

TAPHGO

(Tanzania Pastoralists, Hunters and Gatherers Organization)

**With support from
THE NORWEGIAN PEOPLE'S AID (NPA)**

**MKURABITA AND THE IMPLEMENTATION OF
THE VILLAGE LAND LAW – ACT NO 5 OF 1999**

**A Participation Report of
The Pilot Project in Handeni District,
September 18 – December 8, 2006**

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January 2007.

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(i) Acronyms

CCRO – Certificate of Customary Right of Occupancy

CSO – Civil Society Organization

GIS – Geographic Information System

GPS – Global Positioning System

GTZ – Gesellschaft für Technische Zusammenarbeit

HDC – Handeni District Council

LHRC – Legal and Human Rights Center

MKURABITA – Mpango wa Kurasimisha Raslimali na Biashara za wanyonge Tanzania

NLUPC – National Land Use Planning Commission

NPA – Norwegian People’s Aid

O&OD – Opportunities and Obstacles to Development

PBFP – Property and Business Formalization Programme

PLUM – Participatory Land Use Management

PMU – Programme Management Unit

PORALG / PMORALG – President’s Office / Prime Minister’s Office Regional

Administration and Local Government

PRA – Participatory Rural Appraisal

TAPHGO – Tanzania Pastoralists Hunters and Gatherers Organization

UCLAS – University College of Lands and Architectural Studies

VEO – Village Executive Officer

VLUM – Village Land Use Management

(ii) About TAPHGO

The Tanzania Pastoralists, Hunters and Gatherers Organization (TAPHGO) is a membership umbrella organization for pastoralist, hunters and gatherers CBOs and NGOs. Registered in 2002, it envisages a society whereby the interests of pastoralists and hunter-gatherers are recognized and their basic rights related to natural resources, land tenure, secure livelihoods and cultural values are upheld, protected and promoted in their habitat.

TAPHGO's mission is to promote networking, coordination and solidarity among different stakeholders in the development of pastoralist, hunters and gatherers' communities.

The organization's main activities are tied up around five strategic choices:

- Capacity building,
- Poverty reduction,
- Research, documentation and information sharing,
- Advocacy, lobbying and networking and
- TAPHGO institutional and organizational development

The engagement of TAPHGO in relation to the MKURABITA programme in general and the Handeni Pilot Project in particular is in line with its strategy of policy research and analysis, in order to build the necessary knowledge base to effectively engage in lobbying and advocacy around policies and laws that are likely to negatively impact on the livelihoods of pastoralist and hunter gatherer communities.

(iii) A brief synopsis of MKURABITA

The Property and Business Formalization Programme (PBFP), also commonly going with the Kiswahili acronym MKURABITA, is an initiative of the government of Tanzania aiming at economically empowering the poor majority in the country, by increasing their access to property and business opportunities, towards development of a strong expanded market economy.

The **Goal** of the Programme is to empower the target groups and individuals, especially in the informal sector, so that they can participate effectively in the modern formal market economy.

The **main objective** is to build an architecture of property and business rules that will bring together, standardize, and modernize the prevailing local customary arrangements dispersed throughout the country, so as to create one Tanzanian property and business legal system that incorporates all sectors of the society.

The programme is based on the model developed by the Institute of Liberty and Democracy (ILD) of Lima, Peru, led by Dr. Fernando de Soto. To take us to the main concept driving the programme, de Soto first tells us why capitalism fails outside ‘the West’, and that the reasons are:

- Laws and procedures exclude the poor people from the formal economy
- The informally-held assets of the poor are effectively ‘dead capital’
- The key to poverty reduction is to make it easy for poor people to operate formally

The key concepts by de Soto in the PBFP are that a modern formal economy has three essential characteristics:

- Businesses legally separate from owner (for financial reliability, efficiency) – e.g. through formal business constitution
- Conditions for operating in the wider market beyond immediate contacts – e.g. through an identity system
- Formal, fungible property rights to maximize value of assets – e.g. through easily transferable land title

Furthermore, de Soto asserts,

- Business and property systems not consistent with these three characteristics are ‘extralegal’
- Even if they are recognized in law, they do not allow people to make full use of their assets

FBFP Programme Phases:

The PBFP implementation is in four phases:

- Diagnosis phase
- Reform design phase
- Implementation phase
- Capital formation and governance phase

Expected Outcome

The expected outcome from the implementation of the programme is reduced individual household poverty, improved living standards of the target groups, and an expanded national market economy that is governed by the rule of law.

1. Introduction

The Property and Business Formalization Programme (PBFP) within the President's Office, also commonly referred to by the Kiswahili acronym MKURABITA, carried out a pilot project in Handeni district with the aim of testing the implementation of the Village Land Act No 5 of 1999.

The Handeni Pilot Project began on the 18th September 2006, and lasted through December 8, 2006. The original duration of the project was prolonged by four more weeks. It was initially planned to achieve its objectives and conclude by November 11 2006.

The involvement of TAPHGO in this pilot project is in line with its strategy of policy and law research and analysis, targeting those policies and laws that might negatively impact on the livelihoods of pastoralist and hunter-gatherer communities. As TAPHGO sought to get more insight into the operationalization of the MKURABITA programme, and the implementation of the Village Land Act No 5 of 1999 at the community level, the Norwegian People's Aid provided the necessary financial support that enabled it to participate in this pilot project.

The purpose of the report is to provide TAPHGO and others that may be interested, with first hand insight into the operationalization of the property formalization process as promoted by MKURABITA programme, based on the implementation of the Village Land Act No 5 of 1999. The report is only another additional resource tool to help the various stake holders to strengthen the basis for developing their positions in relation to the policy and the law. Two aspects are covered in the report – the process and the immediate and likely impacts.

Earlier on in mid November, I wrote an interim participation report for this pilot project. Most of what was in that report is incorporated in this final report.

The ideas and views portrayed here are personal and do not necessarily represent TAPHGO's position in respect of the subject under discussion.

2. Part One: Process of the Handeni Pilot Project

2.1 Background to the project

The MKURABITA Programme Management Unit chose Handeni district for the pilot project in order to test innovations in land use planning and registration, that might improve and fast track the implementation of the Village Land Act No 5 of 1999, as well as to gain practical field experience in the property formalization process in accordance to the same law.

The choice of Handeni district for the pilot project was greatly influenced by its experience. The fact that the district had had prior opportunity to establish a programme

to implement village land use planning, registration of land parcels and provision of Certificates of Customary Rights of Occupancy was an additional factor in the criteria for the decision. The district had carried out a similar programme with assistance from GTZ, between 2002 and 2005.

In the implementation of that project, the district was mainly guided by the approach and methodology developed by the National Land Use Planning Commission – Participatory Land Use Management (PLUM) guidelines, with the registration of land in accordance to the Village Land Act Number 5 of 1999. A total of eight villages had been involved, and after the split of the district, five of them are now in the new district of Kilindi (Kwamalgwa, Kwamambi, Kiberashi, Gitu and Gombero), with the other three remaining within Handeni (Zavuzza, Chogo and Msilwa).

As a result of the programme, Handeni district had built some capacity in this area of work, having formed a GIS unit with adequate hardware and software. The district wanted to continue with this process in other interested villages, amidst both financial and human resource limitations. It was found very difficult for the district to extend this important service to the rest of the villages in the district. It was felt that some intervention was necessary to look for a different approach that would make this service much more easily available to other villages.

The MKURABITA Program intended to make a pilot project that would test basic changes necessary for improving delivery of the service to more villages in the district. The lessons from the pilot project would also serve as an input to the proposed reforms that will be submitted later in MKURABITA's second phase – the Reform Design phase.

2.2 Stated Objectives of the Pilot Project

Goal:

Living conditions of the seven villages improved through increased income generated from secured Land Resource.

Purpose:

The villages manage their land resource sustainably as a result of having Village Land Certificate and Certificates of Customary Right of Occupancy issued to individuals and groups as per their village land use plan.

Outputs:

- Village Land Use Plans developed and approved.
- Village Land Registries established.
- Certificates of Customary Rights of Occupancy issued to all applied villagers.
- Activities implemented as per plan.

Main Activities:

- To prepare village land use plans.
- To facilitate the establishment of village land registries.
- To facilitate issuance of Certificates of Customary Rights of Occupancy.
- Follow up implementation of land development plans and Land Act.

The pilot project involved seven villages in three different wards, namely Sindeni (consisting of Sindeni, Kweisasu, Mbuyuni, Bongi and Kwamkono villages), Misima with Mzeri village and Kwamatuku with Nkale village.

The selection of the seven villages was mainly based on the interest previously shown by one of them, Kweisasu, that contributed Tshs. 353,000 in order to start a programme to prepare a land use plan and register land parcels. The other five villages are neighbouring Kweisasu village and were included because of their proximity with Kweisasu, as well as for the fact that they supposedly had no boundary conflicts with their neighbours. The seventh village, Mzeri, rather on the wrong direction from the rest, had got into the programme possibly through its own effective lobbying.

The project villages

| No | Village | No of Sub-villages | No of Households | Men | Women | Total |
|-----------|----------------|---------------------------|-------------------------|-------------|--------------|--------------|
| 1. | Sindeni | 10 | 657 | 2704 | 2702 | 5406 |
| 2. | Kweisasu | 9 | 355 | 797 | 803 | 1600 |
| 3. | Kwamkono | 9 | 562 | 1292 | 2844 | 4136 |
| 4. | Mzeri | 10 | 1044 | 1803 | 2310 | 4113 |
| 5. | Mbuyuni | 5 | 504 | 1305 | 1392 | 2697 |
| 6. | Nkale | 5 | 314 | 500 | 587 | 1087 |
| 7. | Bongi | 6 | 220 | 559 | 564 | 1123 |
| | Total | 54 | 3656 | 8960 | 11202 | 20162 |

Source: Respective Village Offices

The pilot project was to attempt to solve problems that were experienced with the arrangement that existed and improve technology used for land registration. Compared to the previous project, this pilot project sought to make improvements in the following areas:

- Preparation of a standard plan for village land registries and provision of material for construction
- Training of Ward PLUM teams to assist the district PLUM teams
- Training of technical teams on use of hand-held GPS and interpretation of satellite images (remote sensing) – this was to include identifying potential trainees at the village level, especially VEOs
- Acquisition of an up to date satellite image of the whole district
- Recruitment of UCLAS graduates to assist the district team
- Systematic survey of land parcels
- Inserting digital photos on the Certificate of Customary Right of Occupancy
- Introducing a new system of numbering of titles from alpha-numeric to numeric system
- Processing and issuing of titles at the village level.

A number of people were fully engaged in facilitating the activities of the pilot project. These included:

MKURABITA

- A Programme Officer who coordinated the project (occasionally alternating)

- Ten UCLAS graduates hired by MKURABITA
- Two drivers

Handeni District Council

- Nine members of staff, mainly from the Lands Department (6), one each from the Forestry, Bee Keeping and Community Development Departments.

Civil Society

- TAPHGO
- Legal and Human Rights Centre
- A driver from NPA

Occasionally, Village and Ward Executive Officers and other ward level extension staff were brought in, in a rather uncoordinated and inconsistent manner.

Three cars, two from MKURABITA and one from NPA supported the team. NPA also financed the participation of the two CSO participants, and the car was related to their presence, though MKURABITA met the running costs.

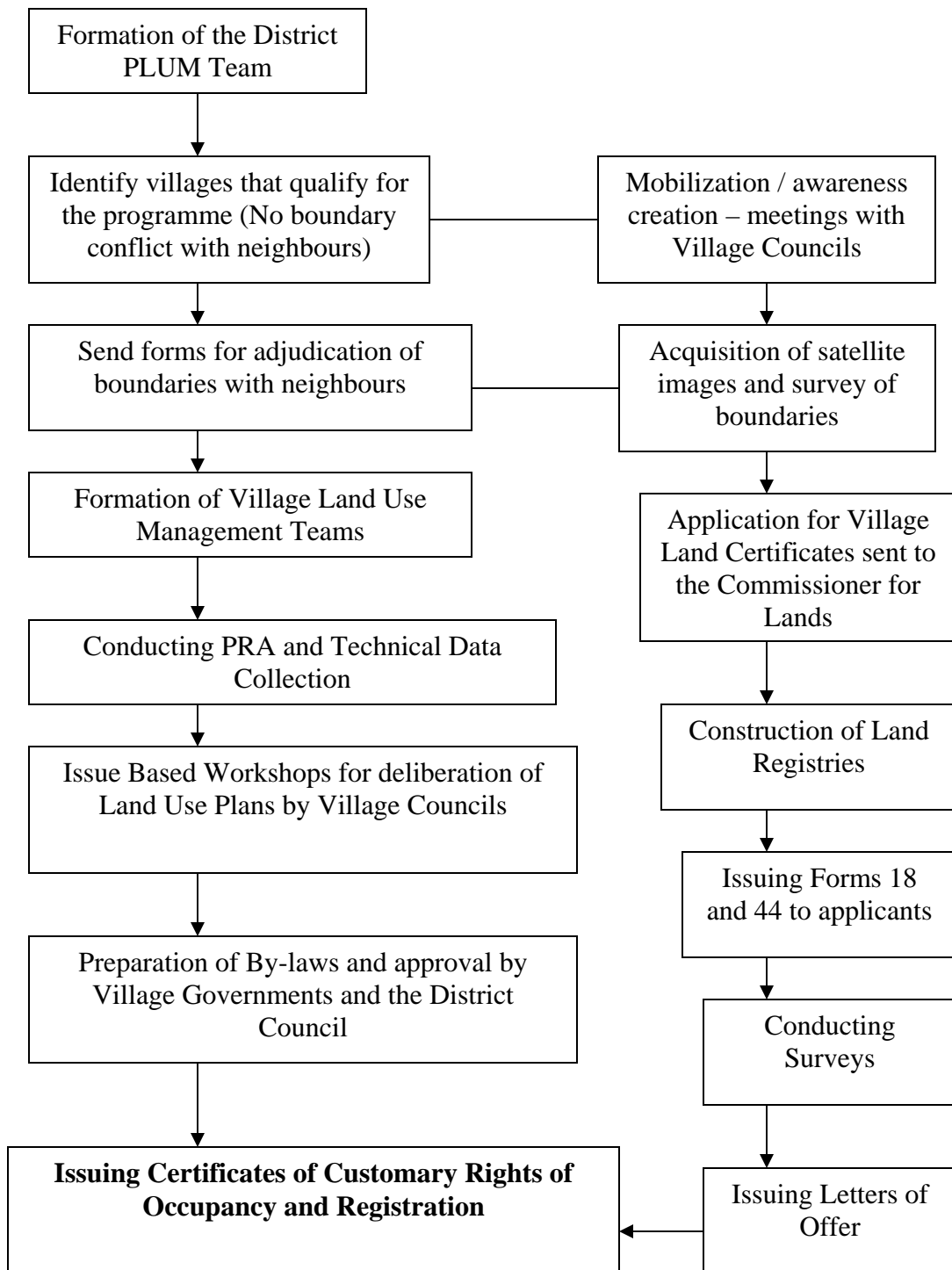
2.4 Summary of the Process of the Pilot Project

To carry out the activities that guided the process to the achievement of the objectives of the pilot project, a sequence of activities was implemented, among them are:

- Formation, mobilization and orientation of two teams, namely the MKURABITA staff, and project specific recruits from UCLAS, and the multi-disciplinary team from the Handeni District Council – both teams assembled before the actual inauguration of the project fieldwork.
- Identification of project villages based on criteria agreed upon by the District Council and MKURABITA Programme Management Unit.
- Training of the Project team, and Village / Ward Executive Officers on the use of hand-held GPS sets.
- Facilitation of village boundaries adjudication process.
- Surveying of village land boundaries and production of village land maps for deed plans – leading to the provision of Village Land Certificates.
- Conducting PRA and facilitating development of land use plans (loosely incorporating training of Ward Facilitation Teams).
- Technical data collection – zoning and actual demarcation of the different land uses.
- Preparation of village maps indicating the various land uses proposed
- Conducting Issue Based Workshops – with village councils to initially adopt the land use plans as proposed by the VLUM teams, and proposals for bylaws to enforce the plans.
- Making necessary revisions as recommended from the workshops.
- Holding Village General Assemblies to adopt the proposals for Land Use Plans and Bylaws as presented by the Village Councils.
- Incorporating recommended changes from the General Assemblies in the land use plans and bylaws.

- Distribution and filling of application forms for Certificates of Customary Rights of Occupancy.
- Holding of Village Council meetings and Village General Assemblies to respectively consider the applications.
- Conducting survey of land parcels.
- Preparation and issuance of letters of offer.
- Processing and issuing Certificates of Customary Rights of Occupancy to individuals.
- Construction of Village Land Registries.

The following flow chart summarizes the planned process for Land Use Planning and Registration



2.5 Main Achievements of the Pilot Project

By the time the external team consisting of the hired UCLAS graduates and Civil Society participants left Handeni by December 9, 2006, some major achievements had been recorded, despite the fact that a lot was also still outstanding. The major achievements included:

- Village boundaries adjudication process had been facilitated, with the boundaries of all the seven villages being demarcated.
- Five of the seven villages had obtained their land certificates (except for Mzeri and Nkale).
- PRA process completed in all the seven villages.
- Respective land use plans had been developed by all the seven villages and adopted.
- Draft bylaws to enforce implementation of land use plans had been developed and adopted by the respective general assemblies of all the seven villages, (role for Council Lawyer still outstanding before approval by the District Council).
- Awareness raised on, and distribution of Forms No 18 and 44 for application of Certificates of Customary Right of Occupancy done, and applications submitted
- Relevant Village Councils and Assemblies met to approve the applications for certificates of customary right of occupancy.
- Zoning of farms / land parcels began in all the seven villages – over 1000 farms surveyed.
- Preparation of letters of offer was in progress.
- Certificates of Customary Right of Occupancy were also being processed.

Summary of land parcel survey in all the seven villages by December 8, 2006

| S/n | Village | Planned Parcels | Application Forms | | | | | Surveyed Parcels | | | Non surveyed Parcels | | | CR O ⁴ |
|-----|--------------|-----------------|-------------------|-------------|------------------|-------------------|------------------|------------------|------------|------------|----------------------|------------|------------|-------------------|
| | | | Total | Passed | Obj ¹ | Pend ² | Exp ³ | Total | With Photo | No Pht | Total | With Photo | No Pht | |
| 1 | Bongi | 500 | 198 | 191 | 4 | 3 | 72 | 138 | 119 | 19 | 53 | 34 | 19 | 92 |
| 2 | Kwamkono | 500 | 386 | 334 | 11 | 41 | - | 118 | 25 | 33 | 216 | 135 | 81 | 36 |
| 3 | Kweisasu | 500 | 255 | 227 | 4 | 24 | 22 | 126 | 87 | 20 | 101 | 47 | 54 | 70 |
| 4 | Mbuyuni | 500 | 408 | 373 | 15 | 20 | 10 | 142 | 125 | 17 | 231 | 164 | 67 | 64 |
| 5 | Mzeri | 500 | 559 | 506 | 12 | 41 | 270 | 313 | | | 193 | | | 222 |
| 6 | Nkale | 500 | 302 | 283 | 4 | 15 | 52 | 101 | 64 | 37 | 182 | 66 | 116 | 47 |
| 7 | Sindeni | 500 | 410 | 392 | 18 | - | 121 | 127 | 85 | 29 | 265 | 108 | 157 | 86 |
| | Total | 3500 | 2518 | 2306 | 68 | 144 | 547 | 1065 | 505 | 155 | 1241 | 554 | 494 | 617 |

¹ Objected

² Pending – waiting to be discussed in the general assembly

³ Expected – new applications expected to be submitted

⁴ CROs – Certificate of Customary Right of Occupancy – soft copy already prepared

2.6 Outstanding work

The departure of the pilot project external team by December 9, 2006 was out of necessity rather than completion of the mission. Although quite some achievements were recorded as indicated in the preceding paragraphs, there was still quite some outstanding work that was left for the Handeni District Council to finish. The MKURABITA programme was to enter into an MoU with the Council to carry out, with limited support from the programme, the following activities

- Continue with the survey of land parcels
- Organize General Assembly meetings for approval of new applications of CCROs
- Continue to deal with conflicts at Kwamkono (A small portion of the village boundary) and Sindeni (Pastoralists problems with their land applications)
- Preparation and issuance of letters of offer of right of occupancy
- Continuation of GIS work – preparation of CCROs
- Follow up on completion and appropriate storage of all the documentation of the process that took place since the start of the project
- To keep updating all project records as changes occur in the villages
- To continue with community mobilization and organization towards the construction of village registries, in close liaison with the MKURABITA PMU
- Labeling of the various land uses on land
- Follow up on the Village Land Certificates for Mzeri and Nkale, with the Ministry of Lands, Housing and Human Settlements Development.

The District Council would be considered as having achieved the above role when all the surveyed parcels have been properly dealt with, to the extent that Certificates of Customary Rights of Occupancy are issued to all the respective applicants.

3. Part Two: Emerging Issues and Perspectives

The Civil Society members in attachment to the pilot project team were an integral part of the same. At no point in time did they play a different role from the rest of the team. It is difficult to make a self-assessment of the actual value their presence brought into the team. Obviously, their individual background and experience could only have added some value to the strength of the team. However, there was more to do than just participating as members of the technical team:

Additional Role of Civil Society in the Project

- To provide technical assistance to the exercise (especially on community participation and training, and ensuring fairness among different groups of community members)
- Helping to assess the overall value and lessons of the pilot and especially how the interests of different marginal groups can be safeguarded.
- Communicating the outcomes and lessons through relevant networks for wider awareness and feedback.

3.1 Overall value and lessons of the pilot project

The implementation of MKURABITA as a policy programme has to be sized up to ensure that it is practically feasible. It is thus relevant that pre-testing of one of its main strategies was carried out. The Handeni Pilot Project should give a clearer picture of the extent of work that lies ahead if property formalization, in this case land according to the Village Land Act No 5 of 1999, is to be effected country wide.

There are pertinent issues and situations that the pilot should be able to expose, and which have to be analyzed and considered in future, and these among others include:

Organization of work

An intervention of this type and of the foreseeable magnitude (according to the PBFP) requires some kind of implementation standards to ensure consistency and harmony in both process and outcomes. Small as the Handeni Pilot Project team was, there were quite noticeable differences in perceptions, techniques and outcomes, and in what for instance, PRA is (or isn't), and of the understanding of the various tools and their applications. The diversity in backgrounds and experiences in teams can only be harmonized by preparation of standard guidelines that should ensure that the same process takes place in each village and a set of results is obtained in the same format. The same guidelines could be the basis for orientation workshops in the preparation for fieldwork.

As regards the training of the teams, district, ward and village, the programme might need to do more. It might wish to borrow a bit on the methodology and process from the former PORALG's (now PMORALG) O&OD, that is much more inclusive and intensive, but effectively builds capable and confident teams at all levels, ones that can carry out the process in future on their own.

MKURABITA must have its own ideas as to how it wants to draw and adapt to the lessons from Handeni. However, it might be useful if a workshop to synthesize lessons from Handeni could be organized, where also a strategy to incorporate them into the future could be charted out. Some of the participants could come from the current pilot team, PORALG's / (PMORALG) experts on O&OD and from the National Land Use Planning Commission. The emphasis here is on approach and methodology.

Community participation

In this case, community participation was mainly manifested in:

- Boundary adjudication process
- Situation analysis using PRA – using such tools as participatory mapping, historical timelines, focused group discussions, transect walk, Venn diagramming and pair wise ranking.
- Proposals for land use plans
- Issue based workshops.

Participation begins with appropriate sharing of the vision of the project, thus, a proper stakeholder orientation to the programme and plan of work in order to achieve shared objectives, should have been made a priority. There was little community awareness carried out on the mission of the pilot project. Each step of the intervention unfolded itself to the community almost in isolation of the others. It was only towards the end of the process, during application of certificates of customary right of occupancy, that most people realized what the programme was driving at.

Additionally, the village council and general assembly meetings that could have been used to introduce the project and mobilize community support were omitted. The Village Executive Officers possibly with consultation with the village chairmen nominated the PRA teams. These should have been selected by the general assemblies, with the knowledge of their roles at the back of their minds.

The issue under consideration and anticipated outcomes determine the choice of PRA tools. Obviously, tools like livelihoods analysis and wealth ranking were surprise omissions. If the programme took the poorest of the poor into consideration, there would be no way to focus on them if they cannot be identified. But then of course if there is no agenda for this type of people, then there is no need to bother. After all, even in the title of the programme itself, the addition of the word “*wanyonge*” is discernibly an afterthought. It is not unnatural though, to popularize programmes in this way!

The introduction of the need for villages to organize for construction of land registries as late as in the middle of the project had made the mission almost impossible, at least within the timeframe of the project. This subject could have easily been initiated from the day the programme was introduced to the communities.

3.2 Safeguarding Rights in titling

The process of surveying and issuing formal land titles to individuals greatly raised awareness on land ownership to a near hysterical proportion within the communities. Villagers, resident and those living away in towns, were all fighting to get chances to formalize their land ownership.

One of the significant outcomes of this process was the apparent change of land owned from land used. Village Councils and Assemblies approved nearly every application and there was no way the meetings could ascertain the size or boundaries of the land under application. There was quite some struggling from practically everyone to grab as much unused land adjacent to one’s farm as was possible. In this process of land grabbing, backed by a misconception of the “*customary*” right of occupancy, those claiming that their ancestors were buried under certain land and, therefore belonged to them, displaced a lot of people. Pastoralists were among the main casualties of this new criterion of land ownership. In some villages, like Sindenii for example, some pastoralists were denied the

right to own any land because they are considered aliens, and that they could just as well move on or back to where they belong. Some of them were born of the same village, are over thirty years old, yet some people lay claim to even the land they are living on.

Of course there were also other locals being evicted by the up and coming (MKURABITA) initiated landlords, from land they have been using for something upwards of ten years, and who actually cleared the land for themselves. Some negotiations went on to the extent that some initial developers and users of land surrendered their claim over the land, or negotiated temporary use as titles went to other people. It is claimed around the project area that some aggression on, and submission to these new arrangements are strengthened or weakened by the presumed power one has in witchcraft.

Whether one believes in witchcraft or not, it is a fact that as policies and laws set scenarios for propagation of certain actions and relations around land ownership, there are unfortunately other non-transparent criteria that influence and determine local settings and relations. These informal settings do unquestionably also, from underneath, govern the ground on which formal land policies and laws lay their foundations!

Which Arrangement Formalizes Property in Handeni?

In one village for example, as we were surveying one farm, a certain lady in her sixties, walked to us and requested that we go to survey her farm next. We obliged and went to her farm a while later. As we were about to get started, she asked us to wait a bit as her daughter goes to call one of her neighbours, who owns a farm adjacent to hers on one side, and who had previously indicated to her that she would come to show her her proper boundaries.

As we were waiting for the second lady to arrive, there was a little conversation and this lady says, almost in whispers, that since this project started in this area in the past two months or so ago, they have buried people as a result. “*Tangu mmeanza hii kazi hapa baba, tumeshazika watu. Sitaki matatizo, ngoja aje aonyeshe mpaka wake, hata mtu akisema sina shamba, naondoka!*” Literally this means that since this project began about two months ago, they have buried people as a result, that she does not want problems, let the other lady come to show her boundary, and that even if somebody claimed that she has no land at all, she would only just quit. Our guide in the survey work, a villager himself from the same hamlet, was in agreement that this had in fact happened, a conflict had arose over ownership of a piece of land. They claimed that one was bewitched, and died shortly.

Our host showed us two sides of her small rectangular farm and we took waypoints. There were no crops on the farm then, and the grass growth was high. The lady settled in the middle of the farm picking some wild vegetables, unconcerned by the arrival of her neighbor and our work with her as she guided us along their boundary, with admirably very natural confidence. The two neighbours did not bother to exchange greetings, but the host’s daughter was following the team as we took the waypoints. She did not make any comment as their neighbor was showing the boundary. Our host did not bother to look at what was happening, she did not even lift up her head as we walked past her. She concentrated on her work until her daughter called her to inform her that we had finished and they needed to go back home. She then walked to where we were, thanked us and bid us goodbye. The other lady had already left.

It would seem that looking at the grasses and shrub growth of the two adjacent farms, the other lady had claimed a significant portion of the host’s farmland. The growth nearly showed where the boundary, at least according to it, should have been. The farm was small, possibly under a hectare in size, and the other lady claimed a strip about ten to twelve meters wide along the longest side of the farm. It was a significant piece. Her farm showed less recent use, thus shrubbier, while the farm we were surveying showed prominently to have been cultivated recently. The growth was almost the same and even throughout. It was somehow irritating to see this happening, but it was not for us to determine the boundaries.

This is what is said to prevail in parts of the project villages. It is the real local formalization criterion, the one underneath, which hosts the official formalization, making the latter float above it and look superficial.

All in all, the titling process realigned land ownership, created new landlords and formalized landlessness. It has drawn a line between those that may look to the future with hope having a means of livelihood, and those who will nearly permanently host all the disgusting images of poverty in their homes for lack of land – the source of livelihood.

MKURABITA as a programme may need to determine and institutionalize ways that can ensure a minimum starting point in land access and ownership for the poorest of the poor, particularly the rural based. Deliberate efforts should be made to ensure that no rural family starts at zero in this programme. When the landless see others receive certificates of customary rights of occupancy, they may just as well claim certificates of landlessness, ones that will condemn them to permanent abject poverty! The programme will actually be drawing a formal line between hope and hopelessness. It may be useful to take stock of this category of people in each village and make their case a point of policy intervention.

The way people have scrambled for land that was not yet allocated to anyone makes the survey of land parcels even more interesting as we await its end to learn whether these villages have any more reserve land left for future generations or new investments. The fate of those who could not immediately claim ownership of any piece of land lies perhaps in luck if they may be able to locate a piece that nobody has laid claim on. Alternatively, an early revision of the land use plans might become a necessity when all land designated to agriculture is fully occupied. In fact Sindeni had done this only a week or two after they had adopted the first land use plan. An area previously designated for pastures was realigned to farming. This change was initiated by a group of villagers who found out that they had always been living and farming within a government forest reserve, and that they could be kicked out any moment.

3.3 The rights of spouses

The majority of the people in the project area practice polygamy. To a large extent, ownership of land was registered for families, with husband and wife / wives registering on behalf of all those who have interest in it. Even though that is the fact, most women did not appear to have their photographs taken for inclusion in the certificates. The programme facilitators tried their best to mobilize women's involvement in this regard with a varying degree of success.

In some instances, men simply registered themselves as owners of the land plots, with the rest of the members of the family having interest or right of use. In other cases, each woman in a polygamous marriage jointly owned a separate piece of land with the husband, with the man registered in all the two, three or four farms as the cases might be, but each woman is limited to her plot only.

A few women, mainly heads of their families, registered their farm plots. Furthermore, some married women also individually registered their own land.

Even though those are the general types of land registration that dominated, it is also true that a number of men were of the opinion that jointly registering land with a woman is risky, as separation is always a possibility. They would argue that they would rather grant the women the privilege of use of the land than the ownership.

It may be useful for a programme like this to ensure that where legal marriage exists, both partners are compulsory registered owners of the family land. It might also need to monitor women-headed families so that that fact does not disadvantage them in land access and ownership. Girl children should also be considered when subdivision of a family land takes place, even if they are married.

3.4 The Pastoralists' Predicament

A few pastoralists, mainly Maasai, live in the project villages – Mzeri, Sindeni, Bongi and Mbuyuni. They also had much more limited access to pastures, water and salt licks in some of the other villages like Kweisasu and Kwamkono. Nkale village is infested with tsetse fly. Most of the pastoralists have been living in the area for a long time – well over ten to twenty years, but a few moved in more recently. They remain a small minority in their culture and trade, tucked away in certain less potential areas of the villages.

All the project villages had set aside parcels of land for pastures in their land use plans. The areas thus allocated were very small in relation to the needs that existed, even though they came by through tough negotiations, as were the cases for Sindeni and Bongi. In Sindeni, proposals to evict the pastoralists were easy to come by in the meetings, with claims that the village did not have enough land for “*wafugaji wakubwa*” when there was politeness, otherwise simply bluntly “*Wamasai*” from the less tolerant in the discussions. It should be noted here that the local Zigua population also keep a few livestock, with those keeping them looked upon as slightly more well off by the local standards.

In some villages, the bylaws formulated to enforce the land use plans seemed designed to discriminate against pastoralists and to pressurize them out of respective villages. An example is that of Bongi village where it was proposed in the draft bylaws that a fine of Tshs 100,000 should be paid if livestock entered *agricultural reserve* land. The same fine prevailed if livestock entered into a farm, with or without crops, and the fine would be in addition to appropriate compensation as would be determined by an agricultural officer. Should a farmer contravene in pasturelands, a fine of Tshs 50,000 would apply in addition to an order to vacate the place.

In Sindeni village, fourteen pastoralists, mostly women, were denied even application forms for certificates of customary rights of occupancy to the land they knew and believed that they owned. The reason given was that nobody recognized ownership of the land they intended to register. Some facilitators convinced the perpetrators that the pastoralists be given the forms so that they take their case to the proper decision making structures – the village council and general assembly. That done the sub-village chairperson of the “*kitongoji*” in which they have farms refuses to register their forms in his register as provided by the process. The application forms were sent to the meetings

anyway, but were bundled away as irrelevant as pastoralists did not own any land in the village even if they are using it. These applications were being handled collectively, not individually like all the others. More awareness on rights, appeals for reason and the applications were approved in the following General Assembly, and then they got misplaced for another few days.

When the forms somehow resurfaced from wherever they were “hidden”, and the applicants were taking photographs for their certificates, someone intervenes and lays claim over most of the land some of the pastoralists were going to register. On individual basis negotiations took place between the person and some pastoralists, and then they come to have their photos taken. This emerging landlord insistently tells one lady that she does not own the land she is processing for registration, because it belongs to him. She passes by the photographer who was waiting for her to finish the discussions, her being the last for the day, but then she was just heading for home, crying. Her family had been living in Sindenii for over thirty years. But because she is a Maasai pastoralist, a woman and recently widowed, perhaps more for these reasons, she is landless. But she believes she has land, may be she has.

Several weeks later after this incidence, the surveying of land parcels had begun in earnest in all the seven villages. Surveyors would normally pick names of people whose land was going to be surveyed, from application forms approved by the village assemblies, usually filed together on a hamlet basis. The respective hamlet leaders would have been given prior information of the date and time the surveyors would be at their farms. Here arrives the turn of one of Sindenii’s sub village, where a number of pastoralists have pieces of land they had applied to register. Among others whose names were picked for the day, theirs were also there.

On arrival at the agreed meeting site, and having produced the names of the people that their farms were going to be surveyed, the surveyors were shocked to be informed by the hamlet chairperson and a few other residents of the area, that pastoralists, precisely the Maasai living or farming within the hamlet did not own any land, even though they might be using it. For that matter, they did not inform them of the exercise. The group went on to accuse the village leadership, and even the project facilitators to have colluded to include the applications of the Maasai among those of people whose applications for land registration had been approved by the village assembly. As far as they knew, they said, the assembly meetings did not approve their applications because they owned no land. The surveyors did not share the emerging opinion.

The matter had to be taken back to the village office for more clarification. There, the village chairperson was somewhat overwhelmed by the insistent group headed by the hamlet chairman. It became a small open meeting, with some people saying that the applications in question were approved, others saying not, and more others were simply confused, as they knew the people in question as genuine members of the village community with equal rights. Some were aware of people in this group who earlier on sold their land to the same pastoralists. The pastoralists were not there and unaware of the discussions going on about them. The day ended without any surveying work taking

place there, neither for pastoralists nor non-pastoralists. Unfortunately, it was the last day but two before the external team concluded its work, and it was actually left at that!

Over the time since the first indications of discrimination emerged particularly at Sindeni and a bit at Bongi villages, pastoralist women had picked up issue with the process and organized meetings in all the villages they live in, prepared their complains and forwarded them to the District Commissioner. Somehow the issue was picked up at that level but no impact as yet then, went down to rectify the situation at the village level. The same complains were also said to have been presented to the Tanga Regional Commissioner's Office, and there were also plans to send them to the Prime Minister's Office. It would be interesting to learn the impact of the women's agitation.

Pastoralists had been allocated small portions for pasture lands in most project villages, but the private land parcel ownership was much more hard to come by. The stance varied though, from village to village. For instance, the presence of pastoralists at Mzeri village seemed somehow appreciated by the rest of the village community. They did not have any problems in registering their land parcels, albeit small as they were. Things were most difficult for them at Sindeni, and slightly less but not very good either at Bongi. Their presence in the other project villages was less significant.

3.5 How the pilot approaches might relate to the different social or land use conditions in other areas

It is a fact that the titling exercise instilled and developed a new relationship the people have to land. The land suddenly changed value just because it was being formalized. It appears like there will no more be that possibility of one cutting a junk for oneself that much freely like in the olden days. After all this, every other bit will be belonging to someone.

The titling process is destined to meet various challenges in the diversity of land ownership arrangements country-wide. In regions or areas with high population density and thus scarcity of land it will be more on formalization, of both land and landlessness. In the areas where land is still in plenty the most likely encounter will be that of igniting a new awareness and perception to the value of the land resource. A new ownership structure will emerge as land grabbing will be at its highest.

The new challenge will be in pastoralist dominated areas, where the relation to the land resource is more communal than individual. In general terms, the pastoralists' communal nature of land use will put them at a different footing property wise, on individual basis, as relates the Village Land Act No 5 of 1999.

There is already plenty of land speculation in pastoralist areas as well, but still the communal is the traditional joint preference. It may however be much more sustainable livelihoods wise if pastoralists created land use plans that would allow for both individual and communal ownerships. Programmes like MKURABITA could make policy and legal interventions along these lines, supported by CSOs that have a pastoralist focus.

All in all, the MKURABITA programme is still at its infancy. There will be endless lessons to draw at every stage of its implementation. The most we may argue from this early stage is for the programme to institutionalize reviews that will allow socially and economically useful and above all legally fair access to the land resource to all Tanzanians. In this context, the programme may need to do more than just formalizing ownership of land, but to also take issue with equitable access, use and ownership rights for all citizens, particularly the rural based to whom livelihood options minus land, are almost nil. For the poor, recovery from landlessness will be impossible. A caste which one would never be able to break from will be formed otherwise, of poor, landless people reliant only on sale of labor for their subsistence.

3.6 Issues arising from the Village Land Act No 5 of 1999

The misconception of the word “*Customary*” in the Certificate of Customary Right of occupancy could be a basis for discrimination and conflict. In the context of the pilot project area, the perception that emerged around the word was that to do with the local, the traditional, the ethnic or the clan or wider family historical right to the land, that should exclude others on those bases. The strength attached to this perception overrode any subsequent rights of others considered alien to the area, regardless of the duration of their presence, or use of the land. A way to rid this word from the title might do the process a lot of good.

When the project reached the stage of applications for registration of land parcels, it was wondered how relevant and practical the Village Land Act is in sections 22, subsection 3(f) and 30, subsection 2(a-f) that require non residents of a village applying for CCROs, to build their headquarters within a respective village, and at that, within a period of three months from the day they acquire the CCRO.

Perhaps out of complications in handling so many applications at the moment or from actually a point of relevance, the essence of the Letter of Offer prior to provision of CCROs seemed unnecessary. Processing both documents could prove a burden to most rural communities to the extent that if a programme were not handling them, most people would not bother to meet the requirements of both documents on their own.

While paper work cannot be ruled out in any registration process as is the case of land parcels, the amount might be reduced, for example, by collating Forms No 18 and 44 in applying for CCROs. Quite a significant part of each form is a repetition of the other.

It also emerged that when there was, for instance, a conflict of boundaries between two villages, even though along a very small part, it was too much to bear to abandon the rest of the programme work in the village until such conflict was resolved. It was being suggested that the law allows all else to continue in the rest of the village where no conflict existed, as a solution is sought about the portion of the boundary in conflict.

4. Part Three: Recommendations to TAPHGO

The implementation of the Village Land Act No 5 of 1999 as it is, or under the auspices of a policy programme like MKURABITA, should remain of paramount interest to TAPHGO. Pastoralist and Hunter – Gatherer communities utilize land and land based resources communally. On one hand, these communities, in order to sustain their traditional livelihoods practices need this arrangement to continue. It is these communities that must bring up their own case. They do need however, adequate information and proper organization to stand up for their own rights in this regard. Their voices in this respect must be amplified by structures like TAPHGO, as relate policies and laws that govern land and land based resources.

On the other hand however, accessing and utilizing common land and land based resources should not deprive these communities access to the private land property. A way that would allow prevalence of both types of ownership has to be thought through and recommendations made for inclusion in policy and practice.

In order to draw an intervention strategy it would be advisable for TAPHGO to conduct a workshop that should inform these communities and their civil organizations more on both the MKURABITA programme and its implementation as based on the Village Land Act No 5 of 1999.

It might also benefit TAPHGO's position and capacity in the above recommended intervention if it continued to engage in future MKURABITA programme initiated pilot projects, in one way or another.

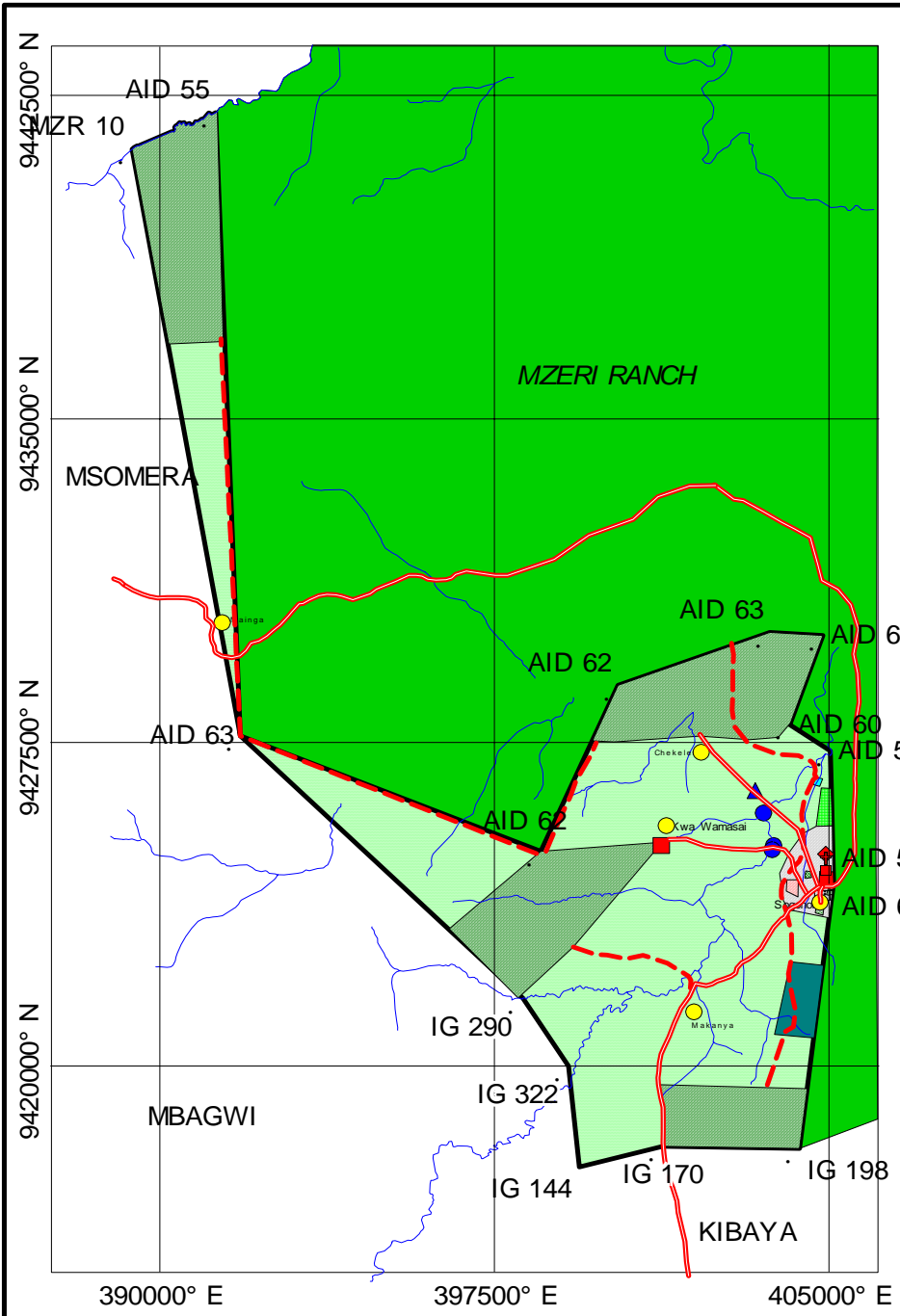
This first experience in engaging with MKURABITA in the pilot project in Handeni was generously financed by the Norwegian People's Aid (NPA), an organization that has very good historical links with the MKURABITA Programme. It might benefit TAPHGO to continue to cultivate close collaboration with both NPA and MKURABITA, in the assumption that it wants to pursue farther interest in this agenda.

Annexes

Annex 1 - References

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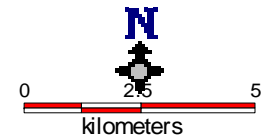
Annex 2 – Village Land Use Maps of the seven project villages

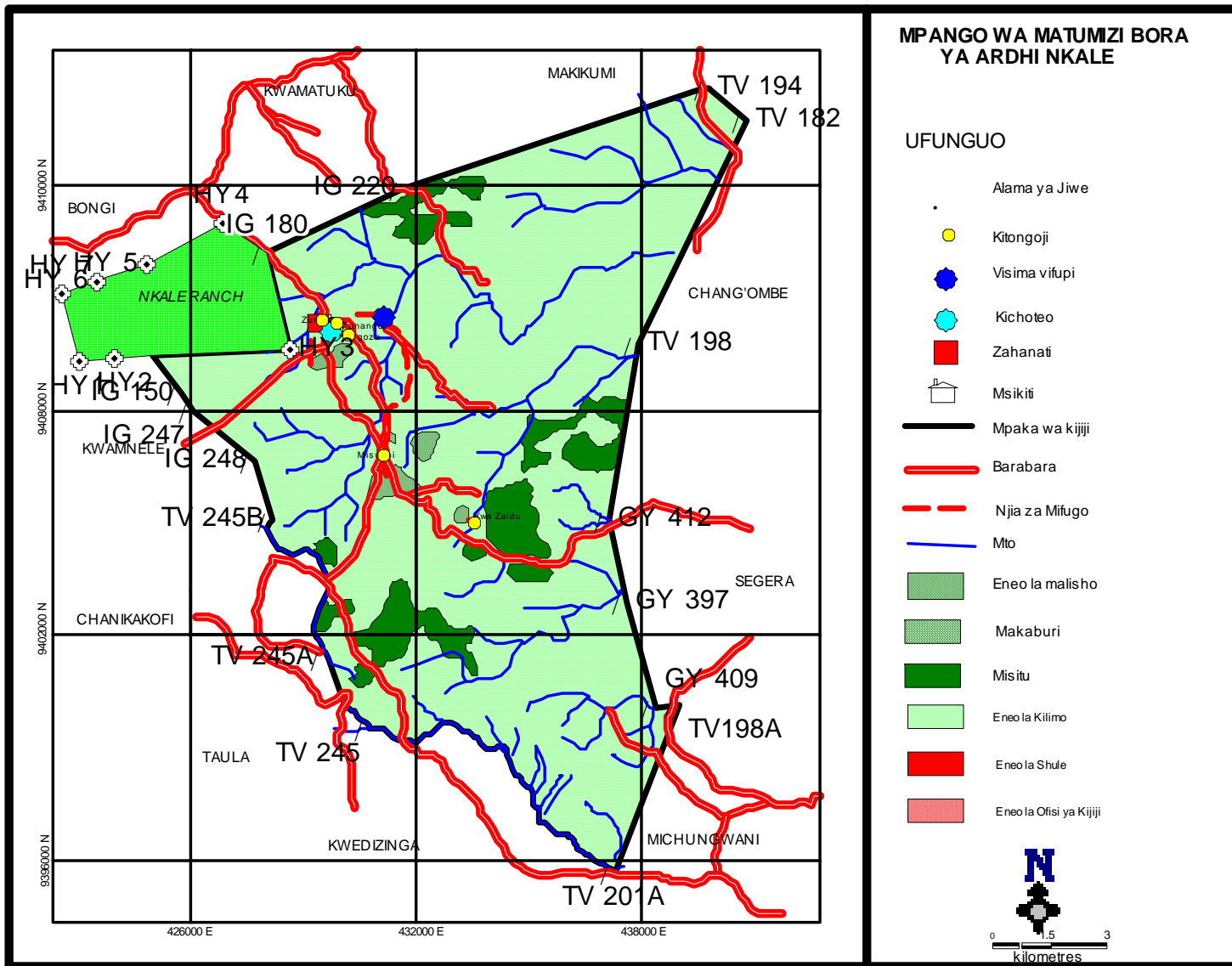


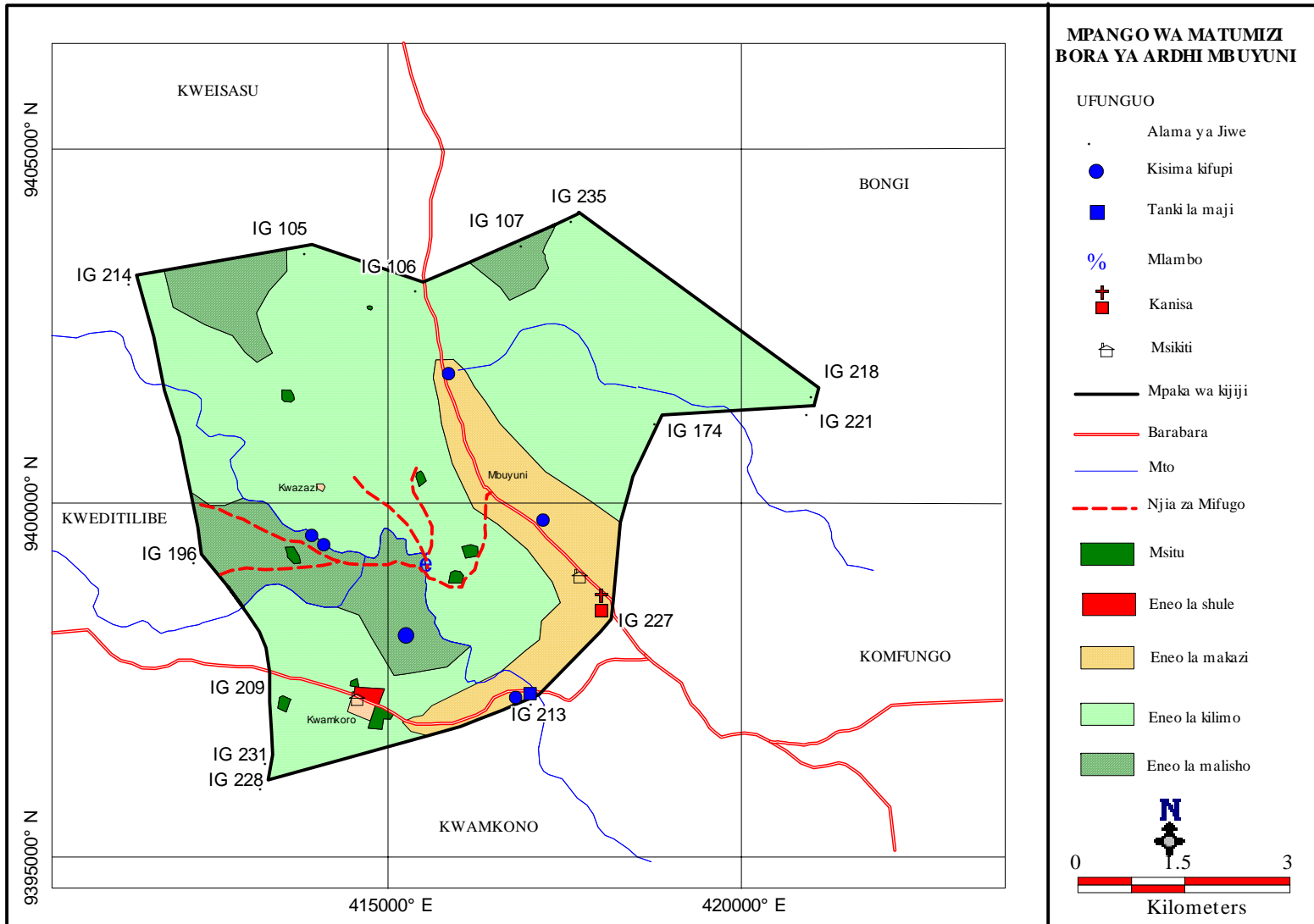
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BORA YA ARDHI MZERI**

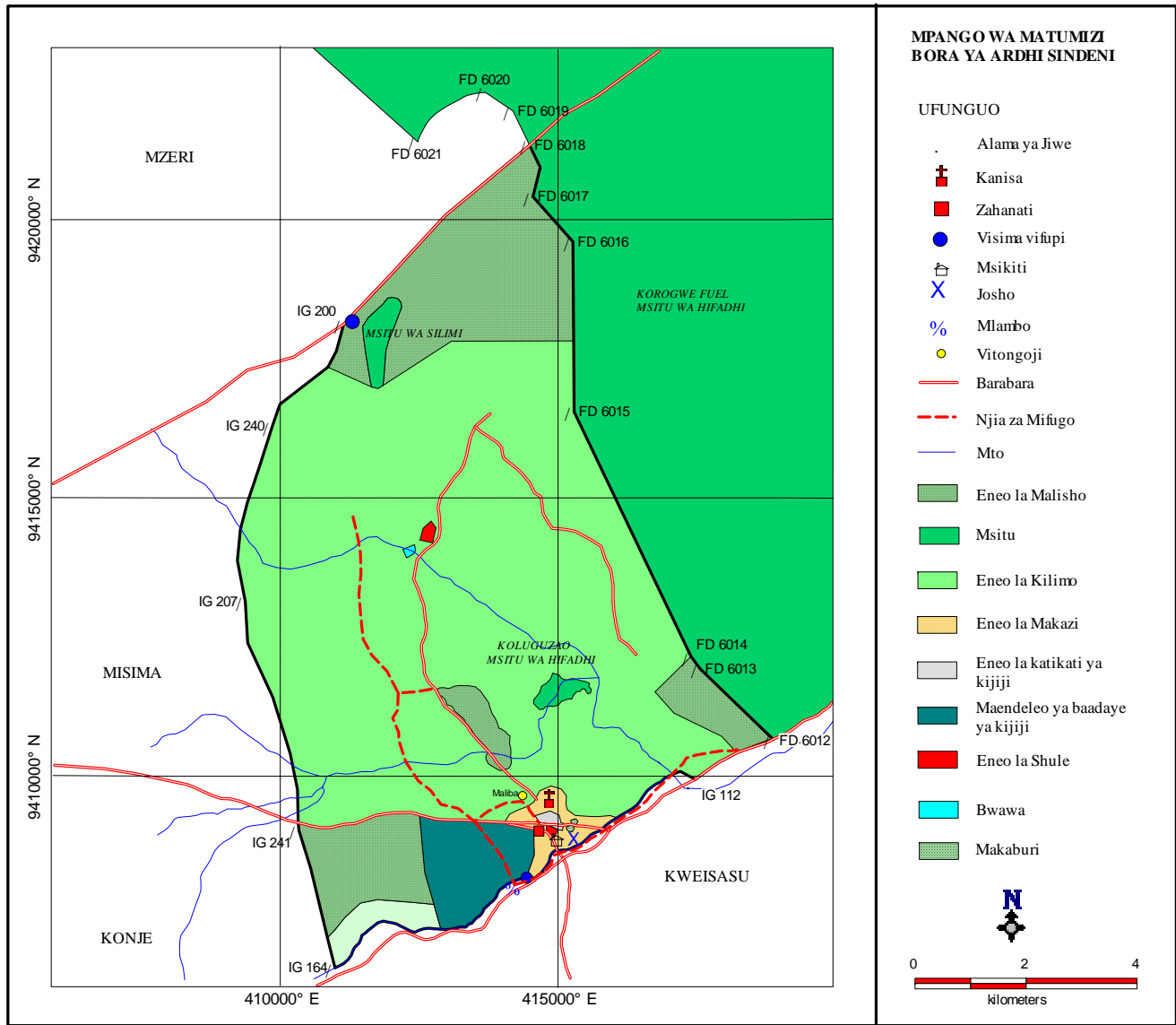
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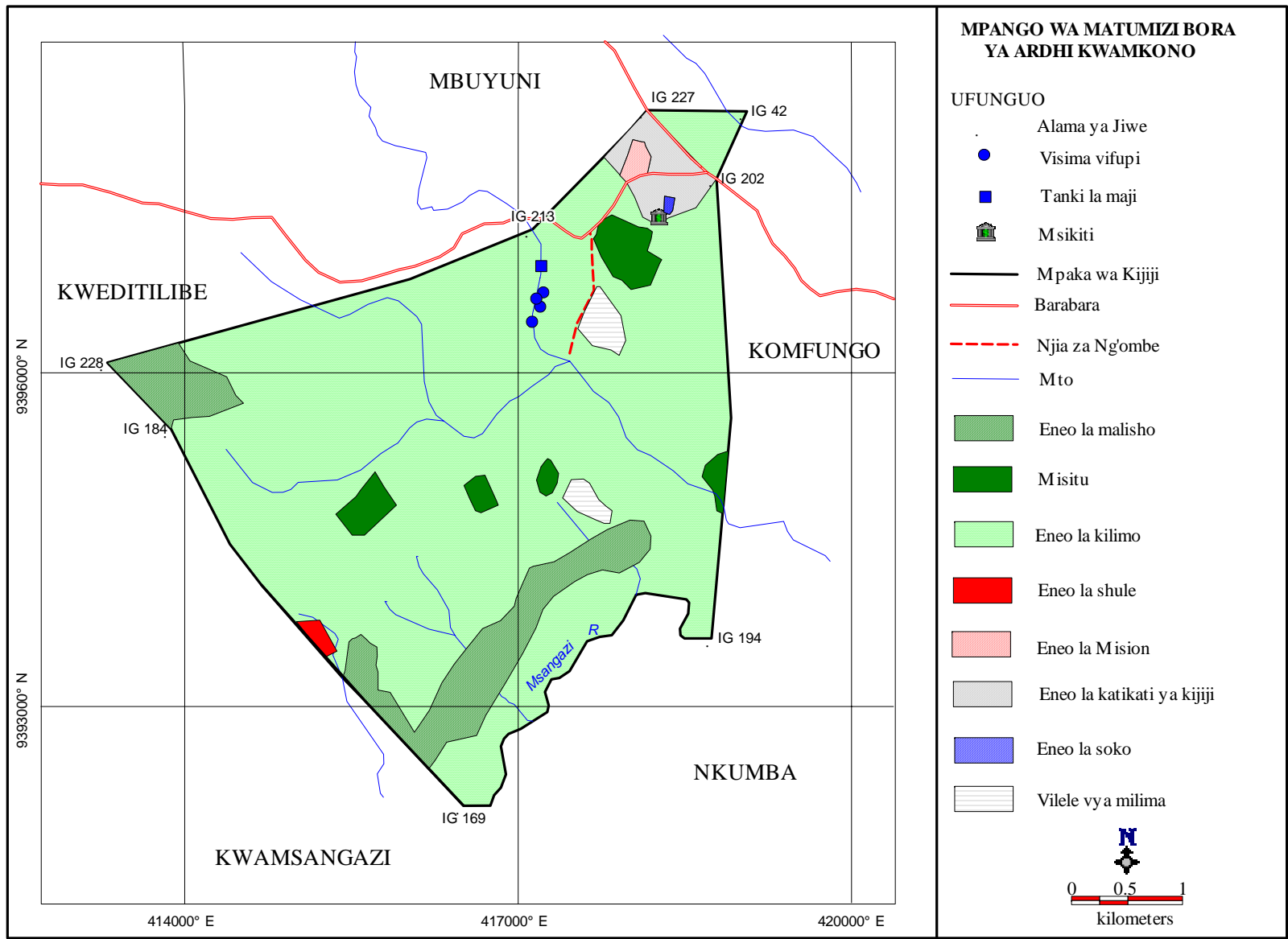
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- ☐ Msikiti
- Kisima kifupi
- Shule ya awali
- ◆ Zahanati
- ▲ Josho
- ✚ Kanisa
- Barabara
- Mto
- Mpaka wa kijiji
- - - Njia ya Ng'ombe
- ▨ Makaburi
- Msitu
- ▨ Eneo la Mashamba
- ▨ Eneo la Malisho
- ▨ Eneo la katikati ya kijiji
- Bwawa
- Eneo la shule
- Eneo la maendeleo ya baadaye ya kijiji
- Eneo la Ofisi ya kijiji
- Msitu wa Hifadhi wa kijiji

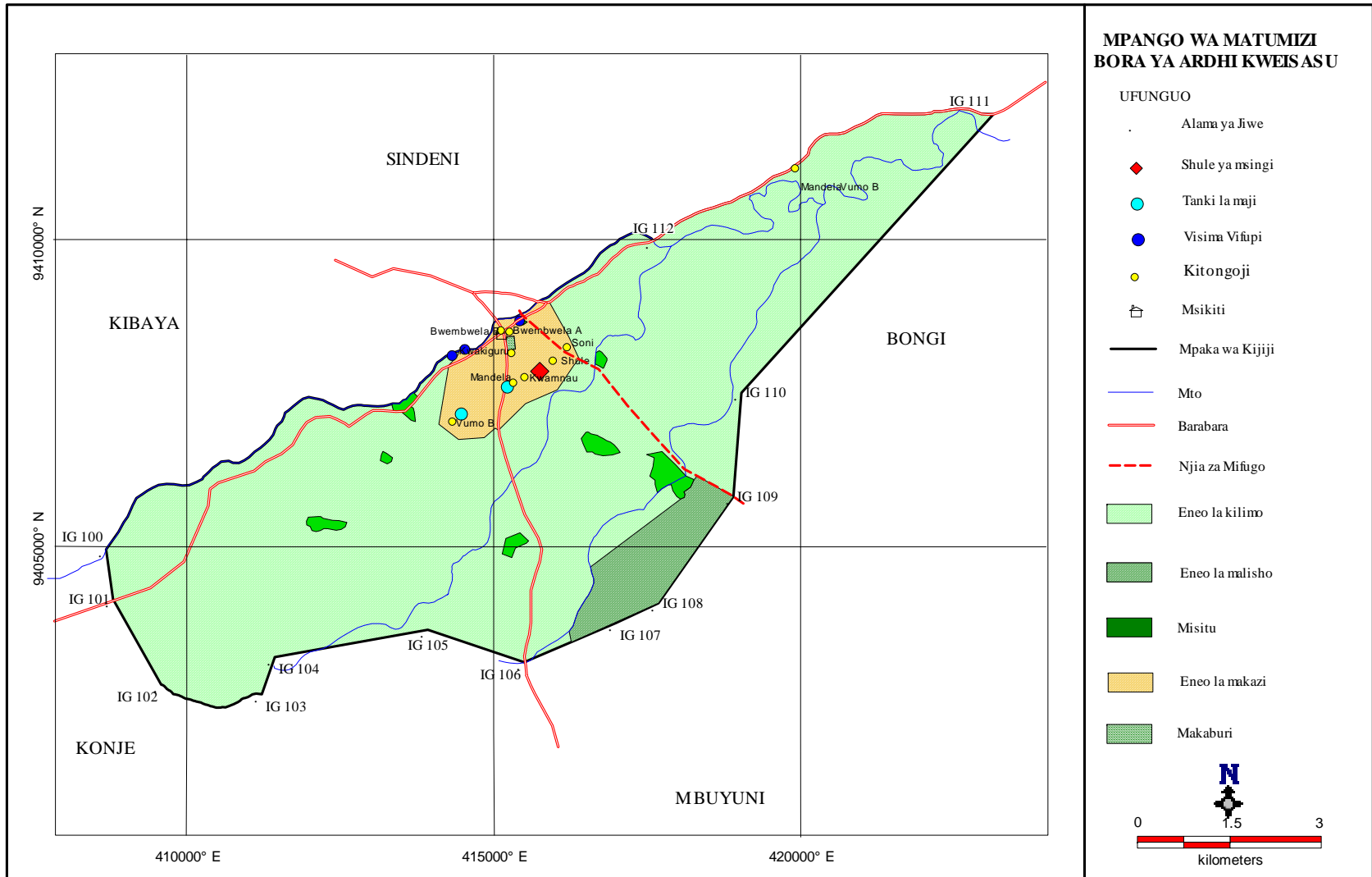


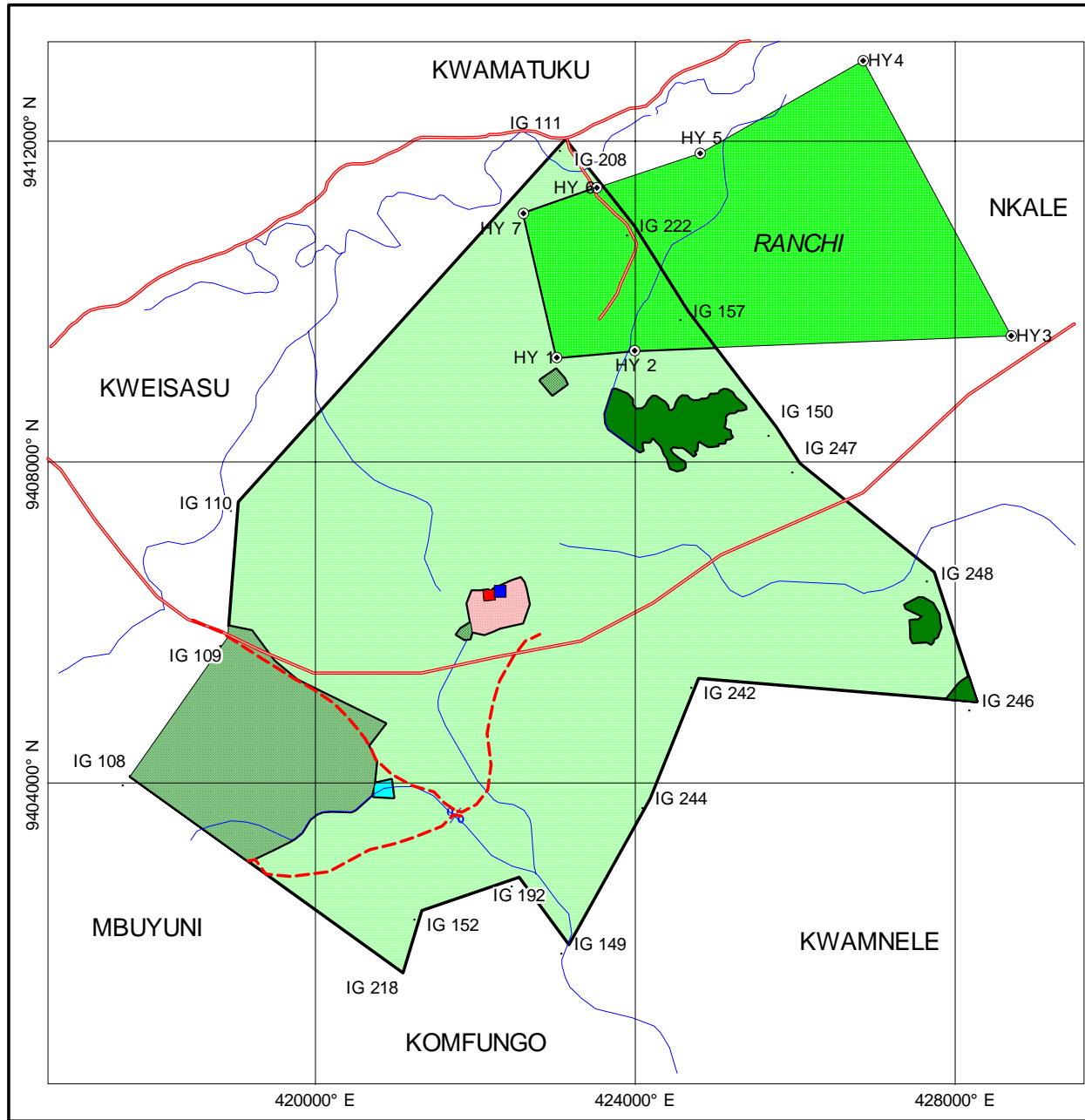








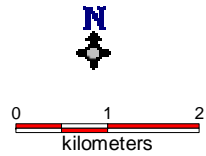




MPANGO WA MATUMIZI BORA YA ARDHI BONGI

UFUNGUO

- / Alama ya Jiwe
- Tanki la maji
- % Manywesheo ya mifugo
- Mpaka wa kijiji
- Mto
- Barabara
- - - Njia za mifugo
- Eneo la mashamba
- Misistu
- Eneo la malisho
- Eneo la katikati ya kijiji
- Eneo la Ofisi ya kijiji
- Bwawa
- Eneo la Ranchi
- Makaburi



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| 0 | MKUHLI IDI JABILI/SAMHANDO SALEHE ASHA | 125.3 |
| 0 | MCHELO ALI OMARIMKOMENI BAKARI AMINA | 76.31 |
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| 0 | MSISI RAJABU SALEHE/NGOSO MKOMBOZI FATUMA | 73.3 |
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| 0 | KIZIKO MUSA OMARI/BATULI SEFU | 27.9 |
| 0 | NGAYAMA OMARI HASANI/JUMADARI M'VENJUMA ZUHURA/MSELEMU NASSOR | 61.9 |
| 0 | HAMISI OMARI MASIMBA/HABIBA ALLY/SALIMA OMARI | 30.03 |
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| 0 | DIMWE ADAMU YAHAYA/SOFIA KASIMU | 45.51 |
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| 0 | GAMBO ALI AMIRI/REHEMA IDDI | 41.45 |
| 0 | MPALAHINGWE TIMOTHEO STEPHANO | 30.77 |

Annex 4 - A Sample Certificate of Customary Right of Occupancy