and they need not be understood simply in terms of the choice between reform and stasis or between development and tradition.⁵³ Consider, for example, the other land reform proposals in circulation, such as those tabled in the Shivji Report. They may very well have been more attentive and sensitive to the interests of those who are now being dispossessed, and it is certain that land reforms *can* be made more attentive to those interests. If the effect of such alternatives is to restrain the easy alienation of these lands or prevent their use and development without wider consultation and agreement among the affected parties, then that may be the point: securing agreement for new land uses under different legal and institutional arrangements may compel concessions and compensation to those who would otherwise simply lose out.

It is worth recalling that until recently, land reform for development was primarily about the *distribution* of land. By contrast, land reform in conjunction with contemporary

⁵³ See Duncan Kennedy’s comment, this volume, on the possible ways of configuring land and land tenure entitlements in the wake of the disintegration of property and the extent to which they may effect compensation to those who are evicted.

development policy almost invariably means reform to land *law*. Given that legal reforms often effectively redistribute land, the question of distribution may need to be put back on the agenda explicitly. The argument for doing so seems compelling where, as in Tanzania, land and other reforms lead not only to the ‘hard’ evictions such as occurred at Nyamuma but also to what Mwambi Mwasaru has called ‘soft eviction’,⁵⁴ that is, the effective expulsion, through urban upgrading or other policies, of communities from the land they have traditionally used.

Real consultation, and substantial control of the decision making process, is also key. Although it has officially been part of Tanzanian law for some time now that communities be given a meaningful opportunity to participate in the development of the lands on which they reside and to thereby directly reap some of the economic benefits of that process, these laws have not been implemented effectively to date.⁵⁵ Notwithstanding some token efforts at the implementation of ‘benefit based’ approaches to development, locals (rightly) believe that the gains they are receiving are far outweighed by the costs that are being imposed upon them. How different this picture might look in the Serengeti if the requirements for real consultation and participation were taken seriously is something we can only guess at, although there are real lessons from other contexts that are surely of use here.⁵⁶ As the more recent history of land struggles in Tanzania discloses, the extent of countervailing pressure and the bargaining power of the groups, and hence the outcome of conflicts such as those like Nyamuma, can sometimes be successfully altered by the factors such as the disclosure of previously hidden information; collective learning leading to organized rather than sporadic responses; and shifts in external alliances and the tactics those alliances enable.

8. Postscript: Hope After Nyamuma?

As the people of Nyamuma have struggled in court to have their rights to their land recognized and compensated, unauthorized takings of land by the government for a variety of purposes - foreign investment, environmental protection or conservation - have continued to occur throughout the country. However, there has been a significant change in the ways that both local communities and advocacy organizations respond to these events. Tanzanians are now more likely to vigorously contest such dispossessions, and more empowered in their capacity to do so, while advocacy groups like the LHRC are more strategic in the ways they are intervening to assist the people affected. It is in these developments, detailed below in the context of several recent disputes, that it is possible to identify a ray of hope emerging from the ongoing tragedy of Nyamuma.

⁵⁴ See Mwambi Mwasaru, this volume.

⁵⁵ For example, the LHRC (2003) Report documents that the 1998 Wildlife Policy incorporates an emphasis on community based conservation, which permits local people to have access to wildlife resources through the creation of Wildlife Management Areas. The Report observes that “the concept and practice of community based conservation has not yet been fully adopted and practiced in many parts of the country”, notably, the western corridor of the Serengeti National Park. (infra section 6.6)

⁵⁶ For a consideration of community consultation requirements in the context of the squatter movement in Johannesburg, see Achmat, Budlender and Forbath, this volume.

The following five scenarios detail some of the ways in which the experience of the Nyamuma evictions has changed peoples' responses to conflicts over land. In general, they reveal greater strategic engagement with both legal and political processes, from selective use of court processes to parliamentary interventions; increased reliance upon media to publicize disputes; continued advocacy on the domestic and international fronts; and no small amount of direct action against officials who formerly used force against local populaces with impunity.

The first concerns the Hadzebe in the Yaeda Chini valley in Mbulu District of Manyara Region, who are internationally recognized as the oldest group still living traditionally in the Rift Valley. The Hadzabe's ability to maintain their traditional hunter-gatherer way of life is increasingly under threat by the incursion of other groups into their traditional territory as well as by the granting of hunting permits in the area by the government. Recently, the District Commissioner, working with other groups who have settled in the valley, attempted to enter into an agreement with a foreign investor for an exclusive lease for big game hunting. This would have left the Hadzabe people without access to the land for hunting or gathering and, consequently, entirely without sustenance. When they first became aware of the proposal, the Hadzabe contacted the media and international organizations that work for minority rights in order to publicize their opposition to it. A Commissioner from the Commission was sent to investigate, and after meeting with the District authorities, he became persuaded of the merits of the investment, and subsequently, convened a meeting in which he encouraged the people of Yaeda Chini to support the investment. That meeting was disrupted by protest. The abortive meeting and the very public protest was then publicized in the national media, which facilitated efforts by the Hadzabe to secure more support from advocacy groups both within and outside the country. The vigorous advocacy on the part of the Hadzabe leaders led to the arrest of their two spokespersons on a charge of inciting the people. However, the arrests silenced neither the Hadzabe nor the advocacy groups, including international NGOs and faith-based organizations, working on their behalf. Instead, a further onslaught of urgent appeals to both the government and the investor on behalf of the Hadzabe eventually led to the withdrawal of the proposal by the investor.

Two differences from the Nyamuma case are worth noting here. First, the government did not use force to evict these people but rather attempted negotiations through the District Commission and then the Commission itself with the less affected villagers in the area. Second, and perhaps as a consequence of this approach, the people were made aware of the looming threat of dispossession and with this knowledge and the support of NGO's and the media, were able to successfully challenge the authorities even where other groups were already siding with the government.

In another area known as Kiteto in the same Region of Manyara, the District Council decided to earmark an area in and around a cluster of seven villages as a village conservation area. According to the Village Land Act, it should be the villages, through their village assemblies, who decide to demarcate such areas. The law further allows several villages to agree among themselves to demarcate land for certain common use among the villages. In this case, however, the villagers were not consulted. When they

were asked to move to give way to the conservation area they refused and turned to the media and to the LHRC for legal support and intervention with the regional police. Notwithstanding these efforts, a forced eviction was subsequently conducted. The immediate response from the villagers was to seek further publicity in the national media and to seek an injunction against the evictions while they filed a suit challenging the process of demarcating land as a conservation area without their involvement and their subsequent forced eviction. The injunction application was successful, allowing the people to stay on their land until the main suit is determined. The greater effectiveness of the legal advocacy in this instance can be traced to the greater awareness of the potential for a legal challenge on the part of the villagers. While the people in Nyamuma only sought help after they were already out of their area, the villagers of Kiteto acted immediately in approaching the media and the LHRC. For its part, LHRC was willing to take this case on, and successfully argued the injunction application, thus ensuring that unlike the villagers of Nyamuma who have remained homeless and dispossessed throughout their lengthy court battle, these villagers will be entitled to remain on their land until such time as the government is able to make its case for the eviction successfully to the court, which given the clear violations of provisions of the Village Land Act, seems unlikely.

A third episode concerned a group of pastoralists who had moved to a valley known as Ihefu, which is also a water catchment area. The authorities decided, rather abruptly, that cattle grazing had been responsible for environmental degradation in the area and ordered thousands of the Ihefu to move within a very short time. The affected people were required to hire trucks at their own expense to move the cattle, and the scale and speed of the demanded relocation caused significant expense and loss of livestock. This relocation, like the others, incited an active opposition. More than twenty pastoralist groups came together to challenge the government's actions. They informed advocacy groups and sent petitions to their Members of Parliament, leading to a discussion of the matter in Parliament. The groups are also pursuing a legal challenge in the courts to seek compensation for their lost property.

While the preceding examples emphasized the prompt and effective pursuit of legal and administrative advocacy strategies, aided by publicity, in a growing number of instances, the people are prepared to articulate even more directly their opposition to proposed government actions to remove them from their land. In a suburb of Dar-es-salaam known as Chasimba, there is a legal dispute currently before the courts between the residents and a company over title to the land. Before the legal proceedings were concluded, the District Commissioner held a meeting with the residents in which he attempted to convince them to prepare to move from the area. Although the residents were angered by what they took to be the assumption that they would lose in court, the District Commissioner persisted in claiming that they would need to move, inflaming the group. The meeting became so hostile that the District Commissioner had to be rushed out of the area. This type of confrontation of a political leader by the people is unprecedented in Tanzania, and is evidence of a new level of empowerment of the people. Fortunately, such encounters do not always end with the threat of violence. In

two other recent examples, meetings between the people and high level political figures have led to successful resolutions of the conflicts in question.

In Misenyi, a group of people were being requested to vacate to give way for a proposed (international) investment in a ranching enterprise. Although the groups opposing the investment were pursuing various channels to have it shut down, it was not until the President of Tanzania, Jakaya Kikwete, visited the area in person that a successful resolution for the people was obtained. On hearing of the difficult situation from the people themselves, and how they were exhausting their meager resources in order to defend their lands in court, the President publicly declared that they should be left alone. A similar encounter took place in another area of Dar-es-salaam known as Kibamba. Here, residents had originally agreed to relocate for some development initiatives, but had not been able to reach agreement on a fair compensation. The matter was heavily reported in the media, and eventually came to the attention of the Minister for Lands, who then decided to hold a meeting with the residents. At the meeting, when an official report was read out which the people claimed contained inaccuracies, they shouted down the official and provided their own evidence directly to the Minister. The meeting led the Minister to order that the residents be allowed to stay on their land until adequate compensation was decided upon and paid out, and to order a police investigation against his own officers.

All of these incidents have occurred in the years after the evictions at Nyamuma. As awareness of the illegality and political resistance to the perceived injustice of these acts has grown, it has become more difficult for the government to simply displace people from their land by force. Tanzanians who are adversely affected are actively resisting these evictions through recourse to administrative mechanisms, the courts, international civil society alerts, domestic and international media outlets and even 'shouting down' local officials. Perhaps because the pressure exerted through these means has become more common and more organized, there has been a willingness by higher authorities such as the President and the Minister to intervene in some of these cases.

This new mobilization, some of which has prevented planned evictions altogether and some of which has merely altered the terms on which they occur, represents a significant achievement in itself. Yet the evictions are merely the most visible, and extreme, consequence of a larger set of transformations, raising a further question: what are the prospects that this mobilization will, on its own, come to exert pressure on the larger regulatory and policy initiatives behind the evictions?

Here, the issue is complicated. When the 1999 land laws were enacted the popular reaction was positive, as the reforms promised power to the people through the village assemblies, and recognized land ownership by women. The challenge now is to unpack the constellation of concerns occasioned by a larger set of laws on investment and development, including the development of land banks, as it is these laws collectively that provide the legal basis for evictions. In addition, there is now a hidden time bomb on the horizon: *mkurabita*, or land registration.

The LHRC is currently engaged in outreach work to sensitize people to the risks entailed by land registration. This has not been easy: fed a steady diet of claims about its benefits, people are anxiously awaiting registration in order to access the capital that it may provide. Moreover, registration has some undeniable attractions. The new land laws have made it possible to register customary land, something that is appealing to customary land holders who had sometimes faced the onerous task of claiming back land from individuals who had attempted, and sometimes succeeded, in registering land individually. Especially attractive is the idea that when land is registered, not only will title be secure, land can be used to obtain cash.

The main concern of the LHRC has simply been to caution people about the dark side of these developments, however obscure the risks may seem. As the LHRC has discovered in two districts, Handeni and Bagamoyo, in which *mkurabita* has been attempted, in general people are not aware of the ultimate implications of registration. In the excitement over the prospect of obtaining loans, they typically fail to appreciate that they could lose their land if debts remain unpaid, and they may not consider that although registration entitles them to sell their land, the result may be that they then have no alternative land to cling to. Most Tanzanians are poor; they will be tempted to take out loans or even sell the land in order to pay for necessities such as school fees or to engage in petty business ventures. In most cases, it will not be easy to repay the loans.. Thus, the specter of permanent indebtedness or dispossession looms. Apart from the risks to individuals, there are systemic risks to communities as a whole as a result of alienation of land on a widespread scale. Pastoralists, in addition, face distinct threats to their way of life. Not only is the idea of individual title alien to these groups, land registration is very likely to force pastoral groups to give up access to the lands on which they have traditionally hunted and to settle for a mere piece of land in exchange.

The weapon at hand to contest the manner in which land registration is proceeding may be the very empowerment that has come out of the mobilization around the evictions. Once land registration is recognized as a matter of economic security and even survival, those with stakes in the reform process can be expected to organize and to resist as they have in the case of evictions. However, given that registration is at a relatively early stage in Tanzania and that concrete internal illustrations of the risks are few, effective mobilization will almost certainly require activists to draw lessons from other contexts where the experience with registration is more advanced. This suggests a new, and different, role for international advocacy groups: the provision of information about other contexts in which land registration has been introduced and the consequences that have ensued; the identification of the actors behind these initiatives; and the sharing of strategies for engagement, and if necessary, resistance to these processes, ideally in advance of their introduction rather than after the fact.⁵⁷

⁵⁷ Contemporary examples of effective anti-eviction struggles may lie close at hand. See for example, the successful resistance against evictions and foreclosures organized by low-income tenants in Boston and advocates and students from the Harvard Legal Aid Bureau in the wake of the sub-prime mortgage and financial crisis. See Harvard University Committee on Human Rights Studies, Harvard Law School, and

Yet there is a further question: can local action on its own, even assisted in this manner, be expected to disrupt the overall project of transforming land uses, especially the trend toward rewarding foreign investors with large land grants? Mobilization sometimes stops the evictions; it may impede the implementation of land policies in particular locales; or it may mitigate the effects of reforms. But, so far, it is not altering the general drive to commodify land in the name of greater productivity and growth. Nor has it yet defeated the campaign, waged both directly and collaterally, against those engaged in subsistence activities wherever those activities are perceived to conflict with initiatives to foster market-centered investment and growth.

This is where the conflicts continue. Although the normal expectation may be that a government has the interests of its people at the forefront, what we observe in some of the examples is action by the government against its own people, in some instances even contrary to the law. For example, even the Commission, which is supposed to guard against government violations of rights, was used against the people in the case of the Hadzabe. It is clear that the government and particular populations may have divided interests, although reforms are typically couched in terms of economic benefit to those populations. To use the words of one Minister interviewed by the LHRC, “The Arab is coming there to put up a camp for his leisure, to rest and to do some small hunting, as there is not much in terms of animals to hunt. But it will be for the good of the people, as he will make a road and build a school which is needed by this people.” However, roads and schools are of little interest to people who have lost their land.

The government of Tanzania remains under a clear inducement to facilitate foreign investment because the revenue it generates enables the reimbursement of loans. Yet while we may assume that either government or some government officials are excited by the possibilities offered by openness to foreign investment, it is also worth considering the external groups and institutions driving this venture forward. As the widespread introduction of land reforms projects that look much like those now in operation in Tanzania indicate, whatever its own desires and responsibilities in respect of land policy and land use, the government is caught up in a development trend not entirely of its own making. To the extent that they are part of the equation, ultimately, the external forces which have proved to be such powerful catalysts to land reform may have to be engaged as well.

What would an international campaign challenging the forces promoting such policies and reforms look like? Could we imagine an international campaign, for example, that eschewed selective advocacy on behalf of the environment and the wildlife and, instead of positioning those engaged in traditional economic activities as a threat, or even as a development problem to be ‘solved’, imagined them as the very parties to be supported?

the Swiss Ministry of Foreign Affairs, *Property Rights for the Poor: Conceptual Challenges, Pragmatic Responses*, Harvard Law School, April 26-27, 2009.

Would such a campaign still be framed in the language of human rights? If so, in the name of what rights would it be advanced? At this point, we can safely say that any such campaign, because it is destined - even designed - to engage dominant ideas of property rights and development could expect to meet either countervailing rights claims or competing interpretations of what respect for those rights entails. If so, would prevailing in the end require recuperating other vocabularies of struggle – solidarity, self-determination, socialism⁵⁸, or even sustainable development for example – or inventing new ones not yet on the horizon?

Beyond the vocabularies of moral responsibility, political struggle and economic development, on what regulatory and policy territory would such a campaign rest? What positions would it advance in respect of land and development, for example? Might it endorse heterodoxy rather than orthodoxy in law and policy, thereby sanctioning greater diversity and experimentation and empowering those at the local and national level who have reason to prioritize other legal rules and policies?⁵⁹

Moving into this territory engages a host of interconnected issues about growth and distributive justice. It would almost certainly involve new analytic and discursive work, as well as engage types of knowledge and expertise – collective, professional and political – that lie largely outside the purview of the human rights community as it is currently constituted. In short, it would be a big step, especially for international human rights advocates. Moreover, the complexities of effective and sustained SER advocacy are not to be underestimated, as this and the other chapters in this volume have illustrated. However the LHRC has already signaled that, in Tanzania, this is where at least some of the important action now lies. In their own actions, local activists and advocates have issued a clear challenge to advocates and actors on the international plane as well.

⁵⁸ See Duncan Kennedy's comment, this volume.

⁵⁹For an argument to this effect, see Dani Rodrik, *One Economics, Many Recipes: Globalization, Institutions, and Economic Growth* (Princeton University Press: 2007).