

Land and resource rights: Conflicts and challenges in legal plural settings

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Working Group 2



Outline

- Questions/Objectives
- Conflict examples from 2 settings in East Africa
- Findings:
 - Considerable interaction between customary and statutory/formal
 - Replacement of customary with statutory
 - Elite capture of land and resources
 - Customary systems also have problems
- Conclusions:
 - Need systems that are downwardly accountable
 - Multiple systems/levels of arbitration (fair, legitimate, expedient) in addition to courts





Questions

- *How can the legitimation of informal and traditional rights and customary tenure be harmonized with formal land rights?*
- *What key institutional and governance factors must be considered in conflict contexts?*
- *How can the VGGT be supportive?*



Conflict

- Distribution—who gets what, how much of it, where
- Internal to groups or between groups and external actors
- Productive or unproductive (threshold?)
- Increasing pressures:
 - Global trade and investments
 - Climate change
 - Reforms/promise of reforms

Conflict in the transition from group to individual rights among pastoralists (Kenya)

Creation of group ranches (1968 Act)

- Control rangeland degradation & incentives for decreasing livestock holdings
- Group title, governance structure (committee & general assembly), voting—2/3 majority, livestock quotas/control; oversight by land ministry; male household heads
- In practice: Cultural norms eg age-set leadership/competition; consensus; no accountability by committee

Dissolution of group ranches (1980s onwards)

- Unequal distribution & exclusion of women and youth
- Officials in collusion with group leadership (lack of oversight)
- (High) Court cases (accept—expensive; limbo, 20 yrs)
- 20 years Limbo— move cases away from courts to hybrid arbitration systems comprising district administration and cultural leadership—elders councils

- **TOP-DOWN ATTEMPTS TO CREATE HYBRID SYSTEM FAILED**
- **DISSOLVING GROUP RANCHES TO INDIVIDUAL: MORE FAILURE MANIFESTED BY EXTENDED CONFLICT**
- **RESOLVE CONFLICT THROUGH ELDERS, LESS ADVERSARIAL, BUT INVOLVED DISTRICT HEAD**

Large scale land acquisitions (Tanzania)

- Strong legal recognition of local community and customary rights (Village Land Act, Public Land Act)
- BUT large tracts of land, including forests, given away to investors (similarly in Ghana, Mozambique)
- WHY?
 - Dodgy clauses—250ha limit & conversion to general land
 - President's land (radicle title); Strong support from the highest levels of government
 - Limited information and consultation; strongly mediated by district administration
 - People go back to district admin to resolve compensation, employment etc
 - Land tribunals? Overwhelmed; multiple accountabilities

Overall

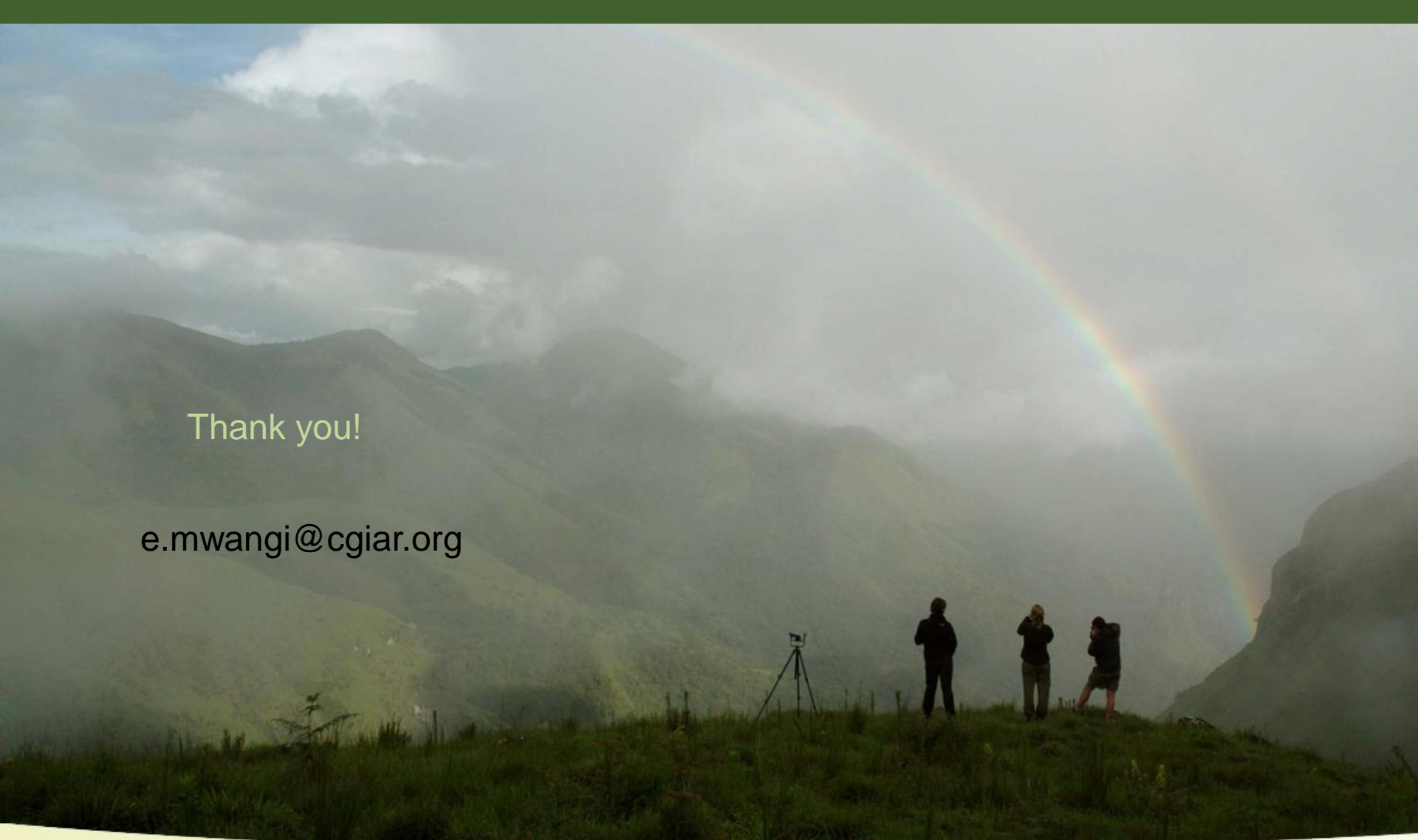
- Recognition in law. Important first step.
- Incorporation of actors and authorities considered legitimate, socially accepted. Important step.
- Legitimate actors, illegitimate acts.
- But how to make actors more downwardly accountable? Both customary and state?
 - Poor supply (oversight; customary authorities)
 - Even poorer demand/challenge among people



Options

- Strengthening peoples' capacities to challenge and to defend
 - Information
 - Supporting collective organizing
 - Building/strengthening networks
- Strengthening responsiveness of authorities that have oversight
 - Incentives?
 - Budgets?
- Conflict resolution systems (fair, timely, low-cost, nested)





Thank you!

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Thinking beyond the canopy

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