Introduction
Since independence, Tanzania has come a long way in its efforts to empower its people. Tanzanian citizens now have the right to own things, to operate businesses, and to reside wherever they wish. They have been emancipated by policies and laws that bring management down to the village level, allowing people to make decisions for themselves. In the last four decades legislation has been reengineered and written law has been thoroughly modernized. Nevertheless, President Benjamin Mkapa has recognized that there is still much to be done to unleash Tanzania’s economic potential. Poverty still prevails. The legal tools created to enable citizens to cooperate on a nationwide basis are not being used: assets cannot be fixed in such a way as to be economically useful or be pulled together from their dispersed local arrangements into one consistent network of systematized representations; people are not held accountable for their commitments; assets are not liquid and cannot be used to create credit or capital; people are not interconnected, and transactions cannot be tracked from owner to owner; business organizations do not have statutes that allow members to work under one point of control; they do not have the means to divide labor and control risks through limited liability and asset partitioning, or associate in standard forms such as corporations, cooperatives, and other collectives; people cannot be identified, and contracts are unable to reach a market outside the limited confines of family and acquaintances.

Under these conditions of widespread extralegality, wealth continues to elude the majority of the nation’s people; women have yet to be empowered. How to change that? To find the answers, President Mkapa decided to reach into the grassroots of
The Challenge of Connecting Informal and Formal Property Systems

Tanzania to find out what obstacles remained and what tools were available for Tanzanians to lift themselves out of poverty. To that end, the Government of Tanzania commissioned me and my not-for-profit organization, the Instituto Libertad y Democracia (“ILD”) based in Lima, Peru, to shed light on the shadows of Tanzania’s extralegal economy to learn as much as possible about the many local, informal practices that people use to do business among themselves. The Government felt that among those informal rules might lie the building blocks of the kind of formal legal system required to build a prosperous modern economy, rooted in the beliefs of the majority of Tanzanians and, therefore, legitimate and enforceable.

From October 2004 to October 2005, ILD researchers traveled deep into the world of extralegality in Tanzania in an all-out effort to trail, find, compile, and diagnose the kinds of documents, rules, and other social devices that Tanzanians have spontaneously generated for organizing their production and assets. We also tried to identify the legal and administrative obstacles that uselessly get into people’s way. Our overriding goal was to get as complete as possible a picture of how Tanzania’s extralegal economy actually operates and how the official legal system interacts with it.

We focused on how Tanzanians in the extralegal economy connect with each other, how they cooperate and collaborate, how they make their deals and secure their contracts, how they organize themselves inhouse and between separate organizations, and how they connect (and do not connect) with the government – the basic stuff of economics. My underlying assumption is that it is impossible to build a modern economy without including most of the nation’s economic activity, and in Tanzania we found that well over 90% of economic activity takes place outside the law. There is no way that Tanzania can escape poverty if the overwhelming majority of its citizens do not have the legal tools to create wealth: organizations that enable them to cooperate productively with each other, a property system to protect their assets and build capital if they so wish and legalize identity and contracts, allowing people to gain access to all the markets in their own country.

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

The results of the year’s work were assembled in a 1,700 page report presented to the Government of Tanzania in September 2005, “The Program to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law: Final Diagnosis Report.” This article is based on that ILD report.

**The situation**

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

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

Unfortunately, most Tanzanians do not use this legal system: 98% of all businesses operate extralegally (a total of 1,482,000); 89% of all properties are held extralegally (1,447,000 urban properties and 60,200,000 rural hectares, of which only 10% is under clan control – mainly Massai pastoral land), and the rest is privately held.
The crucial question then is: Why don’t Tanzanians want to benefit from all the security, organization, information, finance, capital, and the expanded national market that Tanzanian law can provide? The usual Western explanation refers to a general defect in the culture of Africans. The academic commentators in the “culture counts for everything” camp, such as Huntington, Landes, and Harrison, say that African societies are “steeped in traditional cultures and are unsuited to market-oriented development and are, thus, fundamentally hampered in their pursuit of growth.”\(^1\) A number of academics “assign hopelessness to countries that are seen as having the ‘wrong’ kind of culture for development.”\(^2\) Some have characterized African cultures as “regressive and tribal.”\(^3\) Others are kinder and blame it on Europe: “Africa’s traditional structures were destroyed by colonialism.”\(^4\) And while many do not dare to say it out loud, they are still stuck on prejudices as old as David Hume, who, in the 18th century, declared that the main problem with the Africans is that they don’t have what it takes to get organized. “There never was a civilized nation of any other complexion than white … no ingenious manufacturers amongst them, no arts, no sciences …”\(^5\)

**The findings**

What we have found in Tanzania totally contradicts all of the above contentions. Here are three massive facts for why that is so:

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

2. **It is virtually impossible for 90% of Tanzanians to enter the legal economy.** The obstacles that Tanzanians would have to overcome to access the legal system and obtain organizational structures, credit,
### Court of Law

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registry Clerk</td>
<td>Registrar of High Court/Responsible Magistrate</td>
<td>Court Process Server</td>
<td>Court Clerk</td>
</tr>
<tr>
<td>Cashier Clerk</td>
<td></td>
<td>Court Clerk</td>
<td>Seal of the Court</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Judge / Magistrate for trial</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chief Justice / Responsible Magistrate</td>
</tr>
</tbody>
</table>

### Offices

<table>
<thead>
<tr>
<th>Department</th>
<th>Office</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Commission</td>
<td>Registrar of High Court</td>
<td>Responsible Magistrate</td>
</tr>
<tr>
<td></td>
<td>Court Process Server</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Court Clerk</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Seal of the Court</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Judge / Magistrate for trial</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Chief Justice / Responsible Magistrate</td>
<td></td>
</tr>
</tbody>
</table>

### Court Law

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidders</td>
<td>Purchaser</td>
<td>Court broker</td>
<td>Police Officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Witnesses</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lawyers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Defendant (judgment-debtor, Civil Prisoner)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Plaintiff (decree-holder)</td>
</tr>
</tbody>
</table>

### Ministry of Land

<table>
<thead>
<tr>
<th>Division</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Development Services Division</td>
<td>Land Commissioner</td>
</tr>
<tr>
<td></td>
<td>Revenue Supervisor</td>
</tr>
<tr>
<td></td>
<td>Surveyor</td>
</tr>
<tr>
<td></td>
<td>Junior Surveyor</td>
</tr>
<tr>
<td></td>
<td>Survey Clerk</td>
</tr>
<tr>
<td>Surveys and Mapping Division</td>
<td>Hydrographic Survey Officer</td>
</tr>
<tr>
<td></td>
<td>Geodesic Survey Officer</td>
</tr>
<tr>
<td></td>
<td>Topographic Survey Officer</td>
</tr>
<tr>
<td></td>
<td>Mapping Officer</td>
</tr>
</tbody>
</table>

### Ministry of Human Settlements

<table>
<thead>
<tr>
<th>Division</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban Development Policy</td>
<td>Area Planning and Record Keeping Officer</td>
</tr>
<tr>
<td></td>
<td>Urban Strategic Development Plans Officer</td>
</tr>
<tr>
<td>Housing Policy</td>
<td>Registrar</td>
</tr>
<tr>
<td></td>
<td>Assistant Registrar</td>
</tr>
<tr>
<td></td>
<td>Cashier</td>
</tr>
</tbody>
</table>

### Registrar of Title Agency

<table>
<thead>
<tr>
<th>Unit</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Property Valuation Officer</td>
</tr>
<tr>
<td></td>
<td>Receipts Officer</td>
</tr>
<tr>
<td></td>
<td>Accounts Officer</td>
</tr>
<tr>
<td></td>
<td>Cashier</td>
</tr>
</tbody>
</table>

### Council

<table>
<thead>
<tr>
<th>Committee</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Deputy Chairman</td>
</tr>
<tr>
<td></td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td>Assistant Secretary</td>
</tr>
</tbody>
</table>

### Ministry of Infrastructure and Human Settlements

<table>
<thead>
<tr>
<th>Department</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning and Coordination Department</td>
<td>Town Planning Coordinator</td>
</tr>
<tr>
<td></td>
<td>Survey and Mapping Unit</td>
</tr>
</tbody>
</table>

### Court Office

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Registrar of High Court</td>
</tr>
<tr>
<td></td>
<td>Court Process Server</td>
</tr>
<tr>
<td></td>
<td>Court Clerk</td>
</tr>
<tr>
<td></td>
<td>Seal of the Court</td>
</tr>
<tr>
<td>Bidders</td>
<td>Purchaser</td>
</tr>
<tr>
<td>Court broker</td>
<td>Police Officer</td>
</tr>
<tr>
<td></td>
<td>Witnesses</td>
</tr>
<tr>
<td></td>
<td>Lawyers</td>
</tr>
<tr>
<td></td>
<td>Defendant (judgment-debtor, Civil Prisoner)</td>
</tr>
<tr>
<td></td>
<td>Plaintiff (decree-holder)</td>
</tr>
</tbody>
</table>

### Ministry of Health

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minister</td>
</tr>
<tr>
<td></td>
<td>Health Development Services Division</td>
</tr>
<tr>
<td></td>
<td>Surveys and Mapping Division</td>
</tr>
<tr>
<td></td>
<td>Property Valuation Agency</td>
</tr>
</tbody>
</table>

### City Council

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Deputy Chairman</td>
</tr>
<tr>
<td></td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td>Assistant Secretary</td>
</tr>
</tbody>
</table>

### Court of Law

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidders</td>
<td>Purchaser</td>
<td>Court broker</td>
<td>Police Officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Witnesses</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lawyers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Defendant (judgment-debtor, Civil Prisoner)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Plaintiff (decree-holder)</td>
</tr>
</tbody>
</table>

### Ministry of Health

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minister</td>
</tr>
<tr>
<td></td>
<td>Health Development Services Division</td>
</tr>
<tr>
<td></td>
<td>Surveys and Mapping Division</td>
</tr>
<tr>
<td></td>
<td>Property Valuation Agency</td>
</tr>
</tbody>
</table>

### City Council

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Deputy Chairman</td>
</tr>
<tr>
<td></td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td>Assistant Secretary</td>
</tr>
</tbody>
</table>

### Court of Law

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidders</td>
<td>Purchaser</td>
<td>Court broker</td>
<td>Police Officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Witnesses</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lawyers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Defendant (judgment-debtor, Civil Prisoner)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Plaintiff (decree-holder)</td>
</tr>
</tbody>
</table>

### Ministry of Health

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minister</td>
</tr>
<tr>
<td></td>
<td>Health Development Services Division</td>
</tr>
<tr>
<td></td>
<td>Surveys and Mapping Division</td>
</tr>
<tr>
<td></td>
<td>Property Valuation Agency</td>
</tr>
</tbody>
</table>

### City Council

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Deputy Chairman</td>
</tr>
<tr>
<td></td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td>Assistant Secretary</td>
</tr>
</tbody>
</table>

### Court of Law

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidders</td>
<td>Purchaser</td>
<td>Court broker</td>
<td>Police Officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Witnesses</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lawyers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Defendant (judgment-debtor, Civil Prisoner)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Plaintiff (decree-holder)</td>
</tr>
</tbody>
</table>

### Ministry of Health

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minister</td>
</tr>
<tr>
<td></td>
<td>Health Development Services Division</td>
</tr>
<tr>
<td></td>
<td>Surveys and Mapping Division</td>
</tr>
<tr>
<td></td>
<td>Property Valuation Agency</td>
</tr>
</tbody>
</table>

### City Council

<table>
<thead>
<tr>
<th>Officer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Deputy Chairman</td>
</tr>
<tr>
<td></td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td>Assistant Secretary</td>
</tr>
</tbody>
</table>
The Challenge of Connecting Informal and Formal Property Systems
capital, markets beyond their immediate families, and legal property rights, are insurmountable. If a poor entrepreneur throughout a 50 year business life obeys the law, it will require him/her to make cash payments of US $ 91,000 to the State for the requisite licenses, permits, and approvals, and to spend 1,118 days in government offices petitioning for them (during which he could have earned US $ 9,350). The same entrepreneur would have to wait another 32,216 days for administrators to resolve all his/her requests, and during that time lose another US $ 79,600 in potential income. The grand total of these costs: almost US $ 180,000 – enough money to create 31 additional small enterprises.

These numbers are based on the obstacles documented in 67 flow charts contained in the full report to the Tanzanian government. Here are four prime examples of what ordinary Tanzanians are up against:

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

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

We found thousands and thousands of extralegal documents. And what are they like? As Wittgenstein said about intellectual tools, “they are no different than the tools in a carpenter’s toolbox: there is a hammer, pliers, a saw, a screwdriver, a ruler, a glue-pot, glue, nails, and screws.” However, Tanzanian documentary tools, instead of bringing pieces of wood together, bring people together to do particular things such as: creating property, extracting credit and liquidity from physical assets, and structuring entrepreneurial associations where they can divide labor internally and trade externally. The extraordinary thing about the documented tools that are used in the Tanzanian extralegal economy is how complete they are. Some examples:
01 Systems of records to establish institutional memory
02 Agreements to have principals represented by proxies
03 References that testify to the trustworthiness of economic agents
04 Consensuses that recognize the rights of people to their land, business or chattel
05 Informal mechanisms that safe-keep and retrieve information
06 Authorizations that empower enterprises to operate in certain areas
07 Titles that assign responsibilities and rights to business organizations
08 Mechanisms that establish prices
09 Extrajudicial mechanisms that settle disputes
The Challenge of Connecting Informal and Formal Property Systems
IOUs to bear witness to debts
Ways to lay out statements of account
Means to ascertain qualifications
Maps to identify claims and possessory arrangements
The Challenge of Connecting Informal and Formal Property Systems
Charts that illustrate the organization of extralegal business
Agreements that establish partnerships and other forms of association
Systems of declaration that convey knowledge
The Challenge of Connecting Informal and Formal Property Systems
With these tools, extralegal Tanzanians are today in the process of building a documented, selfstyled, homegrown, nationwide market economy. We know this because that is what documents – the result of the expectations and the collective will of Tanzanians – tell us. There is no need for documents to interact in a small society: everybody knows each other. In the village, for example, Tanzanians can identify each other directly by perceiving the distinguishing physical aspects of people, and as soon as people know “who you are,” they also know “your place in the village,” through kinship and everyday actions. In the expanded Tanzanian market, however, identity requires standardized representations of all aspects of the life of individuals and groups, and this can only be achieved through documents.

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

Understanding the findings
The extralegal economy

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

Documentation might not be considered much of a technology compared to such advances as the computer, for example. In fact, most people take documents for granted, what clerks spend their days dealing with. Yet documentation is one of history’s most far-reaching technologies. Documentation is the prosthetic externalization of the law, of rules and agreements. If these are not documented, they are fated to remain forever uninterpreted. Documents are, in fact, the signature of organized legal life; they initiate the rule of law. They bring together humans all of whom, “thought-wise,” live in solitude,
and cannot structure a complex relationship with other people, except through documents. They enable society to work as a whole because they allow people to deal with things at different points in time, and in different places, even when they are not physically present.

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

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

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

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

The fifth underlying principle I noted – common to all the documents we found – is that they exist essentially to empower citizens over limited resources by giving them the tools with which to govern property, to manage collective cooperation
among themselves, and to provide communication with parties beyond their immediate circles of acquaintance. That is why we have grouped all these documents into 17 patterns of interaction – what I shall from this point onward call “archetypes,” representing the principal mechanisms that are fundamental to Tanzania’s extralegal market order. In other words, I have organized the thousands of documents that we collected in Tanzania into 17 archetypes with the purpose of mapping Tanzanians’ extralegal economic relationships from the world of acquaintances on the ground to the world of documents and law: the Archetypes of Property: Adjudication, Documentation, Registration, Fungibility, Collateral, Testament; the Archetypes of Business Organizations: Association, Division of Labor, Management, Transparency, Traceable Liability; the Archetypes of the Expanded Market: Identification, Redundancy, Attestation, Representation, Standardization, Contract. Here is a summary of what we found:
The archetypes of property

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

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

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

/  
2.1 Document recording the transfer of property in Ilkerin Village. The contracting parties have described not only the boundaries of the land being sold but have also included a hand-drawn map with the property boundaries measured in steps.
3. Registration
Archetype: The repositories of property and business documents run by the Mwenyekiti store the only visible evidence for investigating and ascertaining the truth as to who owns what and who has contracted with whom, and on what terms: Tanzanians are recognizing the value of registration as the storing of documents in a way that makes them permanently accessible, providing in one single source records of the information required to track property and contractual agreements. These village repositories mirror the network of economic relationships that can some day provide the basis of official registries.

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

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

4.1. Property title document of a right of occupancy in an area of the Mtwarra marketplace in the south of Tanzania – given as a guarantee for credit by an extralegal micro-finance organization.
5. Collateral
Archetype: Humans have demonstrated that they can agree not only to have rights over things but also conditional rights over the real rights of others: Tanzanians working in the extralegal economy have reached this stage on their own because they not only have established the right to property, but also the right to transfer that right to obtain additional resources, such as finance.

/ 5.1 A “rehani” type of guarantee that uses land as collateral for a money loan. The debtor transfers to the creditor a parcel of land – on the condition that it shall be returned on the payment of the loan.

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

/ 6.1 Example of a testament containing a list of goods to be willed, the beneficiaries, and the signatures of the witnesses – officially certified by a Mwenyekiti in the Kibaha area.
The archetypes of business organizations

7. Association

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

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

8. Division of labor

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

8.1 A Dar es Salaam furniture showroom, office, lumber supplier, wood working shop, door factory, bed and cabinet manufacturer, and fabric supplier – all independent entities operating under the business license of the showroom owner.
9. **Management**
Archetype: When people collaborate in business associations, some of them begin specializing in management which covers the functions of developing business goals, organizing and distributing work, keeping track of accounts, supervising labor, distributing profits and salaries, calculating risks, making decisions, determining the organization’s policy, dealing with clients, suppliers, and officials: Tanzanian associations are already doing this – even trash collectors.

9.1

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

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

10.1

Mwenyekiti making documents that represent property, contracts, and business associations available in his office.
11. Traceable liability
Archetype: Written documentation is indispensible in order to attribute responsibilities between economic players, both inside and outside the organization, and to track the flow of activities through the life of the business organization. The trail that is thereby created allows traceable liability in case of fraud or error and facilitates the enforcement of contracts, the protection of property, along with good governance and self-correction within each association:

Extralegal business associations founded by Tanzanians have various devices for tracing liability within their record-keeping.

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

12. Identification
Archetype: Establishing identity is crucial for economic cooperation and trading relationships. At the village level, establishing identity is simple – physical aspects (face, voice, eyes, teeth, gait, etc.) and knowledge of position in the vicinity make identification easy. In the expanded market, however, nobody can personally know more than a fraction of 1% of Tanzania’s 36 million inhabitants. Identity in the expanded market is the answer to the question “Who are you?” using imaging devices (e.g. photographs and fingerprints) and other imprints (e.g. signatures), and descriptive information (e.g. names, addresses, dates of birth) to validate personal documents. Regarding objects (e.g. cattle and equipment), differentiating marks (e.g. brands and nametags) are necessary: Tanzanians in the extralegal economies are already creating identification imprints and marks to have themselves and the things they own recognized in wider circles.

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

12.2 Marks used to identify ownership of the cattle at an auction market in Dodoma. Such branding serves as the basis for a formal pledge system.
13. Redundancy
Archetype: By assembling multiple types of overlapping information in a structured context, Tanzanians are developing the archetype of redundancy – creating extralegal document-based devices that ensure against the subversion of the truth: The problem in any society, and especially one that is market-based, is that agents use their imagination not only to invent, predict, and plan but also to lie and deceive, to commit fraud and theft.

/  

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

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

/  

14.1 A sales contract for a piece of land in the Mwanza area. Attestation appears in the form of a fingerprint, signatures (also countersignature and official stamp of the Mwenyekiti)
15. Representation
Archetype: Representation as a kind of deontic action-at-a-distance is an important step in the evolution of law, because it allows the expression of intention of one person or entity to have an immediate consequence in the form of an obligation for another group at a remote place: Tanzanian extralegal associations in many cases have statutes which provide that specific persons within the organization are vested with the powers to represent the organization as an entity in its own right.

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

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

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

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

17.1 Money-lending contract between two individuals, which establishes the amount of the loan, the interest rate, the payment period, and the collateral to be used in case of non-payment (the debtor’s house). The document is signed by both parties, the witness provided by each, and the balozi or “ten-cell leader.”
The problem with these archetypes is that on the ground they all work separately, trapped in thousands of fragmented, informal, undersized and underdeveloped circumscriptions. The result is a series of barriers that prevent ordinary Tanzanians from creating efficient and productive legal institutions from the bottom-up. Specifically, these barriers are:

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

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

Regarding the Archetypes of the Expanded Market, the extralegal system does not provide them with enforceable rights and obligations throughout the whole nation. It does not protect their trading names and the trademarks of their products, nor protect their imports and exports at national and international levels, nor allow them to freely advertise, nor give them the means to demonstrate cash flow and financial statements to outsiders using official accounting standards, nor allow them to issue shares to raise capital and guarantees to obtain credit outside their local circles.
Because these Tanzanian archetypes lack all the above benefits of standard law, productivity in the extralegal economy is extremely low, the capacity of extralegal enterprises to reap the rewards of organized, large scale production in an expanded market is practically nil, and their chances of using property efficiently and obtaining credit and capital in competitive conditions are very reduced. Extralegal enterprises operate way below their potential because they lack the rule of law.

**The legal economy**

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

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

**Property barriers**

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

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

Business organization barriers

1. 90% of the businesses in Tanzania are sole traders and partnerships, but the law makes no provision for separating their business and personal assets or for a business to continue after the owner’s death.

2. Tanzania has no clear laws for separating the owners of small enterprises from their managers – and holding them accountable for their management.

3. Agreements between employers and trade unions require the approval of the state bureaucracy.

4. Incorporating a private company can only be done in Dar es Salaam – and is thus virtually impossible for most of the 87% of the nation’s businesses located outside the capital; permits for officially declared “special businesses” (e.g. pharmacies, restaurants, tour agencies, cell phones) are available only in Dar es Salaam – and may cost between US$ 3,916 and US$ 5,506.

5. Authorities have excessive and unregulated discretionary powers over applying laws and regulations – and Tanzanians do not have the reasonable mechanisms to defend themselves against alleged arbitrary decisions. (Objecting to a administrative decision on the mainland requires consent from the Attorney General – and could take 570 days.)

6. To incorporate a private company in Zanzibar or register a cooperative on the mainland requires complying with procedures that are totally unrelated to either objective or that duplicate procedures already completed.

7. Incorporating a private company on the mainland costs US$ 2,669; to wind up a company voluntarily costs US$ 2,753 – almost four times the average annual wage for an ordinary Tanzanian.

8. It is impossible for most Tanzanian companies to raise financing by selling shares on the stock exchange – unless they have been profitable for the past three years and have a minimum of TShs 50 million in capital, a description of less than 1% of the nation’s companies.

9. Growing through mergers and acquisitions is also closed to the majority of Tanzanian companies who do not have the requisite stock to transfer nor the funds to meet the costs of judicial procedures to change company by-laws.

Expanded market barriers

1. Mainland Tanzania has two legal systems, and neither offers security to contracts: The statutory system contains general norms and specific ones, which are not well-known to most entrepreneurs; in the customary system it is easy to make contracts, but difficult to enforce them – an appeal must be moved into an entirely different legal system with different
PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY LAWS

PROPERTY LAND RIGHTS

PROPERTY ARCHETYPES

ORGANIZATIONAL FORMS PROCEDURE

REALIZING PROPERTY RIGHTS

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURES

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHTS PROCEDURE

PROPERTY RIGHT...
PROPERTY RIGHTS PROCEDURES

- Land Acquisition Act 1967,
- Govt. Exec. Agencies Act No. 30, 1997,
- MOBILE GUARANTEES CONSTITUTION AND EXECUTION (PLEDGES):
- CORPORATION (private pharmacy)
- Govt. Exec Agencies Act No. 30, 1997,
- Village Land Act 1999, Village Land
- VERTICAL CREDIT/CO-OP (SACCOS):
- MBEYA:
- TOWNSHIP (BUILDING) RULES, CAP 10, 1953.
- URBAN LAND ALLOCATION:
- SETTLEMENTS ACT 2002, MAGISTRATES COURTS ACT NO. 2, 1984, ET AL.
- BUILDING PERMIT:
- BUILDING PERMIT:
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
- PENAL CODE CHAP. 16 OF LAWS
- LAND (AMENDMENTS) ACT 2004, COURTS (LAND) DISPUTES
- CORPORATION (PRIVATE PHARMACY)
- EXPANDED MARKETS
- BANKING & FINANCIAL INST. ACT NO. 12, 1991
- CONTRACT ENFORCEMENT – CUSTOMARY LAW:
- CONTRACT ORD. MAG. COURTS ACT 1984, PRIMARY CT. RULES.
- BIRTH & DEATH REGISTRATION ACT,
- LAND (AMENDMENTS) ACT 1999, LAND REG. ORD. CAP 334,
courts, rules, modes of proof, and language (Kiswhali to English).

2. Contracts are typically made only between individuals known to each other and on a cash basis, due to lack of effective national identification and registry systems.

3. For most Tanzanians, contracts to provide goods and services to the State are inconceivable: not only do they have to be in writing, they must have the signed approval of the Attorney General or the Minister of Finance, and carry non-refundable fees and financial guarantees.

4. Traditional forms of credit are unavaiable to most entrepreneurs – unable to pay the high costs of registering or use their real estate for collateral because it is extralegal; pledging moveable property, such as a car, takes 297 days on the mainland. (In Zanzibar, such pledges are non-existent.)

5. Micro-financing is also prohibitive, requiring a bank account of at least TShs 10,000 for three months; groups receiving loans are required to attend weekly training sessions for a month.

6. There are no publicly available administrative guidelines for obtaining permission for advertising – and no time limits on the approval of a proposed sign or billboard.

7. Import and export procedures are prohibitive for most Tanzanians: due to the complexity of regulations, entrepreneurs must hire “clearance agents,” increasing the cost of doing business by about 40%.

8. The current law discourages innovation: registering a trademark for a new product in Zanzibar takes 107 days; on the mainland, trademark registration is quicker – but can be done only in Dar es Salaam.

9. Enforcement of contracts through judicial procedures is lengthy and costly: In Zanzibar, recovering a US$ 1,000 loan through the courts takes 1,286 days and costs US$ 1,022; appealing the decision could take between 2 and 5 years. On the mainland, the same procedure costs US$ 4,745.

10. Special, “fasttrack” business courts are available only to big businesses: they handle disputes of no less than 40 million shillings, cost 10 times greater than regular courts, and are located only in the capital and Arusha.

11. Most Tanzanians also discount the possibility of legal arbitration and mediation mechanisms, because courts, in practice, can modify the awards, no matter how fair – thus destroying the meaning of “arbitration.”

12. Tanzania simply does not have the systems in place to allow its entrepreneurs access to expanded markets: no national I.D. system, no integrated, national registry with up-to-date information, no fully organized credit bureaus.

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

**Looking to the future**

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

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

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

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

The reforms to be designed will have to take into account not only the prevailing local and customary arrangements that exist in Tanzania’s extralegal economy (bottom-up), but also the institutional obstacles and deficiencies found in the nation’s legal framework (top-down). Some of the reforms will focus on improving the existing legal framework, while others will focus on improving current “extralegal practices” – all in a way that will merge both systems into a single legal framework that will help create an inclusive legal and economic system in Tanzania. Special consideration will also be given to ongoing Government reform initiatives. Herewith follow the principal recommendations we have made to the Tanzanian government:
A. Reforms geared to improving the current legal system until it fits the needs of the great majority of Tanzanians (top-down)

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

__Introducing simplification and modernization principles, legislation, and procedures for public administration (e.g. acceptance of applications and statements at face value; decentralization; deregulation; elimination of unnecessary and expensive requirements and formalities, etc.).

__Designing special mechanisms to continually improve and streamline the regulations that govern all the relationships between the government agencies and formalized businesses, as well as to receive and channel user feedback.

__Harmonizing the current programs, projects and initiatives that aim to improve specific aspects of the institutional framework to facilitate entrepreneurial activity and assign clear property rights in Tanzania.

Reforms to improve the property system, such as:

__Improving the existing formalization procedure, possibly with, among other things, a simplified, standardized and low-cost formalization procedure that allows costly and time-consuming official surveys to be conducted by private professionals; a simplified, decentralized, massive, and low cost registration procedure with a geographical database.

__Establishing simplified, standardized, and low cost procedures for the registration of transactions involving formalized real estate assets, and harmonizing current registers in Mainland Tanzania and Zanzibar.

__Facilitating the economic utilization of properties, eliminating restrictions on transfers and other conditions that, in practice, are no longer in effect in Tanzania.

Reforms to improve business organizational forms, such as:

__Allowing access to asset partitioning and risk reduction through entity shields and limited liability facilities for all enterprises, particularly sole traders and partnerships, which constitute the most frequently used organizational forms in Tanzania.

__Establishing decentralized, simplified, standardized, and low cost procedures for the entry into (incorporation, registration, licensing) and exit from the market legally (protecting third party rights), for all enterprises and particularly sole traders and partnerships.

Reforms to facilitate operation in expanded markets, such as:

__Establishing simplified and low cost procedures that allow small and medium sole traders and partnerships to contract with the Tanzanian State and to comply with the legal and administrative requisites to export, import, advertise, etc.

__Establish simplified mechanisms to solve disputes.

__Establish simplified procedures to draw up and foreclose mortgages and pledges.

__Design an interconnected business information system to provide all interested
parties with a clear, reliable and updated information service.

B. Reforms geared to improving the archetypes of Tanzania’s extralegal economy (bottom-up)

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

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

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

Reforms to improve expanded market archetypes:
___ Design mechanisms that will help authorities monitor and simplify the use of redundancy to control mistakes and fraud. (For example: Clarifying the legal effects and the hierarchy of documents created to prove something, such as land transfer contracts and wills.)
___ Determine the constraints of extralegal arrangements for enabling effective
representation and its enforcement. (For example: Perfecting or standardizing the powers of attorney and liability arrangements based on extralegal practices to help make representation less risky and more widely acceptable.)

Determine how contract and company law can take advantage of the increasing clarity of extralegal contracts to provide norms and standards that will make it easier to monitor and interpret the duties and obligations of each contracting party. (For example: Creating simple, standard forms for different kinds of written contract; evaluating the need of the Village Council’s role in approving contracts and mortgages.)

Implementing these reforms will benefit all Tanzanians and not only the small minority that already uses the present legal system. The prospect of such widespread benefits will, in turn, not just inspire equally widespread support for reform but also silence the opponents of institutional change. When the Government of Tanzania first asked us to shed light on the nation’s informal sector, the hope was that we might find among the extralegal practices of ordinary Tanzanians the building blocks of a modern, legal economy. We have done exactly that. As a result, we believe that all the facts laid out in this document along with its recommendations, provide the pillars for establishing a Master Plan to identify the policies to include the extralegal economy under the rule of law by providing it with the indispensable legal tools to create wealth: organizations that enable Tanzanian entrepreneurs to cooperate productively with each other, a property system to protect their assets and build capital if they so wish and legalize identity and contracts to gain access to all of their own country.

I am extremely grateful to the government of Tanzania and especially to President Benjamin Mkapa for having the courage to look at Tanzania’s problems with the same or even greater enthusiasm than they look at their many achievements. I am proud to have been chosen to support them in their quest for development. Needless to say, my colleagues and I are especially thrilled to see how the facts that have been discovered continually demolish the notion that Africans are not prepared culturally or disposed to work in a modern market economy and are doomed to depend on charity and untested models of development.

Acknowledgements

We would like to thank the following people for their contribution.