



**Wearing an amulet: Land titling and
tenure (in) security in Tanzania**

**A dissertation presented by Anne Fitzgerald to the Department of Anthropology
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Abstract

Land reform in Tanzania introduced a new National Land Policy (1995) and Land Laws (1999), changing the way land is governed and administrated. The land reform process promoted formalisation of customary land rights as a means to tenure security for the citizens. This ethnography found that possession of a land title does not guarantee tenure security; when land held under customary rights is allocated by the state for investors or encroached upon by the wealthy and well connected. Nevertheless, land titling is undertaken strategically by each of the three groups who form the core of this ethnography to achieve their different goals: MKURABITA – a government sponsored programme, the Community Organisation for Research and Development Services (CORDS) – a pastoralist NGO, and the smallholders and pastoralists village residents, to achieve their different goals. The government of Tanzania are focussed on attracting inward investment, loans and development. Civil society groups promote titling for their members as a defensive mechanism against encroachment and smallholders and pastoralists hope that having a title deed just might swing a case in their favour.

Declaration

I hereby state that this dissertation has not been submitted in part or in whole to any other institution and is, except where otherwise stated, the original work of the author.

Signed _____

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List of Acronyms

| | |
|------------------|---|
| BLC | Board of Land Commissioners |
| CCRO | Certificate of Customary Rights of Occupancy |
| CGRO | Certificate of Granted Rights of Occupancy |
| CBNRM | Community Based Natural Resource Management |
| CORDS | Community Organisation for Research and Development Services |
| CVL | Certificate of Village Land |
| CVL | Certificate of Village Land |
| DLO | District Land Office |
| EARC | East Africa Royal Commission |
| ERM | Environmental Resource Management |
| GDP | Gross Domestic Product |
| GLTF | Gender Land Task Force |
| GoT | Government of Tanzania |
| GPS | Global Positioning System |
| Haki Ardhi/LARRI | Land Rights Research and Resources Institute |
| HDI | Human Development Index |
| IFAD | The International Fund for Agricultural Development |
| ILD | Institute of Liberty and Democracy |
| IMF | International Monetary Fund |
| LHRC | Legal and Human Rights Centre |
| LTSG | Land Tenure Study Group |
| LUP | Land Use Planning |
| MC | Ministerial Committee |
| MKURABITA | Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania. (Property and Business Formalisation Programme). |
| MLHSD | Ministry of Lands, Housing and Human Settlements Development |
| MNRT | Ministry of Natural Resources and Tourism |
| NAFSN | New Alliance for Food Security and Nutrition |

| | |
|--------|--|
| NCAA | Ngorngoro Crater Conservation Area Authority |
| NGO | Non-governmental Organisation |
| NLC | National Land Commission |
| NLP | National Land Policy |
| NORAD | Norwegian Agency for Development Cooperation |
| NVRS | National Village Re-settlement Scheme |
| PLUM | Participatory Land Use Planning |
| PWC | Pastoral Women's Council |
| RLO | Regional Land Office |
| SAGCOT | Southern Agricultural Growth Corridor of Tanzania |
| SPILL | Strategic Plan for the Implementation of the Land Laws |
| TANAPA | Tanzania National Parks Authority |
| TIC | Tanzania Investment Centre |
| TNRF | Tanzania Natural Resource Forum |
| TR & D | Tropical Research and Development Inc |
| UCRT | Ujamaa Community Resource Team |
| UNDP | United Nations Development Programme |
| URT | United Republic of Tanzania |
| VICOBA | Village Bank |
| VLUP | Village Land Use Plan |
| WMA | Wildlife Management Areas |
| WSRTF | Wildlife Sector Review Task Force |

Wearing an amulet: Land titling and tenure (in) security in Tanzania



Figure 1 Devotional Scapular of Our Lady of Mount Carmel

Catholic religious objects blessed by a priest and worn as a sign of devotion to the faith and protection against losing the faith.

'amulets – were magically potent objects worn for protection against witchcraft, illness, the evil eye, accidents, robbery, etc., also to enhance love, wealth, power, or victory. Houses, walls, and towns could be protected in the same way. Any kind of material might be employed: stones and metals as well as (parts of) animals and plants, since, to every sort of material could be attributed an inherent 'magical' virtue.... Belief in amulets remained active in Greece and Italy in all classes of the population throughout antiquity and into modern times' (Oxford Dictionary of Classical World 2007).

Introduction

It is easy to grab land without title, when you have a case you are asked to 'bring evidence'. You cannot fight without a title. Land grabbing happens through titles, because not many people have them. It is so costly most people cannot afford one (Interview with Shilinde Ngalula, Human Rights Lawyer, Arusha, Tanzania 3rd June 2013).

The words of my informant illustrate the precarious nature of land tenure and the importance of providing documented evidence in the form of a land title in Tanzania not least, if disputes arise and the case is heard in court. The situation as described by Shilinde is paradoxical. Land titling provides tenure security for those who have the means to formalise their rights to land, which is a minority of Tanzanian citizens, while the majority continue to have insecure land rights under customary tenure. Customary tenure is a form of land holding which involves communities using traditional norms to guide decisions on land related issues. John W. Bruce, a World Bank tenure expert defines customary law as:

A body of norms generated and enforced by a traditional, sub-state polity and governing the actions of its members [*that*] may or may not be recognised by national law. Customary rules are best not regarded as informal, because they enjoy social sanction by a polity. They come with administrative institutions and powerful advocates and have deep cultural resonance (Bruce, 2007:13 cited in Rachael Knight 2010:20).

Today in Sub-Saharan African countries, the majority of the population possess their land through customary tenure, without formal documentation, registration or recording of ownership or interests in land. Camilla Toulmin (2008) indicates that 'most land in sub-Saharan Africa has no formal documentation of who owns it or has rights to use it' (2008:11). Liz Alden Wily (2012) suggests that less than 10% of African populations have formally documented land rights and that 'most titled properties are in cities and towns', thus leaving the remaining 90% under customary tenure (2012:2).

In 1991, a land reform process was initiated in Tanzania, which culminated in land policies which encouraged rural land holders to formalise their customary land rights, through gaining land titles. Formalisation, in the context of Tanzania, does not entail freehold rights in the Western legal sense. Freehold title pertains to ownership of immovable property, such as land or structures on land, which are owned outright without conditions, for an indeterminate duration. Tanzania land law allows the registration of occupation rights, similar to leasehold rights and provides for the granting of land titles in the form of certificates of occupancy, to individuals or corporate entities (Alden Wily 2003:25). All land in Tanzania is public land and can only be leased from the government, with 'radical title' or ultimate title held by the President in trust for the people (URT 1994a:19, Alden Wily 2003:25). My research focused on the subsequent experiences of land formalisation for two groups of rural Tanzanians; small holder farmers in Manyoni district, Singida, central Tanzania, and pastoralist Maasai in Monduli district, Arusha region, northern Tanzania.

This thesis examines the relationship between land formalisation, as a means to gain tenure security for small scale agricultural producers, and the forces which undermine this tenure security by dispossessing those small scale producers from their land. I argue that land titling is a tool which can be utilised as a defence against appropriation by the state, foreign corporations or by neighbours. But it is important to note that the ability of the title holder to successfully defend their land rights is heavily influenced by their capital resources and gendered social status. Social status structures how the individual can access those vital capital resources, be they economic, social or cultural. My research illuminates how the possession of a land title has limited purchase when confronted with well-connected and wealthy adversaries, but despite this shortcoming, village residents will gladly accept titles as a protective device. Land titles are more

akin to ‘amulets’ representing an aspiration for protection against dispossession and an insurance policy when protection fails.

In order to understand the impact of formalisation, I will examine the responses of three key agents; the state bureaucracy, subsistence agricultural producers, and civil society organisations, to the opportunities presented by the land reform process, during its development and in its subsequent implementation. Each of these groups employed whatever strategies that were within their power to gain the maximum advantage from the reformed policies and laws.

In this thesis, I refer to the ‘state’ in the knowledge that the existence of the state is subject to debate among scholars. For Max Weber, the state is an entity defined by its power to control a specific territory and its population through the use of legitimate force (Mitchell 1999:81). James Scott (1998) argues that the modern state attempts to centralise power and enforce uniformity onto diverse local social and economic practices. Local variations in agricultural methods, customary tenure and patterns of movement are eliminated in favour of systematic and standardised practices. The state project is one of ‘legibility’ systematising populations in order that they can be understood and observed. Ultimately, the system facilitates the tying of property and land to owners and therefore the population becomes more amenable to state control and revenue collection.

But the Weberian attributes of the state and Scott’s concept of centralized authority have been subjected to scrutiny and found to be an unsatisfactory definition of the concept of the state (Abrams 1988, Mitchell 1991, Gupta and Sharma 2006). Philip Abrams (1988) maintains that the state is an ideological construct, it does not exist in an empirical form, but is the mask behind which political practice takes place and a site

of struggle for power. Abrams (1988) draws an important distinction between the 'state system', which includes the bureaucratic practices of government, dominant in most societies, and the 'state idea' as an ideological concept. According to Abrams the state system comprises 'a nexus of practice and institutional structure centered in government... a state idea, projected, purveyed and variously believed in' (1988:82). Timothy Mitchell (1991) approaches the state in a similar vein, arguing that the presentation of the state as a 'free-standing agent, issuing orders' with the power to regulate and control which it extends into society, is false (1991:95). The state is not a separate structure, outside of society, rather, Mitchell argues the state is the effect of practices, as exemplified by the arrangement and administration of organized groups such as armies, schools and bureaucracies (1991:94). Akhil Gupta work resonates with Mitchell's assessment, which rejects the prevalent scholarly reference to the state as a 'cohesive unitary entity' (2012:45). Gupta argues that the state is rather 'characterised by various levels that pull in different directions' (2012:46). The sometimes contradictory attitudes of senior district officials in Manyoni and Monduli and senior staff at MKURABITA as revealed in Chapter Two and Chapter Three presented an example of this ideological disagreement between the various levels of the 'state' involved in land formalisation programmes. The particular value of 'An ethnographic focus, perhaps more than any other approach, makes evident that the materiality and solidity of the state dissolve under scrutiny' (Gupta 2012:45).

Gupta and Sharma (2006) argued that the cultural dimension of state-systems has been neglected by political science scholars. Thus, Gupta and Sharma (2006) point to the potential of anthropology to reveal the cultural constitution of the state and the local interpretations of the relationship between citizen and state. Anthropological research can interrogate the mundane bureaucratic practices of state operations, which are the

means through which the idea of the state is projected and most citizens of a nation-state directly experience the state system. In this thesis, I will focus on the mundane enactment of formal policies, laws and bureaucratic processes which support the belief in the existence of the state. Following from this, I will examine the local perceptions of state power and purpose with regard to policies and laws which affect land rights.

The objectives of the Tanzanian land reform, as outlined in the official record, are to promote land markets which are accessible to national and foreign investors and to encourage the formalisation of land holding to achieve tenure security for its citizens (URT 1995a, Sundet 1997). These two objectives are not always compatible and when they clash, small scale producers are usually on the losing side of the struggle. Foreign or national investment in large scale commercial agriculture is endorsed in the National Land Policy (1995) and agricultural policies, such as Kilimo Kwanza, as essential for economic growth in Tanzania. A key recent example is the G8 New Alliance for Food Security and Nutrition (NAFSN) which is a programme of action to improve agricultural productivity in Africa, through private foreign investment (NAFSN 2013-2014). In Tanzania, this programme focuses on policy reform to facilitate private sector involvement in every aspect of the agricultural value chain, from seed production and agricultural machinery to marketing (NAFSN 2013-2014).

Indeed, this discourse has been the official policy since the colonial period (East Africa Royal Commission 1953-1955, Nyerere 1967, URT 1995a, URT 2009a, SAGCOT 2015). From the 1950s onward, development of the agricultural sector was envisioned as moving out of subsistence agriculture towards capital intensive, commercially oriented, mechanised production, with an emphasis on foreign investment. This model has been a priority objective of government agricultural programmes in the belief that

it will result in much needed economic transformation. In order for African governments to attract inward investment into agriculture, land markets must provide tenure security through formally-documented, unambiguous property rights (Byamugisha 2013). This thesis demonstrates that this policy approach, which privileges large scale investment, results in tenure insecurity for both small holder farmers and livestock herders. Lorenzo Cotula et al found in their research that ‘Many countries do not have in place legal or procedural mechanisms to protect local rights and take account of local interests, livelihoods and welfare’ (Cotula et al 2009:7).

Early on in my fieldwork, this mismatch between the discourse of tenure security through titling, and the actions taken by state bodies, which undermined tenure security, was revealed when I entered my research site in Manyoni district. My research in Manyoni district was designed to investigate two issues. Firstly, I wished to examine whether three village communities who had undertaken a government supported land formalisation programme were experiencing enhanced security through the certification of their land. This particular government programme is popularly referred to by its Swahili name MKURABITA (Swahili acronym for Business and Property Formalisation Office). Secondly, the research intended to uncover whether the certificates acquired, called the Certificates of Customary Rights of Occupancy (CCRO), were being utilised as collateral for loans. By doing so, I wanted to understand how the village residents perceived their security of tenure before and after MKURABITA, and to examine their perspective on the promised loans for ‘development’.

In 2009, MKURABITA had arrived in the villages, promising land titles, loans and development. The smallholders underwent all the necessary procedures to gain their

certificates, including the mapping and demarcation of the entire village, filling out application forms and taking photographs of the occupiers for their identification on the certificates. Mr James Benjamin, the Village Chairman stated that most of the owners of land parcels, perhaps as much as 90% had completed all the requisite administrative procedures to gain a land title for their farms, a Certificate of Customary Rights to Occupy (CCRO). However, at the closing ceremony, to celebrate the completion of the programme, a mere eleven out of an expected two thousand plus certificates were handed out by local dignitaries (Interview with Enock Msimbira Ward Councillor 8th March 2013).

In March 2013, I arrived at the town of Ilala, the nearest town to my village field sites, to begin research into the local experience of formalisation through MKURABITA. On the first day, I was greeted with the news that the village smallholders had not received their ‘Certificates of Customary Rights of Occupancy’ four years after the programme had completed the registration process. My research plan was rendered invalid, and I questioned what I could achieve if the informants did not have any certificates. I consoled myself remembering that of all research methods, anthropological research should be closest to the everyday experience of change, flux and it is not a tightly controlled experiment. I adjusted my questions to gauge the reactions of the villagers towards the delay in the certificates and to question what plans if any they had once they would receive them. The responses of the smallholders demonstrated their intense disappointment at the delay with the certificates, Veronica, a small holder farmer in Kiwawa summed up the responses;

MKURABITA has lost its meaning. People have even stopped respecting the land use planning done during the exercise (Kiwawa, 10th March 2013).

This unexpected outcome offered a glimpse into power dynamics which existed between the village communities and the authority structures of the state. To my surprise, some village residents and local leaders asked me if I could help them get their land titles (CCROs). I assured them I could not as I had no power to influence MKURABITA to give them their certificates. This turned out to be only partially true, as I later found out.

The MKURABITA programme Co-Ordinator had requested that I would share my research findings with their office. I sent my draft report to Denis, my research assistant and translator, for his observations. His only comment was that the report ‘was very strong’ in terms of how the disappointment of the village community was communicated. Denis asserted that it should have a ‘big impact’ on the ‘important’ leadership in MKURABITA in Dar es Salaam. When I probed him further, he explained that when a foreigner writes a report, attention is paid to it by the authorities. I was concerned that the attention might be negative but he assured me that the report would not reflect badly on my work or endanger the research. My detailed report was emailed to MKURABITA and it clearly related the frustration experienced by the smallholders over the delay with the certificates. I heard nothing back about my report for several months, until the Coordinator of the MKURABITA confirmed it was received. In 2014, as soon as I arrived in Tanzania, Denis and I planned a visit to Manyoni district. The first stop was the district headquarters where we were greeted by two officials including the Land Officer, who proudly showed me the hundreds of certificates ready and waiting to be distributed to the villages. The officers explained that they had worked long days and late into the evening to get them finished in time. I was told by the officer that this flurry of activity had happened because I, as a foreigner, had written a report exposing the lack of certificates in the villages. This

situation made me feel quite uncomfortable as I realised that I was being perceived by the District Council officers and the MKURABITA leaders, as having power and influence with some higher authorities because I was a foreigner. This insight reminded me of Bourdieu's (1986) claim that cultural and social capital are used strategically to reproduce the dominance of groups. MKURABITA reacted to my report by sending one of their officers to Manyoni to help the District Council officers to finalise the certificates in time for my visit, thus confirming that the initial perception by the villagers of my being a powerful foreigner was indeed correct. The evidence of that power lay in front of us on the table, embodied in the physical certificates. This also revealed underlying power relations between MKURABITA and the village communities who had requested to have their certificates for years, but whose pleas had gone unanswered. I asked myself, why should a foreigner be listened to rather than the citizens of Tanzania residing in Manyoni district? This vignette mirrors one of the key themes of this research; the official neglect of the needs of small holder producers for tenure security, despite land reform policies designed to promote tenure security. Why were the repeated pleas of the village communities of lesser significance than the words of a foreign researcher? Why and how this occurs were important questions worth investigating in this research. The series of events leading up to this point will be explored in more detail in Chapter Two. In order to understand the present day high levels of tenure insecurity expressed by informants, an analysis of the formation of and implementation of the land policies and laws will be undertaken in Chapter One. The specificity of tenure insecurity, as experienced by smallholders, pastoralists and women, will be examined separately in Chapters Two, Three and Four respectively. Tenure insecurity affects each group differently, smallholders are coping with a reduction in the land available for allocation and a growing population, pastoralist lands

are affected by conservation regulations and laws, which are rapidly taking over large areas of pastoralist grazing pastures (Nelson 2012b, Nelson et al 2012). According to Fred Nelson, a long time scholar and land activist, national parks and reserves were carved out of pastoralist lands (see Annex B). ‘When the colonial and post-independence governments established national parks and game reserves in these customarily owned lands, local people were evicted and rights of occupancy gradually extinguished’ (Nelson 2012b:2). This is causing migration out of pastoralist areas and ultimately, conflict with farmers. Women’s share this land loss alongside their male relatives, but experience a double burden of curtailment of their access to land through inheritance laws as defined by codified customary law and religious law, which discriminates against female heirs (URT 1995b).

Tenure insecurity has led to conflict over land within families and communities between migrants and long standing residents, sometimes ending violently, which is acknowledged in government policies, media reports and academic researchers (URT 1995a, Olengurumwa et al 2012, Odgaard 2006). Land reform was undertaken to remedy this situation, but has encountered obstacles on the path to achieving tenure security. The following section will historicise the experience of land reform in Tanzania.

Locating Land Reform in Tanzania

In 1991, Tanzania was one of many African countries which embarked on a land reform process. According to Elizabeth Alden Wily (2012) since 1990, thirty-two Sub-Saharan African countries have commenced land reform processes, with Tanzania being one of the first to complete the reform of land policies and laws. Land reform has been undertaken by governments to both redress past colonial and post-independence inequality in land holding and to streamline land administration. Frank Byamugisha

(2013) records that the colonial legacy of inequality in land holding and the application of a dual land tenure system has impacted negatively on African societies. The result has been ‘land concentration and inequality’ and contests over land rights (Byamugisha: 2013:69).



Figure 2 Map of Administrative Regions

Tanzania is the largest country in the East African region with a population of 44,926,923 persons and a land mass of 945,090 sq kms (URT 2012b:3). The United Republic of Tanzania (URT) is the political union of the mainland of Tanganyika and the island of Zanzibar. Prior to independence, Tanganyika was a colonial protectorate under British Trusteeship, and the island of Zanzibar was under control of the Sultanate of Oman. The population is mainly rural based with agriculture the main source of livelihood, employing 80% of the workforce, providing 80% of exports and 25% of GDP (Milder et al 2013:6, Ashraf 2011:1). According to the World Bank, Tanzania has enjoyed high economic growth over the last decade, growing annually by over 6.5% for most years (World Bank 2015 online). However, that growth has not raised living

standards significantly and Tanzania remains among the least developed nations, in 2013 ranking 151st out of 187 on *The Human Development Index* (HDI) of the United Nations Development Programme (UNDP: 2014). It is estimated that one-third of Tanzanians live below the basic needs poverty line¹ and well below the international poverty line². Poverty is concentrated in rural Tanzania where the vast majority of Tanzanians live and practise pastoralism or subsistence agriculture. According to the African Development Bank report on agriculture in East Africa, Tanzanian farm size averages 2 hectares (Adeleke et al 2010).

Upon attaining independence, Tanzania, in common with many African countries, inherited a dual tenure system referred to as legal pluralism. Legal pluralism in the colonial context, meant the provision of statutory land rights for European settlers and businesses and for a limited number of African property holders, whilst the majority of ‘natives’ were permitted to occupy land under their customary arrangements (URT 1994a:9, Rwegasira 2012:58). The Governor held radical title, or ultimate ownership of all lands, while the African occupants were permitted to remain there at the discretion of the authorities (Rwegasira 2012:55). Statutory rights were granted in urban areas to European settlers or for commercial agricultural estates, whilst the vast majority of Africans were relegated to customary land holding which had no legal protection (Rwegasira 2012). This dual legal system institutionalised inequality in land holding between European and African, urban and rural residents. The dual legal system remained in place after independence until the land law reforms were enacted in 1999.

¹ Basic needs poverty line is a tool for measuring poverty. The basic needs poverty line is the line below which a person is living in poverty. To ensure basic survival a calculation is made of the cost of acquiring adequate food, 2,100 calories per day, clothing and shelter, calculated in each country using local prices for goods (Haughton and Khandker 2009:40-42).

² International poverty line is the global poverty line, since October 2015 is \$1.90, prior to this was \$1.25. Poverty Tools website. Available at:<http://www.povertytools.org/> (Accessed 26 Jan 2017).

In 1967 the post-independence government, headed by President Julius Nyerere, began an experiment in socialist policies, during which self-reliance and national ownership of natural resources were emphasized. The Arusha Declaration (1967) introduced Nyerere's political philosophy of socialism from an African perspective. The Declaration initiated a Leadership Code which forbade politicians from engaging in any business ventures, i.e. holding shares in companies, or holding assets which accrued rents, such as land or houses (Nyerere 1967). Freehold titles which comprised a small number of land titles, were abolished and replaced with leasehold (URT: 1994a). Private agricultural estates were nationalised and became state enterprises or parastatals and subsequently, many European settlers abandoned their farms and businesses (URT:1994a). Dispersed communities were obliged to move into socialist villages to undertake collective farming. This transfer of population was called the Ujamaa Policy or Villagisation (Moore 1979, URT:1994a). Nyerere (1968) posited that living in villages would restore past traditions of 'Ujamaa' or 'familyhood', where 'villages would be rural economic and social communities where people live together and work for the good of all' (Nyerere 1968, cited in Lorgen 2000:178). Estimates for the numbers of people who moved into villages vary from five, to thirteen million (Lorgen 2000:178). Customary land rights of families and individuals which were traditionally under the control of clans and lineages, were transferred to elected village officials (Rwegasira 2012). Socialist policies failed to boost agricultural production, and Schneider (2015), notes that in the 1970s, food imports and food aid increased dramatically. State enterprises proved to be poorly managed and a drain on the resources of the state (Schneider 2015). Tanzania slipped deeper into poverty and was in danger of famine, when Nyerere reluctantly gave into the demands of the International Monetary Fund for liberalisation of the economy. Socialism as designed

by Nyerere collapsed (Schneider 2015). According to Brian Cooksey (2011:26) by 1985 when Nyerere stepped down and his successor Ali Hassan Mwinyi took over, a complete change of political and economic direction for Tanzania was set in motion by the new President. President Mwinyi (1985-1995), popularly nicknamed Mzee Rukhsa (Anything Goes), supervised the transition out of socialist economic policies, relaxing import restrictions and encouraging private enterprise, as the liberalisation of social and economic life was encouraged (Schroeder 2012:54). However, liberalisation of the economy increased corruption as the privatisation of national industries, plantations, and property presented an opportunity for accumulation by national elites. A Presidential Commission of Enquiry into Land Matters, popularly known as the Shivji Commission (1994) (and is called from here on) investigated land conflicts during the 1990s and found that conflicts emerged as the tensions which lay below the surface during the socialist era erupted and were brought out into the open. Land disputes resulting in violence, became an urgent issue for the government. The Shivji Commission (1994a) found that plantations that had been nationalised in the 70s were subsequently occupied by Ujamaa villages or squatters who moved onto the land in the 1980s. These villagers found themselves evicted from the land they had occupied, when the plantations were sold during the privatisation drive often to foreign companies. At public hearings conducted by the Commission, people ‘spoke bitterly of land being given away to foreign ostrich breeders’ or flower growers while the subsistence producers were left without a home or land to feed themselves (URT:1994a:62). Beginning in 1991, land reform in Tanzania was initiated to harmonise land legislation, to provide stronger protection for customary rights holders and to facilitate the development of a land market (Sundet 1997). According to Rwegasira (2012), Tanzania’s land reform process did not attempt to undertake any re-

distribution or restitution of land, nor did it endeavor to change the basic land tenure system. Instead, the reform process, changed the land laws and administration and should therefore be referred to as the ‘land law reform’ (Rwegasira 2012:48). The new laws, the Land Act No. 4 and Village Land Act No. 5, increased the legal protection for customary rights, formalised the status quo and devolved a limited authority over land to village governments (Wily Alden 2003, Rwegasira 2012, Shivji 1999). All land under the new laws remains public land, held in trust by the President for the people of Tanzania, as has been the case since the colonial era (Rwegasira 2012). The Village Council, elected by the Village Assembly, comprising of all adults over 18 years in the village, was granted authority to administer land in the village. The Village Assembly was granted the right to be involved in the demarcation of village and farm boundaries and to approve all land allocations prior to registration. This assembly was also expected to be consulted on any issues pertaining to land required by the government for ‘development purposes’, such as sites for health facilities or industrial enterprises. Village Land Councils, a sub-group of five members of the Village Council were given responsibility for mediating land disputes. Thus, in principle, the land laws devolved power over land administration to the village level. However, in actual practice, divesting the district and central government of power of land allocation has been only partially achieved, despite these aspirational policies and laws. Limitations were built into the land laws to minimise the power of the local village residents over their land. Firstly, the Village Council must seek approval from The Commissioner of Lands, who acts on behalf of the President, for the registration of land and bylaws. The Commissioner of Lands is appointed by the President as a Principle Administrative Advisor on land matters. Secondly, the Village Land Council has no legal power to impose sanctions in land disputes. This power lies solely with the higher levels of the

court system. Therefore, village land administration is subordinate to local and central government.

Methodology

This research involved two case studies. The first took place in three villages, Songambebe, Kiwawa and Mlala in Manyoni District, Singida Region, central Tanzania (see Annex A). The case study methodology provided a useful framework for study of the topic of land formalisation. Case study methodology employs detailed contextual analysis of an event or a social issue in its contemporary manifestation. Robert Yin (1989) defines the case study as

an empirical enquiry that: investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evidence and in which multiple sources of evidence are used (Yin 1984:23).

Using the case study method of multiple sources, documented laws, evaluation reports and news media in addition to interviews was essential to understand the interwoven structures and processes, local, national and international, and the shifting relationship between the official rules and procedures and the everyday practice. Gupta (1995) points to the importance of vernacular and English language newspapers as a means to gauge how ‘daily life is narrativized and collectivities imagined’(1995:385). Gupta found that local newspapers often carry news reports which are unavailable outside the region.

The first case study in Manyoni district involved the government led land formalisation programme, MKURABITA as introduced above. The MKURABITA programme was inspired by the development economist, Hernando de Soto. De Soto was hailed as the foremost proponent of land formalisation with the publication of his book *The Magic of Capital, Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000).

According to de Soto (2000) formalising the assets of the poor will allow them to be used as collateral for loans to develop their property or business, release entrepreneurship and opportunities for development will follow. De Soto's ideas came at the beginning of the twenty first century, when land reform had returned to the policy agenda in Africa 'to an extent unknown since the liberation struggles of the 1960s and early 1970s (Lahiff 2003:21). De Soto has been widely criticised by academics in the field, and later research on titling programmes in many developing economies has proven his formula for economic transformation to be deeply flawed (Reeve 2001, Gilbert 2002, von Benda-Beckmann 2003, Royston 2004, Graner 2005, Cousins et al 2005, Rutten 2009). This has not prevented his ideas from remaining influential outside of academic circles, for example, de Soto has advised thirty heads of state including El Salvador, China, Libya Tunisia, and the Tanzanian government, to name but a few (van der Molen 2012:1). Despite the compelling evidence on the shortcoming of titling as a 'silver bullet' to achieve 'development', government leaders, donor and financial institutions rushed to join de Soto's formalisation crusade. The MKURABITA programme in Tanzania was developed out of this biased enthusiasm.

In September 2003, the third President of Tanzania, Benjamin Mkapa (1995-2005) invited Hernando de Soto to present his theory on the link between formal property rights and development and his model of accessible and locally appropriate formalisation of the property of the poor to a seminar for Ministers, senior civil servants and the media (Mkapa 2003). After the seminar, his economic think tank, the Institute of Liberty and Development (ILD) was engaged to design a programme for Tanzania. In this context, in November 2004, the MKURABITA Programme was established.

Seraphia Mgembe, the Coordinator of MKURABITA explained that the most important objective of formalisation in the view of MKURABITA is to create an enabling environment for development, through access to financial markets for rural smallholders and businesses, rather than merely titling land or businesses (Interview with Coordinator 31st January 2013). As noted in the preceding vignette, MKURABITA completed a series of pilot projects formalising land parcels in villages across the district in 2009. The village residents reported that without MKURABITA they would not understand the value of land, the regulations and procedures involved in formalising land, nor would they have the means to pay the necessary costs involved. The second case study explored in my research took place in villages in Monduli district, Arusha region northern Tanzania. The villages of Olomotoi, Mindoi, Nangolo, Lengai and Iramba formed part of the research (see Annex A). This case study was facilitated by a Maasai advocacy organisation, the Community Organisation for Research and Development Services (CORDS), which coordinated a village land certification programme, assisting the village to gain a Certificate of Village Land (CVL). The Land Rights Programme of CORDS assisted pastoralist communities in having their villages demarcated and in gaining the Certificate of Village Land (CVL) in Monduli, Longido, Kiteto, and Arumeru districts. My original research plan was to undertake a four-month internship during which time I would study both villages which had already received their certificates, and those which were about to embark on this process. This research plan was subsequently revised when CORDS had to cancel many of their activities due to delays with donor finance. As a result, I re-focused my research plan and subsequently, a boundary dispute between two villages became the main thrust of the research. In addition to this dispute, a second issue of relevance to my research was explored in the village of Nangolo, which had previously gained a

Certificate of Village Land (CVL) but was subsequently de-registered and divided by the District authority. The NGO, Community Organisation for Research and Development Services (CORDS) viewed land titling as a potential solution to land conflicts and as a pre-emptive measure against encroachment on village lands. The smallholders and livestock herders, the target of these programmes, had their own interpretations of the value and utility of land titles which will also be captured in this thesis.

Thesis Questions

The research asked two key questions: firstly, can land formalisation provide security of tenure to small holder farmers and livestock keepers? Secondly, can gaining land titles lead to increased access to loans for ‘development’ for the rural poor in Tanzania? Tenure insecurity caught my attention and became a major theme of the research. In Manyoni district my informants’ experience of tenure insecurity related to the growing competition over land for grazing and for growing crops. Disputes erupted between village neighbours, with ‘strangers’ and within families. In Monduli district, the land dispossession was keenly felt by pastoralists in relation to communal grazing pastures given over to conservation enterprises and commercial farming (Benjaminsen and Bryceson 2012). This provoked closer scrutiny of the regulations and laws relating to wildlife resources as they contributed to the pastoralist’s experience of tenure insecurity. As the research progressed, gender divisions presented themselves for scrutiny as the different outcomes of land titling for men and women assumed greater importance as in both districts. Female informants had particular problems gaining access to land on an equitable basis with their menfolk.

Imagining Tradition

It is important to consider the nature of customary tenure and to examine why the formalisation of customary arrangements has become an important component of land reform in Tanzania. Three factors about customary tenure in Tanzania must be noted; firstly, while customary tenure refers to the traditional arrangements of members of the 120 ethnic groups which make up Tanzania's population, these arrangements are not static and have been influenced by changing conditions in social and economic life, during the colonial, socialist and neoliberal eras. Secondly, villagisation has created a diverse population dispersed throughout the villages of Tanzania, many of whom live far from their 'traditional' territories and reside alongside other ethnic groups, which has impacted on traditions (URT:1994b). Thirdly, customary tenure was codified into the Local Customary Law (Declaration No. 4) Order passed in 1963 (URT 1963). This codified one form of patrilineal inheritance practice into a set of binding rules and applied these rules to all patrilineal ethnic groups in Tanzania in law. The code excluded matrilineal groups, but in practice the code was interpreted to mean that all groups were obliged to follow the prescribed rules.

What exactly does the term customary tenure mean? The anthropologist Lucy Mair, reviewed the literature pertaining to land tenure among diverse groups, across the East Africa region during the 1930s. Mair's (1931) research demonstrated that communal ownership did not mean that individuals lacked rights to land as was assumed by European colonial officers. Rather, land was not a commodity in terms of a land market, but instead, individuals had access to cultivation rights, 'the most concrete relationship between individuals and land is that created by actual cultivation' (Mair 1931:315). Mair found 'a scale of rights' pertaining to land among the people she encountered (1931:316). There were two distinct categories of rights, the right to use,

and the right to dispose of land. The minimum level of rights was a 'land to the tiller' the right to cultivate land whereby individuals could decide for themselves about which crops that they grew, but those rights could be lost, if they ceased cultivating. There were usually some gift giving obligations but otherwise they could dispose of their harvests as they wish. Some groups within these societies, i.e. clans or lineages, held on to their right to the land even if not actively using it and could lease it to others on a temporary basis. The next level of control over land pertained to those individual chiefs or group of elders who could apportion land among the members of the group. At a higher level again, chiefs could allocate land to non-members, mediate disputes or dispose of land to outsiders, although this was a rare occurrence (Mair 1931).

Mair noted that over time social change had altered how land was perceived, as 'land is no longer a unique commodity; it can be exchanged for money' (1948:186). Mair (1948) observed that both the use of the plough and hiring labour had accommodated larger scale production leading to competition for land as land became a scarce commodity through alienation and the natural increase of population. Mair noted that land sales were common despite customary prohibitions. Those who could allocate land had benefitted from the rising monetary value of land and this raised the stakes for the securing of land rights.

However, the nature of what is defined as 'customary tenure' is challenged by various scholars of history (Chanock 1991, Mamdani 1996). According to Mamdani (1996) during colonisation, European administrators imposed the legal systems of their own countries on their subjects, but found it a practical necessity to involve local authorities in the administration. Chiefs and headmen were co-opted as both judge and jury on

everyday matters of law and order. According to Joseph Osogo Ambani and Ochieng Ahaya (2015),

the British accepted African customary law and religion to some extent, but also riddled it with the so called ‘repugnancy clauses’, in order to avoid those aspects of African customs that European culture found most appalling, ridiculous, or simply unhelpful to the inculcation of Christian ideals (Ambani and Ahaya 2015:47).

The repugnancy law was used to prohibit local practices not acceptable to the European values, i.e. practising witchcraft. Thus, indirect rule by the colonial authorities distorted indigenous political and social systems. What is described as ‘customary’ in post-independence Africa is not simply pure tradition handed down intact through generations, rather constitutes a much altered and diluted version of the past. Colonial powers exploited and manipulated local custom to suit their own agendas, trade or exploitation of resources (Mamdani 1996, Peters 2013, Chanock 1991). Mamdani (1996) argues that colonial rulers increased the power of traditional chiefs, giving them proprietary rights over land, overturning customary norms and creating ‘chiefs’ in societies which did not have any functionaries which resembled ‘chiefs’ to facilitate ‘indirect’ rule.

In 1965, President Julius Nyerere, began writing the blueprint for his philosophy of ‘African Socialism’ which was a more nuanced form of social engineering. Nyerere expected that ‘African Socialism’ would guide post-independence Tanzania to development, through socialism. Nyerere (1968) invoked African customary tenure whereby land could not be sold, but should always be available to those who wished to cultivate, and therefore was not to be viewed as a commodity. In *Ujamaa: Essays on Socialism*, Nyerere (1968) wrote;

To us in Africa land was always recognised as belonging to the community. Each individual within our society had a right to the use of land, because otherwise he could not earn his living and one cannot have the right to life without also having the right to some means of maintaining life. But the African's right to land was simply the right to use it; he had no other right to it nor did it occur to him to try and claim one (Nyerere 1968:7-8 cited in Rwegasira 2012:67).

Thus, Nyerere encouraged 'land to the tiller' rights and prohibited land sales as the basis for his socialist political project. Under socialism, all land belonged to the state and all citizens were entitled to land to cultivate (Rwegasira 2012). Their use rights to land were dependent on making productive use of the land.

Sally Falk Moore (1978) studied 'the semi-autonomous social fields' of the Chagga kinship systems in Kilimanjaro in the 1970s, in order to understand the power of state legislation to affect or change social rules deeply embedded in Chagga identity (1978:54). The socialist state was intent on re-engineering social relations by removing the 'traditional' chiefs and replacing them with elected party members as village leaders and instituting the 'Nyumba Kumi', the 'ten cell' system. The 'ten cell' system involved the appointment of a responsible head of household to manage security issues in the neighbourhood and act as a communication point between the party and the people. Sally Falk Moore (1978) found that despite efforts by the state to replace the traditional lineage system, (which represented competition to state power) it remains the most important and 'effective rule-making and sanction-applying social nexus' for the Chagga residents of Kilimanjaro (1978:72).

A decade later, Parker Shipton (1984), conducted research in socialist Tanzania, among the Sukuma and Nyamwezi, where he found that males retained control of the allocation of land to wives and offspring, and mixed farming and herding was practiced. Members of both societies were assured of their right to access the basic minimum of

land to subsist, with grazing rights on land not in cultivation, alongside free access to firewood. However, continuation of use rights was dependent on ‘compliance with diverse behavioural norms’ (1984:118). If transgressions of social norms took place, the perpetrator’s rights to land was revoked ‘the withdrawal of land privileges was an important means of social control’ (Shipton 1984:118). Land sales, rent and mortgages were prohibited in both societies (ibid).

Shipton (1994) noted that the ‘fundamental principle underlying the land tenure system, exemplified by the Socialist government of Nyerere’s rule, that land should not be sold, was ‘an egalitarian ideal’ for which was needed enough land to guarantee a minimum subsistence for all’ (1994:122). Modern pressures were undermining this ideal, as the hoe was replaced by the plough and cash crops, such as cotton, became important. Land became a source of profit and the resulting competition for land became a matter of concern. Just as Mair noted in the 1940s, as populations grew and the cash economy became more important, economic forces were pushing land rights towards individualisation. This tendency could only be restrained by formal authority at chiefdom and local community levels. Shipton (1994) asserted that the ‘egalitarian ideal’ was lost in the struggle against the superior motivation of ‘accumulation’ by well-connected individuals and corporate groups.

Despite the existence of land markets, official or otherwise, formalising customary land remains controversial. Since the 1950s, influential voices, such as the East Africa Royal Commission Report (1955), Feder and Nishio (1999), Firmen-Sellers and Sellers (1999), de Soto (2000) Deininger (2003), among others, have supported formalising customary land rights. Scholars have argued that formal land rights ensure security of tenure, encourage higher investment in agriculture, and results in more efficient

producers gaining opportunities to increase the productivity of their land (East Africa Royal Commission 1955, Deininger and Feder 1998, de Soto 2000). Research by Bruce et al (1994) in Sub Saharan Africa demonstrated that communal or family based property rights tend to evolve towards individualised land holding, under the pressure of population growth and the commercialisation of agriculture. De Soto (2000) argued that people in poor countries have great entrepreneurial spirit and accumulated assets, such as property, land and businesses, but because those assets are unregistered, they cannot be used productively, and as such they are ‘dead capital’:

Capital, like energy, is a dormant value. Bringing it to life requires us to go beyond looking at our assets as they are to actively thinking about them as they could be. It requires a process for fixing an asset’s economic potential into a form that can be used to initiate additional production (de Soto: 2000:45).

De Soto’s thesis was later criticised as empirical studies demonstrated that formalisation had reduced the security of the poor people, the opposite outcome to what de Soto had predicted (Royston 2004, Graner 2005, Cousins et al 2005, Rutten 2009). De Soto failed to take into account three important factors affecting land tenure; firstly, many countries lack functional legal systems meaning that the poor are excluded from the protection of the state (von Benda-Beckmann 2003, Royson 2004, Joiremann 2008). Secondly, customary tenure regimes which manage resources outside of the formal sector are often more trusted than the formal systems (Bruce 2012, Gilbert 2002, Nyamu-Musembi 2006). Thirdly, de Soto treats the poor as a homogenous group, ignoring social differentiation within the ranks of the poor (von Benda Beckmann 2003, Bruce 2012). As more empirical studies became available for comparison, the World Bank land specialists, Deininger and Feder (2009) concluded that land registration and formalising rights can yield benefits but only when the ‘broader socio-economic governance environment’ are functioning well (2009:256) In those cases, positive

benefits include higher investment in land and less energy spent on protection of land rights, alongside enhanced women's rights to land (ibid). Those benefits do not occur in situations of poor governance or within a 'predatory state' (2009:256).

Loans for Development

The second phase of the research asked the informants about the value of 'loans for development'. Of all of my informants, over 97% believed that using land as collateral for loans was much less important than security of tenure. Only a small number of informants understood that taking a loan could be problematic, i.e. that land could be confiscated by the bank upon default of a loan. Julia Mbembe in the focus group in Nangolo shared her experience of a close relative whose house in Moshi, was almost confiscated by the bank. Her relative had defaulted on the loan, but was saved from losing the house by all the relatives contributing towards the repayment of the loan. The day before the court order to repossess the house was executed, the family gathered all the money they needed (Focus Group, Nangolo, 13th May 2014). Financial institutions in Tanzania are reluctant to give loans on the basis of small 'parcels' of land, although the managers of two financial institutions, the National Microfinance Bank (NMB) and the Savings and Credit Cooperative Organisations (SACCOS) reported that the credit agencies are under pressure from the government to increase mortgage lending using land as collateral. The manager of the National Microfinance Bank (NMB) explained their attitude towards certificates for rural land parcels by saying that 'Banks will not give out loans using CCROs, land is cheap in rural areas, outside the towns, defaults are difficult, you could not sell the property easily' (Mr Mwachali, National Microfinance Bank, Monduli, 2014). Getting into debt could have potentially devastating effects on poor rural communities, yet, the ability to procure loans was considered as a priority objective of the MKURABITA alongside other

international institutions, such as the World Bank, as one of the greatest benefits of land titling (Deininger 2003:1, Byamugisha 2013:36).

Microcredit is often posited as the answer to the need for short-term cash advances for the poor, to help them with their businesses or family emergencies, and in particular, targeting women. In two villages, Songambebe and Iramba women formed a VICOBA (Village Community Bank), a savings and loan association. The members contribute on a weekly basis and can draw out loans at very low interest when needed. Some women were unable to join as they could not afford the weekly commitment to save even those very small amounts, which means that the VICOBA did not reach the poorest villagers. Microcredit has many critics, for example, Duvendack et al (2011) reviewed datasets on microcredit from nineteen countries and found no reliable evidence of microcredit improving the well-being of poor people. The need for short term credit is undeniable, as many informants expressed an interest in having access to credit. However, I argue that using land as collateral for loans is the least desirable aspect of formalisation, as a mortgage market in rural land could rapidly lead to landlessness.

Bourdieu and the Theory of Practice

In order to explore the questions raised in this thesis, mainly related to tenure security and economic development through land formalisation, I engaged with the conceptual framework of Pierre Bourdieu, which offered useful analytical tools for this study. The relevance of Bourdieu for this research was evident to me due to his concern to both resolve the dichotomy of agency and structure, which is a recurrent theme throughout his prolific work starting with the publication of *Outline of a Theory of Practice* (1977) and due to his attention to the persistence in all societies of social inequalities (Bourdieu 1995, 1984, 1986). Bourdieu developed his concepts as he focussed on 'the visible

social world of practice' (Jenkins 1992:66). According to Thomson (2012) Bourdieu observed in his research among the Kabyle, that cultural norms/rules were not the determining factor in the individual's decision making. He found that individuals acted strategically; flexibly responding to their position within the social space in order to achieve the most advantageous outcome (Thomson 2012:44). According to Bourdieu social life is divided into distinct 'fields', i.e. art, literature and science, with each field being a microcosm, which has unique rules and customs, analogous to a sports field (Bebbington 2007:156). The rules are internalised, equipping the agents with the knowledge on how to behave, and thus the agents develop a 'feel for the game' (ibid).

Bourdieu defined the field as follows:

... a structured social space, a field of forces, a force field. It contains people who dominate and people who are dominated. Constant, permanent relationships of inequality operate inside the space, which at the same time becomes a space in which various actors struggle for the transformation or preservation of the field. All individuals in this universe bring to the competition all the relative power at their disposal. It is this power that defines their position in the field and, as a result their strategies (Bourdieu 1998b 40-41 cited by Thomson 2012:72).

However, an agent may occupy different fields and find that their capital resources are valued differently and this may result in a loss of dominance (Hardy 2012). The field, for Bourdieu, is always a site of competitive struggles over capital resources, but not in the economic sense of Marxist theory. Bourdieu (1986) argues that 'it is in fact impossible to account for the structure and functioning of the social world unless one reintroduces capital in all its forms and not solely in the one form recognised in economic theory' (Bourdieu 2006:105-6 cited by Moore 2012).

Bourdieu rejects Marxist analyses of the primacy of economic relations, rather, he conceptualises capital as having three major dimensions outside of the purely economic. Those dimensions, he argues can be defined as social, cultural and symbolic

capital. Social capital comprises the network of social relations, consisting of familial, group or class membership and is the key to accessing material resources, knowledge and influence. Social capital 'consists of claims of reciprocation and solidarity from particular others' (Smart 1993:394). Members are obliged to assist one another and these actions are 'consciously or unconsciously aimed at establishing or reproducing relationships that are directly usable in the short or long term' (Bourdieu 1986:249).

Cultural capital, conversely, consists of the cultivated knowledge, attitudes, aspirations and practices which 'distinguish' one group from another and can be 'used to generate privilege, products, income, or wealth' (Smart 1993:392).

The field of land administration comprises of the legal and regulatory framework, and bureaucratic practice which structure access and rights to land. In this field, both knowledge of the laws and regulations and access to financial resources are usefully deployed to achieve the goal of formalising land rights. Using the concept of cultural capital as a form of 'insider' knowledge, the village communities in Manyoni and Monduli lacked the cultural asset of knowledge of land administration and relied on outside help to navigate the obstacle course to formal land titles. Nor did the village residents have the financial capital to independently pay the cost of having their land rights formalised, nor to engage in corrupt practices to bypass official channels. The major difference between the two groups of agricultural producers, small holder farmers and livestock herders was that pastoralists were able to use 'cultural distinctiveness' as a form of cultural capital, to both band together as an identifiable group, albeit with internal differences, and to attract international support for their land rights. They could mobilise both cultural capital, in terms of branding themselves as being repositories of expert knowledge of a traditional African lifestyle, and thus

accumulate social capital, i.e. networks of Western sympathisers, none of which was available to the people of Manyoni.

In his acclaimed work on 'taste' published in *Distinction: A Social Critique of the Judgement of Taste* (1984) Bourdieu argues that the high value assigned to elite cultural products, for example, works of art or operatic performances etc. is arbitrary and is used to draw distinctions between social classes and to reinforce the dominance of certain social groups. He summarises this idea in the introduction to the book using the phrase, 'Taste classifies, and it classifies the classifier' (Bourdieu 1984:6). Cultural capital is inculcated through early socialisation and is further enhanced by gaining prestigious qualifications (Bourdieu and Passeron 1990). Bourdieu's empirical research in the field of education has been acknowledged as particularly creative and influential (Navarro 2006:15). In *Reproduction in Education, Society and Culture* (1990), Bourdieu with his collaborator John Claude Passeron, tackled the subject of class inequalities in educational attainment and demonstrated how class privilege affected student's performance in higher education. Their privilege/capital was far more indicative of their performance than their natural abilities. Social class determines the level of cultural capital each student possessed upon entering the educational institution. Yet, the education system operates on the premise that all students have equal levels of cultural capital; a necessary attribute in order to succeed in the education system. Lower class students are disadvantaged, but the system treats all students as 'equal' and is considered to be meritocratic, thus 'the system consecrates privilege by ignoring it [...] Privilege becomes translated into merit' (Jenkins 1992:111). This results in the educational establishment contributing to the maintenance of domination and social inequality, as those who have achieved success in the current system are rewarded with credentials which can be utilized to improve

or maintain social status. In Tanzania, educational background structures opportunity to enter better paying jobs, i.e. the upper levels of the civil service, or work in an international company, at senior level in an NGO or become accepted into political elite circles. Having such opportunities structures the possibility to accumulate assets, such as houses to rent in Dar es Salaam which Gloria noted were owned by wealthy local politicians, top civil servants and business people of Indian origin. The village communities struggled meanwhile to hold on to their land, which was for the majority, their only asset.

Social and cultural capital acquisition is combined into the category of 'symbolic capital', as distinct from capital in the form of material wealth and assets. This is where Bourdieu departs from Marxist analysis, as symbolic capital in his metatheory is placed on an equal footing with economic capital, in the reproduction of social inequality and domination. According to Swartz, (1997), Bourdieu departs from Marxism in two important ways, firstly economic interest is expanded to include social and cultural goods and services, and the exercise of power takes multiple forms, 'material, cultural, social or symbolic' (Swartz 1997:73). For Bourdieu, domination is the exercise of power and requires legitimation which is achieved through justifying the status quo as a natural condition and by assigning superior status to the cultural forms of the dominant groups (Bourdieu 1984)

But why are the dominated not simply rising up against their domination? Bourdieu posits that it is due to 'misrecognition' by the dominated. Derived from Marx's concept of false consciousness, 'misrecognition' masks the economic and political interests which underpin social practices and maintain domination. 'The logic of self-interest underlying all practices-particularly those in the cultural domain-is misrecognised as a

logic of 'disinterest' (Swartz 1997: 90). Accumulation of symbolic capital happens within a social world characterised by structural violence. Paul Farmer (2009) exposes the structural violence behind the poverty and inequality experienced by his patients in Haiti. Paul Farmer (2004) calls for anthropologists to look beyond simplistic understandings of social categories of race, ethnicity, gender and to undertake an analysis of power and privilege based not on 'cultural' explanations of behavior or experiences, but acknowledging the primacy of the economic exploitation underpinning structural violence. Farmer argues that 'for many, including most of my patients and informants, life choices are structured by racism, sexism, political violence, and grinding poverty (2004:13). Gupta argues that structural violence against the poorest citizens in India happens not through indifference on the part of the state or local officials towards the poor, but the 'very mechanisms that are meant to ameliorate suffering' which applied rules and procedures in an arbitrary manner which resulted in the exclusion of large numbers of the poorest citizens (2012:24).

The notion of habitus is central to Bourdieu's theory of practice. Habitus is an ambiguous concept, related to class, and can be understood as that which embodies the social position of the agent in the field, and is 'the system of internalised dispositions that mediates between social structures and practical activity, being shaped by the former and regulating the latter' (Brubaker 1985: 758). Habitus is how individual agents or groups act and carry themselves in ways suited to their social position. Habitus is manifested in their physical deportment and the modes of thinking with which they guide their actions, learnt through socialisation and everyday experience. The concept of the habitus was developed during Bourdieu's study of the Kabyle ethnic group of Algeria. Bourdieu observed that the manner in which men and women comported themselves was defined by their gendered position. The superior male

status and the subordinate position of females, was inscribed in their different physical movements and gait (Jenkins 1992:75). The concepts of field, capital and habitus are interconnected, and ‘each are integral to understanding the social world’ (Thomson 2012:67). Human action, for Bourdieu, is the outcome of a complex inter-relationship between the individual and the social environment, or ‘field’ where they are located. Navarro (2006) interprets Bourdieu as assigning all human interactions to maximising the interests of the agents. Even those actions which appear to be altruistic, are driven by the need to further the interests of the agents as ‘all actions in any sphere of human interaction are fundamentally ‘interested’ (even solidarity) whether they are directed towards material or symbolic items’ (2006:14). In this thesis, I am applying Bourdieu’s understanding of the complexity and inter-connection of social life to my own research on land titling in Tanzania. This involves examining how social structures provide a framework, within which human action is constrained, by hierarchies, ideals, rules and customs. Wacquant in an interview with Maguire et al elucidates the relational nature of Bourdieu’s concepts as follows:

Bourdieu proposes that the mental structures of (of habitus) and the social structures (of field) interpellate, respond and correspond to each other because they are linked by a genetic and recursive relationship, the society moulds the dispositions, the ways of being, feeling and thinking characteristics of a class of persons, which dispositions in turn guide the actions whereby those same persons mould society (Maguire et al 2012:51).

Thus although the actions of individuals are constrained by the social position they occupy, individuals exert their agency to adapt to and modify the social structure as they act upon it.

Doing Ethnography

My interest in the topic of land rights and land formalisation began while researching young diamond miners' attitude to education in Liberia in 2008. While reading through documents and reports, I discovered that the Government of Liberia was considering applications for investment by international and national investors amounting to over 8 million hectares of land in one of the smallest countries in Africa. The term land grabbing was penned by the non-governmental organisation, GRAIN, a small international lobbying and advocacy organisation, which supports small holder farmers (GRAIN 2016, Eklof et al 2016). 'Land grabbing' became the popular term used to describe the phenomenon, of investment by foreign corporations into agricultural land in low income countries. That same year the media was reporting incidences of food riots as the cost of basic foodstuffs was causing hunger in many low income countries. Having lived for eight years in both East and West Africa, I was aware of the importance of land for subsistence for the vast majority of the population of these agrarian societies. A couple of acres might be all that lies between a family and total destitution. Thus, I decided to choose to conduct research on how land rights could be secured against the threat posed by large scale land acquisition or 'land grabbing'. Since 2008, those investor applications for Liberian land and natural resources bore fruit. By 2013, Liberia had signed contracts for large tracks of land for palm oil plantations and had handed over 50% of its forest resources to international investors (Ford 2012).

I had a special interest in East Africa, having spent four years working as an English language teacher on Marsabit Mountain in Northern Kenya in the 1980s. I estimate that over 90% of my students at that time came from pastoralist communities, Samburu, who are related to the Maasai, and Rendille, Boran, Gabbra and Somali. Most of my

fellow teachers hailed from the rest of Kenya, and were from Kikuyu, Meru, and Kamba ethnic groups. Those young teachers were unwillingly posted to a place that they considered remote and ‘undeveloped’. I was struck by the low opinion held by my colleagues towards the pastoralist way of life. According to them, pastoralism was a ‘backward’ way of living and had no place in a modern Kenyan state. I often wondered how pastoralists were faring in this new dispensation of international investment in land in East Africa. When the opportunity of doing research in Tanzania was presented to me, I decided to make one of my case studies relate to pastoralist peoples, studying how changes in land tenure relations are affecting one particular pastoralist group, the Maasai of Northern Tanzania.

Doing ethnography requires the ethnographer to seek answers in informal settings as much as through formal interviews, by observing and taking part in everyday life as much as possible. Ethnographic research, as distinct from other forms of social scientific research, focuses on engaging actively in social life and the insights gained through developing relationships with participants. From the vantage point of that lived experience, research connects to the systemic patterns which interpose themselves into everyday life.

My preparations began in Ireland where I started learning Swahili, which I had some familiarity with many years previously. More importantly, I started to develop those very important relationships with Tanzanians which opened doors to the everyday social life in Dar es Salaam. According to Marilyn Strathern (1995) relationships are the rock upon which the fieldwork is built. My Tanzanian language teacher, in addition to language skills, also provided local contacts in Dar es Salaam. One of these was Gloria, who helped me enormously in understanding the urban market in houses and

land. Gloria opened my eyes to the extremes of social differentiation which exist within Dar es Salaam. Through Gloria I attended several Dar es Salaam weddings of the rich and discussed women's positionality and gender relations with some regular customers of her hairdressing salon. Staying in the informal housing settlement of Dar es Salaam with her family, I learnt how urban residents create their own sense of tenure security in the melting pot of residents from diverse ethnic backgrounds.

Despite my teacher's best efforts, I knew that my language skills would not suffice to conduct interviews and therefore, I needed to engage a research assistant. Additionally, in Monduli district many of the informants had only rudimentary Swahili themselves, so it was essential in that context to have a Maasai speaker. Having two different research assistants actually contributed to the success of my research. An outcome which other ethnographers have also noted, (Berreman 2007, Elyachar 2005, Gal 1991). For example, Julia Elyachar (2005) in *Markets of Dispossession: NGOs Economic Development and the State in Cairo*, maintained that having a research assistant made her ethnography much richer, as it shifted her relationship with the field from a dyadic to a triadic one. Elyachar (2005) found that conducting interviews with the third person present, the research assistant, produced a different experience. The three way interaction added dynamism to the interaction, whereby 'a different kind of learning can take place and a different kind of knowledge produced' (2005:33). An additional benefit for Elyachar was that having a local assistant opened doors to places it would have been difficult for a foreigner to access. For Elyachar (2005) having an assistant proved to be of incalculable assistance, in the complex social field of development projects and craft workshops of Cairo:

in a project that attempted to grasp the different forms of power, acting on one ethnographic setting, such as el-Hirafeen, multiple perspectives on that ethnographic reality were imperative. No one perspective on that complex reality was adequate (2005:33).

I was fortunate to have a similar positive experience with Denis Kobelo. Soon after arriving in Dar es Salaam in January 2013, I visited the headquarters of MKURABITA. The office was located in a large compound in a leafy suburb of Dar es Salaam which has high profile government and embassy offices, with large plush buildings behind high walls. I was warmly received by Mrs Mgembe, the Co-ordinator, who suggested that I might find it useful to undertake research in villages where the MKURABITA titling programme had taken place. She explained that the management of MKURABITA would be interested in a study into how land titles were subsequently used by those farmers whose land was incorporated into the formal land registration system. The study would contribute to the data collected by the programme on the long-term outcome of formalisation. This presented an unexpected opportunity to understand the impact of formalisation as implemented through the MKURABITA programme. I agreed on the understanding that I was not engaged by MKURABITA in any form of employment, nor would I receive any payment as I wanted to keep my independence as a researcher as far as possible. Mrs Mgembe suggested that I conduct research in three villages in the Singida region where land formalisation had taken place four years earlier. A young graduate who was familiar with the MKURABITA programme, Denis Kobelo was available to act as my research assistant. Denis turned out to be a knowledgeable and resourceful research assistant and became my key informant. Denis is a graduate of Makerere University, Uganda and worked occasionally as a freelance interpreter. He accompanied me into the three villages in Manyoni. We also attended a workshop together and travelled to Morogoro to interview staff and clients of a paralegal centre in Morogoro and to the site of a pastoralist/farmer dispute. He was

formerly a research assistant with the MKURABITA programme when the programme took place in Manyoni. This meant that Denis was known to the villagers, and could facilitate my acceptance into the village. I was aware that his former position in the MKURABITA programme could create a conflict of interest, for example, he might feel obliged to show MKURABITA in the best light. We discussed this issue in depth and he was conscious throughout not to hide or minimise any criticisms of MKURABITA. Our conversations and debates on many aspects of life in Tanzania provided rich insights. It was useful to have someone to review the day's interviews with, to hear his interpretations of events and to reflect on what issues arose. Denis arranged our visits to the villages through the Ward Councillor, Enock Msimbira. The Ward Councillor was an important gatekeeper. Enock Msimbira was a politically powerful, an elected representative and member of the ruling party, Chama Cha Mapinduzi (CCM). His introduction of my research opened doors to the village leaders, who respected their Councillor. However, when Enock Msimbira accompanied us to the first focus group discussion, I felt uncomfortable, as his political connections and higher social status could restrict the information the informants were prepared to share with me. I discussed this with Denis, as the situation caused me some concern. I was aware that Enock Msimbira had been very helpful to me in setting up the research, but I also felt that he had the power to influence the attitude of the village leaders positively or negatively towards me, as an outsider and as a foreigner. In the end, there was no need for any anxiety as when we asked him to allow us to interview the research participants without his presence, he was quite willing to step back. From then on, our interviews were held independently.

My research in Monduli required a fluent Maasai language speaker and the Acting Director of CORDS recommended a female interpreter to accompany us on our visits.

I wanted to look at the female experience in more depth, and I felt that entry into the women's pastoralist advocacy organisations I expected would be easier with a female research assistant. The young research assistant, Sara, who was recommended was a recent graduate and intern with CORDS on the gender programme. Unfortunately, Sara lacked experience in the field and this contrasted greatly with my experience with Denis. I had also not factored in sufficiently the importance of gender and age in structuring Maasai communities. It turned out that Sara, being young and female, limited the responses from elder male informants during interviews. The greeting of the elders to Sara followed the traditional pattern of an elder to a younger person, Sara bowed her head slightly and the elder touched her forehead gently in a sign of respect. But this also indicated that Sara was a subordinate, a youthful person lacking experience and this augured badly for interviewing mature, experienced men. The interviewees seemed to be guarded, neither very enthusiastic nor giving much detail in their responses. As I became aware of this issue, George, an older staff member of CORDS, also noticed their hesitancy and kindly stepped in by his own volition. He took over the interpretation and also became my informant on some important details of life in the Maasai areas of Monduli district. George, a well-respected married man with children was more acceptable to the male interviewees. A young single woman, even one who is well educated, does not have the status of a married man with a family. George was well acquainted with the challenges facing the community and we visited his family homestead, meeting his extended family. George also facilitated my research in Nangolo and Iramba. The arrangement on balance turned out to be an advantage as Sara continued to help me during the focus groups with young people, male and female. In that setting, she was well accepted by male and female young people during those interviews, where being female was if anything an advantage. Gal

(1991), describes the experience of having both a male and female ethnographer doing interviews with women in the Solomon Islands. The differing positions of men and women in society are drawn out in the different responses to each ethnographer.

My key informant with CORDS was Emanuel Ndulet, the Land Rights Officer from CORDS. Emanuel was in charge of the programme and had twelve years' experience working with CORDS. He was a quiet spoken natural mediator, with an in-depth knowledge of the challenges facing the Maasai community in securing their land through titling. Emanuel was generous with his time for formal and informal discussions. Both Denis and Emanuel remained in contact with me after I completed my field work and currently keep me posted on the progress and setbacks in the villages.

On my second visit to Tanzania, I arrived in Arusha to start my internship with CORDS for four months, which had been agreed upon in 2013. The arrangement was that I would travel to a cross section of villages where the process of gaining Certificates of Village Land (CVL) had taken place, and by way of comparison, villages which were starting the process of gaining certification. Unfortunately, CORDS had to cancel some of their programmes temporarily due to financial difficulties with donors, which meant that all work involving long distance travelling to outlying villages was not possible for several months. This demonstrated the dependence of NGOs on somewhat unreliable donor funding. Instead, I spent five weeks visiting two villages close to Arusha town, Olomotoi and Mindoi, which were involved in a village boundary dispute which had temporarily blocked their village demarcation process and several other sites. I also spent some time visiting the village of Nangolo, whose Certificate of Village Land had been invalidated and Iramba, the home of George, and a sub-village,

which was not involved in titling programmes. In Nangolo and Iramba villages, I conducted interviews but also spent more of my time conversing about life in Monduli as experienced by the young and older, men and women, which highlighted the difference in generational mind-sets within the community. The formal interactions and natural conversations provided a bounty of data. I had access to the NGO staff for over four months, particularly with Emanuel Ndulet, the Land Officer who was a tireless informant.

Overall, much of the ethnographic information collected was obtained using semi-structured interviews with village community members, in Manyoni and Monduli districts. The names of villages and informants from the village communities have been changed as well as foreign investors to ensure confidentiality. I conducted ninety interviews with village residents in Manyoni in addition to focus groups and interviews with officials involved in the Village Council, Village Land Council, the Development Committee and Ward Land Tribunal. In Monduli, I held interviews with forty-five village community members and ran numerous focus group discussions, to tease out issues separately with men, women and young people. I collected life histories from older men and women in both settings. Interviews also took place with local government officials in the land administration services of Manyoni District Council and Monduli District Council. I taped some of the interviews in the initial stages, but found that the interviewees were more restrained when confronted with a tape recorder, so I took notes instead. Therefore the interviews took more time, but were more relaxed. Many conversations between interviews yielded data and I kept a diary in which I recorded conversations, interview highlights, observations and reflections on the process. The field diary has proven to be an invaluable record.

Academic links had been developed between Maynooth University and University of Dar es Salaam through a jointly managed East Africa/Ireland university exchange programme, 'Combat Diseases of Poverty Programme' funded by Irish Aid. Dr Kamaguisha, a Tanzanian academic involved in the programme facilitated my introductions to academic contacts at the University of Dar es Salaam. Thus, I was able to interview experts with many years of research on the significant political events and economic policies which shaped current policies and practices on land administration such as Professor Kironde (RIP) and Professor Kombe. In addition, I interviewed Dr Mwasumbi, Dr Abu Nuwasi Mwami and two doctoral researchers Chambi Chacage and Bashir Ali, undertaking research on land grabbing by foreign investors. I was fortunate to interview Geir Sundet whose doctoral thesis inspired my analysis and Brian Cooksey who is one of the foremost scholars on Tanzania.

To get some insight into how commercial loans are managed, I interviewed the manager of the National Microfinance Bank (NMB) in Monduli and the head of the Savings and Credit Cooperative Organisation (SACCOS) a savings and loan organisation in Arusha Northern Tanzania. I also interviewed members of two VICOBA's, the village bank, which provides savings and loans similar to microfinance projects. Three independent foreign businessmen; Robert Kochen working for a Dutch flower growing agri-business group in Arusha, Geert Haakvoort a Dutch tourist lodge owner, and Ravikant Bhalero, the Indian Project Manager of a food processing company shared their experiences of doing business in Tanzania.

To expand my understanding into pastoralist activism, I interviewed Maasai advocates from a variety of civil society organisations, both formally and informally, including Alais Morindat from Tanzania Natural Resource Forum (TNRF), Maanda Ngoitiko

from the Pastoral Women's Council (PWC) and Makko Sindei from Ujamaa Community Resource Team (UCRT) an organisation supporting Hunter Gatherers, including the Hadaze people and pastoralist Maasai and Barabaig. CORDS which facilitated my research was not a radical organisation, taking a pragmatic approach to land rights issues and grappling with local politics, thus, I felt it was necessary to reach out to more politically engaged organisations. The Ujamaa Community Resource Team (UCRT) and Pastoralist Women's Council (PWC) represented a more combative approach to land rights, for example, PWC had spearheaded protests over land confiscation by the Government of Tanzania (GoT) for tourism projects.

Staff from both international and national civil society organisations were willing informants. The list of international NGOs includes, Concern, Oxfam, and ACTIONAID. I attended an Oxfam Land Rights Programme workshop/training event organised for their partner agencies. At the workshop, I heard divergent viewpoints on the value of customary dispute resolution systems, and on the conflicting land needs of pastoralists and farmers, women and men. Attending the workshop enabled me to interview activists from different regions of the country which would have been very difficult to arrange individually. This led to an opportunity to undertake research into the work of the Morogoro Paralegal Centre. Without the Oxfam contact, I might not have gained access to so many relevant agencies and activists.

During my second field trip in 2014, I returned to Manyoni and concentrated on the various disputing processes. I observed a land dispute mediation of the Ward Land Tribunal (WLT) in Songambe and conducted focus group discussions with all the Tribunal members upon completion of the case. I conducted in-depth interviews

individually with Ward Land Tribunal members and a successful businessman/farmer with two separate land disputes over large land parcels.

The Morogoro Women's Legal Aid Centre facilitated interviews with their staff, the legal officer Cazimiry Sabath, legal rights defenders, paralegal volunteers and clients with land disputes. I was able to carry out in-depth interviews with two of their clients, one of whom was going through a challenging and complex case, which is elucidated in Chapter Five. Legal experts who had acted as advocates for members of the Maasai community were also interviewed, for example, Shilinde Ngalula from the Legal and Human Rights Centre (LHRC) and Francis Kiwanga, a practising lawyer and a former head of the LHRC. The LHRC focuses on free legal aid, policy and advocacy on the justice system. In addition, D'Souza a prominent family law case advocate was interviewed on inheritance law issues. Through Denis Kobelo, I gained access to a village in the midst of a pastoralist and farmer dispute. The dispute was in a sensitive location, the site of a number of attacks and I was asked not to reference those interviews directly.

In contrast to my positive experiences of accessing informants from NGOS and amongst academics, I failed to gain access to World Bank officials based in Dar es Salaam and gained limited access to Ministry of Land Housing and Human Settlement Development (MLHHSD). After two visits in person and fourteen emails, I was unable to interview the World Bank official with responsibility for land issues in Tanzania. As I waited for a reply from the World Bank office in Dar es Salaam and the Ministry of Lands, Housing and Human Settlements, I was reminded of the 'inequality of spaces' as described in Gupta and Ferguson (2002:987). They contrasted the situation of the workers in Child Development Centres who were subject to surprise inspections by

their manager, while the workers ability to enter the offices of their manager in the program head-quarters was high circumscribed to specific times or when requested.

Three visits to government offices in Dar es Salaam and writing several letters to gain access to officials in the Ministry of Lands, Housing and Human Settlements (MLHHSD) Dar es Salaam proved fruitless. I succeeded in getting only one interview with an officer in charge of the land registry for urban land and another fellow officer joined for the second half of the interview. In an unexpected turn of events, when I called to seek an interview with a representative of the Permanent Secretary, I was then interviewed by a panel of three officers in the registry section about the nature of my research and what questions I was expecting to ask during the proposed interview. I was instructed to follow up the interview with a written application to the leader of the interview panel, and a letter endorsing my research from the University of Dar es Salaam. My subsequent application letters and supporting documentation and follow up emails, yielded no result. I had to accept the disappointment of this omission and instead of direct interviews, make a close study of documented records of official policies, evaluations, programmatic reviews and reports from government, NGO and international institutions. Abrams argues that the state resists attempts by researchers to study it, he states:

Any attempt to examine politically institutionalised power at close quarters is, in short, liable to bring to light the fact that an integral element of such power is the quite straightforward ability to withhold information, deny observation and dictate the terms of knowledge (Abrams 1988:62).

The rejection of all my appeals for interviews, demonstrated that while I appeared to have ‘power’ in one setting to strike fear into the officials in MKURABITA and the District Council (such that they quickly prepare the certificates in time for my return visit) this power evaporated when I was confronted with high level ministry officials

and denizens of international finance. My networks simply did not stretch to the higher levels of power. Bourdieu argues that social capital in one field, may not be transferable to another, and this observation was fitting for this situation. Hugh Gusterson (1997) notes that the ‘studying up’ of powerful elite groups is particularly difficult in anthropology. Most ethnographers resort to ‘polymorphous engagements’ using various techniques and multiple sites for collecting data or virtual research (1997:116).

My research was multi-sited, and many informal discussions were held with community members, activists and NGO staff during the long journeys to the villages. Numerous in-depth discussions and observations of everyday life took place over meals, in local bars, attending important ceremonies, two weddings and two funerals, and when accompanying staff on visits to their homesteads. The range of data collected was increased with Skype, telephone and email correspondence with key informants, academics and activists. To improve my understanding of the wider local context, I followed events in the media, regularly buying the English language newspapers to undertake a media analysis of the newspaper’s coverage of land conflicts. These reports revealed the pressures on land in rural and urban areas and the extent of land conflicts. The print and online media captured the lively debates on land rights, pastoralism, development and justice, as Tanzania has a vibrant and open media, which is prepared to discuss contentious issues. The objective was to follow Bourdieu’s (1999) approach to research, which is to seek out the complex and competing points of view which make up the field developing thus a ‘complex and multi-layered representation capable of articulating the same realities but in terms that are different, and sometimes irreconcilable’ (1999:3).

Layout of the thesis

Chapter One: The Road to Development

The chapter will problematise the concept of ‘development’ and its relationship with land markets and to land dispossession by the state. The following section will explore the nuances of customary and statutory rights to land, and will be informed by anthropological studies of customary tenure. Finally, the chapter will provide a detailed record of the creation of the current National Land Policy (NLP) of 1995, and the contested passing of the Land Act No. 4 (1999) and the Village Land Act No. 5 (1999) and the manipulation of the terms of the policy and the Acts to safeguard state control over land.

Chapter Two: MKURABITA in Manyoni: Three villages, four years and a printer cartridge

This chapter will provide an overview of land administration practices at village level. This is followed by an analysis of the MKURABITA programme; its vision and objectives, and the impact of its reform programme. Finally, the chapter will present the experiences of the smallholders who took part in the MKURABITA programme, their strategic positioning behind the government supported programme and their perceptions of the capacity of Certificates of Customary Rights of Occupancy to provide tenure security and loans for development.

Chapter Three: Monduli District: Pastoralists and agro-pastoralists

This chapter will present the research findings from the Monduli case study. The chapter explores the deployment of Maasai identity as a strategy to gain recognition of customary land rights. This is followed by a brief historical background to the land dispossession experienced in the Maasai dominated regions of Northern Tanzania and the current struggles over land. The final section examines the land titling programme

of Community Organisation for Research and Development (CORDS) and the experience of two villages, Olomotoi and Mindoi attempting to gain a Certificate of Village Land despite bureaucratic sabotage and boundary disputes.

Chapter Four: The Gendered Life of Things

This chapter brings into focus the gendered dimension of land rights, in particular, the disadvantaged position of women in kinship systems and within the legal framework. The discussion in this chapter is organised into three parts, firstly an exploration of women and men's working roles and the male breadwinner model which marginalises women's contribution to livelihoods and permeates the design of development interventions. Secondly, how rights of inheritance are conceived across communities and in legal frameworks. Lastly, the active resistance to the disadvantaged position experienced by women, from individual women and civil society mobilisation for change.

Chapter Five: The Disputing Process

In this chapter the focus of the analysis will be the social field of the law, and how the disputing process can operate supportively or as an obstacle to justice. Firstly, the chapter will analyse the opportunities and limitations of the current system, to support the land rights guaranteed by law and documented through formalisation. Secondly, the chapter will present the legal framework for land dispute resolution and will utilise the example of the Kiteto dispute. The informants experience of village level disputing systems will additionally be explored. Thirdly, the challenging case of the widow 'Telesia' who is fighting a battle to regain land taken over by a 'stranger' will be reviewed in detail. Telesia's case weaves together the themes of corruption, poverty, and the multiple abuses of power.

Chapter Six: Conclusion

This chapter summarises the main findings of this ethnography. The ethnography attempts to understand the strategies used by three groups of actors to gain tenure security, or controlling rights over land in Tanzania. The chapter highlights the definitive role of policy and legal frameworks in maximising control over land by the most powerful group, the centralised state bureaucracy. The view that the GoT had no agency in the design of policies or laws does not take into account the political choices made under the influence of interest groups. Thus, the capacity of formalisation of land rights to provide tenure security to rural subsistence farmers and herders is limited by this power imbalance, between the village and the agents representing the state.

In Tanzania, tenure insecurity is a widespread phenomenon, pastoralists communities and women, are particularly vulnerable. Overwhelming challenges are faced by smallholders, pastoralists and women farmers in defending their land holdings, yet, despite the existence of multiple barriers the belief among my informants remains strong, that a just outcome is possible and having a land title just might be the evidence which will save them in court.

Chapter One – The Road to Development



Fetish: an object (as a small stone carving of an animal) believed to have magical power to protect or aid its owner ... object of irrational reverence or obsessive devotion.. (Merriam-Webster dictionary).

The Fetish of ‘Development’

This chapter focuses on the theme of tenure insecurity and examines the relationship between ‘development’ ideals and the dispossession of subsistence producers from their land and livelihoods. The model of development pursued by the GoT, pivots upon the neoliberal policy of private sector investment in large scale commercial agriculture. This policy objective is taking place in the context of a global land grabbing phenomenon and the first section of this chapter will provide an overview of the global land rush, followed by examples of both historic and contemporary Tanzanian experiences of large scale land deals and the transformation of agriculture as a development strategy. The next section will unpack the neoliberal ideologies guiding Tanzania’s development path. Finally, the process of creating the current National Land Policy (NLP) of 1995 and the two Land Acts, the Village Land Act No. 5 and Land Act No. 4 (1999), including the Presidential Commission of Enquiry into Land Matters (1994) will be investigated in order to demonstrate how the content of the National Land Policy and subsequent Land Laws was manipulated to consolidate centralised state control over land. Land activists blamed external forces, such as the

financial institutions and donors for pushing the government of Tanzania to adopt a neoliberal stance in the creation of its land policy. This chapter will demonstrate that the state roundly rejected both neoliberal prescriptions and the recommendations of the highly respected Presidential Commission on Land Matters (1994) to divest power over land from the state to the village communities, and ultimately retained control over land in the state apparatus. David Harvey's assertion that neoliberalism is utilised in the pursuit of class interests is evidenced here, as 'the principles of neoliberalism are quickly abandoned whenever they conflict with this class project' in this case, the objective being to retain centralised control over land (Harvey 2007: 29).

The Rush for African Land

This section will briefly outline the characteristics of the phenomenon of land grabbing; the drivers behind it and the justifications used for massive land transfers. The issue of 'land grabbing' by investors is a phenomenon well known to Tanzanians through the regular media reports. For example, the case of Sun Biofuels, a UK company which invested in a jathropha plantation, represents one incidence which attracted media and civil society engagement (Carrington 2011, Beyene et al 2013). Smallholders and livestock keepers often expressed fear of losing their land and several of my informants had direct experience of land dispossession. Close to the village of Olomotoi, Emanuel pointed to the large area of grazing pastures taken from pastoralist control by the military for a practice base in the 1970s. He explained that the land was allocated to the army by a Maasai politician who became Prime Minister, Edward Moringe Sokoine. Sokoine allocated the land to the military in an effort to protect it from encroachment by large scale farmers, but the pastoralists had not been able to regain access to the land.

In Manyoni district, over one hundred farmers, some of whom had ‘bought’ the land from other residents, lost access to land they had been farming, during the Land Use Planning (LUP) exercise. It was revealed during the LUP process that the land had been categorised as communal grazing pasture, therefore, it could never have been sold and the ‘buyers’ lost their plots of land. Achieving tenure security was the main concern for my informants because tenure ‘insecurity’ was perceived as a real possibility and potential threat. When I asked a group of three village residents of Mlala, why they believed they had not received their land titles, despite completing all the necessary procedures. Their response was that

white men came after the MKURABITA people and took away the soil and we suspect now, that there are minerals in the soil. The government will not allow the villagers to have their land titles if there are minerals underneath (Interview with Yaro Efendi, Mlala, March 2013).

The Director of Haki Ardhi, the land rights NGO, Yefred Myenzi, said ‘nobody in Tanzania owns their land, the President owns it. Ultimately, all land belongs to the state and therefore everyone only has relative security’ (Interview 28th January 2013).

In recent years, ‘land grabbing’ on a global scale by foreign investors into countries of the global south has attracted a great deal of attention from scholars (Vermeulen and Cotula 2010, Zoomers 2010, de Schutter 2010). Africa is considered to be the continent with the highest degree of underutilised farmland and has been a particular target of investment. Research by the Food and Agricultural Organisation (FAO) indicated that foreign investment in agriculture was primarily targeted at the African continent (Liu 2014:9). The FAO research also found that domestic investors played a major role and represented over 60% of investment in agriculture (ibid). Foreign investors include agri-business corporations, hedge funds and cash rich countries of the Middle East. and Asia. Many of those countries lack sufficient arable land and are seeking food security

for their citizens. Schoneveld (2014) provides an up-to-date analysis of land acquisitions over 2,000 hectares in thirty-seven sub-Saharan African countries since 2005. His findings indicated that 18,104,896 hectares were acquired by foreign companies originating in fifteen countries, of which the United Kingdom, the United States and India were the top three (Schoneveld: 2014:40). Hall, Scoones and Tsikata (2015) attribute the acceptance of this large scale transfer of resources by African countries to several factors. Firstly, the failure of African agriculture to fulfil even the basic food security needs of the countries, necessitates major importation of food. Secondly, the declining revenue base for African governments as economies have stagnated has worsened under the pressure of structural adjustment programmes. The result is that governments are prepared to use whatever natural resources are available to them to entice investors. Often this can be 'free' or very low cost agricultural land. The benefits expected from this transfer include new technology training for local farmers, food for the local market, employment and tax revenues. 'Many governments have argued that they have large areas of empty, marginal, uncultivated or inefficiently-used lands that can be used more profitably for commercial agriculture' (Nalepa and Bauer 2012 cited in Hall et al 2015). Often, such land includes customary lands or state farms taken from customary land users at various points in history.

A narrative of 'abundant' unused land puts the stamp of legitimacy on the expropriation of land (Scoones et al 2014:21). Bourdieu (1984) argues that the dominant classes use symbolic capital to justify their actions as the 'norm' as having right on their side. Bourdieu argues that the imposition of the ideology by the dominant forces in society is a form of symbolic violence perpetrated upon the weaker members. Thus, the take-over of the customarily held land of small holder peasants or livestock keepers is rationalised in terms of achieving the elusive 'development' through investment by

foreign or local investors, despite the increase in poverty which loss of access to land entails. Cooksey and Kelsall (2011) posit the explanation that the intense interest in foreign investment was influenced by the accumulation of large parcels of property by elite Tanzanians. Cooksey and Kelsall (2011) assert that upon the demise of socialist policies:

those with political connections, fell over themselves to acquire land, the assets of former parastatals, seats on private enterprise boards, and to generally use their public positions to make private gains in any way they could (Cooksey and Kelsell 2011:26).

These land acquisitions were made without capital to develop the land, and Cooksey asserts that the drive for foreign investment is in part fuelled by the hopes of partnerships between national large land holders and private foreign capital (2013:25).

In contrast to this view, Carmody (2015) warns against recent scholarship in international development which emphasises the agency of African elites and their negotiating powers within an international system which reproduces economic domination by well-resourced networks. Carmody states that African agency ‘needs to be situated in the context of both massive power differentials between states in the international system and the continuing and arguably deepening power of transnational capital’ (2015:27). African countries are highly dependent on commodities, in some cases a single commodity for revenue. Carmody concedes that elites in the African context are the main beneficiaries of increasing investment into the continent, but their power is limited to negotiation with foreign investor. They are powerless to change their country’s position in the international trading system.

However, even allowing for the marginalised position of African countries, land is offered to foreign investors against a backdrop of food insecurity. Bush et al (2011) point out the fact that food insecurity disproportionately affects African countries, ‘17

of the 22 countries identified by the FAO in 2010, as having protracted food insecurity, are in Africa' some of those same countries are offering land to investors, for example, Ethiopia (2011:89). Oliver de Shutter, the former Rapporteur on the Right to Food, reported his concern over the diminishing land available to small scale farmers and pastoralists (2010). This growing landlessness and reduction of plot size for subsistence farmers was having detrimental consequences in terms of food security. According to de Shutter, access to land 'is a condition for the achievement of a decent standard of living' for the vast majority of the world's poor (2010:3). Research undertaken by Thomas Jayne et al (2015) in Kenya, Malawi and Zambia, found that the majority of African small holder farmers experience land shortages, as land with reasonable infrastructure and access to markets is in short supply. Urban based salaried public servants and better-off rural families are accessing land in rural areas and creating medium scale farms, from 5 to 100 hectares and larger scale 100 plus hectare farms (ibid). Jayne et al (2015) asserted that land controlled by medium scale farms exceeds the farmland acquired by foreign and domestic large scale landholders combined in all three countries, Kenya, Malawi and Zambia studied.

In Manyoni district, plot size showed large differences; a small number of farmers had plots of over 50 acres, whilst the majority had small holdings of 2-5 acres. Land was increasingly scarce and the Village Council had less land available to offer to village residents or newcomers. At the same time, purchasing land became more difficult as land values had risen sharply in the last three to four years. Many informants expressed an interest to purchase land, but found that land prices were beyond their means.

The Schemes and Dreams of Development

These old houses on Jamhuri St are very ugly, look how shabby they are, when I see those new tall glass buildings, madam, I feel comfort, because I have hope that Tanzania will not always be poor (Denis Kobelo Dar es Salaam, 12th July 2013).

Denis and I walked through the crowded old streets of Dar es Salaam where remnants of a former empire, the shops and apartments of Indian merchants with ornate carved balconies and shutters, are now falling into decay. Coming from 'old' Europe where architectural heritage is a national asset, I admired the beauty and historic meaning contained in these well-trodden streets. Denis did not share in my appreciation. He felt most hopeful when we encountered the rubble of 'development' as the old buildings were torn down to make way for high rise apartments and office blocks. Where Denis saw creation, I saw destruction. For Denis, as for many young Tanzanians, 'development' is a tantalising but elusive state, always just beyond reach. On another occasion, in a small house in the village of Iramba, I was lucky to meet a group of young secondary school students, home for a family celebration. A very articulate member of the group, Lomayani, complained about the unfashionable traditional lifestyle of the older generation. Lomayani stated:

Our fathers have too many cattle. People don't build good houses, they live in bad houses, too small and no comforts, but they have a lot of cattle. It is better to have good houses and less cattle. As well, we the youth don't want to follow pastoralist tradition, boys and girls want to choose their own partners and we don't want to have a lot of children (Focus group of youths, Iramba 25th June 2014).

The 'habitus' which defined expectations of what life should be, how homes should look and family life is experienced, is undergoing change due to education and exposure to commodities and media communication. The older generation formed their identity at a time when large herds indicated social status and large families were a bonus, children took care of animals and provided security for the future. Now, cash

is needed for school fees and equipment, there is less time for children to help with herding duties. Traditions such as early marriage and children assisting with chores and not attending school is shameful, as many activists confirmed.

In *Distinction* a passage which could be aptly applied to the experience of the young Denis and Lomayani, Bourdieu exposes the shame assigned to lower class lifeways and habits, which in turn legitimates the lifestyle and attitudes of the elites;

This means that anyone who want to ‘succeed in life’ must pay for his accession to everything which defines truly humane humans by a change of nature, a ‘social promotion’ experienced [...] but having internalised the class struggle, which is at the very heart of culture, he is condemned to shame, horror, even hatred of the old Adam, his language, his body and his tastes, and of everything he was bound to, his roots, his family, his peers, sometimes even his mother tongue, from which he is now separated by a frontier more absolute than any taboo (Bourdieu 1984:251).

I was reminded by the comments of the both Denis and Lomayani of the ethnography of modernisation in Zambia, by James Ferguson in *Expectations of Modernity: Myths and Meanings of Urban Life in the Copper Belt in Zambia* (1999). Ferguson’s ethnography reveals the desperation of former miners who have experienced the promise of a cosmopolitan modern lifestyle with secure jobs, only to be cast aside during the de-industrialisation Zambia experienced from the 1980s. They then had to make a difficult adjustment to life in their rural places of origins. His ethnography reveals the cruelty of the mythology of ‘modernity’ as a linear progression, and argues that the disorientation experienced by the miners, expressed the tragedy of the human casualties of globalisation (1999). Both Denis and Lomayani were experiencing an unfathomable gap between their imagined modern future and their everyday experience of poverty and marginalisation. Bourdieu’s concept of cultural capital resonates with the expression of alienation described to me by these two young men. The traditional ways of life are devalued for the younger generation; ‘history’ represented by old

architecture or dearly held traditions such as accumulating large herds are rejected by young people, as those lifeways lack ‘cultural capital’. They are no longer esteemed symbols of a desirable lifestyle. But whilst that which is deemed modern is revered, for many young people, modernity in this form, is unattainable.

Having worked for more than ten years in ‘development’ focussed organisations, I am very aware of the attraction of the idea of development, which offers hope for the end to poverty. International bodies like the United Nations, development economists, and government ministries in the global south devote enormous energy to achieving this goal and despite these efforts it remains unfulfilled for millions of people. During the post-war period when those same international agencies were in the process of creation, Karl Polanyi (1944, 2001) warned of the detrimental effects of a ‘free market’ as espoused by conservative economists, which he assessed would lead to unregulated exploitation of the weakest sections of the society and destroy the natural resource base upon which we all depend. He wrote that:

to allow the market to be the sole director of the fate of human beings and their natural environment indeed, even of the amount and use of purchasing power, would result in the demolition of society (Polanyi 1944, 2001:76).

Since the 1980s, the ‘market economy’ and in particular its neoliberal direction, has drawn many critics. Scholars such as Wolfgang Sachs (1992), have questioned the value of the concept of ‘development’ which has not spread the benefits of increasing global wealth across nations and social groups, rather, it has resulted in increased poverty and inequality. According to Arturo Escobar (1995), underdevelopment is a ‘construct’; the post-colonial world was divided into a global hierarchy of spheres of poverty and ignorance, and labelled as ‘under-developed’ in contrast to the modern

rationality of the 'developed' West and required a complete re-ordering of 'under-developed' societies (Escobar 1995:4-5).

Sachs argued in his introduction to *The Development Dictionary* that by 2010, 'the age of globalisation' had replaced the age of 'development' (2010:vii). Globalisation had created huge gains in terms of Western style 'development' in newly industrialising countries, China, India. These aforementioned 'emerging economies' and many low income countries have in the last decade attracted global investment, Tanzania being one example with large scale investment into mining, agriculture and tourism (Cooksey 2011). According to Sachs (2010) the increase in growth and productivity has only benefitted an elite class, and was gained at the expense of the poor. A global middle class has risen to prominence in every low and middle income country, who have more in common with others from their class than the poorer members of their own nations.

Sachs argued that:

development has come to mean the formation of a global middle class alongside the spread of the transnational economic complex ... rather than the formation of thriving national societies (2010:vii).

Sachs accused the 'globally oriented middle classes' of, at best, ignoring the needs of the poor and, at worst, that their ambition to increase their income 'is often carried out at the expense of the fundamental rights of the poor and powerless' (2010:ix). Sachs contends that this search for 'progress' towards modernity at any price is not merely a desire for material gain, but bound up with the desire to redress past injustices and negative experiences of colonialism and exploitation.

Post development theorists, including Gustavo Esteva, Gerald Berthoud, contributed further critiques of both development theory and practice. Esteva argued that 'development' is a comparative term, which assumes the superiority of Western ways

of living, and supports the ideology of the ‘homogeneity and linear evolution of the world’ (2010:7). According to Berthoud (2010), the market ideology has reduced all human relations to economic transactions, where ‘To be human is thus to be able to exercise one’s individual rights to accumulate goods within a culturally recognised competitive context’ (2010:89). Sachs (2010) argued that the desire to achieve a more equitable world has been mistakenly linked to a narrative of economic growth, positing that only with continuous growth can the poor be brought into the more prosperous world of market economies.

In the 1980s, the declining growth of many developing countries led to financial crises, for which the only solution offered by the international institutions, was intervention by the International Monetary Fund and adherence to the Structural Adjustment Programmes. The Structural Adjustment Programmes followed closely a neoliberal economic ideology which advocated for a ‘free market’, privatisation of state assets, deregulation of social protections, flexible labour markets, liberalisation of trade and finance and a much reduced role for the state. This was popularly referred to as The Washington Consensus. Joseph Stiglitz, former Director of the World Bank, has been a leading critic of the Washington Consensus and has written extensively about the tragic failure of these neoliberal policies (2004).

David Harvey (2005) asserts that neoliberalism has become hegemonic, to the point where ‘it has become incorporated into the common-sense way many of us interpret, live in, and understand the world’ (2005:23). Harvey’s theory of accumulation by dispossession, summarises the loss of assets, both financial and political of the poor and middle classes under the onslaught of neoliberal policies in Western countries. Jamie Peck and Adam Tickell (2002) further argue that neoliberalism is not static,

rather, it is a dynamic process, responding to the diversity of places and state forms but whose aim is ‘the reproduction of market-like rule’ (2003:166). Aihwa Ong (2007) demonstrated the malleability of neoliberalism as a concept, which allows it to be utilised under radically different political regimes, authoritarian or democratic to their own ends. Ong views neoliberalism not as ‘a fixed set of attributes with predetermined outcomes, but as a logic of governing that migrates and is selectively taken up in diverse political contexts’ (2007:3). Ong’s analysis covers East and South East Asia where a more fluid form of capitalism guided by neoliberal policies has developed, as countries position themselves to take advantage of the global market.

Wacquant (2012) argues that ‘neoliberalism is a political project of state crafting’ (2012:66). For Wacquant, the state actively ‘re-regulates, rather than de-regulates the economy in favour of corporations’ and endeavours to support and even extend the reach of the market (2012:72). Rather than the independent, unfettered market of neoliberal ideals, the reality is that the market depends on state monitoring and, where necessary, adjusting legal and institutional forms to maintain both the open market and free trade.

Mathieu Hilgers (2012) points out that African countries were the first to be subjected to neoliberal policies through SAPs in the 1980s, which foisted policies of deregulation, liberalisation and privatisation onto indebted nations. For Hilgers (2012) it is important to acknowledge the level of diversity in historical legacies across the continents, which influences the formation of the state. Responding to Wacquant’s analysis, Hilgers argues that the form which neoliberalism took in African countries diverges from Western experience, lacking components, such as the reduction of welfare benefits of the poor, which Wacquant noted in his research in the hyper ghettos of Chicago.

Hilgers points to the fact that the majority of Africans have never received any form of welfare benefit:

If neoliberalism implies the atrophy of the social state, we can say once again that numerous African countries are on the vanguard. Indeed, many citizens in Africa have never received a cheque for unemployment or disability benefits, or for that matter any other public aid for survival, however minimal (Hilgers 2012:86).

These scholars researching the effects of neoliberal policies across different continents and settings, have drawn attention to the flexibility of neoliberalism and to the role of the state in supporting conditions in which neoliberalism can thrive. Ong's analysis that neoliberalism is 'selectively taken up' by political interest groups, bears a strong resemblance to how the Tanzanian state reacted during the process of forming the National Land Policy and Land Laws. When the formation of the National Land Policy is examined, it demonstrates that both neoliberal policy advice and tenure security for citizens, were subordinated to the ambition of the state to achieve maximum control over land. Bourdieu (1986) points out that social capital is utilised by groups and individuals to further their interests in the field, where the struggle to accumulate resources take place. In 1980s Tanzania underwent a neoliberal policy change during which a series of privatisation drives saw the sale of public housing stock, agricultural enterprises and nationalised industries. Party members and senior civil servants benefitted from the 'fire sale' of these national assets, creating a very wealthy elite class, Cooksey (2011) reports that

The undervaluation of public assets during privatisation, for example, has come in for widespread comment. For example, in 2005, the Kiwira Coal Mine was sold in a non-transparent manner to TANPOWER Resources, a company owned by former President Benjamin Mkapa, Minister of Energy and Minerals Daniel Yona and their close family members (2011:30).

Bourdieu's concept of social capital helps to analyse this situation. Politicians turn their political networks from social capital to economic capital, by leveraging their

social connections into lucrative financial deals. The smallholders and pastoralists have a relatively small stock of social capital, with low levels of information on current land laws and policies which could be to their benefit. Their only hope to benefit from policy or legal changes is when help is extended from outside, through an NGO or a donor funded programme.

Developing Tanzania – Yesterday’s dreams

Both local and international scholars have identified neoliberal policies as the driver behind national commitments to foreign investment, large scale commercial agriculture and the subsequent appropriation of land from the rural smallholders for investment (Shivji 1999, Stein 2014). The historical record demonstrates that the desire to attract foreign investment is not a recent model of development imported with neoliberal policies. Tanzania has been subjected to development programmes to transform agriculture since the 1960s under three very different political regimes; colonial, socialist and neoliberal reforms. Development schemes were introduced by the colonial administration to promote large scale modernised agricultural production. Coulson (2013) describes how the most infamous one, the Groundnut Scheme, which started in 1946, aiming to take advantage of high prices for cooking oil in the European post-WW2 environment. The project designers were high level administrators based in London, who directed the project from inception to implementation with little knowledge of the environmental conditions and who refused to take any advice from the colonial officers with experience of Tanzania. The scheme encountered multiple challenges; ‘the planning was rushed’ lands chosen were low in fertility and unsuited to growing groundnuts, and the terrain was too rocky for machinery to operate effectively (Frankel, 1950 cited in Coulson 2013:80). The results were unsurprisingly,

low harvests and huge financial losses, squandering the millions invested in the scheme, resulting in its closure.

After the granting of independence, the first president, Julius Nyerere decided upon a socialist path of development for Tanzania. In 1968 Nyerere published his blueprint for African socialism, the Arusha Declaration and Socialism and Rural Development (1967), which was to determine how Tanzania was to be governed for two decades (Coldham 1995:228). The socialist path was based on principles of self-reliance and socialism which were to be enacted through both villagisation and nationalisation. According to Moore (1979), the Arusha Declaration (1967) argued that Tanzanians should move into nucleated villages rather than continuing with the dispersed pattern of settlement which was the common practice. Nyerere (1968) posited that living in villages would restore past traditions of 'Ujamaa' or 'familyhood' where everyone in the village worked for the good of all and collectively shared the fruits of their labour. To achieve this, farming was to be undertaken as a collective activity with land redistributed according to need, and mechanisation introduced at lower cost. Social services, such as water, health and education services, would be provided in an economically efficient manner. Nyerere was influenced in his adoption of this strategy by the World Bank Report of 1961 (IBRD 1961), which recommended that villages would be the optimum means to introduce economic and social development, in what was called the 'Transformation Approach', to rural development. Scott (1998) explains how ujamaa villages were proposed as 'a welfare and development project'. They were to become villages in which 'layouts, housing designs and local economies were planned, partly or wholly by officials of the central government' (1998:223). In life histories, older residents of the village described how the new settlements were marked out in straight lines quite unlike their own scattered and uneven shambas. Scott argues

that the overall design was predicated on the ‘logic of improvement’ (1998:244) through organising communities into simplified settlement which allowed development, but more importantly political control of a scattered population.

Moore (1979) states that by 1972 only 11% of the population were in villages and people continued to farm individually (1979:68). In some villages a ‘token plot’ sometimes as little as half a hectare was farmed collectively (ibid). The policy to move into villages, locally named the ‘Ujamaa’ policy was initially voluntary, but when few took up the opportunity the government changed tactics and declared that moving into villages was an order. Between 1973-1976, in what was referred to as ‘Operation Vijiji’ (Vijiji is the Swahili word for village) millions of people were forcibly moved into ‘development’ villages. Those who resisted had their homes destroyed (Kekshus 1977 cited in Moore 1979). In the process, 5,528 villages were created and approximately 80% of the rural population were moved from their home areas (Veit 2010:3).

Villagisation was undertaken with no legal basis (URT:1994a, Coldham 1995, Rwegasira 2012). Former customary rights to land parcels were not legally extinguished, nor were rights to land in the newly created villages legally instituted either. Thus, rural communities found themselves with uncertain rights in either place. Additionally, there was no system of compensation for land taken for Ujamaa villages (Coldham 1995, Rwegasira 2012). The implementation of villagisation was noted by the Shivji Commission as showing ‘a total disregard of the existing customary land tenure systems as well as virtually no thought being given to future land tenure in the newly established villages’ (URT 1994a: 43).

Coldham attributes this attitude to the underlying assumption of the ruling party that 'land tenure could and should be handled administratively, little attention was paid to land rights pre or post villagisation' (1995:230). The Shivji Commission received evidence that land taken from farmers for redistribution to incoming settlers into the villages was subject to corruption by party officials 'various leaders who were given responsibility to allocate land maltreated some people by acquiring their lands and allocating it to their families' (URT 1994a:51). By the 1980s, cases began to be taken to court looking for redress for the injustices of villagisation. One problem was the right of compensation. Coldham (1995) relates one instance; a farmer took a case looking for compensation for his cashew nut trees which he had lost when his land was confiscated for distribution in an Ujamaa village. He claimed compensation and succeeded in the primary courts, but the case went on appeal to the High Court where it was left in a file, 'pending' with no final judgment for years' (1995:230). Coldham (1995) recounts that the Chief Justice Telford George gave the following explanation for the delay: 'for it was felt that the payment of compensation for land or property involved in the establishment of Ujamaa village may prove beyond the villagers' purse and as such stand in the way of the Party and government policy to build socialism in the country' (1995:230). The Chief Justice directed that all cases should be treated similarly, as 'since Tanzania believed in Ujamaa then the interest of many people in land cases should override those of a few individuals' (1995:230). During the 1980s land cases relating to villagisation were not addressed by the courts. Rwegasira asserts that 'the villagisation policy was a serious threat to the security of tenure of the customary holders' and a major cause of land conflicts and litigations in Tanzania (2012:75). Villagisation failed in its objective of increasing agricultural production, instead, agricultural production was disrupted as people had to develop new farms in

new terrain (Lofche 1978 pp. 468-475 cited in Moore 1979). In 1973-1974, food shortages led to massive imports of food and economic crisis (Briggs 1979). During his life history interview, Jackson related how life was under villagisation:

Mlala was one of the Ujamaa villages. Government officials were brought here especially to do the distribution of land. They gave each person pieces of land, all along a line, one acre by the road. People started straight away clearing the bush. These were people from Taturu and Ndaturu and a few Gogo. The original inhabitants still had their farms outside the village. The one acre was used by them just for housing. After the villagisation, some people, the newcomers were compliant and depended on that one acre. That brought hunger in 1976, because the plots were too small to feed a family. Then the government had a new plan, they wanted bigger farms and they forced people to clear the bush to have at least 2 acres (most of them hadn't cleared any extra land after getting the 1 acre). A lot of people returned to their original homes when Mwalimu Nyerere announced that villagisation was over (Jackson, Mlala, 28th March 2013).

The Shivji Commission, in their extensive research into land conflicts, found that both initiatives, villagisation and nationalisation, were the main source of land disputes, with villagisation being 'the main source of land tenure problems in Tanzania (URT 1994a:60).

The SAGCOT Scheme – Dreaming of development today

The most recent scheme to encourage an agricultural transformation in Tanzania is the Southern Agricultural Corridor of Tanzania (SAGCOT) launched in 2010 as introduced earlier in the chapter. SAGCOT is an ambitious public/private partnership initiative to realise the objectives of Kilimo Kwanza (Agriculture First), the agricultural strategy of the Government of Tanzania (GoT) as described on the SAGCOT website (SAGCOT 2016). Kilimo Kwanza represents the first time that the agricultural strategy for Tanzania is to be led by the private sector (Ngaiza 2012). One of the main objectives

of the scheme is to link small holder farmers with commercial agribusiness in outgrower schemes (Ngaiza 2012).

Formalisation of property rights is also a key objective. The strategy has ten pillars, of which Pillar 5 relates to land availability (URT 2009a). The actions to be taken under Pillar 5 include ‘Amend the Village Land Act No. 5 of 1999 to facilitate equitable access to village land for KILIMO KWANZA investments’ (URT 2009a). This change to the land law could have detrimental effects on smallholders and on pastoralists. The situation at present is that a foreign investor can only access Village Land through minority shareholding in a Tanzanian company, but this proposed change would mean that investors could enjoy ‘equal’ access to land (Makwarimba and Ngowi 2012:1). Pillar 5 also has the objective of strengthening District level officials and Land Offices to supervise land administration and to fast track land titling. It is interesting to note that village land administration receives no support in the ten Pillars.

SAGCOT’s promotion literature *Why Invest in Tanzania* declares that Tanzania has 44m hectares of which only 10.1m hectares are currently under cultivation. Of the available land, SAGCOT states 29.4m hectares are suitable for agriculture with irrigation, and they go on to state that Tanzania is endowed with many lakes, rivers and underground water sources, ready for irrigation projects. The official website of SAGCOT promotes the scheme as an effective means for increasing agricultural production, and argues that the planned creation of 420,000 jobs, will improve food security and reduce poverty. The scheme aims to move tens of thousands of subsistence farmers into commercial farming with access to modern inputs, irrigation and international markets.

SAGCOT is expected to attract 3.4 billion of investment ‘more than 80 per cent of which would be private investment’ (Milder et al 2013:3). The funding of 3.4 billion will be spent on farming technology, infrastructure improvements and developing the means to add value, such as through processing, transport, market links. However, an interim evaluation of SAGCOT in 2012 by the consultants from the Environmental Resources Management, (ERM) painted a less positive picture of the scheme. The evaluation reports;

Tanzania is exhaustively analysed in numerous documents (see e.g. Deininger et al 2012), with key features being a strong movement for reform with limited implementation and many ambiguities, resulting in complex, slow process of formalisation, little tenure certainty for marginalised groups and limited transferability of land. There is significant public concern over what is perceived to be ‘land grabbing’ by investors and an increasingly vocal civil society willing to speak out on land issues. The sustainability of the SAGCOT programme will rely heavily on turning it from a perceived threat to residents’ interests to a process with tangible, reportable benefits (ERM 2012:12).

The many stakeholders interviewed for the evaluation, across all sectors affected by SAGCOT, raised a series of complaints about how the scheme was operating and the likely negative effects. The question of access to land was the top priority issue for both investors and local smallholders. The investors found that the promised Land Bank, from which they could easily access unused land as promoted by the SAGCOT team, did not actually exist (2012:54). There is no Land Registry, thus no detailed record of land actually available for investment, nor is there an organised system for accessing land. Almost all land is used, indeed there are already conflicts over land between pastoralists and crop farmers. Investors must negotiate with communities for access to village land which involves negotiations over issues of compensation and the re-settlement of village communities. Negotiations are complex, thus slowing down the process of acquiring land for production, where it can take between 6-10 years to finalise the acquisition (ERM 2012:54). The team found that ‘SAGCOT is not

sufficiently transparent’ and that important information about SAGCOT is not shared with the village communities (ERM 2012:53). The communities are not informed about how SAGCOT is supposed to operate and what benefits they can expect from the SAGCOT scheme (ibid). They are disadvantaged in the negotiation process with investors due to their lack of information and are now suspicious of their land being ‘grabbed’ by outsiders. That suspicion is not without foundation, as already, the team were informed by village and district authorities that speculators were grabbing village land for re-sale to foreign investors. The promotional materials emphasise the poverty alleviation aspect of the scheme, while, in fact, the scheme is at serious ‘risk of the capture of benefits by elites’ (ERM 2012:54). In 2012 Karol Boudreaux, a land tenure specialist was commissioned to undertake a review of SAGCOT for USAID, a major donor to the programme. Boudreaux described how SAGCOT officials assured the evaluation team that ‘land was not a problem in the Corridor’ although almost all land in the designated area is village land or land reserved for conservation purposes (2012:2). Boudreaux noted two important risks to the poverty alleviation aspect of the policy, the National Land Use Planning Framework policy document which states that the GoT ‘plans to transfer 17.9% of lands from villages into the general land category’ to free up land for investment, which may lead to land conflicts as villagers and pastoralists are displaced from their land and livelihoods (Boudreaux 2012:11). Secondly, Boudreaux points out the lack of control of villages over the negotiations with investors and their subsequent exclusion from the benefits of investments. Boudreaux alludes to the contradictory logic of the Kilimo Kwanza (Agriculture First), the agricultural policy, of which SAGCOT is an important component. Kilimo Kwanza states that small holder farmers should be encouraged to be commercially active, but their involvement in the process is considerably constrained:

Indeed it is difficult to understand how Kilimo Kwanza's stated policy (1.2.1) of transforming peasant and small farmers to commercial farmers by focusing on productivity and tradability will occur if these farmers are barred from trading their most valuable asset: their land (2012:5).

In addition, the proposal 'Land for Equity' requires that foreign investors provide GoT or their agents with a 25% equity stake in the investment, in exchange for leases on land, while the villages who have lost access to their land are cast aside. Boudreaux advocates that the 'Direct control of resources (land) and benefits (lease payments)' is vital to ensure small farmers benefit (Boudreaux 2012:5).

The findings from both the ERM Evaluation (2012) and the review by Boudreaux (2012) indicate that the SAGCOT programme posed a high risk for investors, due to a number of shortcomings. These include: ambiguities in the institutional framework, the costly and protracted processes of acquiring land, and doubts over the fairness and transparency of land acquisition from villages. Boudreaux notes that companies investing in SAGCOT may place themselves in danger of reputational damage or even potential liability under the US Foreign Corrupt Practices Act (2012:9).

SAGCOT like other ambitious schemes before, has not sought to include the very small holder farmers whom it was supposed to lift out of poverty. Bourdieu signals to us that any agent may find that their capital resources are valued differently in diverse social fields. An agent may achieve a dominant position in one setting, while experiencing loss of dominance in another, 'an agent can occupy a desirable dominant position in one field, but a less valued position in another' (Hardy 2012:231).

The foreign investors find themselves in a quagmire of bureaucracy, misinformation and misrepresentation of their intentions vis a vis the village communities. Their ability to structure the social space is severely curtailed by officials at every level with whom

they have to negotiate entry into the lucrative opportunity afforded by the SAGCOT. While for local small scale farmers investment induces anxiety as past experience of large scale investment has led to land dispossession. The Director of Haki Ardhi /Land Rights Research and Resources Institute (LARRI) a leading land rights civil society organisation, voiced the widespread fear among small scale farmers and activists that large scale investment will not reduce poverty, but rather, exacerbate it (Interview with Myenzi, Haki Ardhi 28th January 2013).

Investors wishing to invest in land in Tanzania have a ‘one stop shop’, the Tanzania Investment Centre (TIC) which was established in 1997 to promote large scale investment both foreign and local, into the economy (URT no date). Geert, a Dutch lodge owner, stated that although the Tanzanian Investment Centre (TIC) is promoted as a one stop shop, the reality is much more bureaucratic:

In the TIC a representative from each of the ministries responsible for land, labour and tax, sit at their desks in the same building, but your application letters must be hand delivered to each desk, there is no internal post, so you still have to attend to each relevant department separately (Interview with Geert, Majengo Point, 3rd April 2014).

The options for investors involve going directly to the village to negotiate for land or buying land from individual Tanzanian citizens or local companies. Village land cannot be used for investment, it must be transferred by the village to the category General Land, only then can it be allocated. After which, investors may only hold derivative rights to land (leasehold rights from the GoT or from customary or statutory rights holders) meaning the land is held on a lease from either the GoT or village or urban land holder. According to the Tanzania Investment Centre website, a Land Bank was set up to offer land to investors in 2003, which has established 25 million hectares of ‘unused’ land for investors, as mentioned earlier. Among land rights activists, the Land Bank was a controversial topic. Myenzi from Haki Ardhi stated that the Land

Bank was created through a Presidential Order, and that every District Council at very short notice was told to identify the land available for investment (Interview with Mwenyi, Dar es Salaam 28th January 2013). He gave the example of the District Council in Manyara, which was given seven days to identify several million hectares. Mwenyi asserted that the whole process of creating the Land Bank was on shaky legal grounds. Normally the Village Councils must put the proposal before the Village Assembly, who must agree to the transfer of land to the government as General Land for development. This did not occur in many areas, as the whole process was rushed, the District Councils accepted 'under duress' (ibid). According to Boudreaux, and the very existence of the 'Land Bank' came into question in the SAGCOT scheme (2012:9). There appeared to be no Land Registry or anywhere recorded details of the 'Land Bank' of available land.

Investing in Tanzania is presented by the GoT websites as relatively uncomplicated, but the reality is much more complex. To give an example, Geert the Dutch lodge owner mentioned above and his wife, invested their retirement savings in a small lodge in the Usambara mountains, where they trained the local staff in the various tasks so they could run the lodge without any professional outsiders. This couple faced many obstacles while attempting to follow the legal procedures for acquiring land and setting up their business. The bureaucracy was time consuming. Geert related their story;

Foreign Investors are in a catch 22 situation. There is the Tanzanian Investment Centre (TIC) from there, an investor can get a Tanzania Investment Certificate and if you have that, you can buy land from the village. There is a procedure required though, to get an Investment Certificate, you need to already have land, that is you need to have spoken with the village and have their agreement to sell you the land. We found land we liked and the village were happy to sell us the land. We went to the land office here in Lushoto. My wife and I were the first foreign investors to look for land. The TIC explained to the District Land Officer that the land must be bought first by the District Office, and then it is sold on to the investor. The District Land Office did not

know about this procedure, so the TIC had to inform them. Then the District Land Office said they would buy the land, but it had to go to the President's office. The project was delayed and delayed for three years, but eventually we had the approval. We decided to go ahead with the villagers and started building, we got training for the village youths from local builders so, it was the villagers who built the lodges. We had to insist at the District Office that the villagers build the lodge, they wanted us to employ their recommended contractors, but we didn't give in to them. The villagers got skills during the building and they got the money, now they can do the building alone. We didn't get the title deeds as yet, we are still waiting six years later (Interview in Majengo Point, Usambara Mountains, 3rd April 2014).

When the business was up and running, employing local staff and receiving tourists, there was a conflict with the District Commissioner (DC). Geert's assessment was that the District Commissioner could see that the couple were vulnerable as they did not have their title deeds for the land:

The DC informed the national security that we had bought the land illegally, because she wanted us to be kicked out. We had discussed everything, every step of the way, with the village landowners and we had employed only the local people for every job. We bought the land from the villagers, but they still had use rights on the land, and we respected that, everyone knows their borders and we put sisal plants to mark the borders. We feel secure about the land through the village being behind us, we have the signatures of the village leaders, but if the government gives trouble, you really need title deeds and we haven't been given them. You just cannot do it right, dealing with the TIC is very tricky (Interview with Geert, Majengo Point, Usambara Mountains, 3rd April 2014).

The Presidential Commission of Enquiry into Land Matters – The Shivji Commission (1994)

The Government will be turned into a beggar for land when required for development’ (URT 1993a:5 cited in Sundet 1997:93).

During the 1980s land conflicts and tenure insecurity increased dramatically and President Ali Hassan Mwingi established a Presidential Commission of Enquiry into Land Matters to investigate the causes and recommend solutions. The Commission coordinated by Professor Issa Shivji, was given the task of both reviewing the laws and policies pertaining to land and investigating the ongoing high level of land disputes, legal cases and violence over land, which had become pervasive (Rwegasira 2012). The Shivji Commission, undertook a nationwide study of rural and urban communities experience of land laws and policies and published its report in 1994. The Shivji Commission (1994) stated that the objective of the exercise was to ‘hear and see for ourselves the way matters operated on the ground before delving into books to see how they were supposed to operate in theory’ (URT 1994a:2). A strong commitment was made to elicit the opinion of as many citizens, academic experts, policy makers and community representatives as possible, in an attempt to find the best solution to ongoing land conflict. Two hundred and seventy seven public meetings were held in one hundred and forty five villages and one hundred and thirty two urban centres (URT: 1994a:3). The study covered all twenty regions of Tanzania and all but two districts.

The Shivji Commission gathered evidence which demonstrated that there exists a ‘striking continuity between the colonial and post-colonial periods in (a) the approaches and attitudes towards customary land tenure and (b) alienation of rural lands to outsiders’ (URT 1994a:24). The Shivji Commission found evidence of the widespread disregard of customary held land rights, both during villagisation and when

formerly 'nationalised' plantations were returned to their former owners, or additionally, when land was acquired by government for public projects.

The Shivji Commission concluded that villagisation created many of the land related problems in Tanzania. The lack of legal basis for villagisation left residents with insecure land rights. Their customary rights to land in their original home areas was unclear. At the same time, they were insecure in the new villages they were forced to occupy. This has led to many land evictions of long term occupants when former owners returned to their homes, and when villagisation was no longer compulsory (URT 1994a:24).

Another major source of land insecurity was that of the settlements of former workers on nationalised or abandoned plantation farms. The nationalisation of foreign owned land around the time of the Arusha Declaration (1967), coupled with the low prices for agricultural commodity crops, led to many farms being abandoned by their owners, or in some cases, through their inability to pay the mortgages (1994a:61). Many farms were then settled by the former plantation workers, sometimes willing, but some were also forced to move into the newly created villages during the villagisation operations. Some were moved onto farms during a government food mobilisation drive 'Kilimo Cha Kufa na Kuona' (Produce or Perish), in the mid-seventies and a re-settlement of the urban unemployed in the early 1980s. A number of these large farms and plantations were re-allocated to 'well connected individuals or people of means or foreigners rather than indigenous landless ... to grow export crops' (URT 1994a:62). This re-allocation has displaced large numbers who had settled on the farms. These settlers had been taken to court as 'trespassers' on the land which they had occupied for extended periods, and were treated 'like criminals' (ibid). Banks sold land to recoup

the mortgages leading to the eviction of whole villages and the loss of their livelihoods without compensation (ibid). One of the villages adjoining Olomotoi, the village where I was doing my research, was belonging to a former parastatal farm which had been occupied by 'squatters' who farmed the abandoned land for many years and were now living with uncertain land rights.

The Shivji Commission (1994) found that numerous other problems arose due to the management of village lands being vested in Village Councils. Village Assemblies, which includes all resident adults over 18 years, had virtually no control over land and this led to 'many abuses and malpractices in allocation, alienation and use of village lands' (1994a:60)

The Shivji Commission received reports that Village Land Committees, village leaders and district officials were often working together to alienate village land, with the Village Assembly being powerless to stop this misuse of power. There was widespread bitterness over the alienation of land to people from outside the village. The conclusion of the Shivji Commission was firstly, that villagisation 'forms the main source of land tenure problems in rural Tanzania today' (URT 1994a:60). Secondly, they argued strongly that the radical title vested in the President was a major source of the problems with land legislation in Tanzania (ibid). The focus of many complaints of village communities revolved around the fact that radical title is vested in the President and their lack of involvement in decisions made on land matters at village and national level. The Shivji Commission recommendations were comprehensive; the most controversial ones being that the President is divested of the radical title to all land and that authority over village land should be vested in Village Assemblies (1994a:140-141). Further suggestions were proposed, that National Land should be administered

by a National Land Commission (NLC) and authority over land ought to be vested in a Board of Land Commissioners (BLC). Tenure in National Lands should comprise Rights of Occupancy and Customary Rights. The Shivji Commission (1994) were not in favour of alienating village land to outsiders, but village land could be leased, with both 'customary lease and licences' proposed, which would not exceed ten years and pertaining to an area of no more than three acres (URT 1994a:152). A statutory ceiling on land holding of 200 acres within the village was deemed essential to prevent land concentration (URT 1994a:156). Finally, customary ownership of village land should also be recorded in a Village Land Registry and a certificate of land ownership issued entitled 'Hati ya Ardhi ya Mila' (Certificate of Land).

The Shivji Commission argued that customary laws should be allowed to evolve in their own time, changing to suit modern conditions, rather than being changed from the top down (URT 1994a:193). This aspect of the report was contested by the women's rights organisations as being discriminatory and leaving women without any legal support for their claims to land (Killian 2011).

The Shivji Commission (1994) found that the dispute adjudication system was highly ineffective. The most innovative recommendation was that a Baraza la Wazee La Ardhi (Land Council of Elders), should become part of the formal judicial system, advising on the basis of their expertise on customary rights and traditional practices (URT 1994a:199). The recommendations were designed to strengthen tenure security for village residents and to give the village residents more control over village land matters.

The Shivji Commission Report was eagerly awaited, but upon submission in 1992, was not disseminated to the public for discussion nor was the report translated into Swahili

(Sundet 1997:215). Only one copy was sent to the University of Dar es Salaam. It took two years for the report to be released to the parliamentarians (ibid).

The work of the Shivji Commission (1994) has been widely acknowledged as thoroughly researched and as offering innovative solutions to land issues, and the report 'remains a point of reference in the history of land law in Tanzania' (Rwegasira 2012:89). The report was a comprehensive assessment of the challenges in the land administration system and put forward the opinions and suggestions of the whole range of stakeholders in land matters. Despite this, the report was ignored and very few of the findings were incorporated into the National Land Policy 1995 (NLP).

National Land Policy 1995

This section utilises the insights of Geir Sundet (1997), a political scientist who researched the policy-making process which shaped the form and substance of the final draft of the National Land Policy (NLP) 1995. Sundet (1997) interviewed key senior officials and former politicians who were involved in the policy making process and uncovered information which had previously not been in the public domain. The experience of the various advisors to the Ministry on the development of the NLP will be explored. The interests of the state, civil society and donors diverged, and ultimately the highest capital was held by the state, whose agenda was served best in the new National Land Policy.

The formation of the National Land Policy was five years in the making and proved to be a complex and highly political process. The process was notable for the extent to which policy advice was received from the Shivji Commission, international experts, national academics, and to a limited degree, civil society organisations, only to be ignored in the National Land Policy final draft (Sundet 1997). The policy making

experience is an unequivocal example of the competitive struggle in the field for dominance, and the unequal power attached to the agents.

A policy-making committee was established in the Ministry of Lands to draft a comprehensive National Land Policy, referred to from here on as the Ministerial Committee (MC). The Ministerial Committee was composed of senior officials in the Ministry of Lands, the Planning Commission and the National Land Use Planning Commission. During interviews with senior civil servants involved directly in the committee, Sundet (1997) records that the policy was designed with an emphasis on facilitating investment. At the same time, an open land market was seen as problematic and looked upon with suspicion. The Shivji Commission and the Ministry were in agreement on one issue, the inadvisability of an open land market (Sundet 1997:230).

Soon after the International Monetary Fund (IMF) structural adjustment programmes began to transform the economy, the National Investment Promotion Policy and Investment Code was launched. The policy established the Investment Promotion Centre which was tasked with attracting domestic and foreign investment. The economic policies underlined the commitment to developing the private sector through deregulating most economic sectors and through the privatisation and reform of parastatal enterprises. It was hoped that local and international investment would be found for much needed development. Thus, the Ministerial Committee working on the land policy were greatly concerned to ensure that suitable land would be available for investors. Sundet was told by interviewees that what had occurred in Mtwara was a 'wake-up call' for the government (1997:209). Mtwara was the only region in Tanzania where all villages were demarcated and, to the governments' surprise, all village boundaries were coterminous. Thus, when the government sought land for

development, there was no spare land for national projects, nor to offer to investors. This was considered by the senior civil servants as a barrier in the way of the National Investment Promotion policy. The solution to this untenable situation was for land use planning to precede village demarcation, as that way, land could be made available for investors. This point was explained by the Principle Secretary during a National Land Policy Workshop in Arusha:

it should be emphasised here that in areas or districts where there is no public land or land set aside for public use, it would be extremely difficult for the government to attract investment from within and outside the country (cited in Sundet 1997:210).

The next important issue for the policy makers was the question of whether or not a land market should be allowed. Concerns were expressed by the officials that a free and open land market would result in land concentration and subsequently land dispossession of the poor. The attitude of the policy makers towards customary land tenure was that it should not be encouraged and ideally was to be phased out, as it was incompatible with modern life. Customary land tenure was seen as an obstacle to selling land and it 'discouraged individual progressive villagers' from using their land as collateral for mortgages (Sundet 1997:91). Sundet noted the belief among those officials he interviewed that being able to use land for collateral is a 'pre-requisite for development' and represented an important step in the modernisation of Tanzania (1997:91).

The first policy draft of the Ministerial Committee was ready by May 1992. The policy made little or no changes to the status quo, stating that 'all land should be public land vested in the President' and all citizens shall continue to have Rights of Occupancy (Sundet 1997). The biggest change was the recognition in the policy that land has a market value, over and above the 'unexhausted improvements'. Unexhausted

improvements are the labour or capital the person has expended on land. This was an important principle of land administration under socialist policies, where compensation was being calculated, labour or capital investment, such as fencing or buildings alone were taken into account, not the land itself nor the opportunity costs of no longer having any means of future livelihood.

Allocations of very large plots to foreign investors was viewed negatively and a proposal was made to introduce a land ceiling and to ensure that the investor who acquires land can actually develop the land.

A National Land Use Plan was proposed to create a definitive map of what land was available and recommendations for how it should be used. This was believed to be the solution to land conflicts and land shortages, as unused village land could be allocated to needy villagers. Lastly, the proposal stated that the Land Policy should have the objective of providing land for development by potential investors. This meant that villages should come together and set aside surplus land which could be offered to investors. Investors may develop the land jointly with villagers 'where possible' (Sundet 1997:92).

The Shivji Commission (1994) submitted its report in November 1992. The report was not distributed to the legislature and there was little public discussion on the Report's analysis and recommendations. The government responded to the Shivji Commission Report recommendations in a Draft Position Paper. In the Draft Position Paper the Government categorically rejected divesting the President of radical title to land. The result of this action, they argued would be that:

The Government will be turned into a beggar for land when required for development. The Government will not implement its policies in that way. The Investment Promotion Policy will be impossible to implement

when the Government does not have a say in land matters (URT 1993a:5 cited in Sundet 1997:93).

The Government did concede that checks and balances were needed to limit the power of the Executive in land management. Land should become a constitutional category which would mitigate abuse of power by the Executive. The Government proposed the establishment of a Land Committee in the National Assembly of the parliament.

With regard to the criticisms of the dispute mechanisms in the Shivji Commission Report, the Government stated its commitment to setting up a specialised body of land courts, similar to the recommendations of the Shivji Commission Report. The proposal from the Shivji Report was an Elders' Land Council at village level, however, the Government recommended that the land courts should become a quasi-judicial body to be directly accountable to the President. The reasons cited included that the judiciary is prone to delays and malpractices.

The Ministry did not believe it was necessary to change the land allocation system, comprising of Committees at District, Regional and Ministerial levels. The system was operating since 1988 and according to the Position Paper, allowed for transparency due to the fact that allocations were advertised in the media.

Upon reading this, I was reminded of the difficulty of finding newspapers for sale in any of the villages where I was doing research, and significantly even if they were available, that many villagers would not have the necessary cash to purchase them.

Allowing the Village Assemblies to be in control of village land was rejected on the grounds that the Village Assembly finds reaching a consensus decision difficult. The paper argued that the Village Council is elected by the Village Assembly and therefore it should be the proper forum for managing land.

A Second Draft Land Policy (DLP) made almost no changes to the position taken by the Ministry in the original Draft Land Policy Paper and the Position Paper which responded to the Shivji Commission Report. The Second Draft Land Policy merely synthesised the points raised in the two original papers (Sundet 1997). One additional point however, was noted that pastoralists land rights were specified and their loss of rangelands due to the spread of large-scale agriculture was acknowledged. This regrettable situation was partly blamed on their 'nomadic behaviour' which meant that they often lose their right to the land. The recommendations were that rangelands should be protected and pastoralists should be settled into permanent villages. To sum up, the Draft Land Policy rejected the changes recommended by the Shivji Commission which would reduce the state's power over land allocation and give citizens more control over their village land. The land policy, instead, should conform to the state's objective to use the National Land Policy as a means to facilitate inward investment, rather than as an opportunity to solve land conflicts and create a more secure tenure for the citizens of Tanzania (URT 1995a). As these documents were not circulated to the public, the media, or to the parliamentarians, there was no public discussion of either the Draft Land Policy nor the response to the Shivji Commission Report (1994).

The World Bank – Donors, consultants and workshops

The World Bank extended assistance to the Government in drafting the Policy. In the early stage of drafting, an American consultancy firm was engaged to advise on reforms which would create an investment enabling environment. The consultant's Final Report recommended privatisation of the land market. However, this was rejected by the Ministry of Lands and the consultants contract was not renewed. Another consultancy firm was commissioned by the Government to assist in drafting the Policy, the Tropical Research and Development Inc (TR&D). The TR&D brought in a land

tenure specialist, a Ghanaian national, who was given the task of both reviewing the Draft Land Policy document and the Shivji Commission Report.

A National Land Policy Workshop of stakeholders was convened by the consultant to consider the recommendations presented by the Shivji Report and the Government's Draft Land Policy. The workshop was a first opportunity for input from interests outside of the Government into the formulation of the policy. Two policy documents were prepared for the workshop; a land policy study by the consultants, TR&D and a study by the Land Tenure Study Group, composed of academics and law professors from the University of Dar es Salaam. The workshop comprised mainly of senior civil servants, Regional and District Commissioners and Members of Parliament. A small number of NGO representatives were present, alongside representatives from the Tanzanian Gender Network Programme, one Maasai NGO and a small number of legal and technical experts. The Minister of Lands, Edward Lowassa, chaired the workshop. The government representatives recommended that the tenure system be retained. They qualified their position by arguing that the rights of customary and statutory landholders must be strengthened. Land should be acknowledged as a valuable asset and a land market allowed to operate but with safeguards for the 'underprivileged' (Ahene et al 1995:31 cited in Sundet 1997:100).

The Report of the Land Tenure Study Group (LTSG) of the University of Dar es Salaam was presented by Professor Anna Tibaijuka, a former Executive Director of UN-HABITAT and leading campaigner for gender equality in land rights. Tibaijuka later went on to become Minister of Lands, Housing and Human Settlements from 2010-2014. The Land Tenure Study Group (LTSG) group agreed with the analysis of the Shivji Commission that customary tenure was insecure, mainly due to the problem of

Government land policies and practices. They disagreed with the Shivji Commission on two of their central arguments; the issue of President holding radical title to land, and the formation of a new body, the National Land Commission to become the responsible entity for land matters. They were concerned that radical approaches to institutional problems in the past had been costly mistakes. They cited the previous attempts to improve national institutions through wholesale re-structuring, i.e. nationalisation of private property and the abolition of local governments, which had all ended in failure (LTSG: 1995:38). They made the point that if the current national governance structures cannot ‘follow the rules and stop the injustices suffered by the people because of failure to follow laid down procedures why should we expect the National Land Commission to do any better?’ (LTSG 1995:38). The recommendation from the group was to build the capacity of staff with professional training and to improve pay and conditions.

They supported a dual system of land administration, differentiating village and national land, but giving villages freehold titles of 999 years (LTSG 1995:12). Regarding a land market, the Study Group were in favour of a free market, and argued that opening up village land to outsiders was positive. They believed that restricting the sale of village land would prevent citizens in urban areas from making investments in their home villages;

we are of the view that whether in villages or national lands, the rules adopted should be flexible enough to allow the development of the land market defined as freedom to transfer land rights through sales when necessary (LTSG 1995:19).

They proposed that a sub-committee of the Village Assembly should be responsible for land administration rather than the whole assembly which would be cumbersome.

The group contended that gender issues in land access and security were not addressed by the Shivji Commission, which they pointed out, was composed of nine men and one woman. They were especially concerned that customary tenure systems marginalised women as ‘despite being the main operators of land, Tanzanian women depend on husbands, fathers, brothers, and even sons for a guarantee of their access to the land they operate’ (LTSG:1995:25). The increase in population and land values had conspired to undermine traditional safety nets, for example, where widows or divorcees could return to their home village and be given land by their brothers. Women were increasingly marginalised in terms of access to land (LTSG 1995:25). They argued forcibly for the outlawing of gender discrimination in customary tenure systems. In addition, they proposed that name of spouses should be mandatory on any official records of customary title. While they agreed with the introduction of the Elder’s Council, the group were concerned that many elders had gender prejudices and that this could negatively affect women’s rights. The recommendation was that half of the ‘wazee’ (elders) should be women.

Groups were formed on the second day to draft policy recommendations on specific issues. Only three recommendations departed from the Government position; firstly, on women’s rights to land, spouses should be included on the land certification and the consent of the spouse should be sought prior to any transfer or sale of land. Secondly, Village Assemblies should have responsibility for land management. Thirdly, the participants recommended that the power of the President to revoke titles should be specified clearly and compensation was to be calculated at market value of land.

No official recorded account of the workshop was circulated. Sundet (1997) describes how some of the participants were convinced that the workshop was an important

watershed in the policy-making process. Others were not convinced and believed that the workshop was called merely to keep up appearances that consultation had taken place.

When the Ghanaian consultant advocated in his report that some of the progressive ideas of the Shivji Commission Report should be included in the new policy, the Ministry were not pleased. The consultant was rebuked and sent home, and the consultancy firm's contract was immediately terminated (Sundet 1997: 3).

When the final National Land Policy was passed by parliament, there had been significant changes since the revised version in June 1995, after the Arusha Workshop. The final NLP scrapped the two recommendations emanating from the Arusha Workshop. The policy also wrested control of land matters from the political leadership, i.e. the Minister of Lands, and placed it firmly within the remit of the internal Ministry, i.e. the Land Commissioner, a senior civil servant. Non-citizens were now allowed to acquire land for approved investment purposes, but not through the purchase or transfer of customary land. The only reference to pastoralism was the comment that 'shifting agriculture and nomadism will be prohibited' (URT 1995a:36). The gains for women of having spouses' name on land certificates and the requirement of the consent of the spouse for any land deposition were scrapped. Instead, customary law and inheritance rights, which were discriminatory towards women, were upheld. The Final Draft of the National Land Policy confirmed the suspicions of those who attended the workshop and believed that the Ministry had no intention of listening to their opinions (Sundet 1997).

The Ministry officials rejected the recommendations of all the experts; the Shivji Commission Report, the international consultants, and academics from the University

of Dar es Salaam, and produced a Draft National Land Policy which deviated little from the first draft produced by a small group of senior civil servants. Civil society activists led by Professor Shivji formed a coalition to lobby for inclusion of the recommendations of the Commission. Gender activists did not accept that discrimination against women should become enshrined in the National Land Policy and they continued to struggle to attain gender equity. This process is discussed in more detail in Chapter Four.

The National Land Policy (1995) and the subsequent Land Act and Village Land Act (1999), confirmed the centrality of land availability for investors as the over-riding 'development' priority. Creating more secure tenure for the citizens of Tanzania and resolving land conflicts took second place to investment for development.

The Land Laws of Tanzania 1999

In 1999, the Land Act No. 4 and the Village Land Act No. 5 were passed by parliament. With the enactment of the two Land Acts; land is divided into three categories; General Land, which includes all public lands and unused land; Reserve Land, all national parks and game reserves, forests; and finally, Village Land, all land designated for villages. Only 'General Land' can be offered by the government to investors for development. 'Village Land' can only be offered to investors with approval of the Village Assembly (VA) and under specific conditions. It is interesting to note that approval by the VA is only necessary for land parcels under 250 hectares. The Commissioner of Lands has automatic right of allocation on land parcels over that amount. Village Land can be expropriated by the government for development purposes if this can be justified in the national interest and in which case, villages must be compensated (Alden Wily 2003). One of the most famous land conflicts occurred when pastoralist land in Loliondo was

appropriated without compensation by the state. The land was allocated to a Dubai company for luxury hunting safaris and later became an internationally known conflict over land rights. This case study will be explained in more detail in Chapter Five.

For village residents, before individual or collective titles can be given out, the village must be surveyed and demarcated and a Certificate of Village Land (CVL) prepared with a detailed map which gives the exact location and area of their village. Once the CVL is approved by the District Council, the residents can apply for individual certificates; the Certificate of Customary Rights of Occupancy (CCRO). The village registration process was very slow to gain momentum. By 2010, a decade after the passage of the legislation, only 753 of Tanzania's 10,397 registered villages (or 7 percent) had received certificates, which raised concerns because of the lack of clarity about the legal status of land in unregistered villages (Deininger et al 2012:83). With support from the World Bank in the last five years, the pace of surveying and registration of village land has quickened, and according to Byamugisha (2013) seven thousand villages out of twelve thousand have been registered (2013:57). Registration of land parcels within villages to individual land holders continues to lag behind, as only 200,000 certificates have been issued to individuals out of the national total of approximately 25 million land parcels (Byamugisha 2013:58).

Figure 3 The Land Acts of 1999

| <u>Village Land Act No. 5 1999</u> | <u>Land Act No. 4 1999</u> |
|--|---|
| Governs all land within Tanzania's 11,000 + villages. | General Land: all land not claimed by villages + Urban land |
| Villages may apply for a Certificate of Village land defining the boundaries of the village. | Reserve Land + Land with utilities/public facilities. |
| Land holders have Customary Rights of Occupancy/no time limit. | National Parks and Game Reserves, forest reserves are covered by the Land Act No. 4 |
| Twelve years of continuous occupation also grants 'customary rights'. | Land holders have Granted Right of Occupancy. Time limited occupation. |
| Customary rights are treated the same as Granted Rights of Occupancy in law. | Companies/corporate bodies have leases on land with conditions attached. |
| Certificates of Customary Rights of Occupancy can be registered. | Certificates of Granted Rights of Occupancy can be registered. |
| Adapted from Rasmus Hundsbaek Pedersen (2011). | |

The new land policy and land laws retained radical title to land with the President on behalf of the people. The reform upholds existing rights of occupiers, that is those with customary rights over land, as well as those who can prove residency for over twelve years. A limited level of responsibility for village land administration is devolved to the elected village government, but with little support from the District Councils to manage those responsibilities. Village authorities receive meagre financial assistance and little or no training on the extensive bureaucratic procedures which are required in land administration and dispute resolution (Sundet 2005).

In addition, village authorities must seek approval from the District Council for many actions relating to land administration, such as, formalising land parcels and creating bylaws. Village Land Tribunals cannot impose fines or penalties on those who transgress the land laws.

Liz Alden Wily (2003), a land tenure specialist, undertook a comprehensive analysis of the land laws. Alden Wily (2003) argues that the Village Land Act No. 5 (1999) is ground breaking in terms of African land tenure systems. Firstly, the Village Land Act No. 5 (1999) builds upon pre-existing villages 'the integrated social and spatial construct of discrete village areas' (Alden Wily 2003:3). Most villages have village governments in place, the elected Village Councils which manage village affairs since 1975 and have defined areas of jurisdiction. Village Councils also have legislative functions, termed Village by-laws under the Local Government (District Authorities) Act 1982 and women must comprise 25% of the Councillors (Alden Wily 2003:49). The by-laws cover use of communal resources, such as forests, pasture lands and water resources. The whole village must agree to the by-laws and the District Council must also give their approval in order for the by-laws to become legally enforceable and backed up by legal sanctions. The legal sanction underpinning the by-laws has increased the capacity of the village communities to regulate the use of their resources and to exclude non village members from using communal resources.

Alden Wily's (2003) criticisms of the land laws mainly focus on the following four points. Firstly, Alden Wily questions the extent of top down management in the law, giving the example of Hazard Lands, that is lands which are deemed fragile, such as mangroves, wetlands lakeshores etc. The President may take over the management of these lands from the Village Assembly in the national interest. At the same time, the Village Assembly only has the power to approve or reject the removal of land from its domain by the State under 250 hectares. Parcels over that amount are removed at the discretion of the Commissioner of Lands.

Accountability is upwards from the Village Council to the District Council with little downwards accountability from the Village Land Manager to the community or to the District Council to Village Council. The Village Assembly cannot dismiss their elected Chairman without permission from the District Council. The District Land Officer must sign and seal all certificates which may delay the certificates being issued.

Secondly, the system is overly bureaucratic; there are too many forms, fifty in total, which must be filled in, which will put undue burdens on weak systems. Sundet (2005) describes the lack of resources at village level to manage this level of bureaucracy, and argues that the cost of the formalisation exercise itself is prohibitively expensive for village authorities and individuals who wish to get their CCRO. Mr Mollei, Village Executive Officer for Lengai village stated that:

After we got the training on land laws given by CORDS, we called the village to come for measuring the land. But the Arusha District Commissioner told us that every person must pay 120,000³tsh to get their CCROs to pay for surveying. The village members didn't turn up to measure the land, only 4 people came for the CCROs. The villagers said the cost was too high. Up to now there is no progress in the case of certificate. The villagers didn't not follow through. But there was no disputes, because everyone knows their place, local elders are there, if there are problems (Interview with Mr Mollei, VEO, Lengai, 1st July 2016).

Thirdly, Alden Wily (2003) also noted the ambiguity between the Village Land Act No. 5 1999 and the Land Act No. 4 1999 in the definition of what constitutes General Land.

The Village Land Act 1999 defines General Land is a “residual category” meaning all land not village land or reserved land ... [While] ... the Land Act 1999 defines General Land as “all public land which is not reserved land or village land and includes unoccupied or unused village land” (s.2) (cited in Alden Wily:2003:10).

³ 120,000 Tanzanian shillings is equivalent to 49.29 euros.
<http://freecurrencyrates.com/en/TZS-exchange-rate-calculato>

There is a danger that villages could lose land they are not currently using, such as, land lying fallow, protected areas, village forest reserves or marshland. The Land Act No. 4 (1999) gives leeway for the state appropriation of common or protected lands in the name of development (Sundet 2005). While communities are entitled to compensation and also could contest the issue in court, this is an expensive and time consuming activity which many could not afford.

Fourthly, Alden Wily predicted serious shortcomings of the system in resolving village boundaries disputes. Village registration has taken place in Tanzania over different time periods, with attempts to register villages beginning in 1975 and occurring again in the 1980s. During these separate registration drives, villages were given conflicting advice on what to include in village land by the District Council. For example, common land, forestry and pasture were often not included. Alden Wily (2003) stressed that resolving the boundary issues between villages needs to be a priority activity of the land administration system.

There are a number of redeeming features of the current system for Alden Wily including; management of village land is devolved to the village government which is both 'locally elected and locally accountable' and substantial protection of land rights for rural Tanzanians, in particular, for women, pastoralists, and other vulnerable groups (2003:5). The best safeguard of those land rights is the equal legal status under the law of customary rights and granted rights, whether registered or not. The inclusion of the commons within village lands administration, is also an important to secure commonly held property.

One of the positive aspects of the land laws is the provisions for the land rights of women (Alden Wily 2003). The protection afforded to women was a hard won victory

of the Gender Land Task Force, a coalition of gender activists (GLTF). After the Draft National Land Policy was made public, the GLTF lobbied for the inclusion of important provisions which would protect women's land rights. They argued for the abolition of customary law and for the introduction of joint titling/ownership between spouses and protection of wives against the sale of land without their consent. The land laws drawn up reflected some of these recommendations. The Village Land Act No. 5 states the principle which enshrines a woman's right to land: 'The right of every woman to acquire, hold, use and deal with land shall to the same extent and subject to the same restrictions be treated as the right of any man' (Alden Wily:2003:47). Customary rules which deny women access to land ownership, occupation or use, are rendered null and void. Village committees concerned with Land Matters must have female representation, i.e. three of the seven members of the Village Land Council must be women. The law presumes co-occupancy, that is unless otherwise stated on the Customary Certificate of Occupancy, 'both spouses are presumed to be joint owners' (ibid). Chapter Four focuses in more detail on the struggles over gender in the land debates.

Conclusion

Neoliberal policies of supporting private investment in the economy, particularly in relation to agricultural land, continues to be promoted as the natural route to development with support from governments in the global South and multiple international financial institutions. The evidence of failure of these policies in numerous settings appears to have no impact on the ‘obsessive devotion’ to the fetish of ‘development’. There is no doubt that the impact of neoliberal policies of privatisation have facilitated ‘land grabbing’ by foreign and national investors of millions of hectares of farmland across the African continent. The GoT is one of many low and middle income African countries who are using their agricultural land to attract foreign investment, with the objective of achieving economic ‘development’. Foreign investment is considered the key to achieving goals of generating revenue, improved infrastructure, and jobs. Land formalisation has been criticised by scholars as a means to facilitate land transfers to foreign or national elites and therefore, is implicated in the dispossession of land from the poor. According to Tanzanian and internationally acclaimed scholars, this constitutes a new form of ‘primitive accumulation’ by global capital of the assets of the poor (Shivji 1999, Harvey 2004, Amanor and Moyo 2008, Stein 2014). Hilgers (2012) argues for an approach that recognises the diverse contexts within which neoliberal policies take effect and emphasises the different character of neoliberal policy and practices in an African setting.

The vision of achieving economic development through foreign investment in land is not a new phenomenon, driven by recent neoliberal stance, but a policy objective of every government in Tanzania, since the 1960s both pre and post-independence, regardless of the political ideology followed. Thus, if the choices taken during the formation of the policy are examined, it becomes obvious that the National Land Policy

(1995) and the Land Laws of Tanzania 1999, were formed with the objective of keeping land firmly under the centralised control of the state. The policy was masterminded by a small cohort of senior civil servants who dictated the terms. This group ignored calls for real reforms and the devolution of power to the village assembly and village authorities, instead, they consolidated land in central control (Sundet 1997). Thus 'land grabbing' by foreign corporations happens through the legal framework and investment policy pursued by the state. A more precise description is that land is expropriated from communities and customary rights holders by the state, in the name of development. This has led to a collective anxiety over land tenure and the proliferation of land conflicts. Gaining a land title is one strategy by which the village communities and individuals hope to tighten security around their villages, individual plots and communal resources; an amulet to protect against encroachment at best, or at least, a useful piece of evidence for any future court battle.

Chapter Two - MKURABITA in Manyoni: Three Villages, Four Years and a Printer Cartridge

We have been waiting so long for the certificates (CCROs) we think the land has been stolen because it was surveyed by MKURABITA and then they went away. There is no difference now between those who had their land surveyed and those who did not. Nobody has a CCRO (Yoram Emmanuel, resident of Mlala 2nd April, 2013).

This chapter presents the experiences of smallholders farmers who participated in the MKURABITA programme in 2009 holding high hopes of receiving a valuable certificate for their land; a Certificate of Customary Rights of Occupancy (CCRO). When I arrived to undertake my fieldwork in 2013, four years after the programme staff had left their villages, they were still waiting and losing hope of ever receiving those illusive CCROS. For Bourdieu (1977,1990) social capital is the network of contacts, where reciprocity and trust prevail, assistance is rendered when needed without consideration of immediate gain. Those who expend their energies to help a member of the network, invest against a future need for help themselves, thus, they build up ‘credit’ which they can call upon. According to Bourdieu (1977, 1990) social capital is utilised by agents to secure their position and augment their resources. The social capital resources of the village community were so low that their capacity to pressurise their District Council or the MKURABITA headquarters to process their certificates was almost non-existent. Even, their local political representative, Mr Enock, the Ward Councillor, lacked the social capital endowment to force the District Council to produce the certificates in a timely manner.

This chapter commences with an overview of land administration practices at village level. This is followed by an analysis of the MKURABITA programme; its vision and objectives and the impact of its reform programme. Finally, the chapter will present the experiences of the smallholders who took part in the MKURABITA programme,

their strategic positioning behind the government supported programme and their perceptions of the capacity of Certificates of Customary Rights of Occupancy to provide tenure security and loans for development.

Tenure security was the highest priority for my informants, and land dispossession through expropriation or encroachment, was perceived by them to be a potential threat. For these smallholders and pastoralists surviving on low or subsistence level incomes, village structures are the most accessible institutions for managing land and mediating disputes. Yet, despite land policies which devolved power to the village authorities, the power of the village leadership over land matters continues to be subordinated to local and central government bureaucracies. In particular, their control over large scale transfers of land (over 250 hectares) for national development projects is very negligible. In addition, village communities receive very limited, or no financial or technical support, to administer a complex land management system. The low level of social capital of the village communities was evident once more in the exclusion of village leaders and the village residents, from training on the land policies and laws. This exclusion of the village community is contrary to the intent of the land laws, which were ostensibly designed to devolve power to the villages. The village leader's lack of knowledge of this vital information left them wholly dependent on external sources for guidance on both procedures and laws. Village Councillors informed me that without the MKURABITA programme they would not have known anything about neither the content of the new policies and laws, nor of their rights and responsibilities in relation to them. James Benjamin the Village Chairman of Songambebe stated:

If we didn't have MKURABITA here, we could not afford the cost of the CCROs, it would be impossible, we would not even know how to do it without the MKURABITA training (Interview in Songambebe, 23rd March 2013).

Nor would the village communities know the true value of their land, which is one of the reasons given that in other districts, villagers have sold land cheaply to outsiders in ignorance of its true value. Ibadaa Njoghomi, a village resident of Kiwawa stated ‘we were asleep before MKURABITA to the value of land’. To operate effectively the villages needed basic infrastructure to administer land, such as offices, filing cabinets, land registries and stationery as well as training. All of which were lacking until MKURABITA arrived with funding for these essential components of the land administration. It became apparent throughout the research in Manyoni that the village residents lacked both the necessary symbolic and economic capital to enable them to press their claims on the dominant state bureaucracy.

It is imperative to begin this chapter with an explanation of the village land administration structures and the procedures involved in formalising land titles. This is followed by an analysis of the MKURABITA programme, examining its vision and objectives, style of operation and the implications of the reforms recommended. The final section reviews the experience of land titling in three villages. Themes covered will include the perception of tenure security, inheritance, rights to land and finally the practice of dispute resolution will be explored.

Village Structures and Land Use Planning

The National Land Policy and Land Laws of 1999 have created a decentralised land administration. Decentralisation, however, is only partial, as the primary responsibility for implementing land reform laws remains with the Ministry of Lands, Housing and Human Settlement Development (MLHSD). The Commissioner of Lands within the Ministry plays a central role in relation to land administration.

In this section I am drawing on an evaluation report (2010) by the Ujamaa Community Resource Team, an advocacy organisation campaigning for the land rights of hunter gatherers and pastoralists. The Ujamaa Community Resource Team (UCRT), an advocacy organisation of Maasai and Hunter Gatherers conducted an evaluation of a Participatory Land Use Planning exercise in villages in northern Tanzania (UCRT 2010). Tanzania is divided administratively into regions, districts, wards and villages.

Every village in Tanzania has a Village Assembly comprising all the adult members of the village. This Assembly is required under the Village Land Act No. 5 1999, to elect a Village Council, every five years, to be led by the Village Chairman, to act as the governing body of the village (UCRT 2010:5). Every village Council is obliged to have a Village Land Council and an Adjudication Committee, or Village Land Tribunal, to mediate on land conflict and boundary disputes.

The Village Council must obtain Village Assembly approval for many key decisions related to land use, including by-laws to manage the natural resources belonging to the village (UCRT 2010:4). By-laws are an important mechanism to sanction those village residents who violate the provisions of the land use plans (ibid). The UCRT evaluation report states ‘Once the District Council approves village by-laws, they have legal force equivalent to any other law in Tanzania and violators can be charged in courts of law’ (UCRT 2010:4). These by-laws were regularly mentioned by informants as being an important means of sanctioning those who ‘misbehave’ in the village:

The Village Council and Assembly must approve the bylaws. We monitor the by-laws, making sure that they are kept. One example is cattle tracks, they need to be left clear so the animals can move for grazing and water, but they can be used for farming by some villagers and we have to put a stop to that, when its happens. (Rubeni Nathaniel, Focus group, Village Land and Community Development Committee, Songambe, 11th March 2014).

The land reform policies and laws have prescribed detailed guidelines covering the process of land formalisation at village level. The process begins with a systematic compilation of information about village land use patterns, called Participatory Land Use Planning (PLUM) which must be undertaken with all village residents actively involved in identifying their land parcels and areas designed for general use, such as water sources and forest reserves. Communal grazing land for use by the members of the village and 'akiba' land, which is the reserve land for the village, set aside for future generations (UCRT 2010) are also designated. The Land and Development Committee in Songambebe explained how they manage the Village Reserve Lands:

People in the village can acquire land in two ways, they can buy some, or they can get some from the Village Reserve Land. Any resident who wishes to get land writes a letter to the VEO asking for that plot. This letter is taken to the Village Council (which has 25 members) who meet and discuss it. If there is land available, then the request is then taken to the Village Assembly who have to agree to the plot. If a stranger wants land, they must go through the same procedure. The village residents can rent the reserve land for 30,000⁴tsh per acre but for outsiders it is much more. Residents can buy land for 100,000⁵tsh per acres, but for outsiders it is 200,000⁶tsh per acre (Interview with members of the Land and Development Committee Songambebe, 11th March 2014).

At the end of the process, a Village Land Use Plan or (VLUP) is created. The VLUP is an important step on the journey to gaining a Certificate of Village Land (CVL), after which individuals or groups can apply for their Certificates of Customary Rights of Occupancy (CCRO).

⁴ 30,000 Tanzanian shillings is equivalent to 12.50 euros

⁵ 100,000 Tanzanian shillings is equivalent to 42 euros

⁶ 200,000 Tanzanian shillings is equivalent to 84 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=100000&From=TZS&To=EUR>. (Accessed 26 January 2017).

While village authorities and community members can prepare the Village Land Use Plan and the by-laws, the District Council, an elected body, must ratify and approve the Plan and the by-laws. The revised Land Use Planning Act of 2007 now also requires the Minister to approve Land Use Plans (UCRT 2010:6). Once authorisation from the Ministry is received, the village community begins to put the plan into action, demarcating the different land use zones and implementing the by-laws as agreed. The plans are not static and may be modified as land use changes occur, for example, land may need to lie fallow for a period, or land might be needed for a public building. The evaluation team concluded that:

Participatory Land Use Planning process can be a powerful tool for capacity building, empowerment and conflict resolution when communities are really partners in the process and their interests are central (UCRT 2010: 19).

Land use planning and village level governance of land allocation are key elements of the National Land Policy (1995) and the Land Laws (1999) of Tanzania. My informants at all field sites continuously emphasised the importance of Land Use Planning for clarifying which areas are for communal resource use, for farming and grazing pastures, and for securing individual farm plots.

However, the implementation of the land reform policies has been criticised as ‘patchy’ and extremely slow. In 2008, Geir Sundet undertook an evaluation of MKURABITA for Norwegian People’s Aid. He pointed out the structural problem of multiple channels of reporting which makes the whole system complex to manage and monitoring the system a demanding task. He found that the capacity of village government was very low, as most villages lacked the most basic infrastructure to manage the complexity of the land administration system. The Village Land Act No. 5 1999, required fifty different forms in order to have a complete and full record of

land administration. The majority of villages lacked a village office in which to keep records safely. Additionally, basic tools such as stationery and equipment were in short supply or lacking entirely. The Village Executive Officers (VEO) whose role was to administer the paperwork, were thus forced to keep records in their own homes, and ‘typically the Village Executive Officer carries the village office in a folder under his or her arm’ (2008:3). He found the situation at district level was better, with most District Council offices at least, having some computers and filing systems.

The UCRT Report (2010) identified a lack of knowledge of the laws as problematic in the absence of the widespread dissemination of information regarding changes to legislative and administrative procedures. Additionally, villages were often left to cope without any technical help in creating maps or typing records of the by-laws from the District Council (UCRT 2010). The findings of Rasmus Hundsbaek Pedersen (2011) confirm those of Sundet (2008) and the UCRT evaluation (2010). In addition to the lack of capacity to manage such a complex system, Pedersen (2011) found that there was confusion regarding responsibilities between the district land authorities and the Ministry of Lands Housing and Settlement Development (MLHHSD). According to Pedersen (2011) ‘the implementation of Tanzania’s new wave land reform has proved to be slow, uneven and to a large extent project-driven’ (2011:70).

While interviewing officials from the village, or having informal conversations with members of the Tribunal and Committees, I was asked if I knew of any funding for training on the land laws, as they felt that their knowledge was inadequate to the tasks they had to undertake. Some of the members had no training at all and those who had, felt the need of a refresher course.

Songambele Village Councillors proudly showed me their Village Land Office, which was funded by MKURABITA programme. Songambele was the only one of the three villages which had a completed office. Without funding from the programme, there would not have been a village office to store records or use for dispute resolution.

The habitus of the rural poor is characterised as lacking: in knowledge of the land laws, in the skills to effectively manage bureaucratic systems, dependent on ‘expertise’ from outside. Village communities are the last to be considered for training on the land laws, thus, valuable knowledge of land administration is kept within the ‘dominant’ groups, government officials, NGOs and legal experts. This is accepted and justified as resulting from the poverty of Tanzania. Paradoxically, the experience of the World Bank project in Babati and Bariadi in 2005, was that the unit cost of formalising land in Tanzania was among the most expensive cost per plot in the East Africa region, \$45 USD per plot compared to \$5 and \$10 per plot in Rwanda. This was found to be ‘the result of high field expenses incurred by staff from central and district offices’ (Byamugisha 2013:65).

The Strategic Plan for the Implementation of the Land Laws (SPILL)

In 2005, the Ministry of Lands Housing and Human Settlements Development (MLHHSD) developed the Strategic Plan for the Implementation of the Land Laws (SPILL). SPILL provides a framework for the implementation of the Land Act No. 4 of 1999, the Village Land Act No. 5 of 1999 and the Land Disputes Courts Act No. 2 of 2002. SPILL’s objectives are to promote greater tenure security and to alleviate poverty which links directly to the national poverty reduction strategies (URT 2005). A key objective of the SPILL programme is to make land a useful commercial asset and promote ‘modernisation’ of traditional farming practices to achieve economic

development. This objective of SPILL is to be achieved through introducing a minimum acreage for farmers (URT 2005:16-17). This would involve re-settling farmers from small plots to larger plots in a resettlement scheme, called the ‘National Village Resettlement Scheme’ (NVRS) (ibid). In the SPILL plan, pastoralists would be encouraged to settle and create ranches rather than engaging in intensive grazing. The SPILL policy also includes facilitating the investment of capital and labour into the development of land, while also safeguarding customary land rights. The SPILL policy document states:

... that it will take on-board all that needs to be done by the land administration machinery to frame and safeguard customary and granted land rights for land users so as to, among other things, facilitate the alleviation of poverty, through enhanced incomes accruing from investments in land (URT 2005:v).

Criticisms have been levelled at both the objectives of the programme and the attempted implementation. The SPILL programme displays the same incompatible objectives of poverty reduction, whilst simultaneously encouraging ‘investment’ and ‘modernisation’ into commercial agriculture. Odgaard (2006) points out that this re-settlement strategy clashes with the provisions of the Land Acts (1999), which recognise customary land rights regardless of the size of the land parcel. Additionally, previous attempts to uproot smallholders in re-settlement schemes during the 1970s failed, and caused long-lasting negative effects (Raikes 1986). The premise of this objective is based on the belief that small acreage is a constraint to agricultural productivity and therefore, increases poverty. Odgaard (2006) noted that evidence which contradicts this assumption was presented in the government policy initiative; the National Strategy for Growth and Reduction of Poverty, MKUKUTA, which argued that smallholder farmers’ agricultural productivity is constrained by lack of labour, technical support, and infrastructure to access credit and markets rather than

size of acreage (Odgaard 2006). According to Odgaard (2006) many smallholder farmers use land as a supplementary income, having diversified their income generating capacities. To date, neither re-settlement nor ranch development for pastoralists, has been implemented. If these objectives were realised, there is a strong possibility that tenure insecurity would increase.

The programme also has a mandate to focus on training and capacity building for District personnel and for Village Executive Officers on land policies, laws and administration, as well as equipping the district offices with materials for record keeping and computers. However, the capacity building programme did not include members of the Village Council, nor, the village committees with direct responsibility for land matters, despite their importance in allocation of land and mediating village land disputes. Village level registries are not included in the upgrading component, despite the problems encountered through inadequate record keeping, such as double allocation of plots (Rwegasira 2012:107, Fairley 2013:160).

Pedersen's research revealed that there is a large gap in knowledge between village leadership and ordinary residents and the Ministry of Lands, and the SPILL initiative has not bridged this deficit. The correct procedures on how to implement the Village Land Act have been established by trial and error processes over the years. During the last decade, the Ministry of Lands has accumulated know-how through various projects. Much of this knowledge, however, cannot be learned by reading laws and regulations and has not been made public. Citizens and stakeholders therefore depend on the Ministry, even though implementation activities are not a part of the Ministry's own projects' (Pedersen 2010:9).

Knowledge of the land laws is a commodity worth accumulating, as such expert knowledge represents a form of cultural capital with the potential to become a source of future profit, and is currently hoarded within the bureaucratic system. Village communities with lesser capital, both economic and social, are excluded from the networks of circulation of this important knowledge.

Formalising the Informal

Formalisation of land tenure re-entered the land tenure debates with the demise of socialist policies and the introduction of neoliberal economic environment from the late 1980s. President Mwinyi (1985-1995), oversaw the country's transition out of socialist economic policies, relaxing import restrictions and encouraging private enterprise, as the liberalisation of social and economic life was encouraged (Schroeder 2012). In September 2003, President Mkapa (1995-2005) facilitated a High Level Awareness Seminar on the Formalisation of Property Rights in Tanzania in Dar es Salaam. The seminar was attended by all Ministers and senior civil servants from the ministries, along with civil society organisations and the media. Hernando de Soto presented an outline of his theory of the link between formal property rights and development and his model of accessible and locally appropriate formalisation of the property of the poor. His economic think tank, the Institute of Liberty and Development (ILD), was engaged to design a programme for Tanzania. In this context, in November 2004, the MKURABITA Programme was established.

During the first two years of the programme (2005-6) funding came from the Norwegian Agency for Development Cooperation (NORAD). MKURABITA implemented several pilot programmes, including the mapping of 220,000 properties and issued 47,000 residential licenses in Dar es Salaam. Additionally, a pilot to

demarcate land and register land certificates in Handeni District (Tanga Region) was established in late 2006 (USAID 2011). However, I was informed by a Tanzanian activist and academic, Chambi Chacage, that some hundreds of residents of informal settlements in Dar es Salaam, who were given Certificates of Customary Rights of Occupancy in 2006, later had their certificates revoked when the area became the object of interest to investors for commercial builds (Interview Chambi Chacage, Dar es Salaam 20th January 2013).

During the implementation of the first MKURABITA pilot in Handeni District, technical problems prevented the delivery of the CCROs and, consequently, land disputes proliferated (USAID 2011:16). A review of the process by The Tanzania Pastoralists, Hunters and Gatherers Organisation (TAPHGO) in Handeni, found that the programme was marred by land grabbing, including the allocation of land occupied by pastoralists for twelve or more years by Village Council members to other villagers based on the claim they were outsiders and not village residents (ole Kosyando 2006:16). In some cases, the TAPHCO team found that pastoralists were not informed about the plot surveys and when the surveyors questioned why the pastoralists were not included, the village officials denied they had any land rights in the village. The report states,

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 the pastoralists of the exercise (ole Kosyando 2006:20).

The pilot programmes phase ended in 2006. A Mid-Term Review commissioned by NORAD of the MKURABITA programme found flaws with both the design and implementation of the programme (Fergus et al 2007). Pedersen noted that ‘The evaluation pointed to the programme’s lack of involvement of relevant authorities and

its strong underlying assumptions’ in particular regarding formal titles and credit ‘for which there is limited evidence’ (NORAD, URT, and Claussen 2008, 5; see also NORAD, Claussen, and Nordic Consulting Group 2005 cited in Pedersen 2013:64).

This assumption was also challenged by researchers and civil society activists. In numerous interviews, activists and legal experts stated that the barriers to gaining credit for poor farmers, could not be easily overcome using small plots of farmland as collateral (Odgaard 2006; Stein and Askew 2009, Interview with Yefred Myenzi January 2013, Interview with Shilinde Ngalula 3rd June 2014).

When I told Mwenzi, the Director of Haki Ardhi, that I was interested in researching the MKURABITA programme, his attitude was dismissive. He informed me that ‘MKURABITA was not doing much, very few land titles had been gained from the programme’ (Interview with Myenzi, Haki Ardhi 2013). Interviews with other land rights activists confirmed this view, that the MKURABITA Programme had failed to register a significant number of villages or to deliver a significant number of land titles. Dr Mwami, an academic at the University of Dar es Salaam (UDSM), informed me that the programme was the former President Mkapa’s ‘baby’ and that the current president, President Kikwete, was less committed. This, he suggested, was why progress in village land titling has been so slow. Six out of the seven academics I interviewed in Dar es Salaam and Arusha, distrusted land titling and registration programmes, claiming they could easily lead to land losses for village communities. In contrast, all but one of the fourteen civil society activists and legal experts interviewed, supported titling programmes which helped villages and individuals to gain Certificates of Village Land, and/or Certificates of Customary Rights of Occupancy as a means to improving tenure security.

When I interviewed the Coordinator of MKURABITA, it became clear that arranging land titles for the whole of Tanzania was not the mandate of the organisation (Interview, Dar es Salaam, 31st January 2013). The MKURABITA programme had a higher level mission. This was described as:

The transformation of the informally held assets or dead capital to formal legally held entities that are operated and managed within the confines of the law and subsequently facilitating the owners to use them as a means of accessing benefits that the formal market offers (MKURABITA 2013).

I was informed by the Coordinator, that the promise of transformation was to be achieved through building a standardized recorded property rights system, based on the local customarily accepted property arrangements. Once achieved, it would be possible to integrate the informal sector into the legal and tax systems. With these recorded and legally sanctioned property rights it should be straightforward to access credit using property as collateral. Thus, formalisation is not only a legal initiative, but also has a key role to play in implementing other government policy initiatives and programmes, by providing a route to finance for improving business, agriculture and social development. According to the MKURABITA Design Phase Report (2010) which is available to the public on their website, the design of the MKURABITA is based on the four phase model developed first by the Institute of Liberty and Democracy (ILD) in Peru in 1985. The four phases are: Diagnosis, Reform Design, Implementation, and Capital Formation and Good Governance (MKURABITA 2010).

The Diagnostic Phase seeks to understand the systems used to manage transactions in property and business, which are locally accepted as valid, outside the formal system. A Diagnostic Study (2007) was carried out by researchers from the Institute of Liberty and Development (ILD) in Tanzania from November 2004 to September 2005 (MKURABITA 2007). The main findings of the Diagnostic Study are found on the

MKURABITA website (MKURABITA 2013). The study mapped the scope of the informal sector, identified the key actors involved and put a monetary value on the informal assets within the sector, including businesses, land and property. The legal, administrative and economic barriers to formalisation were also identified, thus preparing the groundwork for the reforms.

The study found that the legal framework for property rights in Tanzania was excessively bureaucratic, time consuming and expensive, making it impossible for the poor to operate legally or to secure their assets. ‘In short the prevailing regime is simply anti-poor, often exclusive and very unhelpful in building up an all-inclusive society’ (MKURABITA 2013a). The table summarises the findings of the Diagnostic Study with regard to the informal sector in Tanzania referred to by the Institute of Liberty and Development as ‘extra-legal’ in Tanzania:

Figure 3: Findings on the Informal Sector in Tanzania Institute of Liberty and Development (MKURABITA 2013)

| | | | |
|--|---|---|--|
| 90% of Tanzanians reside and earn their livelihoods in the extra-legal sector. | 89% of property is held extra-legal. 98% of businesses are operated extra-legally. | 86% of all urban property valued at USD9.4 billion. All urban residential and business valued at USD11.06 billion. | Total value of Tanzania's Extra-Legal Assets = USD29.3 billion |
|--|---|---|--|

The Reform Design Phase had the objective of standardising the customary legitimate procedures identified in the previous phase and incorporating them into the legal system. The reforms recommended in the Diagnostic Report (2007:xx) included two streams; the formalisation of land titles and use of land as collateral.

Decentralisation of procedures for a low cost formalisation process was urgently needed, and this could be achieved by allowing land surveys to be conducted by private professionals and by the use of geographical databases among other recommendations. It was considered imperative to remove any barriers to using property as collateral for loans, including simplifying the procedures for contracting and foreclosing on mortgages. Linked to this, a National Identification system, and a business information system, should be developed which would connect to the property registration database.

The next phase, the Implementation Phase of MKURABITA which officially started in July 2008. Fifteen land reform recommendations were put forward by the MKURABITA programme to the Ministries. The recommended reforms involved initiating legal and administrative changes. The Coordinator explained:

To bring about the changes recommended, the Ministries of Land, Industry Trade and Marketing, Finance and Economic Affairs, Justice and Constitutional Affairs were supposed to work through their normal channels, that is, where necessary, gaining Cabinet approval. They would have to prepare Bills to put before the Tanzanian parliament. Finally, once the Bills were passed, the enactment of the new policy or legislation would proceed (Interview with the Coordinator, 7th March 2014).

The Diagnostic Phase and Reform Design Phase had both been achieved by the timing of my first visit in 2013. The Implementation Phase, however, is where the MKURABITA programme confronted the reality of resistance to change in a highly centralised system. Only one reform to the legal structure of business had been instituted out of the recommended fifteen reforms in the 2007 report (MKURABITA 2007:22-25). That particular reform aimed at enhancing the sustainability of businesses' after the death of the owner of a Limited Liability Single Shareholder company (Mrs Mgembe, Coordinator of MKURABITA email correspondence 2nd October 2015).

In 2013, the reforms were still being discussed by stakeholders in the Inter-Ministerial Technical Committee (IMTC) made up of all Permanent Secretaries and their deputies, which had to examine all cabinet papers prior to the proceeding for Cabinet's approval. MKURABITA did succeed in persuading the government to simplify the documentation for land registration.

The Coordinator explained how the Implementation phase was hindered by obstacles:

It was not possible to simply change the rules of the game, ministries had to be in agreement and this was difficult. The various ministries had different motivations and objectives conflicting with the proposals put forward by MKURABITA. MKURABITA is neither an elected body nor a ministry and has to persuade rather than enforce its ideas (Interview with Coordinator 7th March 2013).

During the interview the Coordinator admitted how difficult it was to bring about change as 'power gets in the way' (ibid). Furthermore, the external funding from

donors has stopped and the budget is tight, much reduced from the early days when the programme was funded by the Norwegian Agency for Development Cooperation (NORAD).

On account of the slow movement of the recommended reforms through the administration, the MKURABITA Programme management decided to change strategy. The programme management decided to adopt three new strategies to overcome the challenges. Firstly, a pilot programme was developed formalisation of village land, on a small scale using the current laws and systems. This strategy would help to 'fine tune' the recommended reforms, whilst MKURABITA would continue to encourage the Ministries to adopt the reforms. These formalisation pilot projects have enjoyed some success. For example, in Manyoni District, fifty-six Certificates of Village Lands have been issued to Village Councils and just over six and a half thousand CCROs have been issued to village landholders up to March 2015 (email correspondence from Coordinator, 2nd October 2015).

The second strand of the new strategy was consensus building with ministries and departments to support reforms. MKURABITA facilitated the setting up of inter-ministerial committees were set up to discuss formalisation and how it should best proceed and, lastly, regular information campaigns for the ministries, politicians, informal businesses and the public have been enacted to disseminate the benefits of formalisation.

Thirdly, the new strategy re-focussed the priorities of the final phase, Capital Formation and Good Governance. The Coordinator explained that the final phase of the programme could not move forward as planned as the recommended reforms had not been adopted. This phase was expected to focus on connecting the newly formalised

properties to credit facilities, offered by financial institutions operating in national, regional and international markets. The reforms proposed included plans to create of an extensive new system to handle mortgaging of property. The Coordinator noted that a National Identification System would be very important in the final phase:

Advocacy for a National Identification System is very important, to know what that person is doing, where they are living, what do they own will help to avoid doubling up, which MKURABITA believes will solve the double allocations problem and facilitate mortgaging property. This will mean setting up new systems for credit and mortgages, debt collection, individual identification systems, property tax systems, insurance services, housing and infrastructure (Interview with the MKURABITA Coordinator, Dar es Salaam, June 2013).

As none of the reforms had been instigated, the priority of the MKURABITA programme became to engage in an extensive advocacy with all the stakeholders, government and institutional lenders for changes to the laws to facilitate access to credit for property holders who have titles. The Coordinator admitted however, that the concept of mortgaging land came up against institutional challenges once again and there was little change to the status quo to date (Interview with Mrs Mgembe, Coordinator MKURABITA, Dar es Salaam, 7th March 2014).

Ground level bureaucracy

When the reforms recommended by MKURABITA are compared to the current gaps in local capacity, it is not surprising that there are challenges. The recommendations would require an extensive and costly overhaul of the current systems. For example, in the capital of Tanzania, the Land Office administering urban land titling for Dar es Salaam consists of two small rooms with files stacked on shelves and in piles on the floor. These are files that contain legal title deeds. The Land Officer pointed out the stacks of files and told me they had neither enough staff nor space to manage all the

work they had currently (Interview with Apollo Laizer, Dar es Salaam 12th February 2014).

Manyoni District Council has to manage a complex rural land registration system, with just one computer and one District Land Officer with overall responsibility for processing plot applications, surveying plots, and recording the new information for a district of 296,763 citizens, where the majority of people have no documented title to their homes or land (URT 2012a).

Applying for a mortgage using a land title is almost impossible for small scale farmers or herders. In fact, the original Land Act 1999, section 125 (1) prohibited foreclosure on mortgages, however, this was later reversed by Land (Amendment) Act No. 2 2004, followed by further amendments to the original Land Act 1999 relating to mortgaging land with the Mortgage Financing Special Provisions Act, 2008 (Rwegasira 2012:181-182). These amendments made it possible to mortgage village land held under customary tenure, but foreclosure on village land is still a contentious issue.

At present, the banks themselves are reluctant to make loans available using land or houses as collateral. Interviews with managers of two main banks and a manager of the savings and loans societies confirmed this view.

Formalisation of village land is proceeding at a slow, but steady pace, with projects supported by World Bank and donor funding, in addition to the MKURABITA programme. According to Frank Byamugisha, a World Bank tenure expert, as of 2012, ‘more than 11,000 out of 12,000 villages had been surveyed, of which about 7,000 had been registered. The average cost of surveying and registration is US\$500 per village’ (Byamugisha 2013:58). The next section introduces the experiences of the participants in one of MKURABITA’s projects.

MKURABITA in Manyoni District

Kamaguisha's dilemma

When Kamaguisha bought three plots of land from a fellow resident of Kiwawa he did not realise that the land was not the man's property to sell. Kamaguisha farmed the land for six years and then unexpectedly the Village Council told everyone, including Kamaguisha, to stop farming on that land. During the Land Use Planning exercise by the district council some years back, the land had been set aside for communal grazing and not crop production. For that reason the Village Council barred everyone from the area. Kamaguisha lost the three plots along with almost one hundred other residents. The man who sold him the plots had left the village years before. He received no compensation from the Village Council. The land was quickly filled with grazing animals and he had no space to graze his own cattle. When I asked him where he grazed his own one hundred cattle, he said: 'There is not enough grazing area in the village so I moved my cattle to another village where they don't know about land use planning (Interview with Kamaguisha, Kiwawa, 12th March 2013).

Kamaguisha's story above is not uncommon in Tanzania, where rights to occupy or to hold land can be contested by neighbours, relatives, or the state. His experience is a telling representation of the challenge of enforcing land rights which affects rural communities in Tanzania. Kamaguisha was the victim of a local conman. This occurred because there is insufficient information upon which to make a decision regarding the rightful ownership of any plot of land, with very few records denoting who is the legitimate landholder and without detailed village land use plans. Kamaguisha also knows that, there is no point making claims against either the local village government or the original seller, so he moved his livestock to another village, where he was encroaching on the grazing land of his neighbours. Those responsible for enforcing land use, the Village Council, lack the means to compensate him or the other one hundred farmers thrown off their plots, nor are they able to force the security forces to search for the perpetrator of the fraud. For any of those small holder farmers to take a legal case against a fraudulent seller is prohibitively expensive, time consuming and risks draining the family of resources. Experience has shown that court

cases rarely favour those without wealth and connections. Such distrust of the mediation system was a constant theme among my informants including legal professionals. The advocate Shilinde Ngalula, Director of the Legal and Human Rights Centre, in Arusha reported that ‘People who have influence can bribe, they get what they want’ (Interview with Shilinde Ngalula, 3rd June 2014, Arusha). This next section will describe the impact of the MKURABITA formalisation pilot undertaken in three villages in Manyoni District.

Waiting for Formalisation

MKURABITA has lost its meaning. People have even stopped respecting the land use planning done during the exercise (Interview with Hamid, Kiwawa, 20th March).

We had almost forgotten about MKURABITA, it has been so long (Interview with Veronica, Mlala 17th March 2013).

When I arrived in Dar es Salaam, I planned to find an NGO supporting land titling programmes in Tanzania. When I broached the possibility with two NGOs, one international and the other national, I was turned down. I later heard from NGO contacts that the international NGO had a negative experience with a previous researcher. In the meantime, I made two visits to the offices of MKURABITA to meet the Coordinator, Mrs Mgembe. On my second visit, the Coordinator suggested that I could do some research in villages supported by MKURABITA if that fitted in with my research plans. The management of MKURABITA were interested to know how the certificates gained were being used by the village community, four years after they had their plots registered. This research would be informative for MKURABITA as they needed to have more evaluations of the impact of the formalisation drive they had undertaken in 2009, but resources were tight and they could not afford to undertake follow up evaluations. This was an unexpected and welcome opportunity. Three

villages in Manyoni District, Singida region, in central Tanzania, Mlala, Songambebe and Kiwawa were identified as possible research field sites (See Annex A, Map of Singida region).

Manyoni is home to Rungwa Game Reserve about 200 kilometres west of Ilala, the nearest town to the field sites, and Kilimatinde one of the sad 'resting places' of the slave trade. Kilimatinde is one of the stops on the 1,200 kilometre route upon which the slaves, bought from as far away as present day Congo and Rwanda, were marched to reach Bagamoyo and the slave markets of Zanzibar. The district falls within the semi-arid central zone of Tanzania and experiences low rainfall and short rainy seasons. The main crops in the villages are maize, millet and sunflowers for oil and food production, and more recently, mung beans and cotton. The district experiences frequent food shortages as a result of the erratic rainfall pattern (Mary and Majule 2009). Five older informants related to me their experiences when crops failed because of extreme drought conditions in the 1960s, 70s and 80s. They experienced hunger and illness as they relied on intermittent government or foreign food aid relief. As Joseph recalled, 'Even President Kennedy from America sent us food'. They particularly remembered the extensive flooding in 1998 which caused food shortages, during a period of thirty days of rain when the El Nino hit the East Africa region.

Mr Ernest Manugu in his life history recounted the history of the villages. The villages were initially settled by agro-pastoralist people, the Nyaturu and Taturu, people during the colonial period. He estimated that the first groups arrived in the 1920s and 30s. The pasture lands were extensive and wild animals, elephants, lions, roamed freely. The people had cattle and goats and cleared small areas of 'virgin bush' to grow crops. The area has since been settled by migrants of different ethnic origins, including

Nyamwezi, Wagogo, and Wasukuma. My informants noted that the last five years has seen dramatic population increases in the villages.

In March 2013, Denis, my research assistant and I travelled from Dar es Salaam by bus for two days to Ilala, the largest town and our base for the duration of the research, as it was near to the villages. As we drove away from the coast, the lush green landscape changed to dry terrain, punctuated by hills, massive smooth rocks and miombo woods. We sped past prickly sisal plantations which covered hundreds of hectares stretching into the horizon, then disappearing. We passed through towns and villages where large crowds gathered for the infrequent bus connections.

We had arranged to meet with Enock Msimbira the Ward Councillor, who had worked for the MKURABITA formalisation programme when it came to Manyoni district and who was very knowledgeable of the programme. Enock Msimbira was our introduction to the Village Council, whose permission we needed to carry out research in the villages. As an elected politician from the ruling party, Chama Cha Mapinduzi (CCM), Mr Msimbira had a position of authority within the district system.

Our visit coincided with some heavy rainfall so the roads offered a serious challenge. Few vehicles travelled on the roads in that condition and the villages beyond Ilala were often cut off for days at a time. The hazardous roads affected our transport options. Taxis were prohibitively expensive so we haggled with the motorbike taxi drivers, called 'boda boda' drivers and engaged two motorbike taxis for the duration of the research. In every Tanzania town, there are motorbike taxi ranks filled with numerous eager young drivers waiting for passengers. However, Enock Msimbira informed us that the roads were about to be transformed. During a walk to the outskirts of the town that first afternoon, we were shown the new tarmac highway under construction. Enock

Msimbira said that everyone was praying the road would be finished soon and that it would bring tangible benefits to the town and surrounding villages.

Our journey was nerve jolting. The roads were so muddy the wheels were slipping and sliding along. At least, the roads were practically empty of traffic. We passed one lorry, swaying heavily from side to side. I gasped in fear and the young driver, Rashid, shouted 'hamna shida' (no worries), to reassure me. When a bus full of passengers passed us by they looked a little shocked to see a 'msungu' (white person) on the back of a motorbike, in an area with few tourists compared with the famous northern Tanzania safari route. The experience of being 'other' is inescapable once outside the more anonymous city of Dar es Salaam or the tourist filled town of Arusha and famous beauty spots. Being an older woman and a researcher also raised some polite surprise in the rural villages and small towns as people are more used to youthful researchers.

Prior to setting off, Enock Msimbira informed us that hardly any villagers had received their land titles. In fact, only eleven households in the three villages had received titles. The titles granted were presented during the closing ceremony on the final day of the programme four years previously with local dignitaries present. The rest of the villagers were still waiting four years after the formalisation had taken place for their Certificates of Customary Rights of Occupancy (CCRO). This unexpected information disrupted my planned research strategy. At first I questioned what I could achieve if the informants did not have any certificates. I consoled myself remembering that of all research methods, anthropological research should be closest to the everyday experience of change and flux. It is most definitely not a tightly controlled experiment. On reflection, I realised that the changed circumstances would generate a different kind of research and would yield revealing insights into the dynamics of power.

When we arrived in the village of Songambebe, the quiet, cleanliness and feeling of space was striking. This village was a delightful contrast to Ilala, which is at times very busy and noisy, with paper and plastics strewn around on the streets. The population of the village was noted as 4,808 persons and comprising an area of 81,990 hectares, including grazing pastures and extensive forests where bee keeping is carried on as an income generating activity. Homesteads were close enough but not too crowded. Paths crisscrossed between the fields and houses. Family homes built of earth stood in the middle of small plots of millet, maize and sunflowers. Some displayed aluminium roofs, a visible marker of the better off as 'iron sheets' are not affordable for the poorest families. There was a noticeable absence of 'dukas' (local shops) selling the basic food supplies and signs advertising phone credit or 'Mpesa' money transfer. 'Mpesa' is the East African money transfer service by mobile phone, which is ubiquitous all over Tanzania. There was only one small shop but it was not opened in those first days because the owner had to attend a funeral.

Our group, Enock, Denis and I, were greeted by Ilombo Lyaweeye, the Village Executive Officer (VEO) and James Benjamin, Village Chairman (Chairman) and taken to the Land Office, a brand new comfortable multi-roomed block building with a large veranda. The building housed the Ward Council office and two offices for the Village Council, one for private meetings and a large open area for assemblies and conferences.

We sat in the office of Mr Lyaweeye, the Village Executive Officer, and he voiced his frustration that the certificates had never materialised (Interview 23rd February 2013, Songambebe). During those four years, he explained, life in the villages had continued as normal without the CCRO. People still bought and sold land. Many sellers informed the Village Council and had their sales witnessed by a Councillor. Some individuals

arranged sales through the leaders of their neighbourhood called the balozi. Each village is divided into groups of ten homes, called divisions, overseen by a division leader, the balozi, a legacy of the socialist era, the ten-cell system. The sale is documented by making a written contract which is signed by the division leader. Mr Lyaweeye said that ‘some others arranged sales privately and ignored the village authorities’. The number of land transfers posed a conundrum for the Village Council. Mr Benjamin, the Village Chairman, who predicted that this would cause conflict in the future, he said

We don’t know what to do about the CCROs because whenever they arrive, some of them will have out of date information. Should we give them to the new owners, but the information is wrong. I am now questioning the whole titling process (Interview 23rd March 2013).

For the purpose of my research, the VEO enlisted the help of the Divisional Leader, Mr Shem, to identify a mix of families with different income and asset levels within the village. We walked through the fields with Mr Shem and people came to greet us or simply watch us walking through the village. The Divisional Leader approached each home and requested an interview. Some homesteads had women alone with small children as the men had already gone very early to the farm. This pattern repeated itself over the following weeks as Denis and I trekked through the village speaking with village residents, mainly small holder farmers and their extended families, about land titles, kinship and justice.

Social Differentiation

Based on their knowledge of their community, informants for an initial survey exercise were selected in consultation with the Village Chairman, Village Executive Officer and a Village Council member. This situation had implications for a biased result of my research survey, as the informants were identified by authority figures and I was an

unknown foreigner. I was not a position to refuse, as organising the research through the village leadership was mandatory. It was not possible for an outsider to simply go from house to house in any village asking people questions without permission from the village authorities. Having lived in three African countries for eight years in total, I was aware that my research could only take place through a layer of gatekeepers. In fact, a researcher without permits, local contacts and village acceptance could find their intentions misunderstood, or find that people were wary to talk to them. This distrust exists for good reasons, as Tanzanian's have been studied and written about by many outsiders whom they felt betrayed their trust, or misrepresented the people. In fact, part of the 'gatekeeping' is to verify who the researcher is and whether their intentions are genuine (Interview with Canute Temu, Kilimanjaro, 6th February 2013). But this situation has both positive and negative aspects. Doors were opened for me which might have been very difficult to gain entry to otherwise, and, the local knowledge gained through having a friendly relationship with village leaders turned out to be very useful. But I also had to accept the limitation which this situation imposed. As it happened, some of the participants designated by the village leaders were not in their homes when I arrived as they were working on their farms. Thus, we ended up talking to a wider cross section of villagers, through happenstance and casual conversations, as the days and weeks progressed. The many informal discussions were very important to this analysis.

The village leaders drew up a list of households which represented three different income groups. The families were grouped according to various markers, these included, levels of income, family size and number of dependents, acreage of land, physical assets, roofing materials, if employed or operated a business in addition to

farming. The households were then grouped into three categories, higher income, medium and low income as shown in the table below:

Figure 4: Number of village residents to be interviewed according to income levels:

| Village | Pop | Total Households | High Income | Medium | Low |
|------------|------|------------------|-------------|--------|-----|
| Songambebe | 4808 | 595 | 7 | 15 | 8 |
| Mlala | 3605 | 660 | 8 | 14 | 7 |
| Kiwawa | 3505 | 626 | 6 | 17 | 7 |

The data was collected using in-depth semi-structured interviews with ninety households, in Songambebe , Kiwawa and Mlala villages. Six focus group meetings with between three and six individuals, alongside life histories with five older residents were also conducted. Individual and group interviews were also held with office holders, Village Chairman, Village Executive Officer, Village Council Members and Representatives, District Office officials and Representatives at Ward level. The interviews took place at the homesteads, beside the farms, in the Village Council office and in a café run by an enterprising lady in Kiwawa.

I was conscious of the work of Pietiella Tuulikki, who in the late 1990s, researched the role of gossip in creating moral value in Kilimanjaro, among the market sellers. Tuulikki found that people preferred to speak indirectly or in what could appear to an outsider, as evasively. The market sellers did not appreciate very direct questions and would answer in ways they believed were ‘politically correct’ rather than giving their real opinion (2007:24). According to Tuuliki, this strategy was employed by them to

create a harmonious dialogue and avoid conflict. I was also uncomfortable at first asking questions about the material assets people owned, as it is not very common for people in Tanzania to discuss such personal details with strangers. Therefore, I reassured everyone that they were free to refuse any questions with which they were not comfortable for them. I was surprised that only two people refused to answer questions on their assets. I sensed that there was an underlying expectation that I could 'do something' to help argue their case with MKURABITA. Eventually, several people asked outright could I help them get their certificates. At the time I believed that such a request was impossible and I explained my very 'marginal' situation in relation to the decision-makers running the MKURABITA programme or the District Council. If I had been affiliated to a donor agency, it might have been conceivable that my report would have some weight with decision-makers. As a foreign independent researcher, with a loose affiliation to the University of Dar es Salaam, there was no reason to believe that I could influence the outcome of a government sponsored programme.

Prior to the MKURABITA programme, only two out of the ninety people interviewed claimed that they understand what formalisation involved. Of these one man was a Village Council member and a cattle dealer and the other one a businessman, both of whom had a higher level of education than average and who had gained their knowledge through connections outside of the villages. For they both had cultural and social capital, the embodied cultural capital which higher levels of education provides, compared to villagers. Their social contacts through their political and business contacts informed them of important developments which could increase their capital. Educational background was repeatedly shown to be fundamental to both social status and ability to access and mobilise resources, be it knowledge or skills, to further one's

interest. Educational background and social connections dictated who was equipped with the knowledge which could be turned into economic capital.

Hoping for tenure security

All of the ninety informants from each of the three villages, Songambebe, Kiwawa and Mlala, said that they thought having a land title was very important. Despair however was setting in, because they were still waiting for land titles four years after application. One after the other, the residents of all three villages complained that repeated pleas for their certificates to the Village Council and the Ward Councillor were in vain.

There was a lot of speculation surrounding these delays. The village authorities believed the problems were technical, and some residents agreed with them, suggesting that inaccurate information on the application forms was preventing the certificates from being completed. Kiwawa residents suspected that the reason that the Land Office was unfinished, was due to the village running out of funds to complete the building. Every village must have a Land Office where land registration details can be safely kept. We stood in the shell of the Land Office building and were told by some of the Village Councillors that they suspected corruption in relation to the funding. There was no speculation about corruption in Mlala, however, everyone knew that all the funds to build the Land Registry Office had been stolen by the Village Executive Officer. He had quit the village and was never seen or heard of again. I asked if there had there been a criminal investigation or a case brought against him. The Village Councillors replied that the Village Executive Officer had just 'disappeared' and there was no active pursuit of him.

Other residents in Mlala believed there to be a more sinister motive to the lack of certificates. They suggested that their land was actually 'stolen'. A group of residents

explained that some time back ‘white explorers’ had arrived taking soil samples, and it was possible that minerals were discovered beneath the ground, and therefore, it was against the interests of some powerful people to give out certificates. The fear of land grabbing by the state for wealthy foreign investors came up in discussions, sometimes in the villages and even more often in urban settings, such as Dar es Salaam and Arusha. It was not only Western corporate take overs which were feared, but Rwandans and Kenyans whose shortage of land was sending them to nearby countries to ‘buy up cheap land’ (Interview with Gloria, Dar es Salaam January 2013). This fear of the foreign take-over of village land is not without foundation, as land grabs by foreign investors are commonly reported in the media (wa Songa 2015). Haki Ardhi, the land rights organisation reported that in Kahama district, where Barrick Gold operates Buwagi Goldmine, the locals whose land was expropriated have been involved with violent clashes with the staff of Barrick Gold, resulting in rape and murders (Hakardhi 2009, MiningWatch Canada 2015). Other residents of Kiwawa expressed fear that the land titling exercise was really about trying to tax the people and they simply did not declare all their land during the MKURABITA exercise, for fear that land titling was a ‘tax trap’. This assessment had a great deal of truth in it, as Scott (1998) outlines the work of the state is to create ‘legibility’ which can be used to facilitate revenue collection. The MKURABITA programme documents explicitly declares that formalisation can be used to assist governments in tax collection once proper records are in place. Several other informants cited fear of taxation as a reason for not taking part in the MKURABITA programme or not admitting the real extent of the land they occupied.

The impact of the four year wait for the CCROs was expressed by one informant below:

There is no difference now between those who participated in MKURABITA and those who didn’t because everyone is left without a CCRO (Focus group, Samuel, Kiwawa, 12th May 2013).

Only one informant from Kiwawa had succeeded in gaining a land title for himself. Joel, a young motor bike mechanic, explained that his achievement in getting the CCRO cost him 400,000⁷ Tanzanian shillings and had entailed four months of regular visits to the district office. While most small holder farmers could not afford to pay this amount of money for a CCRO, Joel was single and employed in Ilala as a mechanic. He was able to travel the long distance to the district office in Manyoni because he had his own transport. He was motivated to seek out the CCRO by the fact that he was involved in a land dispute with the National Road Authority (NRA). The NRA used his land to dig for gravel without asking his permission or approaching the village authorities. He was hoping for compensation. To put this amount, 400,000⁸ Tanzanian shillings into its social context, in 2012, four women in Songambebe had taken up cotton farming. They were satisfied to make 500,000⁹ Tanzanian shillings for the whole season's work.

Land Use Planning

The village residents were in agreement that the land use planning exercise undertaken during the MKURABITA programme was inclusive and fair, with the exception of three individuals. These three village residents had experienced problems because they had migrated for work and came back too late to claim their land during the planning exercise. They subsequently lost their farms which were re-distributed by village authorities and as a result, the land became the subject of dispute.

⁷ 400,000 Tanzanian shillings is equivalent to 168 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=400000&From=TZS&To=EUR> (Accessed 26 January 2017).

⁸ 400,000 Tanzanian shillings is equivalent to 168 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=400000&From=TZS&To=EUR> (Accessed 26 January 2017).

⁹ 500,000 Tanzanian shillings is equivalent to 210 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=500000&From=TZS&To=EUR> (Accessed 26 January 2017).

Any land unused for more than three years can be re-allocated by the village council to other residents. This re-distribution of unused land was in keeping with socialist era policy which was to ensure that land was fully utilised. Nyerere summed up the party's commitment to land rights based on occupation and use as:

To us in Africa, land was always recognised as belonging to the community. Each individual within our society had a right to the use of land because otherwise he could not earn his living ... But the African's right to land was simply the right to use it; he had no other right to it nor did it occur to him to try and claim one (Nyerere 1968 cited in Rwegasira 2012: 67).

The 1995 National Land Policy also underscores that rights of occupancy are based on the usage of land for productive purposes. Under customary rules of land tenure unutilised land can be taken to be re-allocated. These rules do not fit neatly into Western ideas of 'ownership' which imply the right to exclude others, even if land remains unutilised. The Land Laws recognise occupancy of a parcel of land for twelve years as being sufficient to claim customary rights to land. However, now that formalisation of property rights was being introduced, the situation for some landholders who leave their land for a period of time is ambiguous and can result in double claims, especially if the village authorities lack detailed knowledge of the land laws.

Informants expressed concern over the accuracy of certificates issued. During the survey some photographs and maps had been mixed up in the applications for CCROs. Changes of ownership had also taken place since the MKURABITA programme and these changes needed to be recorded. Two village leaders in Kiwawa, complained that the surveying equipment, Global Positioning Systems (GPS), two of which were given to the village for future mapping of changes to land holding through sales and transfers, were taken away by the District Council officials when the MKURABITA exercise

was completed. The GPS equipment was now stored in the District Council Office in Manyoni. The Village Councillors were disappointed with this outcome. Young men had been taught how to survey the land so that changes to land occupation and land transfers could be recorded. The Village Councillors had been greatly impressed by the quality of training that the young ‘assistant surveyors’ were given by the MKURABITA staff. But now, they have been unable to retain their skills as they rarely had access to the surveying equipment. To get access to the GPS to record changes to land tenure, the Village Councillors would have to travel to Manyoni, and voiced their frustration over this as follows:

A group of young people were trained as assistant surveyors by MKURABITA and can use the GPS to demarcate the land where the land has changed hands since the CCROs were completed. But the GPS is now kept in the district council office. How do they get it from there? The GPS should be kept in the village (Interview Christopher Pius, Kiwawa, 31st March).

When I asked the District Land Officer the whereabouts of the GPS, he explained, they were safely kept in the District Council office:

The Village Councillors could come at any time to borrow the equipment, for a period of time, but there is not enough equipment and the GPS are constantly in use demarcating urban plots (Interview with District Land Officer, Manyoni, 31st March 2013).

The Local Land Market

Selling land is like welcoming poverty (Joseph, Ward Land Tribunal Songambebe, 25th March 2014).

For the residents of Manyoni district, the MKURABITA programme was their introduction into the workings of the land laws and was instrumental in enlightening the village community on both the formalisation processes and the value of land. Without the financial assistance of the MKURABITA programme, the villagers could not afford the significant costs involved in surveying and demarcating the village and

in preparing all the documentation for CCROs. The Chairman explained ‘we would not even know how to do it without MKURABITA training’. The Village Council members, however, attested to the fact that without formal titles, land sales and transfers were regularly taking place in the communities, even during the socialist period when land sales were prohibited by law. Sales were usually witnessed and a paper receipt recording the transfer was signed by any of the Village Council members. The new system of formalisation posed a challenge for the Councillors who expressed the fear that they were not adequately prepared to manage the process:

Having a certificate gives the farmers the right to sell their land, or pass on in inheritance, but before the land registry is even opened, there are some processes to be followed regarding sales, but the Council were not informed as to what these processes are, the people need to be trained on how to handle that (Interview with Village Councillor, Jackson, Kiwawa, 5th April 2013).

Tenure security was the top priority for all of my informants. This was the most important benefit of registering land and gaining a CCRO. The informants noted the high value of land in the village and blamed the influx of migrants as leading to difficulty in accessing land. The second most important benefit of having a title was that it could facilitate their children inheriting the land. This was despite having passed on land through inheritance to their children before land titling, using the rules of customary tenure. In third place, was obtaining a loan through using land as collateral. The most unexpected response was from two villagers who stated that titles were good as ‘bail bond’ if someone was arrested. A small group of people also expected to benefit by renting land and only one person mentioned gaining compensation if the government needed land for development purposes. This may represent the low communal expectation of receiving compensation from government, despite the laws in place. Rwegasira (2012) noted ‘there is a sad history of eviction or attempted

evictions of land holders from their land without compensation at all, or without adequate, just and prompt compensation' (2012:308).

For all informants, selling land was the lowest priority. Those with small plots would like to purchase more land, but it has become too expensive for the majority of village residents. The consensus among village residents was that land had become scarce in the three villages and land values had risen sharply in the last three to four years. Three key reasons were given for the increase in land value. Firstly, the higher prices gained for cash crops. High value crops, such as, sunflower, lentils, and green gram (mung beans) were grown and sold to merchants from urban centres who trade in the Asian market. The second reason identified was the dramatic increase in migration to the village from other areas of Tanzania. There were numerous complaints that 'outsiders' were using village land, even by those who were themselves migrants to the villages some years before. The issue of inward migration was affected by the growing resident population and the reality that there is little 'spare land'. Many of the first settlers or those who migrated in past times found that their families were now larger, and their adult children needed land, but there was very little unutilised land which could be available for the next generation. Commodification of land meant that those with cash can purchase land, but this systematically left out those young people or divorced women who return to the village, who could not afford to pay cash. 'Certificates are useful against migrants' I was informed, as 'too many migrants' are moving into the village (Julius, Songambe, 2nd April 2013). The anthropologists, Lucy Mair (1948) Sally Falk Moore (1978) and Parker Shipton (1984) had noted a similar trend of rising land value in Tanzania in the 1940s, 70s and 80s, as population increased and cash crop production became a new source of income. This had the unfortunate effect of land value increase coinciding with very time that families needed more land.

A third issue present was the intense competition between the need for land for grazing and for farming crops. Livestock keeping was widespread and as an important income generating activity, but was mainly the provenance of the better off members of the community. Some smallholders complained that land designated for grazing was appropriated for farms, while other villagers were concerned that too much land had been allocated for grazing, while they had lost access to land for growing crops. The Village Councillors in Mlala reported that even with a Participatory Land Use Plan (PLUP), many individuals did not adhere to the plan and farmed or grazed animals in places designated for other purposes.

Before MKURABITA, people invaded each other's land, even before this one, a land use plan existed and some people would still invade areas for fallowing and start cultivating (Christopher Mangwela, Village Chairman, Mlala).

While the programme helped to solve a number of disputes, other disputes arose which required mediation. For small holder farmers, the costs involved in mediation are prohibitive and therefore, the poorest most aggrieved parties cannot have their case heard. This situation has caused conflict and ill-will between village residents. This issue will be dealt with in more detail in Chapter Five which elaborates on land disputes and the disputing process.

The District Office

When I asked the Manyoni District Executive Director (DED) what was causing the delay with the certificates, the interview took a slightly hostile turn. He asked who had authorised me to go to those three villages, stating that there were other villages which had already received their certificates.

The reason for these delays are technical complications, some certificates, I understand, are not having the proper information. Anyway, what use are land titles to those village farmers, they couldn't

use them for loans (Interview with District Executive Director 5th April 2013 Manyoni).

The Director then ended the meeting abruptly, telling us that the District Land Officer could illuminate further. The District Land Officer (DLO) who deals directly with matters relating to registration of land, claimed that four obstacles stood in the way of completing the certification process. A number of applications for the certificates were incomplete, some lacked information, or photographs, and some contained inconsistent information, all of which, would require a visit by the District Officer to the villages. There were also logistical challenges. An officer would have to travel to the village and stay over for about three weeks to correct the applications. Additionally, to print the CCROs required a coloured printer cartridge. The printer cartridge was very expensive and could only be bought in Dodoma, the capital city of Tanzania, several hours away. These issues could only be resolved by spending time and money and both were in short supply in the District Office.

The District Land Officer said that many certificates were ready. In 2012, MKURABITA had sent a representative to complete some of the paperwork so that a number of certificates were ready for printing. In addition, another major obstacle, outside of the District Council's control, was the lack of Village Land Offices. The District Land Officer complained that the MKURABITA Programme staff did not involve the District Council in the whole titling process. He reported that 'the people from MKURABITA went to the villages directly to arrange everything, they by-passed the District Office' (Interview with District Land Officer, March 2013). As the result, the money for two of the village offices was 'corrupted'. The entire fund for the Village Land Office (VLO) was stolen by the Village Executive Officer in Mlala who had disappeared, while some unknown Village Councillors squandered the money in

Kiwawa and the office was only half finished. The District Council stepped in to oversee the building of the village office in Songambebe, and the District Land Officer explained, ‘as you can see it is completed and even within the budget’ (ibid). The District Land Officer emphasised that MKURABITA should have involved the District Council from the start. This description of events in Manyoni district is a radical contrast to the claims in the MKURABITA literature that the programme is implemented through existing local government structures, rather than through creating another layer of administration. ‘MKURABITA will be implemented through the existing government structure particularly in the Local Government system’ (MKURABITA website 2013). The MKURABITA Coordinator confirmed that this represented the modus operandi. However, a mid-term Review of MKURABITA (2007), which took place when the Norwegian Agency for Development Cooperation (NORAD) was funding the programme, found that MKURABITA did not involve the stakeholders who would be implementing the activities in the design of the programme.

The Review noted:

There is a need for more Tanzanian ownership and stakeholder involvement in the Reform Design process. To date the MKURABITA process and the Reform Design processes seem to be little known in Tanzania, and they are often badly misunderstood. This is partly due to a lack of awareness raising and consensus building within Tanzania (Fergus et al 2007:23).

The Manyoni District Land Officer explained that the office is extremely busy and that most of their current work is related to the demarcation and registration of town plots for which there is a fee paid by the person wishing to register. The DLO explained how ‘there is no budget allocated for rural surveying and demarcation’. This corroborated the assertion of the Coordinator:

The lack of resources at local government and village level places barriers in the way of achieving the results MKURABITA intends. Even when MKURABITA provides resources, i.e. equipment and staff

are trained in using equipment, procedures and land laws, there are competing calls on the time of local government officers (Interview with the Coordinator, MKURABITA 7th March 2013).

This is clearly what was happening in Manyoni District Council. The District Land Officer said that to have a town plot surveyed, demarcated and registered, costs approximately three million shillings¹⁰ and takes from three to nine months. The applicant, however, might still have the process delayed waiting for the Regional Land Officer's (RLO) signature. The Regional Land Officer is the only person authorised to sign land titles for the region which means it can take months, to complete, as the Regional Land Officer is in constant demand. The GPS which was funded by MKURABITA as a vital piece of equipment for the village communities, is now used extensively by the District Council for surveying town plots.

The District Land Officer (DLO) went on to explain that the District Council can decide to survey a plot and sell it ready to gain a title deed. This was happening in Manyoni town until 2012, when over three hundred town plots were surveyed in approximately three months and some plots were issued to townspeople. Suddenly, the District officials were ordered to stop selling town plots due to 'political interference' from local political representatives and well connected individuals'. The DLO explained that political interference can happen from time to time and 'then all the good work comes to an end'. Following Bourdieu, the distinction between the villagers and their 'habitus' and the officials in place at the District Office, starts with their education. The better educated are rewarded with higher level jobs, the majority of which are in the public services, which in turn lead to opportunities for further knowledge of how the system works and of how best to make gains from it. Conversely, the village

¹⁰ Three million Tanzanian shillings is equivalent to 1,200 euros approximately. Available at: <http://www.currencyconverterx.com/3000000-TZS-to-EUR> (Accessed 26 January 2017).

communities have primary level education, little or no English language skills, and had little if any knowledge of the land laws until MKURABITA informed them. The lack of a budget for rural certification and the cooption of the equipment designed for village demarcation are significant signs of the marginalized position of rural residents in the field of power.

Debt and Development

The second important objective of formalisation for MKURABITA is that land should be a route to gaining credit through mortgaging the property. Banks in Tanzania, however, are reluctant to lend money to small-scale farmers on the basis of a land title, as foreclosing on a mortgage on village land is contentious for lenders. In fact, the original Land Act 1999, Section 125, prohibited foreclosure on mortgages involving Village Land, but this was later reversed by Land (Amendment) Act No. 2 2004, followed by further amendments to the original Land Act 1999 relating to mortgaging land with the Mortgage Financing Special Provisions Act, 2008 (Rwegasira 2012:181-182,196). These amendments made it possible to mortgage village land held under customary tenure, but foreclosure on village land is still a contentious issue. Salma Maoulidi (2004) a researcher with Haki Ardhi, the land rights advocacy organisation, contends that this unexpected and unwelcome change was brought about by external pressure on parliament.

In February 2004, however, in what can be described as a hasty and undemocratic process that caught activists off guard, the government introduced two major changes to the Land Act- 1. the sale of undeveloped land, and 2. the possibility to mortgage land thereby threatening the property interests of the poor. The circumstances in which the changes are introduced highlight the external factors motivating the privatisation of land in Tanzania (Maoulidi 2004, 2).

Foreclosure on statutory held land and residential properties is already a contentious process for lenders and can potentially damage the reputation of the lender. The

situation was so rare that many informants expressed the belief that it was not possible for lenders to repossess village land. Denis explained the popular understanding of the legal status on mortgages:

The Government of Tanzania has refused to allow any reforms/modification regarding this issue, so to protect the people whose land is life to them! Of course, the commercial banks (capitalist in nature) supported by the Finance Act have been pushing for a change of the Chapter so to allow them on collateral thing but as said, this has never been accepted by the Government (email correspondence with Denis Kobelo 5th May 2015).

Stein and Askew (2009:10) interviewed the manager of the Cooperatives Rural Development Bank (CRDB) bank and he explained how they would not consider issuing loans using a CCRO as collateral. The criteria for applying for a loan involves having a bank account, with a considerable amount of savings, over a sustained period of time before lending can take place. My interviews with the manager of the National Microfinance Bank (NMB) branch in Monduli and the manager of a Savings and Loan Association (SACCOS), also confirmed that the banks only lend to persons who can demonstrate a substantial income, regular saving and a business plan to repay the loan (interviews with Mr Mwachali, manager NMB, 12th June 2014, Monduli, 2014). Mr Ntomola, the manager of the SACCOS in Arusha, said that the association requires the loan applicant to have saved over a million Tanzanian shillings¹¹ before considering giving a loan (Interview in Arusha 23rd May 2014). The SACCOS risk management system has put in place stringent requirements for accessing a loan: two members of the SACCOS are guarantors for the loan, therefore, there is every incentive for the borrower to repay and for their colleagues to insist on repayment or to help them if they have difficulties. The manager of the NMB bank described similar requirements. The

¹¹ One million shillings is equivalent to approximately 420 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=1000000.00&From=TZS&To=EUR> (Accessed 26 January 2017).

loan has to be guaranteed by at least two guarantors, in some cases four, and they must be persons of financial means. Assets such as property or land alone are not acceptable and the majority of loans do not involve the use of assets as collateral. Both managers stated that redeeming the loan through foreclosure, even if a viable proposition, would be socially frowned upon and could create problems for the lender. The requirements for borrowers meant that only middle class Tanzanians with viable businesses or secure employment are eligible to apply for loans. Most of my informants were small scale subsistence farmers who struggled to cover the basic survival needs, not to mention, unexpected setbacks, such as health or a school fees issues. A small number of informants could not even afford the small savings of 1,000¹² Tanzanian shillings per week required by the local VICOBA (Savings and Loan Association).

If it was possible for small holder farmers to access mortgages using their land as collateral, this could lead to mortgage defaults and ultimately loss of land and livelihoods. Smallholder farmers have unpredictable incomes, as they are subject to forces outside their control such as, weather, disease and market fluctuations. A recent example of fluctuating income was explained to me by Jenina, a farmer who was part of a cotton grower's association with support from a government initiative. Jenina said that the price of cotton was very high when she started, but had dropped dramatically. Farmers had started moving out of cotton as the price was so low, Jenina remarked that 'the issue was even taken up in parliament'. The journalist, Orton Kiisweko (2011) reported in the Tanzanian newspaper 'Daily News' on the failure of cotton farming to lift people out of poverty. The reason, he explained, was because, although cotton is a major export for Tanzania, the cotton grown is of low quality. This is caused by

¹² One thousand shillings is equivalent to approximately 50 cents. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=1000.00&From=TZS&To=EUR> (accessed 26 January 2017).

farmers using older and less effective seed varieties and achieving low outputs per hectare and thus, Tanzanian cotton achieves low prices on the international market. Despite these setbacks and the failures of many agricultural programmes in the past, farmers, both women and men, were willing to take up new crops or try out new ideas if they were given an opportunity to improve their situation.

Over 50% of the ninety informants interviewed in the three villages stated that accessing loans through using the CCROs was important to them. The reasons for wishing to take out a loan were mainly for farm improvements or business development, but also home building and school fees were cited. Only three informants emphatically rejected the idea of taking a loan as they were afraid of getting into debt, and twenty others wanted more information on how to access loans, but were wary at the same time about taking on debts. I found only three informants who had taken out loans since the MKURABITA programme and learnt that they had used assets other than land as collateral, such as a motorbike which was used as a taxi. As most informants had no certificates, they could not use them, although one person mentioned that he had heard of people trying to use the CCRO but the banks had refused to take them. Some creative and unexpected uses of a CCRO encountered included as collateral for student loans, in applying to the national student loan service and as a bail bond to avoid going to prison, which three informants mentioned.

The Coordinator indicated that the programme staff were aware of the fact that using village land assets as collateral for mortgages is not currently viable. The Coordinator explained that MKURABITA has made recommendations that the laws be reformed, i.e. changes to the Village Land Act ought to make it easier to mortgage village land. How this might impact on poor people within villages is not difficult to predict as

indicated earlier. At the present time it remains unlikely that small holder farmers with small plots will be considered a viable prospect for bank loans.

The smallholders of the three villages indicated strongly that they needed credit to help manage and develop their farms, or to develop off farm enterprises. Both women and men expressed a strong desire for credit to improve their situation and believed that microcredit offers a safer option for people with low incomes. Microcredit is an intervention that meets the short-term financial needs of poor people, and has particularly targeted women. Microcredit assists the poor in gaining access to resources to invest in income generating activities. There is no requirement for collateral and small loans are given out to people who would not normally be considered for loans from any formal institutions, due to a lack of saving history and/or steady employment.

Microcredit is popular among donor agencies and the village communities, however, the implementation of microcredit programmes and their impact on poor communities has been critiqued by scholars. According to Harvey, microcredit developed out of neoliberal policies which utilize an ideology of withdrawal of the state, from the arena of welfare for its citizens and the promotion of entrepreneurship and self-reliance (Harvey 2005:64). There has been strong criticism that microcredit has instead become a debt trap for the poor; as interest rates were increased to make microcredit more attractive to investors, as happened with the Grameen Bank, the once celebrated microcredit institution started by Muhammed Yunis, in Bangladesh (Karim 2008).

Banerjee et al (2015) confirmed the findings of Duvendack (2011) that despite long-standing microcredit programme in India, families using microcredit services showed little improvement in their welfare or consumption levels, but conceded that they

tended to have more durable items in their homes. If they already had a business, then the business grew slightly, but not significantly. Robert Pollin and Feffer (2007) argued that micro enterprises only succeed when a strong domestic market of potential consumers exists, which is not a realistic assumption in very low income countries. Microcredit, thus has serious limitations in regard to reducing poverty, however, both reviews acknowledge that it is widely used to assist families with cash flow problems during times of stress and as such provides an important service.

Julia Elyachar argued that the major microcredit programme in Cairo which she researched, offered false promises to young people of 'entrepreneurship' which would lead to economic prosperity. This model failed and left the young men indebted without the means to repay the debt. A recent ethnography by David Stoll (2013) focuses on the relationship between debt and migration in the highlands of Guatemala. Stoll argued that debt gained through microcredit was fuelling immigration to the US, and since the recession many families of the migrants lost their homes and lands, as the migrants were unable to find work to pay off the debts.

A savings and loan group, referred to locally as 'VICOBA' was operating in Songambebe, but no such endeavour had started in the other two villages. In the VICOBA, all members are shareholders of the 'bank'. All members save an agreed sum of money on a regular basis and are permitted to take out a loan based on their savings record. As the interest is repaid on loans, the savings of the group grows and at the end of each year all members receive dividends. The VICOBA seemed to be successful and the members were satisfied with the service it could render to them. Even so, some people could not participate as they could not manage to save even a

small amount of money every week. Thus the very poorest were excluded; those who most needed to be part of the initiative.

Women’s Access to Land

Girls get married and belong to another family (Interview Beatrice Mlala, 10th April 2013).

Various legislations enshrine the concept of gender equality in property rights, including the National Land Policy (1995) the Village Land Act (1999) and the Bill of Rights (1984) (URT 1990, URT 1995a, URT 1999a, URT 1999b). However, women’s right to land is a contentious and complex issue, for which reason, Chapter Four is devoted to exploring the topic of gender and land. An overview of the findings from Manyoni are briefly outlined here. The MKURABITA programme had undertaken a sensitisation exercise in the three villages, Songambe, Kiwawa and Mlala, on equal land rights for women. The exercise proved to be successful, as the majority of men and women were now aware of the right of spouses to appear on the CCROs and that female heirs as well as male can inherit property. A high number of village residents had recorded the names of both husband and wife and had both photographs on their certificate applications (see table below).

Figure 5: Names Recorded on Certificates of Customary Rights of Occupancy Application Forms

| NAMES RECORDED ON THE CERTIFICATES OF CUSTOMARY RIGHT OF OCCUPANCY (CCROS) APPLICATION | | | | |
|---|---------------------|-------------|-----------|----------------------|
| Husband and Wife | Parent and Children | Female only | Male only | Other Loan/relatives |
| 54 | 16 | 5 | 6 | 10 |

The fact that only six residents had recorded solely male names and fifty-four had recorded joint names, is a remarkable departure from tradition, where male heads of households solely own and control land, as noted by the Shivji Commission (1994). One man was eager to explain the reason that his name alone was recorded on the certificate. He had separated from his spouse and believed this ought to exclude her from any rights to the farm they had shared as a couple. Another young man indicated that he did not realise that a woman's name could be put on the certificate. Of the five certificates with solely female names, three of the women were planning to pass their farms to their sons rather than their daughters.

The Village Chairman expressed his satisfaction that most villagers understood that women can inherit land under Tanzanian land laws. He stated that although in the traditions of Taturu, Nyaturu and Nyamwezi, only males inherited land, in recent years this has been gradually changing. 'Some families are now prepared to allow their daughters to inherit' he related, but 'there is still a tendency for sons to be favoured over daughters' (Interview with James Benjamin, Village Chairman, Songambebe, 11th March 2013). This attitude he explained was common among women as well as men. Women also preferred to put their son on the CCRO rather than their daughter. The reason given for this, by both male and female informants was that women will leave the area to join their husbands. As the table below shows, sons are still preferred over daughters, but more than half of respondents would favour all the family inheriting the land.

Figure 6: Family inheritance preferences

| Can women inherit land? | Sons Only | Daughters Only | Depends on circumstances/character of son or daughter | All family should inherit |
|----------------------------|-----------|----------------|---|---------------------------|
| Yes – 87 it depends – 2 | 15 | 2 | 23 | 49 |

Women are highly dependent on land for their livelihood. Losing land upon divorce or widowhood, can have relatively more serious consequences for women as they are less likely to have other income streams, businesses or work opportunities. Catherine, a young woman in her 30s, and the mother of five children had lost the land she had been farming on her husband’s lineage plot in another village. She then moved back to her home village of Songambebe with her five young children, to farm her uncle’s land. Nora a mature woman already a grandmother, had difficulty holding on to her land after her husband died. Nora said ‘Women are so despised in the ownership of land and property’. She explained she had to fight with male relatives to hold on to her land, as ‘they were jealous’ of her being a property owner.

However, not all women were happy to stray away from tradition. A young Nyaturu woman with seven children, who was attending the village clinic was not concerned that her husband had his name only on the certificate. She said ‘Girls don’t inherit in Nyaturu tradition, but I believe women have the right to inherit’. As to her own situation, she was confident that her children and her natal family would take care of her if she was widowed or divorced. Women without a partner, whether, they were single, widowed or divorced, comprised the poorest group. They had the smallest plots of land, and few had jobs or businesses to provide extra income.

The Village Land Council played an important role in supporting gender equality in land transactions. The Village Chairman stated that they encourage fairness and equity in land matters towards wives and daughters, but conceded that they cannot force the man to follow their advice. The Village Council in Songambebe has put in place a procedure for dealing with family land issues and has used its influence to support gender equality. When approached by a husband who wishes to sell a piece of land, they discourage the vendor from selling unless it is absolutely necessary, such as the family facing a serious health issue or a lack of school fees. When the reason for the sale is explained, the Village Council insist that his wife or wives and children must be present, agree to the sale and sign an official contract. They also insist on the family of the buyer being present. Everyone signs an official contract to avoid future land conflict. Most importantly, this gives the wife or wives an opportunity to have their wishes expressed.

Customary norms relating to gender have undergone change, partly as a result of legal changes which have opened up the space for women to make claims which formerly were decided by tradition. Most families would like to have a responsible male descendant in charge of the family plot, but change has already come to the area and parents cannot depend on their sons remaining to work the land. As young men are more likely to leave the village, some parents have reconsidered traditions and now prefer to bequeath equal shares to their children, as they may find their daughter is close by, while their son is not. Odaard (2006) found a similar pattern emerging among the Hehe in Iringa where fathers were happy to leave land to their daughters, 'as they argue, that daughters are generally more caring towards their old parents than sons, many of whom, due to education and/or employment, are living away from their home areas' (2006:30).

Land Disputes

To support the Village Land Council to perform their job of resolving land issues and disputes properly, they need training on land laws and law books and allowances for members (Interview with Peter William, Ward Land Tribunal member, Songambebe, 7th March 2014).

A boundary dispute between Songambebe and the town of Ilala was solved through meetings of the village leaders during the formalisation. This represents a major achievement, as village boundary disputes can go on for many years and hold back the process of gaining a Certificate of Village Land.

During the formalisation programme, land was not surveyed if there was an active dispute, so many disputes were resolved during the adjudication process. Twenty-eight disputes were reported, twenty-one of those disputes occurred before MKURABITA and were solved during the process, while seven disputes erupted during the exercise and were still ongoing. Those disputes related to boundaries with neighbours, inheritance issues or the sale of land prior to the exercise. Some people returned to claim their land when they heard that MKURABITA was formalising land and found that their land was being used by others, as, land under customary rules if left idle for two to three years, can be used by other people.

Livestock keeping is an important income generating activity and strong competition exists between the need for grazing pastures versus the use of land for farming crops. This competition is the basis for land disputes in all three villages. Kamaguisha, whose story opens this chapter, represents an example of how disputes can start, Kamaguisha moved his livestock to another village when he could no longer find pasture in the village.

While the MKURABITA programme helped to solve a number of disputes, other disputes often arose which required mediation. This is the point where the principle of resolving land conflicts underpinning the NLP and the Land Laws confronts the messy practice of the law, where social and economic capital influence dispute outcomes in favour of those who are better off and well connected.

The costs involved in the mediation process were prohibitively expensive. There is a cost at every stage of the disputing process, even as far as 5,000 Tanzanian shillings¹³ to have a criminal apprehended by a security official. One respondent stated that at least 30,000 Tanzanian shillings¹⁴ must be paid to have a dispute heard at village level. Many smallholders could not afford to pay for the Village Land Council procedures or take their dispute forward to the Ward Council.

Support from the District Council to the Village Council was mentioned by many informants as being essential in order for the Council to perform its duties effectively. The Village leaders and the focus groups suggested that more training on the land laws was needed to help them mediate competing interests in land. The importance of having the essential infrastructure, a secure office and cabinet for keeping documents safe and a fund to assist with mediation costs, cannot be emphasised enough. The lack of these essential components of a functioning land administration in the villages points to the inferior status of village land rights and the lack of social capital of village residents.

¹³ 5,000 Tanzanian shillings equivalent to 2.10 euros

<http://www.xe.com/currencyconverter/convert/?Amount=5000&From=TZS&To=EUR>

¹⁴ 30,000 Tanzanian shillings is equivalent to 12.50 euros. Available at:

<http://www.xe.com/currencyconverter/convert/?Amount=30000&From=TZS&To=EUR> (Accessed 26 January 2017).

Endgame

On my return to Dar es Salaam, I wrote the report as promised for the MKURABITA programme. In the report I relayed the disappointment the village residents felt in relation to the four year delay with the certificates. I was concerned about how negative feedback would be received by the MKURABITA management. I took quite some time writing up the report to ensure it would be respectful, but still highlighting the issues that my informants had voiced. I was already back in Ireland by the time my report was acknowledged by the Coordinator.

In December 2013, I returned to Tanzania and while preparing to return to Manyoni district, I received an email asking me to meet the Coordinator. The meeting was cordial and the Coordinator said that the report had created quite a ‘stir’ in the department. The result was that two staff members were sent to Manyoni to sort out the remaining issues, including buying the printer cartridge from Dodoma. She advised me to call by the District Council offices to see how much work they had done on getting the certificates ready. Denis and I travelled to Ilala and went straight with Mr Msimbira to the Manyoni District Council offices. The District Land Officer greeted us like old friends and we sat in the office and were shown a stack of files on his desk. The District Land Officer pointed several times at what were piles of certificates. He urged me to examine them:

Take a look at the certificates, see, they are all done correctly, we worked very late every night to get them finished, it was a lot of work. We also have good news, the District Council is now discussing creating a budget line for formalisation in the villages. If we can get some help maybe from donors, we can put the resources together and we could do much more for the villages (Interview Manyoni District Council offices 10th March 2014).

The District Land Officer told me they had managed, with the help of MKURABITA, to complete the surveying of remaining farms, printing 2,532 certificates and organising the farmers to sign for their land.

Figure 7: Certificates in process

| Villages | Surveyed farms | Printed Certificates | Signed by occupants |
|------------|----------------|----------------------|---------------------|
| Songambebe | 1,054 | 885 | 655 |
| Kiwawa | 842 | 672 | 541 |
| Mlala | 1,314 | 975 | 868 |

Despite the challenges, the District Land Officer himself, and another officer, had visited these three villages and corrected the individual issues with each certificate, e.g. lack of photos, inaccurate information, etc. They then travelled to Dodoma to collect the print cartridges and were now well into completing all the outstanding certificates.

The biggest problem, they explained, was finance:

Budgeting is a problem, villages need to demand formalisation, it is not a budget priority. It must be demanded at village level, it is not possible, at district level. At central level, they can put in a survey budget. The problem is there is nobody who can enforce the idea. It needs instruction and guidelines otherwise it is impossible (District Land Officer, Manyoni District Council, March 2014).

The Land Officer said the council had agreed to set aside funding to complete the formalisation processes and were enthusiastic about allocating more villages to be formalised, but cautioned that the amount set aside might not be sufficient. He asked me to approach the donors to see if they could come up with some funding. I explained that I did not have any influence over donor agencies.

I was very gratified with this outcome for the people who took part in the MKURABITA programme, but it was an unsettling experience. I felt like a school inspector or the principal coming to check whether the teachers have completed their duties. The outcome confirmed for my research assistant Denis and the village community that ‘foreigners’ are ‘powerful’. The fact that those in positions of authority took more notice of the opinions of the foreign visitor and ignored the pleas of their fellow citizens for their certificates, left me feeling disturbed. I felt strangely ‘coerced’ into a ‘stereotypical’ role of representative of the powerful ‘Western donors’. When I returned to Dar es Salaam I visited the Coordinator to tell her the good news, and she was very happy that so many certificates had been completed. Afterwards I discussed with Denis the possible reasons that the Coordinator had picked out those three villages for the research. His assessment was that she knew about the delay in Manyoni and when I came along it was a perfect opportunity to put pressure on her superiors, the ‘management’. I was a neutral ‘foreigner’ and if I recorded the issue, the management would be forced to listen and to provide the resources to complete the task. The social field for Bourdieu is like playing a game, Grenfell describes how Bourdieu ‘uses the analogy of the ‘game’ and the notion of strategy to emphasis the active and creative nature of practice’ (2012a:53). In this case, I was a pawn in this game, a means through which MKURABITA could achieve their goal of successful registration of the village certificates. I was thankful that in this case as the outcome was a good end for my informants, but it nonetheless, altered my position as a researcher, removing any claim to ‘neutral’ observation that I could have made.

Bourdieu alerts us to the ‘interests’ which lie behind the actions of agents and the competitive struggle to maintain or expand on their position in the field as explained:

The notion of interest – I always speak of specific interest – was conceived as an instrument of rupture intended to bring the materialistic mode of questioning to bear on the realms from which it was absent and into the sphere of cultural production in particular ... On this score I feel very close to Max Weber who utilized the economic model to extend material critique into the realm of religion and to uncover the specific interests of the great protagonists of the religious game (Bourdieu 1994d:106f cited in Grenfell 2012b).

When MKURABITA arrived in Manyoni District their agenda was to transform smallholders into commercial farmers/entrepreneurs. The village communities were hoping that the certificates could be useful in defending their farms against neighbours or relatives who might encroach upon them, or in some cases, they saw the opportunity to take over land where the occupants had migrated for work or to encroach on their neighbours.

The Coordinator had a strategy for how she might complete the unfinished work in Manyoni district by sending the foreign researcher to ‘uncover’ the problem. Some of the Village Councillors and farmers also hoped that I might be able to help them get their certificates and this perhaps influenced their decision to speak to me at length about the issue.

I argue that gaining a certificate of the right to occupy a piece of land for many of the people I encountered, acts like an ‘amulet’ an object, imbued with the power to protect the landholder against those with bad intent. If that protection fails, a certificate of occupancy can act as a ‘tool’, to be wielded by land holders, in a Ward Land Council or in a court of law to defend their land rights. What smallholders in Manyoni are hoping for is the protection of their land rights. Having a certificate however, as has been presented here, is not a guarantee of success. To fulfil the promise of titling, that is, providing land tenure security, depends on a robust justice system, capable of mediating disputes and sanctioning those who threaten or abuse the rights of others. In

theory, power has been devolved to the village residents to administer their land, but in practice their jurisdiction over village land is severely limited, and the insignificance of their power is underscored by the lack of resources made available to them from the district budget to fulfil this role. The majority of villages lack the basic infrastructure to ensure that land is registered, and records are stored appropriately in the Village Office. The majority of village leaders have not received training on land policies and laws, thus managing land is riven with conflict and ambiguity. The following chapter will examine the experience of pastoralist communities in utilising land titling, in this case not individual titles, but Certificates of Village Land, as a protective device in the struggle for their land rights.

Chapter Three - Monduli District: pastoralists and agro-pastoralists

If the village gets a Land Cert, they have a right to manage the land, they can exclude others, without a certificate for land, others can come in. The benefit is to avoid interference (Interview with Lemurrat, Olomotoi 19th May 2014).

Many individuals from pastoralist villages would agree with Lemurrat that gaining a 'land cert' as he calls the Certificate of Village Land (CVL) is a form of protection against 'interference' from outsiders and from land expropriation. Maasai advocacy organisations pursue gaining a Certificate of Village Land as an important policy objective. The organisation who facilitated my research, the Community Organisation for Research and Development have focussed on the objective of gaining a Certificate of Village Land from its inception (Hodgson 2011). The Certificate of Village Land, it is hoped, will copper fasten village rights over grazing pastures and natural resources, as well as, ensuring more control over access to wildlife dispersed across pastoralist lands, and the revenue which may accrue through wildlife photographic tourism. The existence of wildlife within village lands is a resource, which can potentially augment the income of villages in the surrounding area. However, the capacity of land titling to increase control over land is limited if central government seeks to appropriate land for development purposes or against adversaries with wealth and connections. Nevertheless, Certificates of Village Land act as an 'amulet' to protect from adversary or as a weapon to be wielded when protection fails.

This chapter will present the research findings from the Monduli case study. I begin with an exploration of the construction of Maasai identity. This is followed by a brief historical background to the land dispossession experienced in the Maasai dominated regions of Northern Tanzania and the current struggles over land. The final section examines the land titling programme of Community Organisation for Research and

Development (CORDS) and the experience of two villages involved in a boundary dispute will be explored.

Becoming Maasai

Monduli District is one of five districts of Arusha region, Northern Eastern Tanzania. The Maasai claim their ancestral lands as comprising of the districts Kiteto, Simanjiro, Ngorongoro and Monduli. The Maasai market was a two-minute walk from the hotel in Arusha where I stayed when I first arrived. Maasai women laid out their beautiful handicrafts on blankets, which includes colorful beaded jewellery for which they famous, on the ground or under small canopies, calling for customers to see their goods. Just inside the door of the tourist shops stood the giant wooden carvings of ‘Maasai’ men and women, and advertisements with pictures of Maasai in traditional red garb, enticing customers to go for the ‘real’ safari experience. The Maasai as the quintessential warrior nomad fits seamlessly with the construction of ‘wildness and nature’, which tourists pay to see in the national parks. The Maasai are distinguished on the streets of Tanzania’s urban centres by their dress, retaining traditional dress the ‘shukas’, red coloured cloths worn loosely over one shoulder by the men, and intricate beadwork jewellery which immediately express their ethnic identity.

Arusha town is home to hundreds of street sellers, young and old, mostly men but some women also, selling their wares, vegetables, shoes and handicrafts on the street, whatever the weather, lashing rain or boiling sunshine, eking out a living in the tough environment of the city. At times the desperation of the sellers can appear rude in their insistence in pursuing their customers, even when they have flatly refused to buy. Some of these young men, are Maasai youths without other means of livelihood, but

many are migrants from other parts of Northern Tanzania drawn to the potential for work in the tourist industry.

In the small restaurants and internet cafes surrounding the hotels you will find groups of Europeans or Americans, tourists and missionaries, volunteers and the occasional researcher like myself. The weary and hassled tourists can make their escape from the streets to Arusha's four and five star hotels where the comforts of home await, with top class accommodation, tropical gardens, and global cuisine.

'Maasai' is the generic name for Maa language speaking people who practise pastoralism (Hodgson and Schroeder 2002). The name Maasai developed during the colonial period as Maa speaking people interacted with colonial authorities, as at that time, people referred to themselves using the clan or sections, to which, they belonged (Hodgson and Schroeder 2002). Maasai communities are composed of numerous sub-groups the Parkuyo, Arusha and Samburu and within each grouping are sections 'oloshon' and clans. The Maasai practise 'transhumant pastoralism, a form of seasonal migration to take advantage of forage and water options for livestock and to cope with unpredictable climatic conditions (Hodgson and Schroeder 2002:83). Each 'oloshon' or section, manages four different types of pasture, these are categorized as following, wet season grazing lands, with temporary water sources, dry season grazing with permanent water sources and generally more fertile grasslands, drought reserves which are the most fertile areas, and pastures close to the homesteads where young or sick animals can be looked after. Vital water resources and salt licks for cattle are also controlled by the people of the section 'iloshon' (Hodgson and Schroeder 2002).

According to Thomas Spear (1993) there is evidence to suggest that the Maa speaking people of modern Tanzania migrated from Sudan and occupied large areas of modern

day Tanzania by the sixteenth century. Spear (1993) recounts that the archaeological evidence points to the mixed economies, combining cereal growing with livestock keeping of the earliest Maa speaking peoples (Spear 1993a). Pastoralism as a specialist activity developed and flourished during the eighteenth and nineteenth century, and was referred to as the ‘pastoral revolution’, when social and climatic conditions favoured livestock keeping over mixed agro-pastoralist activity (Spear 1993b:131). Maasai are viewed today as the ‘prototypical pastoralists, secure in their own exclusive ethnicity’ (Spear 1993a:2). However, this conflating of productive activity and ethnic identity is questioned by Spear and other scholars of history and anthropology (Spear and Waller 1993). Spear points to the cultural and linguistic ties between Maa speaking Arusha farmers on Mount Meru, the Akiiek hunter gathers in the forests around Arusha, and the pastoralist Maasai on the semi-arid plains surrounding the mountains. Over centuries, the agriculturalists, hunter gatherers and pastoralists have traded essential goods, intermarried freely and incorporated members of other groups. Grains were an important element of pastoralist diets and livestock provided protein for a cereal based diet. Hunter gatherers exchanged honey and were engaged by pastoralists for certain ritual tasks, such as ‘slaughtering cattle and circumcising youths’ (Spear 1993a:12). Some groups of Maasai have farmed alongside exclusively pastoral Maasai. Spear argues that farmers practicing irrigated agriculture, i.e. the Arusha, Maa speaking farmers around Mount Meru and pastoralists on the semi-arid plains below are ‘two sides of the same ecological coin’ (1993b:131). One of my two regular taxi drivers was a tall slim Arusha Maasai, called Riziki, who spoke proudly of his Maasai identity. His English was excellent, which he learnt while working as a cook for an Australian family who lived in Arusha ten years earlier. He had picked up a lot of colloquial English phrases and had a keen ear for the different accents of English speakers. When

the family returned to Australia, they gave him a large sum of money which he used to buy his taxi. He continued looking for work as a cook but despite having good references from the family, he could not find any employment. He then concentrated entirely on his taxi business. Riziki, and his extended family owned a 15 acre family farm which produced maize and beans for the local market. He also had a herd of cattle, which they paid young boys to herd, seeking pasture and water. Riziki's three children were attending school. All his siblings had attended school, his sister was a teacher and his brother in law had a shop. The family farm made a good profit some years, but prices fluctuated, just as his taxi business did, which was heavily reliant on the cyclical tourist trade. Like many other pastoralist families, they survived by a combination of income streams, the cattle, the farm, taxi business and paid employment.

The identification of the Maasai with pastoralism as their way of life, is strongly promoted today, both by those critics of pastoralist practices and by the NGOs who advocate for pastoralist land rights and freedom to express their cultural values. Pastoralism in this narrative is associated entirely with a 'nomadic lifestyle' and a rejection of farming. This description of pastoralist practice ignores the adoption of farming over several generations and the nature of 'transhumance' pastoralism, which involves limited movement over socially organized territories. The informants in Monduli district, all practiced some farming, the only limitation to their interest in agriculture was having land to farm. As summed by Lemurrat 'we are all agro-pastoralists now' (Interview Lemurrat, Olomotoi, 19th May 2014).

The development of 'cultural distinctiveness' of the Maasai coincided with the opening up of space for civil society organisations, after the abandonment of socialist policies

and the one party state (Igoe 2006). Pastoralist organisations utilised this trope of the Maasai traditional lifestyle of nomadic pastoralism to 'brand' themselves as 'indigenous' in their fight for land rights to attract the support of international NGOs such as Oxfam. Igoe (2006) witnessed over his years of researching Maasai grassroots resistance against land alienation, the construction of 'indigenous' identity among the Maasai and their creation of an internationally recognised movement of 'indigenous' people. This movement was comprised of an alliance of pastoralists Maasai and Barabaig and Hadzabe hunter gatherers. Igoe identified the paradoxical nature of this claim to indigenous identity which 'implies a primordial state, necessarily preceding that which is foreign or acquired' (2006:400). The historical record does not provide evidence to support the designation 'indigenous' in relation to pastoralist populations, when the term is used to mean original populations displaced and oppressed by European colonial occupation. This original meaning of 'indigenous' was expanded in the 1990s as more groups claimed indigenous status, and the position of 'culturally distinct' groups became accepted internationally as indigenous.

Jean and John Comaroff argue that ethnicity is both 'ascriptive and instrumental. Both innate and constructed. Both blood and choice' (2009:40). Ethnic identity in South Africa they claim, has been re-configured in the drive to commodify cultural knowledge and artistry. The Comaroffs describe how loosely connected groups in South Africa are solidifying what were tenuous bonds in pursuit of the idea of 'ethnic' identity, not just for material benefit, but also as a means to assert themselves and demonstrate their existence through the tourist 'gaze'. The chief of the Tswana describe how his people needed to 'feel Tswana' (2009:9). In *Ethnicity Inc* (2009), the Comaroffs foreground the international dimension of the very 'local identity' which looks out to international arenas for confirmation of the value of culture and in the cases

of the Tswana and others as vehicles for profitable investment. In a similar vein, in areas of high tourist numbers, Maasai villages are keen to assert their connections with the ‘nomadic’ past and traditional way of life to take advantage of revenues from tourism and to attract lucrative photo-tourism groups. Maasai activist NGOs sought the help of the ‘international community’ to advocate for their land rights in the Loliondo case.

Igoe argues that the indigenous claims by Maasai groups was a political strategy to bypass the state and to seek recognition of their ‘cultural distinctiveness’ in international institutions, thus bringing resources to local struggles. Igoe argues that this use of identity politics by the Maasai is ‘symptomatic of a political system that is externally oriented as a result of long-standing dependency on external resources’ (2006:401).

The pastoralist organisations certainly demonstrate dependency on external assistance. When donor funding did not arrive in time, CORDS staff could not proceed with their work schedule, as funds were not available to fuel vehicles and pay staff. But at the same time, pastoralist NGOs utilised their citizenship rights to lobby local and national political representatives. The Maasai have traditionally followed the ruling party CCM, and the Pastoralist Women’s Council used the threat of Maasai withdrawal of their traditional support for the ruling party CCM as leverage in a protest over the Loliondo land dispute (interview with Maanda Ngoitiko 2014).

For some scholars the active involvement of international donors in local community organisations/NGOs has negative repercussions, distracting the energies and human resources from the issues of importance to the local group and instead towards fulfilling international donor requirements (Kamat 2004). Igoe argues that the support of

numerous pastoralist NGOs by international donors created top heavy institutions which grew distant from the communities they were set up to represent. In fact, Igoe argues that ‘the donor desire to fund civil society organisations has actually undermined the formation of civil society in the pastoralist community’ (2003:881). NGOs are not the best locus of activism to secure political gains and in fact stifle the development of grassroots political movements. My experience was that the NGOs I encountered were a varied collection, enjoying different levels of success. The work of CORDS was very practical and targeted to supporting village groups to fight for their land rights.

CORDS is one of many Maasai advocacy organisations which were created during the post-socialist liberalisation period as described above. According to Dorothy Hodgson (2011) CORDS was one of the most successful Maasai NGOs which focused on service delivery rather than engaging in advocacy or any controversial activities in defiance of the state. During my search for an NGO to facilitate my research, I was interested in attaching myself to a less well known Maasai advocacy NGO. I was advised against doing research with this NGO (name withheld) by a researcher (name withheld) who had many years’ experience of living in northern Tanzania. My contact believed the NGO was too adversarial in its approach to government, and I might find myself caught in the crossfire between the NGO and the authorities, which could jeopardise my research. My contact advised that CORDS would be the most suitable, as it was not as adversarial, or ‘politically active’ as compared to some other NGOS.

Hodgson (2002) recorded how ‘Against this backdrop of overlapping and sometimes conflicting allegiances and divisions’ over one hundred Indigenous Non-Governmental Organisations (INGOs) which had developed in Northern Tanzania during the 1990s (Hodgson 2002:1087). There were contests between the diverse sections of Maasai

and between pastoralists and hunter gatherer groups, who all claimed the designation of 'indigenous' and competed for donor resources and recognition. Hodgson describes the struggles over representation and authenticity which raged and split the fragile alliances created to form a coherent campaign for their rights (Hodgson 2002). The INGOs leadership became estranged from their base communities and concentrated attention on advocacy at international rather than national level. Amon and Mattee (2006) argued that the increase in the number of organisations representing pastoralists has impeded the formation of a coherent organised voice to represent the interests of pastoralist communities. Hodgson (2011) reflected on the complex process of 'becoming indigenous' and the clash of interests among the different Maasai NGOs and their strategies, some taking their case to the UN with the help of Swedish anthropologists and donors while others fought as citizens demanding attention to their problems from their government (2011:30).

'Community' is a term commonly used by Maasai advocacy organisations and individuals. CORDs staff members talked many times about the problems or issues with communities. Vered Amit contends that even when social scientists note the 'slipperiness' of the notion of community, its persistent use both in popular imagination and scholarly literature, point to its ability to evoke 'meanings presumptions and images' (Amit and Rapport 2002:13). I was conscious throughout my field work of the contested idea of 'community', which encompasses a vague and ambiguous term. Anthropologists have problematized the use of the term 'community' as a discrete and bounded entity. The 'communities' in question were 'read as a convergence of place, people, identity and culture, which was construed as the proper subject matter of anthropology' (Amit and Rappaport 2002:13). Maasai activists used this conflation of

place, productive activity and ‘cultural’ identity to leverage resources which could empower their struggle against the state.

Dispossession through Conservation: ‘Museum Parks without People’

... they are making the land into a museum park where people can’t be seen, but Maasai leave the animals alone. The animals they are not afraid of Maasai, they know we do not harm them (Emanuel Ndulet, Arusha February 2014).

Pastoralists have experienced extensive land loss to wildlife conservation and tourism since the 1950s (Parkipuny, 1991; Neumann, 1998; Igoe and Brockington, 1999). The Shivji Commission (1994) declared that in northern Tanzania, they found a ‘large body of evidence of fears and apprehensions expressed against proposed or imminent large scale alienation of village lands, particularly in Monduli and Kiteto in Arusha’ (1994a:34).

Northern Tanzania is home to world renowned unique natural features, such as Mount Kilimanjaro, Ngorongoro crater and various highly valued wildlife. Wildlife tourism in Tanzania is a major revenue earner. In 2014 tourism generated 5.1% of GDP, 2,975.6 billion Tanzanian shillings (approximately \$2.5 billion dollars) and contributed 14% to the GDP of Tanzania (World Travel and Tourism Council 2015:1-4). Northern Tanzania is also rangeland used by pastoralists for grazing cattle. State practice has been to remove people and domestic animals to make way for wildlife, through the declaration of land as Game Reserves, although traditionally pastoralists and wildlife have co-existed on the same rangeland. Paradoxically, while Maasai iconography appears in every safari brochure, members of the Maa speaking groups are struggling to protect their livelihood against the same forces which construct ideas of an uninhabited wilderness.

From German colonial occupation through the British trusteeship, colonial policy was developed on the principle that in order for wildlife to survive, pastoralists must be removed from areas containing wildlife. The German administrators created the idea of a Maasai Reserve, south of Arusha, to make way for Boer settlers to move to the more fertile land to the north, between Mount Meru and Kilimanjaro (Hodgson and Schroeder 2002). Maasai were forced to resettle on the reserve, although the plan was not very successful and people continue to move out of the reserves. When the British took over after World War 1, they were perturbed by the widely dispersed Maasai in central and northern Tanganyika. In 1922, the solution devised by the administration was to relocate all Maasai to a reserve. The reserve did not respect the needs of the pastoralists, as it took water supplies and dry season grazing areas from the reserves, for settler agriculture. A small number of settlers were even allowed to farm within the reserve, and 'Maasai living around Monduli paid one settler £1,000 a year in 1930 for water rights to Lemisigie, the mountain stream which was the main permanent water source for the area' (Hodgson and Schroeder 2002:84).

The Serengeti was one of the original homelands of Maasai communities until it was gazetted by the British colonial authorities for wildlife conservation in 1959 (Neumann 1998). According to Neumann, just after the Second World War and before independence wildlife conservation was high on the agenda of British colonial authorities in Africa and 'mass evictions became a key management strategy in the new national parks' (1998:34). The Maasai lost 14,760 km² to create the national park (Neumann 1998: 146). All Maasai, approximately 10,000, were expelled, but in exchange they were given joint land use status in the Ngorongoro Conservation Area, however this gesture amounted to 8,292 sq. km, representing a loss of almost half of their rangeland (Neumann 1998:146).

In a historical review, Nelson asserts that colonial and post-colonial administrations perceived that pastoralists were responsible for the overgrazing of rangeland and damaging wildlife (Nelson 2012b). During the colonial period, in order to avoid environmental degradation, the administration devised National Parks where wild animals would not have to ‘compete’ with livestock. Nelson (2012) asserts that three concepts underpinned this explanation of land degradation. Firstly, the idea was that large herds of cattle overwhelmed the ‘carrying capacity’ of land. Thus a reduction of large herds was essential to allow grass to recover and forage to become available for wild animals. Secondly, there was a strong belief that in Maasai culture owning cattle was highly valued, that the ‘cattle complex’ a cultural belief system held by the Maasai, discouraged the selling of their animals and led to herds being overstocked. Melville Herskovitz (1926) first coined the term ‘the cattle complex’ to describe the importance of exchange of cattle in marriage arrangements in East and Southern Africa. Cattle were the most valued gift which could be given to the parents of the bride and a marriage was legitimised upon the receipt of the gift of cattle. James Ferguson writing about Lesotho (1994) argued that the farmers targeted by the project did not sell their livestock because, cattle represented a place holder with their extended family and village community men who were working in the South Africa mines as migrant laborers. Cattle were an insurance policy for when they would eventually retire from their work.

The ‘Tragedy of the Commons’ thesis developed by Garrett Hardin (1968), was invoked claiming pastoralists operate a system of communal property which was open access to all, and therefore, it is inevitable that land will become degraded. Elinor Ostrom (1990) devoted her research to solving the question of how best to manage ‘common pool resources’ or communal property, for the benefit of the whole

community of users and additionally how to prevent the ‘free rider’ mentality, whereby some users take more than their share. The conventional solution for this problem is usually privatisation of the resource or, a take-over by central state. Ostrom’s findings refuted the notion that communally held land is not managed sustainably and is open access. Ostrom’s research uncovered examples of cooperative governance of common pool resources globally which had been successful over long timespans and were generally the most effective form of management (Ostrom 1990). According to Nelson (2012) these ideas remain influential on policy today ‘Many of these ideas about overgrazing, the cattle complex, and a tragedy of the commons on communal lands continue to inform policy debates’ (2012b:3).

Nelson (2012) argues that recent ecological and anthropological studies demonstrate that pastoralists practices, cattle grazing and burning off grasslands, contribute to stabilising the landscape and making forage available for different kinds of wild animals. Nelson (2012) argues that pastoralism has shaped the ecology of northern Tanzania over thousands of years and that pastoralist practices enhance the survival of certain types of wild animals.

It has long been recognised that pastoralists and their livestock, and wildlife live alongside one another in East African savannah ecosystems, where they exhibit a high degree of spatial overlap or co-existence (Sitters et al 2009; du Toit 2011 cited in Nelson 2012b:3).

Emmanuel, the Land Rights Officer from CORDS explained that wild animals had disappeared from other parts of Tanzania because farmers hunted them to extinction. In contrast, there are strong taboos against eating wild animals in Maasai culture, ‘you will see zebras and giraffes grazing with Maasai cattle without any problem’ (interview, Emanuel Ndulet Arusha, 10th May 2014). Alais Morindat, a Maasai land rights activist from Tanzania National Resource Forum (TNRF), reported that during the hunting season in Loliondo district which overlaps with the Serengeti National Park, animals

flee from the designated hunting areas to escape the hunters. They run to safety into what is officially pastoralist village lands (Interview, Arusha, 15th Jan 2014).

Pastoralists were singled out as the cause of soil erosion in the region, through their production management practices, which included the burning of grasslands and keeping large herds (Enghof 1990). This conception of pastoralism is outdated, as recent studies have shown that pastoralism is a practical and efficient system in the ecological areas where it is practiced and constitutes an appropriate survival strategy (Behnke and Scoones 1993, Homewood and Rodgers, 1991). Studies have demonstrated that grass burning is an important strategy in keeping grasslands of high quality, by encouraging new grass rather than allowing fibrous grasses develop, and reducing the incidence of tick borne and other diseases (Enhof 1990). Recent scholarship on pastoralist practices has noted the ability of semi-arid regions to recover rapidly after vegetation loss during dry periods or drought, the only variable being rainfall (Behnke et al 1993, Scoones 1995). While other studies have shown that pastoralist mobility makes optimal use of variations in climatic and pasturage conditions, and helps to manage risk during drought conditions or potential disease outbreaks (Mattee and Shem 2006).

Alais Morindat explained that the system of dry and wet season grazing suited the ecological conditions, giving the landscape time to recover. Farming on the other hand, often ended in failure under semi-arid conditions as periodic droughts destroyed the crops (15th January, Arusha, 2014). Morindat and his organisation had undertaken research in collaboration with a local agricultural research institute, on the introduction of a drought resistant maize variety, which was given financial support by an Irish NGO (name withheld). Despite tremendous efforts on the part of the village communities

taking part, the maize crop yields were very low. The villagers were disappointed and lost hope in being able to sustain themselves on farming alone. ‘Maasai are more convinced than ever that turning rangelands into farmland will not feed us’ (Alais Morindat, Arusha, 15th January 2014).

After independence in 1961, the new government retained all the colonial structures for managing wildlife conservation, including the Wildlife and Forest Departments (now Wildlife and Forest Divisions), Tanzania National Parks Authority (TANAPA) and Ngorongoro Crater Conservation Area Authority (NCAA). President Julius Nyerere, the post-independence socialist leader, asserted the importance of wildlife conservation for the development of the country in the Arusha Manifesto of 1961. The Manifesto read:

The survival of our wildlife is a matter of grave concern to all of us in Africa. In accepting the trusteeship of our wildlife, we solemnly declare that we will do everything in our power to make sure that our children’s grandchildren will be able to enjoy this rich and precious inheritance. The conservation of wildlife and wild places calls for specialist knowledge, trained manpower, and money. We look to other nations to co-operate with us in this important task, the success or failure of which not only affects the continent of Africa but the rest of the world as well (Nyerere 1961).

Twenty-two National Parks and Game Reserves on lands where pastoralists grazed their livestock were set aside post-independence, between 1964 and 1994 (Wildlife Sector Review Task Force, 1995 cited in Nelson 2005). In 1974, the Ngorongoro Conservation Area was created by the independence government and all Maasai were evicted. The eviction overturned the assurance by the British administration that the area was a permanent settlement for the Maasai in compensation for loss of the Serengeti (Nelson 2005). In 1976, Mkomazi, occupied by pastoralists, was declared a Game Reserve and all cattle grazing was inhabitants were evicted with the loss of 1,000 sq. km of grazing land (Brockington 2002).

The 1974 Wildlife Conservation Act No. 12 (WCA) retained ownership and control of wildlife solely with central government. The WCA established three types of protected land, Game Reserves, Game Controlled Areas and Partial Game Reserves (Nelson 2005). National Parks and Game Reserves exclude human habitation and permission from the Director of Wildlife is required to enter. Game Controlled Areas (GCA) are reserved lands outside of the network of National Parks and Conservation which are also areas set aside for wildlife conservation. People are allowed to settle in GCAs and they can live there, farm and graze animals, but without a license, hunting is forbidden (Nelson 2005).

With the collapse of socialist policies and the IMF imposed structural adjustment conditionalities in the 1980s, the ability of the government to manage the wildlife sector and control poaching was severely compromised (Nelson 2007).

According to the Wildlife Sector Review Task Force (WSRTF) Tanzania lost 50% of its elephant population and almost the entire population of black rhinos (WSRTF 1995 cited in Nelson 2007). The Government of Tanzania was concerned with this turn of events which had the potential to destroy the developing tourist industry. Nelson (2007) records the steps taken by donors and government agencies culminating in a new Wildlife Management Policy (1998). Donors and large conservation organisations funded the new wildlife management policy. The conservation management model of joint venture contracts between villages surrounding the national parks and safari companies looking for photo-tourism opportunities was hailed as an innovative solution to the lack of inclusion of local communities in the benefits of conservation and tourism. This proposal would also help to tackle human/wildlife conflicts on the periphery of national parks. While national parks exclude people, wildlife moves

across the manmade boundaries placed around the parks, straying into pastoralist grazing lands, with the result that village land on the periphery of the parks contained large numbers of animals. Nelson reports how safari tour companies sought new areas for tours outside of the busy national parks and made revenue sharing agreements with those villages which earned the communities between 30,000 and above, in joint venture contracts (Nelson 2007:13). Maanda Ngoitiko of the Pastoral Women's Council spoke enthusiastically of joint ventures between safari companies and villages which have yielded significant incomes for community projects. Maanda stated that Ngarasero village, which the Pastoral Women's Council had assisted to gain a Certificate of Village Land earned over \$80,000 USD in 2013 from their community tourism venture with a safari company (Interview, Arusha, 16th June 2014). Maanda claimed 'this helps the community to protect their resources, as they are benefitting directly' (ibid).

From the viewpoint of donors and conservation organisations, this model of community involvement in management of wildlife resources and their benefitting directly from the profits of photo tourism was a perfect match. Community Based Natural Resource Management had already become the preferred option for both the International Union for the Conservation of Nature and the Frankfurt Zoological Society (Nelson 2007). This model of partnership was expected to create a 'win win' situation for pastoralists, the state and conservation interests of large international NGOs. The government undertook a review of the Wildlife Policy and the consensus of stakeholders was that community involvement in managing wildlife areas was an essential strategy to ensure their protection (Nelson 2007).

Nelson (2007) asserts that although the new Wildlife Policy (1998) retained the state as the ultimate owner of wildlife resources, it reflected the principles of Community Based Natural Resource Management (CBNRM) on village lands. The Ministry of Natural Resources and Tourism (MNRT) describe the policy as creating local incentives to conserve wildlife through ‘conferring user rights of wildlife to land holders to allow rural communities and private landholders to manage wildlife for their own benefit’ (MNRT 1998, cited in Nelson 2007:5). Wildlife Management Areas (WMAs) were designed to be conservation areas, created out of land set aside by the villages. In return, the villages would be granted a quota of animals for hunting, which is the most lucrative form of wildlife tourism. Villages pooled land to create larger concessions, and in some cases, up to twelve villages contributed land within a single concession (Nelson 2007). Underpinning the policy was the intention that wildlife conservation should ‘compete with other forms of land use’ thus encouraging community interest in the preservation of wildlife (MNRT cited in Nelson 2007: 5). In villages registered as Wildlife Management Areas, the contracts with safari companies were negotiated with the village management and revenues went directly to the village bank account.

However, the intentions of the Wildlife Policy (1998) were undermined by complex procedures and regulations. The regulations under which Wildlife Management Areas operate diminish the authority of village communities over their territory. An Authorised Association (AA) must be set up which takes on the management of the Wildlife Management Association. The villages must undertake three planning operations; developing a strategic plan, zoning and individual use plans, and an Environmental Impact Assessment (EIA). The Director of Wildlife must approve, every step, including the plans, the investor who partners with the villages, and the

Environmental Impact Assessment, before any revenue is received by the villages. The Director of Wildlife alone, has the authority to grant hunting block concessions within the Wildlife Management Association, reflecting the most lucrative form of tourist activity and the most important management decision affecting the communities.

The development of the new Wildlife Policy 1998 took place at the same time as the National Land Policy was being revised. 'The National Land Policy (URT 1995a) recognised that conflicts arose over Game Controlled Areas (GCA) and village lands existing in the same places' (Nelson 2005:4). The solution proposed by the NLP was that in places where Game Controlled Areas (GCA) were in close proximity to important wildlife reserves, then the GCAs should serve as 'buffer zones' without agriculture or settlements. Additionally, the Game Controlled Areas should be upgraded to Game Reserves and the inhabitants re-settled elsewhere. This implies that villages on Game Controlled Areas do not have customary rights to the lands which contradicts other aspects of the land law, which protects land occupied by people under custom or through settlement for over twelve years as having customary rights to land. In an unfortunate repetition of history, the pursuit of economic development by the state leads to abandonment of land laws which do not fit the state's plans. The end result is appropriation of customarily owned land and removal of pastoralists from their livelihood. Formalisation of land, including the gaining of a Certificate of Village Lands is not sufficient to protect against the superior power of a predatory state.

Nelson (2007) reports that the implementation of the Wildlife Conservation Areas has produced three negative outcomes for pastoralists, firstly, the destruction of livestock and property of the Maasai settled near the national parks and game reserves. Lions killing livestock or elephants destroying crops as they pass through fields are a common

occurrence. While the prohibition on hunting means that pastoralists cannot not kill wild animals and therefore cannot protect their crops or livestock. Secondly, the buffer zone land is appropriated from Maasai areas to increase the terrain for wildlife. Thirdly, conflicts between private hunting concessions and community managed photo-tourism projects have been escalating. The most important aspect of the wildlife policy, the devolution of responsibility for wildlife management to communities has been extremely slow in implementation.

Benjaminsen et al (2013) question whether the GoT were committed to devolving power over wildlife resources to the communities. Benjaminsen et al concurred with the findings of Hodgson and Schroeder (2002: 92) that sharing of the profits from wildlife tourism with the communities ‘threatened the powers of the Wildlife Division ... and most particularly the revenue it regularly receives from hunting fees’ (Hodgson and Schroeder (2002:92 cited in Benjaminsen et al 2013:1095).

In addition to the slow implementation process, corruption in the wildlife sector further, discredited the programme and donors withdrew support for the Wildlife Management Areas (Nshala 1999). Withdrawal of donor funding impeded the development of new WMAs, as donor support was critical in navigating the complex procedures required in establishing the WMA. USAID has remained as the major donor to the programme.

The final blow to the limited devolution of control to the villages came with both the Wildlife Policy of 2007 and the Wildlife Conservation Act of 2009 (URT 2007, URT 2009b). The promises of community management of wildlife resources on village lands and direct benefit from those resources has been rolled back in a process of ‘re-centralisation’ in the new Wildlife Policy of 2007. The new policy did not mention community participation in wildlife management and by 2009 was followed with a new

Wildlife Act, which solidified state control of wildlife resources. Benjaminsen et al (2013) contend that the changes introduced by the policy and the Act are attempts to re-assert control over profit from hunting and photo-tourism and to capture control over village land on the periphery of the parks. Regulations were introduced which declared that non-consumptive tourism ventures (photo-tourism, walking safaris, etc.) must obtain permission from the Director of Wildlife to operate in village lands. In addition, there was confusion over the revenue sharing implications of the changes. Some safari companies interpreted this to mean that revenues are paid directly to central government. The new Act brought in revenue sharing with the Wildlife Division and District council, while the village fees have reduced to 65% which reduces their income substantially (Benjaminsen et al 2013:1096). There is also no transparency about the contracts with the Wildlife Division and the safari company nor about the amounts received initially by the Wildlife Division. According to Benjaminsen et al the villages merely receive the funds with zero explanation or evidence for the amount paid over. Hunting fees of 25% are supposed to be shared between the district and the villages, but the proportion to each is not specified (Benjaminsen et al 2013:1096). There is no mechanism to check if the amount handed over is correct, nor accessible information on income levels at district level. Benjaminsen et al assert these processes demonstrate the 'recentralisation' of all control and income from natural resources away from village communities (2013:1101).

The new Act specifies that 'pastoralists need permission from the Director of Wildlife Division to graze livestock in Game Controlled Areas even where these areas overlap with village lands' (Benjaminsen et al: 2013:1095). Most Maasai village land overlaps with Game Controlled Areas and thus this regulation removes all authority from the village residents on land which is customarily held village land.

A USAID evaluation of the Community Based Management programme noted the repeated delays in policy approval and implementation (Techra Tech ARD and Maliasili Initiatives 2013). For example, approving the Wildlife Policy took eight years and it was a further four years before the first WMA regulations were put in place. To repeal the former wildlife legislation (Wildlife Policy 1974) took seven years despite the fact that ‘draft legislation had been developed some 15 years or so before’ (Techra Tech ARD and Maliasili 2013:17). The report concludes that the reform process was hampered by the reluctance of the Wildlife Division to relinquish control over the management of wildlife resources to local communities and subsequently throws doubt on the commitment of the GoT to the reform.

Further complications have arisen as the Land Act governing land which is not part of villages, identifies lands under Wildlife Conservation Area as Reserve Lands rather than Village Lands. The implication of this is that once land is designated Game Controlled Area, it is no longer Village Land and comes under the Jurisdiction of the Wildlife Division (Nelson 2005). This is incompatible with the land laws which protect the integrity of village lands which are often co-terminus with GCAs. Nelson (2005) points out the dangers for pastoralist communities of these conflicting laws, which in effect, take stretches of village land and place them in another category, Reserve Land, out of control of the villages. Monduli District has 95% of its total land area contained in GCA (Madulu and Yanda 2003:10) despite having over twenty wards, ninety plus villages and a population of 158,929 (URT 2012b). Some of those villages are demarcated and have Certificates of Village Land. This creates ambiguity over which laws operate in the area and who has responsibility for managing these valuable wildlife resources. Emanuel Ndulet the Land Officer with CORDS stated that the ‘government laws contradict each other’ and this legal ambiguity over Game Controlled Areas and

village lands was a major problem for pastoralist communities (Olomotoi 20th March 2014). Alden (2003) stated that the Village Land Act No.4 1999, principles of adjudication require length of occupancy to be taken into account in deciding on customary land rights:

A person will be entitled to a customary right of occupancy if s/he or they are found to have occupied or used the land in a peaceful, open and uninterrupted way for not less than 12 years, either by custom, allocation or transaction under customary law or by a written law and for which there is documentary proof (2003:39).

In making determination of rights, the Committee must treat the rights of women and pastoralists no less favourably than the rights of men or agriculturalists (2003:39).

The confusion posed by the conflicting land laws is made more threatening by the objectives enshrined in the Strategic Plan for the Implementation of the Land Laws (SPILL) initiative. Odgaard (2006) asserts that the SPILL initiative, which is designed to inform the public and promote the implementation of the National Land Policy and the Land Laws 1999, contains two essential strategies which have potential to cause extreme tenure insecurity and promote conflict. Firstly, the strategy plans to sedentarize pastoralists and secondly to transform their production system into a ranching system. Throughout the plan, the present performance of the pastoral sector, is in general, looked at very negatively. The SPILL document states:

Pastoral production has very low productivity levels (meaning it marginally addresses poverty reduction policy). Pastoralism degrades large masses of land (meaning is not environmentally friendly). Pastoralism invades established farms (meaning it violates security of tenure). At the moment it is impossible to control livestock diseases, thus making it difficult to export meat, milk and livestock due to international demands on livestock, health and products free of infectious agents (meaning it has marginal support only to economic development) (URT 2005:14 cited in Odgaard 2006:23).

Pastoralism is perceived very negatively in Tanzania today by central and local government administration. Ringo Tenga, a prominent Tanzanian human rights lawyer stated 'the abolition of pastoralism seemed to have been on the agenda at the State

Level for a long time, practically from the eve of independence’ (Tenga 2011: 19). The National Land Policy states that:

the growth of livestock population has raised demand for grazing land and serious soil erosion problems in some areas due to overgrazing [...] this has led to increased movement of large herds of livestock to areas which traditionally had few livestock, such as Mbeya, Iringa, Morogoro, Rukwa and Coast Regions, creating serious land use conflicts (URT, National Land Policy, 1995 cited in Mattee and Shem 2006:11).

In the augural speech to Parliament on the 30th December 2005, President Jakaya M. Kikwete, stated his intention to ‘take deliberate measures to improve the livestock sector. Our people must change from being nomadic cattle herders to being modern livestock keepers’ (cited in Mattee and Shem 2006:11). President Kikwete in 2013 was reported as dismissing the pastoralist mode of production as having no future, as he told a group of pastoralists ‘living a nomadic life is not productive’ (Patinkin 2013).

Despite studies which contradict the attribution of land degradation to the effects of pastoralist practices alone (Behnke et al 1993, Scoones 1995) this assessment remains strong. Policies in the Ministries of Tourism and Agriculture and the Wildlife Division, continue to be influenced by these concepts despite evidence available to the contrary (Mattee and Shem 2006). Denis, my research assistant, who had completed a degree in Tourism and Natural Resource Management in Makerere University, Uganda, described how in his studies, pastoralism was condemned as an outdated system which causes land degradation. Pastoralists were considered to be problematic because they have too many cattle which degrades the land, and therefore, wild animals will not survive, potentially destroying the tourist industry.

Despite low levels of support or outright condemnation, pastoralism has not disappeared. Government research into the sector asserts that 80% of livestock is reared by agro-pastoralists, while 14% by traditional pastoralist communities,

producing high quality food for urban and rural Tanzanians (URT 2015b). The importance of livestock rearing was made clear to me by all my informants. Livestock provides high quality food, milk and meat which is also transformed into cash to pay for school fees and health services. Women sold milk in the market and children (and visitors such as myself) were given protein rich milk and yoghurt. Equally, cattle are a means to create bonds between families and clans through the exchange of cattle upon marriage and the loan and exchange of cattle between kin (Interviews and Focus groups Monduli 2014).

Cattle are the bank' said Mbilinyi, a Maasai elder in Iramba Moja, about the value of cattle to pastoralists. When a relative is in trouble, people will help them, they might give jobs to young men to herd animals, supply them with food stuffs or even animals to help them rebuild their herds (Mbilinyi 28th May 2014).

Ferguson (1994) noted the same sentiment in Lesotho where cattle were extremely important as a means to promote the social relationships of migrant workers with their home-based kin. Cattle constituted an insurance policy against future crisis, and their worth was much more far-reaching, than merely as a commodity.

'We are not just pastoralists anymore, we are all farmers now, because there is more hunger now than in the past' Lengati, an elder from Olomotoi stated. The majority of Maasai families are no longer solely practicing pastoralism, when they have access to plots of land, but they grow crops in addition to keeping livestock. A household survey undertaken in Monduli district in 2009, by the University of Minnesota, found that the main occupation of households was farming, but the main income was from livestock sales (University of Minnesota 2010). The research concluded that agricultural activity was labour intensive work which was almost entirely at subsistence level and could not provide a significant income. In order to increase household income, the researchers recommended that district leaders could scale up pastoralism (University of Minnesota

2010). Negative attitudes prevail despite the importance of pastoralism as a livelihood strategy which provides food security and contributes to the maintenance of rangeland ecosystems. In northern Tanzania, pastoralists rangelands are in ever present danger of appropriation by the state.

Good Fences Make Good Neighbours – Mapping the Boundaries of Village Lands

Community Research and Development Services (CORDS), a registered voluntary organization which facilitated my research. The mission of CORDS is to advocate for land rights and the economic empowerment of Maasai communities. CORDS began operating in 2005 and are now a well-established NGO and have a number of international donors, such as OXFAM UK, Open Society Initiative for Eastern Africa (OSIEA), the International Work Group on Indigenous Affairs (IWGIA) and Caritas New Zealand.

CORDS manages three programme areas, land rights, women's empowerment and livestock development. The Land Rights Programmes is divided into the Pastoralists Land Rights Programme (PLR) and Pastoralists Land Use Programme (PLU). The Pastoralists Land Rights Programme raises awareness of pastoral communities on land policies and laws, and other laws which relate directly to pastoralist issues. The programme objective is to prevent, or at least reduce, land alienation of grazing lands, and in order to achieve this, the programme supports village registration and titling, helping villages gain a Certificate of Village Land (CVL). However, the Co-Ordinator, Lilian Nakuyiet explained:

People do not understand the issues, the concept of titling land ... People are scared their land will be grabbed. There is a lot of suspicion, why suddenly the interest in land titles now people ask themselves. Title is secure in towns, but in the village, there is no security, the Village Chairman or Village Executive Officer can tamper with legal title. The importance of titles is not understood. The poor cannot have proper title, they must have a lot of money. MKURABITA programmes are for the rich. Surveyors and other fees and bribes are necessary for surveys, it is an expensive process. The government see it as cheap, but you cannot get surveyors to come if you don't give them bribes (Interview February 2013).

Lilian conceded that gaining a title can also be a temporary solution, after much effort to gain a Certificate of Village Land, the District Council can split villages and render the title void, which has happened in Nangolo in 2005. The village of Nangolo was demarcated with the assistance of CORDS and beacons were placed at the boundaries. The village was then divided into three villages by the District Council as the population was very large. The three new villages were then registered anew and the original Certificate of Village Land (CVL) was rendered void. Nangolo was now working with CORDS to gain a new CVL. Undeterred by the negative experience, the Village Chairman and Councillors wanted to continue working towards gaining a Certificate of Village Land. The village authorities were committed but were concerned that the process is so complicated. When I asked what they hoped to gain from having a certificate, Lemurrat explained:

the right to manage the land, we can exclude others. Without a CVL others can come in. The benefit is to avoid interference (Lemurrat, Olomotoi, 19th May 2014).

In Longido, CORDS have assisted two villages, Orbomba and Oltepsi villages to prepare the documents for getting the Certificate of Village Land. Unfortunately, they have not succeeded at the last hurdle, the signing off by the District Land Officer. Only the original District Land Officer, who accompanied the villages on the process of titling their land, can sign off on Certificate of Village Land (CVL). As the original District Land Officer has left to take up another post, the CVL cannot be signed by any other officer, and the programme has been delayed by eight months. I was informed by several land activists that splitting villages was most often a strategy for political party members to get votes. CORDS have assisted 109 villages to demarcate their village land in Longido, Kiteto and Monduli and Arumeru Districts respectively. This took time and patience as there is distrust and suspicion around any land issues 'It was

difficult to persuade people, they did not understand why it was necessary, but the fact that CORDS is made up of their own people helped' (Lilian Nakuyiet 14th February, Arusha, 2013).

The Pastoralists Land Use Programme focusses on the issue of access to land and natural resources. The programme concentrates attention on reducing conflicts between pastoralists and groups pursuing other occupational activities, for example, wildlife conservation for tourism and farming. CORDS is also involved in promoting the rights of women to own land, through mainstreaming gender through their two programmes, particularly with regard to equity in access and ownership of resources. CORDS raises awareness among the community of women's rights to land. The female informants who had gone through the CORDS training were aware of their rights. 'Women can inherit land' Grace Mayseki stated, 'but tradition does not allow it. The eldest son looks after the family land, never the daughter'. Despite the legal framework which allows both women and men to own land, the Gender Officer stated that women experience discrimination in accessing land: 'one man can own a lot of land, but women cannot, they have hardly any land' (Martha Naserin Katan CORDS 2014). Despite the multiple challenges and setbacks faced the organisation, the staff of CORDS were convinced of the importance of Maasai people knowing their rights and gaining Certificates of Village Land to protect them. According to Lilian Nakuyiet:

If NGOs were not helping people their lives would be worse. The government knows someone is looking at them and can shout about problems. Overall there is no security in land. Whatever kind of title you hold, it does not matter, it is still easy to lose your land (Lilian Nakuyiet, Coordinator, CORDS, March 2013).

A Tale of Two Villages

The villages of Mindoi and Olomotoi are located in Monduli district, one of the four traditional pastoralist dominated districts of Kiteto, Ngorongoro, Simanjiro and Monduli in Northern Tanzania. Monduli District is located in Arusha region, in the north east of Tanzania and covers 6,419 square kilometres (URT 2010:6) with a population of 158, 929 persons (URT 2012a:47). The Maasai people are the majority population living in this area of Monduli (URT 2010:10). The Maasai people of Monduli mainly belong to the Irkisongo section (Maasai recognise sixteen sections or clans or 'Iloshon' in Maa language of which Irkisongo is the largest section of the Maasai community (Interview with Emanuel Ndulet, Head of Land Programme, 18th February 2013). Arusha Maasai, who are mainly agriculturalists are the second largest group. The villages also have minority populations of Nyiramba and Nyaturu from Singida region, Wairaq from Mbulu district, Chagga from Moshi, Sandaw and Burunge from Kondoa districts. The district is bordering areas of importance for wildlife and national parks conservation, including the Serengeti, Lake Manyara, and Ngorongoro crater, all world renowned wildlife attractions. However, pastoralists are confined to the perimeter of the national parks.

Monduli district falls within a conservation reserve, and is a Game Controlled Area. Game Controlled Areas (GCAs) under the Wildlife Conservation Act of 1974, allow for the co-existence of human settlement, grazing livestock and wildlife. The GCA's have one restriction, which is that hunting of wildlife requires a hunting licence. Game Controlled Areas often overlap with village lands. Emanuel the Head of the Land Programme explained:

So many parts of the country are reserved land and village land at once! This is a conflict between the Land Act and the Village Land Act but also involves the wildlife legislation. Currently, we observe the government contradicting itself. The National Strategy for Growth and Poverty Reduction calls for removing these conflicting provisions between wildlife and land law and policy so that rural community land tenure can be supported. On the ground implementation of any legislation can conflict with other legislation and confuse people. That is why they [GOT] are trying to harmonize the legislation. I don't understand if they can manage, because it is very long process (Emmanuel, Head of Land Programme, CORDS, conversation 10th April 2014).

CORDS provided training for Village Councils on the provisions of the Environmental Act 2004 and the Wildlife Act 2013, as well as the land laws, during the Land Use Planning exercises. CORDS Annual Report states that pastoralist communities 'were not comfortable with ... [these Acts] due to experiences, a background of eviction in different parts of pastoral communities'. These Acts have often been used by the state to evict pastoralists from their land (CORDS 2015:3).

When I arrived to do my research with CORDS, Emanuel, the Land Officer, suggested that I accompany him in his negotiations in a land dispute between two villages, Olomotoi and Mindoi. The villages were in conflict over a reservoir which bordered the villages and each village wanted the reservoir to be kept within their territory. The two main villages, Olomotoi and Mindoi, are forty minutes from Arusha town, the principle town of the region. Olomotoi is 10, 655.22 hectares with a population of 4,644 and Mindoi is 8,550 hectares with a population 3,960.

These villages were chosen by CORDS because there has been a large influx of immigrant farmers from outside the district which caused conflict over land and resources between newcomers and established villagers. In addition, land dispossession was recently experienced due to the expansion of Tarangire National Park for wildlife conservation. Emanuel explained:

The case of Tarangire National Park is that the Wildlife Division grabbed a chunk of land owned by five villages in Monduli district, Lolkisale, Naitolia, Makuyuni, Upper Mswakini and Lower Mswakini, when they were establishing Tarangire. I am not sure the amount in acres, but this is what made CORDS to intervene to protect against further alienation of pastoral land (Emanuel Ndulet, Arusha, July 2014).

Wide new roads attest to the importance of the tourist industry. Tourist buses, delivery trucks and passenger buses move swiftly along the wide, well tarmacked roads running through Mindoi village. Travelling through Monduli district, soil erosion is visible everywhere, particularly near the villages close to the road. Bare brown patches of soil loom between the short tight grass. The dry, friable tropical savannah in some areas is reduced to dusty specks. Erosion is aggravated by the erratic rainfall in recent years, and the reduction of land available for pastoralists, as huge tracts of traditional grazing grounds have been expropriated for public conservation and private commercial game parks (Nelson 2007). This also means that traditional routes to dry season grazing and water courses are no longer available to pastoralists, thus grazing is confined to a smaller area, which is quickly depleted of vegetation. For the pastoralists, I engaged with during my research, I discovered that the word ‘conservation’ is loaded with distrust and fear. Emanuel explained this occurs because, for so long, land alienation has been the experience of the communities, whenever they hear the word.

The Disputed Territory

Olomotoi and Mindoi were one village until 2012. The Local Government Act 1982 has defined the basic criteria for the designation of a village ‘The new village must have a minimum population of 250, a primary school, dispensary and local small shops must be there’ (Emanuel Ndulet, Head of Land Programme, Arusha March 2014). Because the original Olomotoi village was growing in population, the Village Council proposed that the sub-village should become an autonomous village. This

motion was approved by the Village Assembly, the Ward Councillors and finally the District Council. The final seal of approval came directly from the Prime Minister's office and registration of the new village was completed. When I asked Emanuel why the villages were split only in 2012 and so soon about to be split again, he answered that 'Sometimes the political interest influences the process' (Emanuel, Arusha, March 2014).

At the Natural Resources, Land and Water Office in Monduli District Council, Mr Mwangi stated that all Monduli villages were registered, which is mandatory in order to be surveyed and given a Certificate of Village Land. Forty-eight villages were surveyed with only six left remaining (Mr Mwangi, District Natural Resources, Land and Water Office, Monduli, 22nd May 2014). This included villages currently in dispute, whose survey has been delayed until they could agree about the boundaries. The successful surveying of so many villages had been possible through the collaboration with CORDS, Mr Mwangi noted.

The collaboration between the District Council and CORDS is good, they have established a Village Land Council whose job it is to resolve disputes. Conflict has reduced in the surveyed villages, the new villages which have been established, now, must recognise the boundary map approved by the Ministry of Land (Interview District Natural Resources, Land and Water Office, Mr Mwangi, May 2014).

My first days in Mindoi and Olomotoi involved spending several hours waiting for meetings to start with Sara, my interpreter in the vehicle or in the shade of a tree. For meetings to take place, it was necessary to have the elders of the community, the Village Executive Officer, Village Chairman and officials attending, in addition to CORDS staff, which was complicated to organise. Travelling throughout the area is difficult and expensive, during the rainy season, roads are dangerously flooded. There are few vehicles travelling off the main roads, so locals must walk long distances or

hitch a ride with family or neighbours. Representatives from the District Council and village leaders must be transported to the meetings by CORDS. CORDS staff estimate that for the average village, which has some conflicts internally between neighbours and externally with neighbouring villages, it will cost around 7 million shillings¹⁵ to organise the demarcation, surveying and mapping in order to gain a Certificate of Village Land. If there are no conflicts the process can cost less, approximately 4 million. Emanuel informed me that villages without conflicts are extremely rare.

Mindoi and Olomotoi had been involved with disputes over many years. The boundary of one of the subdivisions of the village is the subject of disputes. The original village demarcation was arranged by the former chairman of the Village Council, who it happened, was also acting as chairman of the local Chama Cha Mapinduzi (CCM) the ruling party. The village demarcation became invalid, because it is not permitted to hold the job of Village Chairman and also be actively involved in politics.

Mindoi and Olomotoi were in dispute over which village should have 'ownership' of a reservoir which was bordering the two villages. In addition, Olomotoi village was involved with five border conflicts with neighbouring villages. The reason for so many border conflicts was attributed by the village authorities and staff at CORDS to rising land values. The price of land was increasing rapidly due to the recent development of tourism projects which could generate valuable revenue.

The reservoir was part of a large commercial farm which was created out of land belonging to the original Olomotoi village. In 1980 the land was leased by the District Council to Indian investors, the proprietors of a thriving furniture business in Tanzania,

¹⁵ Seven million shillings is equivalent to 2,936 euros approximately. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=7000000&From=TZS&To=EUR>. (Accessed 26 January 2017).

called Tanfoam. The leasehold from the GOT comes with development conditions and in this case, the lease stipulated that the land should be used for commercial agriculture. The company had requested the land to grow sunflowers for oil processing. In 1990 the investors built a large dam as a reservoir on the land to overcome water shortages. However, the company did not develop the agricultural business, only planting small crops of maize and no sunflowers were sown. Village leaders heard rumours that the company used the large estate as a photographic tourism business and borrowed money from the bank for other commercial enterprises, using the land as collateral. There were reports in the media about the company's activities and the Ward Councillor and Village Chairman advised the community about the company's breach of contract. The community reported the breach of contract, to the District authorities. Once the authorities were aware that the company had broken the terms of the lease, they were prepared to revoke the lease. When the village leaders became aware of the moves by the District to revoke the lease, they got everyone together to discuss how best to use the opportunity to regain the land taken. Traditional leaders and elders were vocal in meetings demanding more grazing pasture, but it was the youth groups who were most vocal in the discussion, as the young men play a 'significant role searching for pasture for their herds' (Interview with Emanuel, 15th June 2014). There was considerable anxiety among the village leaders and youths over the issue of establishing village boundaries because this could constrain mobility of herds, as access points to pastures were needed at different seasons, and water sources might be cut off through the creation of 'borders' between villages (interviews with George 5th April 2014, Emanuel 25th June 2014). The Village Assemblies of both villages agreed that the land surrounding the reservoir should be allocated for grazing and residential uses and they submitted their decision to the district council. The boundary discussions were really

discussions of rights to the reservoir, which village should have the reservoir on their land.

Negotiations over the boundary and the fate of the reservoir took weeks of hopeful starts and disappointing stops and much patience on the part of the CORDS staff. During those weeks, the management of CORDS were busy hosting a group of donors doing an evaluation visit for other programmes and staff were tied up with the visitors. The Head of the Land Programme had to manage the situation without any support from other staff. There were meetings at the district offices and at each village. There were meetings of elders only, meetings with the Village Council and the Village Land Committees. Meetings of elders and leaders took place in the classroom of a secondary school. The leaders and elders spoke in turn, very calmly making their case, but little progress was made as each side felt they had the right to the reservoir, and they needed it more because their population was more reliant on pastoralism. The stumbling block was always the same, the reservoir. Each village wanted to claim the reservoir and surrounding land for themselves. This struggle must be understood in the light of the ongoing water shortages affecting northern Tanzania. Monduli is a semi-arid region and subject to frequent dry periods and drought conditions. During interviews water shortages and lack of rain was cited for the majority of informants as the top issues affecting their villages.

A few weeks into my research a meeting scheduled with the Village Executive Officer was cancelled. This was a regular occurrence and my research progress necessitated many re-scheduling of my interviews with persons in official positions. However, the cancellation turned out to be propitious. Instead, CORDS were successful in persuading the village elders, a group of Village Councillors and the Chairmen from

both villages to have a meeting at the physical boundary of the villages. Emanuel was hoping this meeting at the boundary could broker an agreement.

When everyone gathered we set off in three vehicles to travel to the outer reaches of the village. Once we left Mindoi main road and veered off into the tracks, the landscape began to change. All around Mindoi village the grass is grazed to the length of a golf course green, with many patches of bare earth in between. Once out onto the rangeland, an ominous pink flowering weed poked its head every few yards between the green grass and bare earth. I had seen the same weed in the Pare Mountains the previous year and it was wreaking havoc with grazing land. When I enquired what steps were being taken to control it. The District Executive Officer and village elder I shared the car with did not seem to be perturbed about it, although the DEO had heard about the weed causing problems in Kenya, there was nothing being done to eradicate it. The further away from the village we travelled the greener the landscape. Although it was hot, the air seemed cleaner and fresher than the Mindoi. The car bumped and chugged over the hillocks and at some points the grasses were thick and the vehicle had effectively no road, but chugged through the expansive fields. The District Executive Officer talked loudly most of the time in Maa language with occasional inserts in Swahili. We saw young Maasai boys herding cattle and girls and women carrying loads or leading donkeys laden with goods. When we reached the reservoir the place was very beautiful, with shade giving trees alongside a large body of water. The reservoir looked like a natural lake, which had been there for eons. It was deep and huge, a meandering shape with rounded and uneven edges planted with trees and bushes. Because of a diversity of trees and bushes there were many birds and butterflies. The sounds of birds was all around us, and the air was noticeably cooler and fresher with all the shaded areas and the water. The scene certainly fitted into the description of a photographic or tourism

project rather than irrigation pond for maize growing. The owners allowed the village community to use the water for domestic purposes, but no animals were allowed to drink the water, as the threading of large numbers of animals would destroy the grass surrounding the reservoir. The company allowed the villages to use the site for celebrations. Emanuel pointed out a grove of trees which he said was where many important rituals and celebrations took place.

We walked along a rough path through the wooded area surrounding the reservoir and the elders pointed out landmarks and discussed the boundary issue. We stood in a group for about an hour and a half while the elders and CORDS staff discussed the location of the villages and accessibility to the reservoir. No resolution was found, each group stuck to their original intention of having the reservoir for their village, although there were promises to share the resource. It was difficult for either village to let go of control over such a valuable resource. After the fruitless visit and discussions going around in circles, Emanuel decided to leave the issue for a few days in order to give both sides time to think about their options. It was not unusual Emanuel explained for disagreements over natural resources to drag on for months.

A week later, we went to see the Monduli Natural Resources and Land Office to meet the District Land Executive Officer. We turned up at his office in the old colonial building and were escorted immediately into his tidy office. Files were neatly placed on shelves in a very orderly office. His secretary brought us tea and he gave us his full attention. He related:

There are over 200 investor farms in the district which are controlling huge amounts of land needed by people for grazing livestock for their survival. Much of this land was acquired illegally or the investors are not using the land for the purposes for which it was given to them. The District has been taking steps

to revoke their licenses to operate and as recently as April the District revoked twelve farms.

He showed us the newspaper advertisement of the District Notice of Intent to Revoke a License. All the companies bar one, were local Tanzanian companies except for Tanfoam, and the land parcels varied from 200 acres to 4,000. Prior notice to revoke licenses was a legal requirement. The company, Tanfoam, currently using the farm with the reservoir was one of the listed companies. For this reason, the villages were hopeful of regaining land they had formerly occupied. The District Executive Officer was not from the Maasai community himself but was sympathetic to the situation of pastoralists 'pastoralists need more grazing land just for their survival'. This was an unusual position to take for a district official, as government plans were to turn pastoralists into farmers (Mwangi, District Land and Natural Resources Officer, Monduli, 22nd May 2014).

The Amulet: Formalisation as Protection

The greatest challenges facing the village communities were: shortages of land, water, and work. The majority of village residents of Olomotoi, Mindoi, Nangolo and Iramba were practicing pastoralism in conjunction with other occupations whenever they could. Those who had access to plots of land grow crops did so, in addition to keeping livestock. Plots were generally small, from 1 to 5 acres, although village leaders tended to have several plots. A number of the older men bought and sold livestock at the market, while the mature women made and sold handicrafts in the markets to tourists. Younger men were working as herders or going to school. One focus group conducted in Iramba was composed of a group of male students home during school holidays. All the young women I interviewed had finished school at primary level. They were either married with small children or at home, helping their families, with chores and child minding duties. Men migrated temporarily to Arusha or other towns to work, selling

the tanzanite gemstone, or working as security guards. People were consciously trying to create livelihood opportunities for themselves and their families under difficult circumstances and migration was one option taken.

With the history of land dispossession for pastoralist communities, there was a heightened awareness among the people of the two villages about the value of land and the desirability of tenure security. When asked about their knowledge and experience with land titling, the majority of the village residents had little or no knowledge on how to get a Certificate of Village Land or individual land titles. Most people indicated they relied on finding out more about land titles from the CORDS training. None of the village authorities, the Village Executive Officer, Village Chairmen and the Council members had received any government sponsored training on the land laws, yet their mandate included land allocation, land dispute mediation and settlement. The little information gathered on land titling was known by male informants, particularly those who had travelled for work, or those who held some position of authority, but even they expressed a lack of confidence about their knowledge of procedures and assessed that they needed training on land laws. During focus groups discussions and interviews with women and young people they stated that they had little or no knowledge of titles in terms of how to get one, and what value they might have.

Despite the lack of experience of CVL or CCROs most people thought that having a certificate would be a good idea and blamed the current land disputes within villages on the lack of 'certificates of land'. Additionally, people of all ages put a high value on Land Use Planning which was understood to be a means of resolving disputes and ensuring security for their land. Demarcation of village boundaries and designation of grazing and farming areas ensured that everyone knew what activities were allowed in

which areas. The current situation was unclear and village officials and residents expressed the belief that lack of clarity on land use issues made it easier for land to be appropriated from the village.

There was a noticeable gender and age divide, with opposing views of land titling between male elders and women and young people. Four elders interviewed preferred a Certificate of Village Land designating communal land, while all women indicated that they would like certificates for their individual residential plots with small gardens or 'shambas'. For women, this usually involved certification of their place of residence and the surrounding land. CORDS's policy is to assist villages gain a CVL and this position is held by all of the Maasai NGO staff interviewed. NGOs like CORDS, Ujamaa Community Resource Team and Tanzania Natural Resource Forum, were not in favour of individual titling and registration. They agreed with the assessment of Professor Shivji and the Presidential Commission on Land Matters (1994). The Shivji Commission concluded that individualised land titling would increase landlessness. Alais Morindat of Tanzania Natural Resources Forum (TNRF) explained that privatising individual plots was detrimental to pastoralist practices, often resulting in reduced access to grazing and water resources, as routes between grazing areas were blocked off (Interview in Arusha, 15th January 2014 2014C).

The sale of village land must be approved by the Village Assembly and I was assured by the village authorities that sales are only allowed within the village to residents, not to outsiders, for example, in Lengai:

The Village Council cannot sell land without village assembly. It can happen, but the chairman can cancel the allocation. No possibility to sell from nowhere. The Maasai village council cannot sell land, they give it to a person from the village, not for sale. It is between people in the village (Laizer, Village Chairman, Lengai Village, 1st July 2014).

If a village resident sells land without Village Assembly approval, the Village Chairman can revoke the sale. However, some of the residents and NGO staff reported that the Village Chairmen themselves can well be the originators of illegal sales, and recounted incidences of village chairmen selling off village land.

Some people buy and sell land, the buyers are usually from outside, some people don't use the proper way to sell, i.e. they don't come to tell the Village Executive Officer (VEO) and the Village Council to approve the sale, they just arrange it themselves. Something must be paid to the VEO for the village council, the one who is buying contributes to the office (Mr Mollel Village Executive Officer, Lengai, 29th June 2014).

The Village Chairmen complained that their work is very challenging and they have no financial reward for their time and efforts. As Letuu Tingide described: 'The chairman is not paid, any problem night or day is brought to his door and he is expected to solve it' (Letuu Tingide, Village Chairman, Nangolo, 13th May 2014).

All village leaders interviewed were committed to gaining a Certificate of Village Land and believed that the action of Land Use Planning was a priority for their village. Two leaders expressed dismay that the government was not supporting the villages in gaining a CVL and that the village leaders were dependent on NGOs to assist them. They were frustrated that 'the government was not helping us, rather expecting NGOs to step in to provide resources' (Interview with Tingide Letuu Village Chairman, Nangolo, 13th May 2014). The process of gaining a certificate was costly and without help from CORDS, it would not be impossible. Gaining individual title, a CCRO for an individual plot was very expensive and most people could not afford it.

Tenure security was acknowledged as problematic, but equally problematic was the reduction in rainfall and shortage of land for pastures. Livestock-keeping remains a highly valued occupation. Makko Siwandeti stated in a focus group:

Livestock are very important, especially now, that the local cattle have been crossed with Borana cattle producing better quality animals, they are fetching better prices in the market. The problem is always that land shortages are forcing herders to seek water and grazing outside the villages and this is how conflicts come up with farmers. As well lack of rainfall, climate change can let you down, when you have no rain coming and the cattle suffering (Focus Group Discussion, Iramba, 13th May 2014).

The comment was repeated by many others, the increasing value of land and land based activities, ie. livestock rearing, is creating shortages and leading to conflict over resources, both internally in pastoralist villages, between migrants and locals, and pastoralists and farmers.

Disputing Processes

Mr Mwangi, the District Natural Resources Executive Officer, emphasised how complex the situation is regarding land. He stated:

While solving one conflict, another can arise and the process is time-consuming for the department. There needs to be more awareness raising on conflict resolution, many conflicts are quite simple issues which should be easily solved. Instead, people are willing to fight and to pay dearly rather than give in to the opposite side. This is time-consuming for the department and causes undue delays of other activities. CORDS have assisted in establishing Village Land Councils, comprised of members of the Village Council and local clan leaders or elders whose job it is to resolve disputes and this has increased the number of disputes which get resolved (Interview District Land Office, Monduli, 22nd May 2014).

There are numerous causes of land disputes within and between villages. The most common cause stated in interviews was between neighbours in the village over boundary issues. With no physical mark to show where the boundary exists, claims and counter claims are the result. Reports of neighbours disputing boundaries of farm plots and going as far as moving beacons to increase their plots were commonplace. ‘Families with many sons and a small amount of land experience many disputes’ (Laizer, Village Chairman, Lengai 1st July 2014). As pastoralists are also farmers and have residential plots, they experience similar issues of boundary problems as small

holder farmers in Manyoni district. Land Use Planning was prescribed by several individuals and focus group participants as the best way to prevent these kinds of disputes, or at least to help resolve them, as there is evidence upon which to make a judgement.

The Village Land Council is called upon to help resolve disputes assisted by traditional leaders. There was general agreement that traditional leaders are skilled at dispute resolution, and that the village communities have more trust in the elders than any other dispute mechanism. According to Makko Sinandei from Ujamaa Community Resource Team

Without the elders and clan leaders to balance the Village Council corruption can set in. Elders have ‘culturally accepted’ means to enforce their decisions, for example, using ‘curses’ or damaging the person’s standing in the community can be powerful sanctions against transgression of the rules. This kind of cultural resource is not available to the statutory bodies or elected representatives and is very successful (Interview in Morogoro, 27th February 2014).

The consensus of opinion was that imposing bylaws locally was very important and preferable than going to court when laws are broken. Financial penalties were imposed for breaking the village by-laws, these could be anything from 10,000¹⁶ Tanzanian shillings to 50,000 Tanzanian shillings. For more serious matters, the scale goes up as far as killing livestock, such as a goat, cattle or a bull. Slaughtering a bull or other her livestock fulfils the requirements of the sanction while providing food for people;

Bylaws are that the person who moves a beacon marking a boundary, must slaughter a bull, that is the penalty, it could be also money. Courts take too much money, better that people eat the bull (Tingide Shemburi, Village Chairman, Nangolo, 13th May 2014).

¹⁶ 10,000 Tanzanian shillings is equivalent to 4.20 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=10000&From=TZS&To=EUR> (Accessed 26 January 2017).

50,000 Tanzanian shillings is equivalent to 21 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=50000&From=TZS&To=EUR> (Accessed 26 January 2017).

There was unanimous agreement that going to court was wasteful of resources, with limited chance of success and thus was only used as the last resort. The main problems with administration of village level disputing mechanisms, were identified by village leaders and elders as the lack of sufficient knowledge of the land laws and procedures. They were promised training on the land laws by CORDS they explained, and that had never received any training on land laws and administration. CORDS would be their first training opportunity.

To get some perspective on the rural situation in comparison with urban land issues, I asked the District Land and Natural Resources Officer about urban land titling and disputes. The Land Officer reported that in urban areas double allocation and forgery of documents were the major problems. This happens despite the existence of a registry which can be checked before sales are made. The issue of forgery of documents also exists in villages, he conceded and is a growing problem.

There is a difference, because, in the villages there may be other means of evidence to bring forward to support a claim, long time occupancy or being vouched for by neighbours, in urban settings it is impossible to defend a claim to a plot without documents to prove it (Mwangi, District Land and Natural Resources Officer, Monduli, 22nd May 2014). This contradicts the generally held notion among village residents and indeed even NGO staff were under the impression that town plots are more secure. Lilian Nakuyiet, Director of CORDS stated that:

Titles are secure in town, but in villages, no security. The Village Chair and Executive Officer can tamper with legal titles. Town titles go to individuals (Interview in Arusha, 14th February 2013).

Canute Temus from Kilimanjaro, had a relative who was the victim of double allocation and had spent four years trying to resolve the issue of the town plot he bought in good faith from the District Council, only to find another person had been previously allocated the plot. Telesia's story in the next chapter will provide a disturbing example

of corruption in double allocation. Tenure security in general is not guaranteed for any citizen or indeed some foreign investor.

Loans

Both men and women expressed an interest in having access to loans. Men were more interested in using loans to buy livestock or land, while for women their interest was primarily in developing a business. The majority of women and men in focus groups were not aware of how land could be used to gain a loan. A small number of men and women had heard of people using CCROs as guarantees for loans, but could not identify any close family, neighbours or friends who had gained loans in this way. Those who knew about using CCROs understood the danger of losing land or property if loans are used as collateral with a bank. The idea of using land for collateral for loans was attractive but was viewed as risky.

Loans? No banks will agree to a loan without a land certificate. People would use the certificate to get loans, but you have to be careful with loans. The poor can lose everything. Loans can make someone poorer (Tingide Letuu, Nangolo, Village Chairman, 13th May 2014).

The women of Iramba had formed a VICOBA, a savings and loan association, called a Village Bank. The leader of the VICOBA explained that it started off with 30 people and every person had to pay 1,500 tsh (and they saved 300,000 tsh (Grace, Treasurer, Iramba 27th May 2014). Savings levels vary from 2,000 tsh per week to 4,000 tsh depending on the individual's circumstances. Three of the women members of the Iramba VICOBA had used their association loans to buy beans and keep them in the village store to be sold when beans became scarce. Another member used the loan to buy seeds and to pay for tractors to plough her shamba, but the crop was not successful so she had not yet paid the loan. Women were interested in loans but were unaware of the dangers of debt. They found it shocking to hear that if the loan is unpaid they could lose their property. The Shivji Commission (1994) found a similar situation during

their research, that people were astonished to hear that banks would take the homes or land of people who did not pay their loans.

After I left, the villages of Olomotoi and Mindoi were finally divided into four villages, not three as expected. They are now Mindoi, Lengiloriti, Olenashai and Olomotoi. The new village Olenashai is located closest to the reservoir and is now the most likely to gain the reservoir when the licence is revoked. CORDS managed to settle disputes between Olomotoi and three bordering villages. The only conflict remaining to be settled is that between Olenashai and a village called Nalotoi. This village was part of a National Agricultural Corporation (NAFCO) estate which was taken into public ownership during socialist times, and was then allocated to private ownership as a commercial farm producing agricultural crops. The village on the former NAFCO estate, is now made up of labourers who had previously worked on the farm and squatters who recently moved to the area (Emanuel Ndulet, 10th July 2014).

Conclusion

Maasai communities have reason to be concerned over their tenure security. Large tracts of land in Northern Tanzania have been alienated to local and international investors with little or no consultation with local users, nor compensation for their loss. To gain more control over land and livelihood, pastoralist organisations turn the trope of Maasai traditional lifestyle of nomadic pastoralism to ‘brand’ themselves as ‘indigenous’ to attract the support of international NGOs such as Oxfam, to their cause.

The introduction of Community Based Wildlife Management (CBWM) in the late 90s held great promise to devolve control over lucrative wildlife resources to pastoralist village communities and to be a compensation for some of those losses to the tourist industry. Instead, central and local government overturned the previous policy and

took back more control over what were highly profitable enterprises. Pastoralists organisations utilise a range of tools including neoliberal land titling initiatives, and seeking international support, in their efforts to gain control over their ‘means of production’ land and livelihood. Titling is used as a tool of protection, an amulet. However, certificates have limited effect when confronted with powerful adversaries and/or lucrative livelihood opportunities are at stake.

Monduli residents were facing land shortage, soil erosion and severe water stress for humans and animals. The villagers, authority figures and civil society activists expressed anxiety over the constant struggle to retain control over a much reduced land base. There was a strong interest in having their villages demarcated, and gaining a CVL was an important strategy to keep out ‘strangers’ who might encroach on village land. This struggle stressed the need for clear boundaries. There is an old saying which many informants would subscribe to, ‘good fences make good neighbours’ as the value of clear boundaries and Land Use Planning was repeated by many of those interviewed. Maanda Ngoitiko from the Pastoralist Women’s Council asserted without a Certificate of Village Land, there are no documented and recorded rights to village land, and thus other groups can encroach easily. Ngoitiko explained how their organisation helped two villages Ngarasero and Oloskwan to gain their CVL. The villages used the titles as proof of ownership to negotiate with tourism companies who wanted to use village lands for wildlife photo safaris.

Having Certificates of Village Land is very important. The certificates show the company who is entitled to receive revenue, and Ngarasero had earned 80,000 USD last year and this makes the community protect their resources. We in the Pastoral Women’s Council are not in favour of individual titling, we believe collective titles are better. We help women get titles for the small plots around their houses, that is all. Individual titling is not good, especially if you look at what happened in Kenya, and now even in Arusha, the local people sell land and move on to other areas causing trouble. They can even use the land for bank

loans in Arusha town (Interview with Maanda Ngoitiko, Arusha, 16th June 2014).

The major restraints on villages getting their Certificates of Village Land is the cost, as surveying and demarcating land is expensive and beyond the means of most subsistence farmers or livestock keepers. Only with outside help from NGOs or government programmes can citizens gain formal titles.

There was general agreement that mediation by community elders and clan leaders is preferred for village level disputes. Official channels were viewed with suspicion and considered to be corrupt. Even those who can afford it, have little confidence in the official legal systems of redress or dispute resolution. The only guarantee that land rights will be protected and security of tenure upheld, lies within the system of justice. Can the justice system serve the needs of the poorest Tanzanian citizens when their land rights are violated by more powerful citizens, corporations or the state? Chapter Five will continue to examine the practical experience of the everyday legal and administration of justice system, in particular dispute resolution of land conflicts. The following chapter, will explore how are the land rights afforded to women in the land laws are upheld in the current system.

Chapter Four - The Gendered Life of Things

Can daughters inherit land in Kilimanjaro? Temu: No, in Chagga tradition, women cannot inherit land, only sons. The land belongs to the clan, the clan is the family through the men only.

What about widows, when a husband dies what happens? Temu: In Chagga traditions, women cannot keep the land, they must give it back to the clan. If there is no male heir than it is bequeathed to the man's brothers' son or a grandson. This is for a good reason, the widow can remarry and the husband could be from another clan, then the land is lost. The man himself would not want to live on clan land, graves are placed on the land. Can non-clan people live with the spirits of clan members?

What about your sister, Florence, you told me she bought a large parcel of land in southern Tanzania? Temu: That is her right, she is a Tanzanian, she can buy land anywhere in the country' (Interview, Kilema, Kilimanjaro, 17th February 2013)

This conversation I had with Canute Temu, in his home village. His answers reveal the complexity of 'gender' 'custom' 'kinship' as the basis for claiming rights in present day Tanzania. For a middle class woman such as Florence, educated and employed at managerial level in the civil service, when custom in one setting restricts her entitlement to family property, her independent income can help her to overcome the obstacles 'tradition' puts in her way. Some weeks after that conversation, Temu qualified his earlier remarks admitting

... these new 'gender ideas' are challenging the clan system of inheritance, especially as now even more girls than boys are continuing to secondary school (Kilema, Kilimanjaro, 10th February 2013).

Florence had purchased eighty acres of land in southern Tanzania, where I was assured by Temu, there is a lot of empty land to 'spare'. This idea that land lies empty, which I heard from people in urban and rural Tanzania, usually referred to other places in Tanzania (not their home area) while the existence anywhere of spare or 'unoccupied land' is a highly contested idea (Jayne et al 2015).

This chapter will examine the gendered ways in which social life is organised which affects how land holding and land rights are configured. The social, legal and economic contexts which structure individual rights to land will be examined. The role played by customary and religious inheritance practices will be unpacked. Finally, the chapter traces the struggle of civil society groups over the question of how best to promote equality of rights to land for women, and the strategies, criticisms and successes achieved.

While doing this research I was conscious of the criticisms of Western research on women of the global south, which has produced simplistic constructions of women's position, removing class, racial and religious diversity. Chandra Mohanty (1988) critiqued the unified picture of women as oppressed victims of male patriarchal violence, which portrays women without agency, unable to act in their own interests, 'the production of 'Third World Woman' as a singular monolithic subject (1988:61). Lila Abu Lughod (2002) posits the need for recognition of the diversity of women's worlds, 'as products of different histories, expressions of different circumstances, and manifestations of differently structured desires' (2002:783).

Bourdieu accounts for the almost universal occurrence of male dominated societies, as being made possible through cultural production, which structures our understanding of everyday norms, language and social practice (Bourdieu 2001). Veronique Mottier argues that 'masculine domination' is concerned largely with the naturalisation of symbolic forms of masculine power, the 'misrecognition of domination, and the mechanisms of social reproduction of this domination' (2002:352). According to Dillabough (2004) Bourdieu does not pay sufficient attention to difference, for example, race, ethnicity (2004:501). I disagree, having found the emphasis on

symbolic capital and symbolic violence in Bourdieu illuminates categories of difference.

Florence, is an example of how a woman can experience marginalisation within the Chagga clan system, but her cultural and social capital: education and salaried position, affords her opportunities denied to poor women and men. Being a citizen is not enough to assure someone of access to land, but money in this instance can prise open traditional barriers. It may be the case that the eighty empty acres bought by Florence were already used by dispossessed local farmers or pastoralists, males and females, whose customary rights are ignored.

This chapter will explore the intersectionality of women's experiences, using the term as constructed originally by the legal scholar Kimberley Crenshaw to highlight how race, class and gender combine to structure the experience of oppression by black women in the US (Crenshaw 1989). Intersectionality is a useful tool with which to understand how gender, ethnicity and class position affect women's lives. Women they move through the social field in numerous roles, as pastoralists and farmers, entrepreneurs, as mothers, wives and sisters facing poverty and marginalisation alongside with their menfolk. Pastoralist women face land dispossession and disparagement of their lifestyle alongside their male relatives and the wider community. Rural women face the challenges of low harvests or low prices for their products alongside their male counterparts. Women from both pastoralists and farming communities, share in common the problem of, dispossession of land rights on the death of their spouse, or divorce, and male migration to earn an income which sometimes, leaves women with a higher workload and in extreme cases, abandonment.

Women from all backgrounds are affected by state centred control of land and the ambiguous and contradictory policies and laws which increase uncertainty rather than resolve it. In addition to the challenges of survival in poverty and the insecurity of rural life ways, women are further burdened by their subordinate status in community life, traditions which exclude women from decision making, ie. clan elders who are important in dispute mediation are invariably male (Emmanuel Ndulet Arusha, 10th May 2013, Enock Msimbira, Singida, 20th February 2013). While visiting the villages involved in this research, I did not meet one female Village Executive Officer, Village Chairman/Person, or higher level public official. Women's ownership of land and livestock is significantly less than their male counterparts, partly due to discrimination in inheritance, through both customary and religious laws.

Women's marginalised status is perpetuated through having less access to education, for example, the older Maasai women had rarely attended school and were illiterate, this has changed with the younger generation. Education divides communities and families into those who have cultural capital, gained with diplomas and degrees, and those whose literacy skills are minimal or none and who are increasingly marginalised. Without education there is even less opportunity to earn a good salary or be confident enough to apply for leadership roles, or persuade their communities of their competence.

But this status is not accepted lightly, there is questioning of old certainties with regard to the proper roles for men and women. Advocacy and activism by international and local NGOs on gender issues, mainly concentrated on women's rights, has raised the stakes for those who insist on 'tradition' at any cost.

Woman's Work/Men's Work

Women stay at home and they need land more than men. Even if there is hunger, they stay with their children, but men migrate away (Interview, Hawa Lisu, Mlala, 17th March 2013).

Women play an essential role in agricultural production. According to Kennedy Leavens and Leigh Anderson (2011) women provide the major labour force in agriculture. Women depend to a greater extent than men on agriculture as an economic activity, 98% of women in rural areas, work in agriculture compared to 73% of men' (Leavens and Anderson 2011:1). Thus, access to land for women is the main 'means of production' and guarantee of food security. The agricultural economist Ester Boserup (1970) was the first to demonstrate the importance of women in agricultural production systems especially in Africa. Boserup (1970) argued that colonization and later 'modernist' development programmes actually contributed to women's loss of status and introduced land reforms which resulted in loss of access to land. Boserup critiqued the ubiquitous 'gender blind' reforms which often had unintended consequences, such as increasing women's work burden or leaving them with less control over resources.

Women in Monduli and Manyoni were farming maize and millet to supply their family's food needs and trading cotton, dengu and sunflowers to supplement the family income. In Manyoni, walking around the villages during the day, women with small children were usually in their homes preparing food or doing tasks such as weeding on their small plots surround their home, growing maize and vegetables. Many interviews were conducted while women were preparing food, or nursing a baby. The menfolk had gone to their farms outside the village, early in the morning, or to do business in town, or to check on the livestock. Women traded agricultural produce in the local

market in Ilala, which is a centre for sunflower trading, where businessmen from the city came to buy their produce, with often times disappointing low prices.

In pastoralist villages, the keeping of livestock and small stock was noted by the informants as a gendered activity. In pastoralist villages women played vital roles in the production and sale of milk. However, 'cattle are for men' my informants repeatedly mentioned, but women were given cows to provide milk for the family's needs, and some women also had a few cattle, through gifts or purchase. It was more common for women to have small stock, goats, or keep chickens for subsistence and for sale. This pattern of ownership of livestock was viewed by a substantial number of female informants as unfair. Nemburisi, a pastoralist woman, married woman, mother of five children, stated as follows:

Land is for men, not women. Having rights to land and livestock is a problem for women, which is not easy to change. Men do not want to give rights to women. The women cannot access grazing areas for cows, women are excluded from there, also special areas set aside for weak animals, salalili they cannot have this land which is useful for young calves (Interview in Mindoi, 12th May 2014).

The older Maasai women were involved in trading, and some had businesses in larger towns as well as making crafts, such as colourful beadwork for the tourist market. Hodgson's historically grounded ethnographic work on development *Once Intrepid Warriors: Gender, Ethnicity, and the Cultural Politics of Maasai Development* (2004) demonstrates that Maasai's women's involvement in trade is not a recent phenomenon, but was occurring as far back as colonial times (Hodgson 2004:27). Dorothy Hodgson (2004) argues that attempts at 'development' of the Maasai in both colonial and post-colonial times, was premised on a conflation of 'masculine identity' with ethnicity, so that being Maasai meant, being a male warrior/herdsman (2004:14:). This stereotyped representation of pastoralist Maasai ignored the contribution of women to sustaining

livelihoods in Maasai communities through trade and management of livestock. Development interventions succeeded in re-enforcing already existing gendered division of social roles, and over time this stereotype became accepted by the Maasai themselves as the natural order and led to an acceptance of a diminished role for women in political and economic life in the community.

Women in Manyoni did not have the same opportunities for trade as the women in Monduli, as the vast distances to larger markets at Singida and Dodoma made the journey too expensive, taking a 100kg sac of sunflowers from Ilala to Singida would cost 1.5 and to Dodoma 2.5 USD. This meant their efforts were confined to Ilala market and the prices the middlemen were prepared to offer.

Nevertheless, women joined savings and loans groups and actively pursued any business opportunities. Enock Msimbira the Ward Councillor complained that the traders who came to the villages to buy produce offered very low prices. When the government started to support cotton growing, four women from Songambebe joined a cotton cooperative and received the seeds/fertiliser subsidies. Unfortunately, after the first two years, the price of cotton fell on the world market, and wiped away a lot of their profit.

Fulfilling the male breadwinner roles was described by the male informants as their main responsibility, bringing in cash for the family necessities. Male informants expressed anxiety of the shortage of land for livestock grazing and opportunities to earn cash, and these were motivating factor for men to migrate for work. During a life history with Joseph Lootay in Iramba, he described how the economic changes had affected the lives of the villagers:

Life has changed a lot, before poor people lived together, sometimes twenty or thirty, side by side, while the rich people lived alone. Poor people needed each other to help out. The economy is better now, but life is much more expensive than before, so now everyone needs more cash, men have to struggle to find cash, and it's harder to get. Some changes are good but not all (11th May 2014).

When David D. Gilmore (1990) attempted to synthesise ethnographical accounts of masculinity cross-culturally, his findings were that despite differences across cultures, there was a common project, each society made a significant effort in the creation and maintenance of masculine identities in societies. The emphasis on toughness, aggression and sexuality was common across societies, with rituals to support the ideology of masculinity. One of the advantages of the ideology for the society was the co-option of men for war and work: 'So long as there are battles to be fought, wars to be won, heights to be scaled, hard work to be done, some of us will have to 'act like men' (Gilmore 1990: 231).

Male migration, and children attending school, impacted on women's roles, which the female informants perceived as having multiplied, while concurrently, there are even higher demands for cash to pay for school fees and other necessities. The population census for Mindoi and Olomotoi showed a male/female imbalance, demonstrating the male migration patterns which were discernible as one travelled around most of the villages in both Monduli and Manyoni district.

Figure 8: Male/Female population ratios in Monduli/Population Census 2012

| Villages | Male | Female | Total |
|----------|-------|--------|-------|
| Olomotoi | 1,640 | 2,320 | 3,960 |
| Mindoi | 1,810 | 2,834 | 4,644 |

According to Pietilla Tuulikki, Chagga gender relations were changing as women took on more roles outside the home and more responsibilities for providing cash for themselves and their family (2007). Tuulikki studied market women and found that the women were considered to morally suspect as they usurped the male breadwinner role through their profit-making activities, and this was unacceptable within the prescribed female role. In order to be considered as 'respectable', market women explained their business endeavours in terms of 'feeding' and 'nurturing' an extension of their maternal role 'By their persistent appeal to their "feeding" responsibilities, the women themselves emphasise the socially constitutive importance of their trading. By extending the category of feeding women extend their morally acceptable spheres of activity, emphasise their contribution to social generation and make the claim that it should be acknowledged and supported (2007:82).

At the same time, market women disparaged women who stayed at home and were reliant on a male provider, who were considered as less reliable than in past times. My main informant, in Dar es Salaam, Gloria, was a successful business woman moving up in the social world, who owned a comfortable vehicle for rent to tourists, a hairdressing salon and a small estate agency. Her single status was a source of suspicion for her neighbours, as she appeared to have a good income, no extended family, nor obvious male partner living with her. This liminal state made her neighbours uncomfortable, and remarks were made to her which showed they were unsure about her, local married men approached her and even women asked frequently about her marital status. She decided to find a local man who would work for her as a chauffeur for tourists and also and be visibly in her home, to keep the gossips quiet:

Rashid had just separated from his wife and kids and he used to have a taxi business but that business was finished when the car had problems. When I met him he was left with nothing reliable just day's work here and there. He became my driver and helper, I was renovating the salon and he managed all that for me, as well as driving around the people renting out my car. His being around made all the difference, he was a security for us, the neighbours, they could see him here regularly and I was not then alone (Dar es Salaam, 15th July 2013).

It was not only the neighbours who remarked on her unusual position, her mother scolded her for being single, and could not understand why an attractive daughter, who had already proved herself a capable mother, was not attached to a man who would provide for her. Gloria told me that when her mother travelled to Dar es Salaam from Iringa, to see Gloria's newly built home, she asked her daughter 'Now you can tell me your secret, who is the man who had built this lovely home for you'. Gloria's protestations that she funded the entire building herself was unbelievable to her mother, who could not accept that a woman could make enough income to build a house alone. In Bourdieu's analysis, the gendered patterns of social life are learnt through the *habitus*, which reproduce the social inequality which exists. The dominated are unaware of their marginalised position, it is considered the normal, taken for granted reality. Gloria breaks with the conventional view that women must depend on a male partner to provide the hard assets, a house, land and this created a rupture in the expectations of her mother and the wider society.

Despite the importance of women's financial as well as subsistence contribution to the family survival, the 'common sense' view in Tanzania on gender roles continues to portray an ideal of the 'male breadwinner' as the mainstay of families. This ideal of the 'male breadwinner' includes the assumption of a female carer, whose work outside the home is secondary to that of the male breadwinner, 'men earning and women caring' permeates across societies (Daly 2010:140). This pattern of gendered roles

appears to be widespread across the world, and quite resistant to change. Women tend to occupy lower paid work, experiencing a fluctuating working life, dependent on the demands of family life, while, men in contrast have a more linear working career (Daly 2010). Wharton (2011) states that rarely do women and men do the same work, 'women and men are employed differently, the type of work and the conditions of work remain gendered' (2011:192).

According to Lastarria-Cornheil (2009) despite a history of critiques of the male breadwinner model, this view of gender roles continues to influence both government led and 'development' donor programmes Likewise, despite the importance of women in agriculture and livestock keeping, providing food security for the family, women's access to land is under threat as land shortages become common and land has become more valuable (Lastarria-Cornheil 2009).

For Bourdieu's masculinity is a symbolic structure which is embedded in cultural practices, which legitimise and reproduce masculine privilege and feminine subordination (Bourdieu and Passeron 1990, Bourdieu 1995). In Tanzania, the ideal of the male breadwinner model puts enormous pressure on men, too, and persists as a masculine ideal, despite the evidence of the equally important role women play in providing cash as well as subsistence for the family. Access to land is even more important for women, as land is their main source of both food security and income, and women have less opportunities for work or migration. Yet, women's access to land is constrained by custom, religion and political programmes for development which overlook small scale producers, of which women make up the majority.

Family Matters: Women's Access to Land

Women face a difficult problem, land is for men, if you plant it belongs to women. Women can use the land, but they cannot own it or sell it (Noorkipa, Iramba, 14th May 2014).

Noorkipa's experience of women's lack of land ownership rights and the legal framework of land administration in Tanzania, which enshrines equal rights to property for women and men are contradictory, and point to the limitations of legal change alone to bring about gender equality.

Under the Constitution of the United Republic of Tanzania (1977) there are safeguards for women against discrimination (Olungurumwa et al 2012:151). In addition, the Bill of Rights (1984) promotes equality between men and women. Alden Wily stated that the Village Land Act No. 5 and Land Act No. 4 are protective of women's equal rights to land 'the equal right of women and men to hold and deal with land is made a main policy of the law (VLA s.3 (2)). (Alden Wily 2003:49). Women may apply for land individually, with their spouse, or in groups. Customary rules are rendered void if they deny women access to ownership, occupation or use of land (VLA s.20 (2)) (ibid). Legal rights however, are undermined by customary and religious inheritance rules, which discriminate against women's right to land.

The majority of women in Tanzania gain access to land through family and clan membership, this being described by scholars as 'secondary' access to land (Yngstrom 2002, Odgaard 2006). Women's access to land is governed by a wide variety of customary and Islamic laws pertaining to inheritance, many of which reinforce masculine domination. Customary arrangements transmitted through family and clan, and the codification of customary laws in the Local Customary Law (Declaration No. 4) Order passed in 1963 have contributed, in Pierre Bourdieu's words, to form a

habitus, or ‘systems of durable and transmissible dispositions’ (1995:72). From this *habitus*, village leaders and their communities identify what is acceptable and what is prohibited when death of a spouse or divorce takes place in families and clan. A change of women’s status in relation to her male kin, be it husband, father, brother, is a significant means by which women find themselves landless. But it must be stressed that male relatives are often a source of assistance for women when a change in status occurs and women become homeless or landless. In addition, Manji notes that inheritance is not the only means through which women may be dispossessed or lack access to land, land grabbing’ can cause landlessness for women (Manji 1998:652).

The majority of Tanzania’s population belong to communities which are patrilineal, and patrilocal, while matrilineal societies comprise 20% (Otiso 2013:146, Benschop 2002). The patrilineal form of inheritance became the officially sanctioned policy through the Local Customary Law (Declaration No. 4) Order passed in 1963 which codified and legitimised only one uniform patrilineal inheritance for citizens living according to their custom and tradition. The Local Customary (Declaration No. 4) Order 1963 only applies to patrilineal communities, and unmodified customary law governs matrilineal groups, although in practice it is considered to be the rule for all groups (Duncan 2014). In patrilineal societies each individual, male or female, belongs to their father’s lineage, their mother belongs to her own parents’ lineage, a clan is a group of lineages. This has major implications for rights to property and land which is based on ‘blood’ relations. Young unmarried women use their father’s land, and the assumption is that women are bound to leave their home village to join their husbands, and given land to farm in by her husband’s clan (Kempster 2011).

My informants confirmed this view ‘girls always move into their husband’s village’ (Focus group in Iramba, Sinyati Salemu, 15th May 2014). In practice, this that the woman is given land by the clan of her husband, and therefore her natal family do not make land available for her. As Temu explained in the opening quote, her family would not approve of her bringing her husband or his relatives as non-kin to their property. Pastoralist societies also operate similar restrictions, it would be socially unacceptable for a widow for example, to marry outside of the lineage. During the focus group Sinyati stated ‘Women cannot re-marry outside the village, she stays at home’ (Focus group in Iramba, 14th May 2014).

Clan land has cultural meaning for Tanzanians, it is where ancestors are buried and was handed on by the ancestors to the present generation in trust for the future generations. Several villagers in Manyoni remarked that during their land use planning exercise, a cemetery was written into the plan, they found this unnecessary as people were buried on family’s land. Temu explained that for these reasons, clan land is guarded jealously against being sold to outsiders (Interview Kilema, Kilimanjaro, 10th February 2013). Although sales of land do take place and have for some time, the ideal is held dear, that clan land remains intact within the family (ibid). Divorce and widowhood are major turning points in a woman’s life as she can be forced from her husband’s land and find herself back at her natal village, where accessing clan land is increasingly at the discretion of relatives (Yngstrom 2002).

Therefore, marital status of women affects their ability to negotiate with family and clan for land (Odgaard 2006, Yngstrom 2002, Kempster 2011). The option to buy land exists but is only available to a small percentage of women who are financially secure like Florence. Women’s agency is visible in the ways in which they assert their rights

to family and clan land, either through developing good relations with their relatives and in-laws (Yngstrom 2002) or taking their case to court if they have the means (Rwegasira 2012) or becoming activists, rejecting the status quo.

But the clan-based system, as described above and officially sanctioned, is one type of land tenure among the over 120 different language groups, and customs vary, nor are they unchanging. When the Shivji Commission (1994) were undertaking their research, they found that despite the male preference in inheritance, among some communities, i.e. the Bahaya, they were told that female heirs trusted the inheritance of clan land to male relatives, as they were confident they could reclaim the land if their marriage broke down or they became widowed. Among the agro-pastoral Arusha Maasai and Chagga, they noted instances of conditional bequests of clan land to daughters. The condition being that the daughters will pass on the clan land to their sons who will take the name of the grandfather's clan.

The Shivji Commission (1994) found that widows fared differently under different customary laws. In Kagera widows faced dispossession unless they agree to be 'inherited', that is, married to one of their husband's male relatives, along with the property of the late husband. The Chagga and Maasai on the other hand, could stay on their husband's property keeping it in trust for their sons, who would assume control once they reached maturity. During their research, incidences of widows deprived of their property in the name of customary law were reported. These incidences appeared to be more prevalent when there was inter-ethnic marriage and the family resided in an urban centre.

The Shivji Commission (1994) reports that across the country people interviewed stated that customary laws were not frozen in time, but were flexible enough to respond

to social changes. However, illegitimate children, the researchers noted, faced particular disadvantage, however, as 'neither customary, religious nor statutory laws recognised their right to inherit' (1994:252).

Anthropologists who had studied customary tenure in the 1990s found a variety of different tenure systems among Tanzania's ethnic groups they studied and certainly women were not discriminated in all systems. But these traditions were changing as economic and agrarian systems changed. Odgaard's (1996, 1997) research among the Hehe and Sangu showed that both male and female children were entitled to shares of their father's property (cited in Tsikata 2001:7-8). Rights to property were associated with the daughter or son being prepared to take responsibility for caring for the old and the sick, rather than based on gender alone. Thus women had significant rights under customary tenure. Odgaard (1996) found that fathers often sided with daughters against the sons, as the sons did not always look after their parents, but they claimed the land as theirs. Koda's (1997) research among the Pare showed women had full control over household plots (cited in Tsikata 2001:7-8). Daughters received a gift of land from their fathers upon marriage, this land was theirs to use or to allocate to others, but the land could only be left to their daughters. Koda found that this traditional practice was under threat as land around the household was most desired for coffee growing and men were in control of the lucrative cash crop, thus such land was becoming scarce. Women have made use of some lesser known customary practices, such as marriages of convenience. Kirsten Kjerland (1997) reviewed the literature on the practice of widows taking a 'wife'. Usually widows without sons to inherit land, acquire a 'wife' and become a 'female husband', to a young woman who can provide labour on the farm and who then has children with a person of her own choice, but the children are given the name of the deceased husband (Kjerland 1997). These marriages

are sanctioned by the payment of bridewealth, the traditional gift from the groom to the family of the bride (Kjerland 1997:7).

Denis, my research assistant comes from the Luguru people, who are matrilineal and live in the Uluguru mountains in Morogoro region. I asked Denis to interview the elders in his family regarding inheritance practices. He interviewed his father Albert Mmaze and his grand father, Alex Banzi and summarised their input. Denis relayed the information gathered as followed, starting with a description of his own generation:

We are born five in our family, two males and three females, from two Rugulu parents, so we are typical Rugulu. Now according to my father and grandfather, in our traditions, we all take after our mother's clan, females are more valued in terms of succeeding the kinship, for instance my three sisters will carry on the clan.

Generally our people view these relationships so positively, because there are no chances for errors, because, succeeding from the mother is 'real' as she is the one who gave birth! But the father can be fake, in case she had an affair. The mother's brother, the uncle has a lot of say over family matters, like marriage. Before, when a man married, he used to move to the wife's village, but it is not necessary nowadays, the man is not forced to do so.

When a man dies, property not belonging to the clan, is left by the husband to the wife and her children. If it is clan land, then a group of elders would gather, normally the eldest female will be chosen to take care of the clan property with the elders. Everyone belonging to the clan will have rights to the land. The eldest female may stand as a leader to protect the land if there are disputes or to distribute for use by the descendants.

I can give a vivid example to do with my own Clan. My great great grandmother going by the name 'Mwanakimanga' migrated to Mgeta, our village, from another one called Kilosa, she was running away from wars and famine, we counted it to be before World War One and she died in 1963. She left two acres in Mgeta, which she got by clearing the bushes, and that is our clan land. Her land was inherited by her two children, Cecilia and Emiliana, my great grandmothers (i.e. great grand-aunt and great grandmother). Cecilia had six children and Emiliana had 5 children, their female children inherited the land. My mother was born of Emiliana's daughter and now my mother's sister, Veronica and other member of the clan are farming the land. Veronica stayed behind, the other family members all migrated out of the village. Clan land remains the property of every member of the clan and it is strictly prohibited to sell it unless everyone agrees. This is why such land has remained with

us for over a century. Nowadays there is a lot of buying and selling lands in Rugulu areas, including clan lands, this is the result of declining clan leadership and of course migration of people away from the villages. As well, there is less tribal beliefs and practices due to the presence of religions (Interview with Denis, Dar es Salaam, 2nd July 2014).

Birgit Englert (2008) who researched women's access to land, in matrilineal societies in Uluguru villages, similarly described the changing patterns of land holding. Her findings were that patrilineal practices were becoming more prevalent, young men were no longer obliged to move to their wife's village. As knowledge of the land laws and legal options became known, young men took cases against clan members, who refused to allow them to use clan land, on the grounds of gender discrimination (2008:87). The result was families were wary to allow young men temporary access to clan land, in case they then claimed against the clan, when they were told they had to move for other female clan members who were entitled to the land.

Maasai traditions are also changing in response to changing circumstances. Makko Sinandei, the Director of UCRT, explained that Maasai women without a child or with only female children cannot keep their cattle. But nowadays women without a child adopt one of their sisters' children and they get to pass on the property to the adopted child. Adoption was until very recently frowned upon, therefore this is a departure from tradition that has been proved a successful strategy for women who are childless or without sons to inherit. This reversal of former social practice demonstrates 'custom' is amenable to influences from outside and is flexible enough to change in response to changing circumstances. This flexibility of customary traditions, however, is undermined by the codification of customary law into one rigid set of rules, which will be discussed in the next section. Inheritance rules are of major importance, as the majority of rural Tanzanians inherit land which they farm (Rwegasira 2012:116).

Inheritance Rules

The Shivji Commission heard many reports of gender inequities in land issues and concluded that 'inheritance is the most serious issue facing women' (URT 1994a:249).

Inheritance is affected by multiple factors, the legal framework, the appointment of administrators and the prevalence of polygyny, which introduces much inter-family contests over inheritance. Siboie Simanjeti, a Village Council member in Nangolo stated that:

The most difficult inheritance cases are the large families of a polygamous husband, especially where there are many sons. Usually the Village Council has to step in to help them out (3rd May 2014).

The Shivji Commission (1994) did not research gendered aspects of land administration in any detail, for which it was later criticised by gender activists, this topic will be discussed in the next section. On the other hand, in 1991, the Law Reform Commission of Tanzania, were given the task of reporting on the Law of Marriage (1994) and Law of Succession/Inheritance (1995) with a view to making recommendations to the government on appropriate reforms (URT 1994b, URT 1995b). The Law Reform Commission Report on the Law of Succession (1995) points to the many out of date and unjust features of these legacy laws. Islamic and customary inheritance law favour male inheritance over female in every type of asset and discriminate against non-Muslim relatives and illegitimate children who are not entitled to inherit (1994). Statutory law does not discriminate between male and female heirs and the wife of the deceased is entitled to half of the property, however, it is not commonly applied, as the majority of people live in rural areas and follow customary rules of land tenure (URT 1994a, URT 1995b).

The four main bodies of law affecting inheritance and succession in Tanzania are Customary Law, Islamic or Shari'a Law and the Indian Succession Act of 1865

(Rwegasira 2012), and the Hindu Wills Act (1870). The last mentioned Hindu Will Act (1970), which provides for the Hindu population, is rarely invoked and therefore not discussed here (URT 1994b). Customary and religious rules of inheritance discriminate against women's right to inherit with far-reaching effects.

The Local Customary Law (Declaration) (No. 4) Order passed in 1963 (Rwegasira 2012) codified patrilineal practices as 'customary law' for the entire country. This situation is problematic as one form of patrilineal inheritance was applied to all communities, even though traditions and customs vary across patrilineal societies, and despite the fact that 20% of communities were matrilineal. The Order reduced a great variety of social practices among 120 tribal communities into a singular rigid set of inflexible rules (Rwegasira 2012). The codified customary law includes the Rules of Inheritance, which are applied in respect of the estate of the deceased person, who dies intestate and is a member of a community where customary law applies (ibid). Rwegasira points out that making a will is not common, the majority of Tanzanians die intestate, 'practice has revealed that most individuals are still reluctant to make a will' (Rwegasira 2012:215).

The Rules of Inheritance (The Rules) draw a distinction between family/clan land and self-acquired land (Rwegasira 224-226). The Rules state, a female cannot inherit 'family land'. Family land is passed down by an earlier male ancestor to the direct male descendants. To dispose of this land, the consent of all adult male members of the family must be given. Family land can be used by the daughter for her lifetime, but she cannot sell or bequeath the land (ibid). If there are no males in the family, a female can inherit the land, but this situation is most unlikely. If a female relative inherits the family land, she only has a life interest in it (ibid).

Clan land is very similar to family land (Rwegasira 224-226). Clan land belongs to the lineage members of an ethnic group. The rules are almost the same as those of family land with regard to women's rights to land. Widows and daughters can only inherit clan land when there are no living male clan members (ibid). They cannot bequeath this land to children, nor dispose of it. A widow may remain on the land with her children, but has no control over the land. The Shivji Commission (1994) found that many litigations related to women wishing to dispose of clan land. These customary rules have been challenged as discriminatory. The Constitution guarantees rights without discrimination and this was taken up in a leading case, Ephrahim v Pastory (Mwanza High Court Civil Appeal No. 70 of 1989 (Rwegasira 2012:272-273) of women's right to sell clan land. The High Court held that Rule 20, which forbid women holders of clan land from disposing of it, to be unconstitutional. The judge referred in the case to the provisions of the Bill of Rights which was incorporated into the 1977 Constitution (vide Act no. 15 of 1984, Article 13 (4)) and enacted in 1984 (URT 1995b). The Bill of Rights prohibits discrimination against women, and additionally, Tanzania has ratified many international human rights instruments, including Convention on All Forms of Discrimination against Women (CEDAW) 1979, and the African Charter on Human and People's Rights, which came into force in 1986. In all of these instruments, the guiding principle is that discrimination against women on account of their gender should be prohibited (Rwegasira 2012:272). Widows and divorcees are particularly vulnerable to having the land and property of their husband taken from them by clan members or extended family members of the deceased. Ezer (2006) asserts that during research into inheritance law the researchers were told of many such cases:

Bereaved families stand to lose not only personal property, but also their homes. Relatives may force the widow to leave the home and prevent her from returning by locking the house or by threatening her physically (Ezer 2006: 623).

Self-acquired land relates to uncultivated land cleared by individuals for farming or purchase of land by individuals and the planting of permanent crops. The children of deceased persons have exclusive rights to inherit his or her self-acquired land (Rule 26). Three categories of heirs are recognised, in the first degree, the heir is the eldest son from the first house and takes the biggest share of the estate, one-third of the property (URT 1995b:15). The second heirs include all other sons and each is entitled to between one-tenth and one-fifteenth of the property. Finally, the third degree heirs are the daughters of the deceased who are entitled to only a small share, between one-twentieth and one-tenth of the property (URT 1994a:253). If there are no sons, then the eldest daughter of the first house will be the main heir. The widow is not entitled to any share in her husband's estate if there are children of the marriage, nor can the husband inherit from his wife who dies intestate, unless the wife left no children nor had any member of her family. Illegitimate children cannot inherit in patrilineal societies. In addition, under customary rules, in some communities if a widow remarries outside of the husband's lineage, then she loses her rights to family land (Ezer 2006:610).

Inheritance and family matters are also governed by Islamic Law or Shari'a as well as Statutory Law. Islamic law regulates both cases of testacy and intestacy. In the Islamic tradition followed in Tanzania, writing a will (*wasiyya*) is regarded as the duty of a Muslim (Rwegasira 2012:227). Under Islamic Law, as practised in Tanzania, a person may only dispose by Will of one-third of the estate after payment of funeral expenses and debts. The remaining two-thirds must be administered according to Islamic Law

principles of intestacy (ibid). This aspect of inheritance law, the right of the person to dispose of only one-third according to their wishes, has been contested in court. During a court hearing of a case taken by *Said Selmani Masuka v Anwar Z Mohammad Court of Appeal, 1997*, over the validity of the one third rule in Islamic inheritance, Justice Korosso argued that the one third rule which restricts the amount of a property a person could dispose by a Will,

should be ignored as it infringes the constitutional right of a person to own property and to dispose of it as he wishes (Rwegasira 2012:230).

The constitutionality of Islamic Law rules of inheritance has not been decided by any court of law to date (Rwegasira 2012:231).

According to Ezer (2006) Islamic law recognises three classes of heirs but relatives closest to the deceased exclude others who are more distant, i.e. if there are sons, then grandsons are excluded. Islamic law also excludes from inheritance non-Muslims and illegitimate children.

When the husband dies and leaves a widow and children, his estate is divided into eight shares and widow receives one-eighth of the estate. If there are no children of the marriage, the widow is entitled to one-quarter of the estate, and the remainder passes to the next of kin. If the husband was polygamous, then the wives collective share is one-quarter, divided equally between the wives. If the husband has only one child and the child is a daughter, she is entitled to half her father's property. If the only child is a son, he shall be entitled to two-thirds of his deceased father's estate. Where there are sons and daughters, each son is entitled to a portion equal to that of two females.

When the wife dies, the husband is entitled to half the property of the deceased wife. If there are children the widower shall be entitled to one-quarter of the deceased wife's

estate. What is distinctive about Islamic rules is that spouses may inherit and other female relatives, unlike in customary law (Rwegasira 2012).

The administration of the estate is frequently a source of conflict within the families of the deceased. Under statutory law, the widow of the deceased will be granted the right to administer the estate by the courts. However, under Islamic and customary laws the issue is more complicated. Firstly, in the case of polygamous marriages, the usual practice is for all family or clan members to meet under the guidance of the elder members to choose an administrator to organise the distribution of property of the deceased. In some communities, this is the eldest son or brother of the deceased man. At times, family members can turn hostile against the widows and daughters. To protect the rights of women to land the Shivji Commission (1994) recommended mandatory inclusion of the name of the spouse or spouses on 'certificates of title' in a village based titling system. The Shivji Commission (1994) recommended that Village Assemblies should have a quorum and a mandatory minimum percentage of women attending when decisions are taken.

Statutory law of succession is applied through The Indian Succession Act 1865, which is codified English common law and applied to all Christians and those of European origin (Rwegasira 2012:222, URT 1995b:13). But it is rarely applied to Tanzanians who mainly follow customary laws in matters of inheritance (ibid). A Tanzanian would have to prove that they were no longer living in a traditional manner, which would mean living outside of the village for extended periods and having broken off contact with relatives. The burden of proof on the citizen means this law is rarely invoked, but Rwegasira recounts one famous case where the widow took a case against her deceased husband's relatives who wished customary law to be applied to his property, *Re:*

Innocent Mbilinyi High Court Digest 283, 1969. She won her case to have her husband's property distributed according to the Indian Succession Act (2012:222). The Act recognises the immediate dependents as the principle heirs and does not discriminate between male and female children of the deceased person, who may inherit movable and immovable property (ibid). However, Ezer (2006) points out that the wording and tone of the act is discriminatory and racialized, African women are not afforded equal rights of inheritance to women of European descent, which points to the need for a thorough updating of these laws. Their final report, 'The Report of the Commission on the Law of Succession/Inheritance' (1995) recommended that a uniform statutory law should replace the legal pluralism which is currently in force. The current laws, they argued, discriminate against all women and girls, illegitimate children, and younger children of the family who receive less than eldest sons, and in the case of marriage between a Muslim and non-Muslim, the non-Muslim partner cannot inherit (URT 1995b). The extensive research undertaken revealed that women throughout Tanzania experienced 'property grabbing by relatives' upon the death of the spouse (URT 1995b:32). The question of illegitimacy was highly contested, as in some regions, people were in favour and others not in agreement that either illegitimate or adopted children should inherit, or be treated as equal to legitimate or biological children. In all regions, members of the Muslim community objected to the idea of a uniform law of succession, insisting that Islamic law should remain in force, as the right of freedom of worship was enshrined in the laws (URT 1995b:32). A well-known family law advocate, D'Souza expressed a similar view that Islamic law was not negotiable, and stated:

Islamic law should be equally accepted and recognised as other legal systems. You couldn't really force people to make wills against their religious beliefs (Interview in Arusha, 15th June 2014).

The recommendations of the Law Reform Commission, have not been acted upon to date.

Women of Manyoni District

Girls get married and belong to another family (Interview with Beatrice, 10th April 2013, resident of Mlala).

All of the women interviewed in the three villages shared the same desire as their male counterparts: tenure security and being able to ensure their children would inherit their property. Security of tenure was equally the top priority for pastoralists in Monduli district. Two factors stood out in Manyoni, the striking social differences across the villages and the general awareness of women's right to land, which contradicted traditional norms and practices.

Those who had the largest holdings tended to have an income outside of subsistence farming, i.e. salaried jobs or small businesses, which provided the finance to buy more land. Thus education and work opportunities helped to increase village stratification and land concentration resulted, a perfect example of the reproduction of inequality as Bourdieu has proposed (1986). Bourdieu was concerned with how education, while claiming to operate on an equal opportunity basis for students, in reality reproduces the social stratification across the generations (Bourdieu and Passeron 1990). Although Bourdieu was referring to education in the industrialised north, the unequal development trajectory of Tanzania lends itself to Bourdieu's conceptual framework. Bourdieu argues that education equips the person with cultural capital, the skills and knowledge to negotiate the world, which leads to further opportunities and consolidation of wealth. This is applicable to Tanzania in even at the micro level of the village, those village residents, with higher education are better placed to find work in the modern sectors, or to finance businesses and acquire land. Education is a means

for the dominant classes to perpetuate their dominance, and this concept resonates with the Tanzanian experience. Education is highly valued and a mark of distinction for Tanzanians, as educational credentials are necessary for the more lucrative work in the private sector or civil society, a pre requisite for social mobility. Education is highly gendered, as women without exception, had less education than their male counterparts, although all had had attended school. Makko Sinandei explained that.

Girl's education lags behind because the family feel it's an investment with no return, the girl will leave and go to the man's family (Morogoro, 8th April 2014).

While farm sizes varied considerably, the average was 21 acres, mainly because nine residents making up less 10% of the population, had land holdings from 50 to 207 acres, including three residents with very large plots, one with seventy eight acres, one hundred acres and two-hundred and seven acres. In addition, some of these wealthier farmers had over a hundred cattle, one having a herd of two-hundred and seven cattle plus sheep and goats, while the majority of respondents had between five and twenty cattle. As I walked around the villages, and visited the families, social differentiation was quite obvious in the quality of building materials, with some families having aluminium roofs, sitting areas with couch chairs, coffee tables and a TVs displaying a more secure lifestyle than among the poor families. The homes of the poor tended to have thatched roofs and almost no furniture, or a stool or two. When arriving at Mama Julia's house, the family had to send to the neighbours for two chairs, as the house had only two stools and they did not want Denis and I to be uncomfortable, so their neighbours provided two plastic chairs.

Women did not feature independently among the better off residents, but through marriage, it was evident that married women enjoyed relatively higher standard of living, having more assets, chickens, goats, bee hives, more land to farm and engaged

in cash cropping, dengu, which is sold into the Asian market and has become quite lucrative, and onions and sesame seeds for the local market. A few women had small businesses, but relatively few compared to Monduli where the tourist trade provides a ready market for crafts.

Female-headed households, including lone mothers, divorced or widowed women, were conspicuously among the poorest in the three villages and had the smallest plots and the least number of animals or assets. The Songambebe Village Chairman confirmed my observation, stating that the poorest villagers were those women who had divorced or were widowed.

Legacies

Women are so despised in the ownership of land and property
(Interview with Christina, Kiwawa, 19th March Kiwawa).

Various legislations enshrine the concept of gender equality in property rights, the National Land Policy (1995), the Village Land Act (1999) and the Bill of Rights (1984). But the officially sanctioned customary inheritance laws contradict these progressive legislations. In matters of inheritance, customary law was mentioned as the guiding principle by village officials and residents alike, but they noted that, changes to how custom operated in practice had begun prior to MKURABITA coming to Manyoni district.

The customary laws of the Ntaturu, Taturu, Gogo, and Nyamwezi who lived in mixed communities in the three villages, dictated that women should not inherit family/clan land. Informants across the three villages explained that many people no longer fully followed this tradition and felt able to choose whichever son or daughter is the most responsible to be the heir to the family land.

The MKURABITA programme also undertook a sensitisation exercise in the three villages, Songambe, Kiwawa and Mlala on equal land rights for women. The exercise proved to be successful, as the majority of men and women were aware of the right of spouses to appear on the CCROs and that female heirs as well as males can inherit property. A high number of village residents had recorded names of both husband and wife and had both photographs on their certificate applications (see table below):

Figure 9: Names on the Certificates of Customary Rights of Occupancy

| Husband and Wife | Parent and Children | Female only | Male only | Other Loan/relatives |
|------------------|---------------------|-------------|-----------|----------------------|
| 54 | 16 | 5 | 6 | 10 |

The fact that only six residents had recorded solely male names and fifty-four had joint names is a remarkable departure from tradition where male heads of households own and control land as noted by the Shivji Commission Report (1994). Two men were interviewed who did not put joint names on the application for the certificate, looked somewhat embarrassed and were quick to justify their actions, Emanuel stated that he was separated from his wife and ‘we don’t get along, so why would he put her on the certificate? I have another wife and family’. Victor, a young man in his twenties, claimed that he did not know at the time that a woman could be put on a certificate with her husband.

Of the five certificates with solely female names, three of them were planning to pass their farms to their sons rather than their daughters. According to Bourdieu (1986) actions such as this, daughter preference is attributed to the dominated internalising the conditions of their domination, so that what appears to be common sense, reproduces social inequalities.

The Village Chairman expressed his satisfaction that most villagers understood that women can inherit land under Tanzanian land laws. Mr Benjamin stated that traditions of inheritance of the Taturu, Nyaturu and Nyamwezi, have been gradually changing. Mr Benjamin stated, ‘Some families are now prepared to allow their daughters to inherit, there is still some who prefer for sons to inherit than daughters’ (Interview 23rd March 2013).

This attitude was common among women as well as men. Where a woman was the sole parent on a CCRO, the widow or extended family tended to put their son on the CCRO rather than their daughter. The reason given by both male and female informants was that women will leave the area to join their husbands. As the table below shows, sons are still preferred over daughters, but more than half of respondents would favour all the family inheriting the land.

Figure 10: Can Women Inherit Land ?

| Can women inherit land? | Sons only | Daughters Only | Depends on circumstances/character of son or daughter | All family should inherit |
|----------------------------|-----------|----------------|---|---------------------------|
| Yes – 87 it depends – 2 | 15 | 2 | 23 | 49 |

Women are highly dependent on land for their livelihood. Losing land upon divorce or widowhood can have serious consequences for women as they were less likely to have assets, work opportunities, or earn extra income through work. Divorce or widowhood led to some cases of women losing access to land in one village, but finding shelter and land to farm from male relatives in another village. Christina in Kiwawa had difficulty holding on to her land after her husband died, but she succeeded. She described the bitterness of her husband’s family when she insisted in keeping the land

and home after his death. They refused to accept this and encroached on her land. She fought hard, going to the Village Land Council and the Ward Land Tribunal to have her land restored, and only succeeded after a long and acrimonious dispute.

All male heads of households were taking care of children of sisters, nieces or male relatives who became orphaned or whose families were in difficult circumstances. Catherine, a young divorced woman, had lost land from her husband's lineage plot in another village when he divorced her. She then moved back to her home village of Songambebe with her five children to farm her uncles land.

Women without a partner, single, widowed or divorced comprised the poorest group. They had the smallest plots of land, and few jobs or businesses to provide extra income. Despite having similar levels of education to their male counterparts, women had less opportunity to move away from home for work or business opportunities, having the main responsibilities for keeping the family and working the land.

Gendered Access to Land and Livestock in Monduli District

Women are treated the same as kids in Maasai tradition, all livestock and land belongs to the husband, and there is nothing for women, livestock or land (Grace, Iramba 2014).

In this section I will discuss the experience of the Maasai women on rights to land and gender equity. The villages visited had taken the first steps in the process of demarcation of the village boundaries in preparation for gaining a Certificate of Village Land. As indicated in Chapter Three, the process was stalled on account of these large villages being split before the demarcation would be complete and disputes with other villages over the location of valuable water source in the new village layout. With respect of land titling programmes and their perceived importance to women, it became clear that the old problems of customary rules favouring male control of land and

livestock remained strong, but women were not merely accepting their fate. Focus group and individual interviews with eighty four Maasai women and men in Monduli district revealed a high level of tenure insecurity and anxiety over the ongoing land losses experienced by pastoralists since independence. But despite the negative picture, Maasai advocacy organisations were using whatever means are available to garner support for their struggle to hold onto land. Among Maasai advocacy organisations, women are playing pivotal roles in advocating for justice in land rights, including greater gender equity in resources and opportunities.

Female and male breadwinners

If a woman is without a man and she has lots of livestock and land, there will be gossip. People will talk about her, it is only ok if you are married.

During interviews it was very obvious that Maasai women are considered first and foremost as mothers and carers based in the ‘boma’ (home) which includes the physical house where the family live, the small stock corrals where animals are cared for and the small farm plots which are used by women to supply food for the home. Gender roles are clearly separated, a man’s role remains firmly that of ‘male breadwinner’, the caring responsibilities fall entirely on women. Women are de facto also ‘earners’ but lacking sufficient education to gain even basic level employment. During a life history interview, when asked what jobs men do, Njumali Lemely stated, with an ironic smile:

None, women do all the work, shambas, house building, mabati¹⁷ roofs even (Interview Iramba 10th May 2014).

On hearing Njumali’s observation of men’s work, the women in the group laughed heartily. Other focus group members defined the role of men, as that of livestock

¹⁷ Mabati is the Kiswahili for aluminium sheet

keeping, going to the market to sell, seeking work in urban areas, in addition to heavy tasks such as creating dams for livestock keeping.

During interviews with pastoralist men, they described how the financial demands on them to support their families have increased. The cost of education and medical services has increased dramatically and the need for cash is a constant source of anxiety for both men and women (interviews in Monduli 2014). The expectation is that men will provide cash through livestock rearing, and finding work in urban areas, although their low education background reduces employment prospects. In Olomotoi, in focus groups and individually, men explained ‘the problem here is that the Maasai need land for their livestock, and there is not enough land’.

Migration is an option for men to earn an income, according to Benjaminsen et al (2013) ‘and out-migration for work in cities and the mining area of Merrerani’ is a popular strategy to diversify income (Benjaminsen et al 2013:7). These options are rarely available for women, who are expected to stay close to family in the ‘boma’ rather than ‘struggling’ for money in unfamiliar urban areas. Instead women must remain at home keeping the livestock and land safe and selling produce in the market or to passers-by. One effect of men going away looking for work and children at school, was a sharp increase in the workload for women. In focus groups women noted that their role has expanded and they now work even more than in the past. At the same time, they are expected to perform the multiple daily tasks such as cooking, washing, preparing food, herding goats and sheep, milking animals, attending community meetings. Women reported feeling more exhausted and working harder than before, but they also felt having their own income was really positive. Maria explained ‘There are more jobs now for women, they have to do a lot of work’. When

Lemely, a woman in her late 60s, a mother of six children, when asked what were the significant changes for women during her lifetime, she stated the size of families.

In the past, a woman had two or three children, but now there were sometimes even ten or more children.

When I asked other women what they thought might be the reason for large families, they offered an explanation that it might be the change of diet, eating maize and other non-Maasai food. Children are valued members of the community, but the large family size has added to the workload. Both women and men feel the pressure of the financial burden and struggle to find extra income to support large families.

According to the female informants, most important decisions regarding the family finances, work, and the children, for example, whether they can attend school or not, are made by the husband as the head of household. Only with the agreement of the husband can his wife go out to work. Ndalau Rahao in the focus group discussion explained that ‘Some men would not like their wives to work outside the home’ (Iramba, 12th May 2014). Most men, my informants, declared did not approve of women going out to any work which involved leaving the home at night. Women believed that men are suspicious of public places, such as markets, and fear that women can become ‘corrupted’ by access to wider community values or men who try to seduce them. Tuulikki (2007) found a similar situation in her research with market women in Kilimanjaro, that the market at night was considered a dangerous place for women, and women who wished to spend time there were suspected of ulterior motives.

Going to the market in daytime is ok, and we do not need permission from our husbands, but ‘night time is risky’ (Focus group member, Mainisi Lesani, Olomotoi, 12th May 2014).

A few women voiced their annoyance at these restrictions which reduced their chances of making extra resources to help the family. Despite these obstacles thrown in their

path, the majority of women carve out niches for themselves as self-employed, engaged in small-scale trading in crafts and foodstuff, which they can combine with their domestic duties. Women's role has changed nonetheless, as the social and economic circumstances of their life is changing. When asked the informants, what were the most noticeable changes for women in the villages, women first mentioned women could do business in the market and girls could attend school,

There is more business, women are doing business, not just collecting firewood, like before, now there is more money. Some women sell snuff, and they can buy school equipment for children. Before women asked permission for everything, now they don't (Focus group member, Leah Lesani, Nangolo, Monduli, 13th May 2014).

The money which women earn from their trading or other activities is recognised as their own and they can decide to use it as they think fit. However, it is considered proper to ask permission of their husband first before spending any money. Women indicated that their money was usually spent on basic needs for the family, food and school fees. In the focus groups several women reported that they hide their earnings for fear their husbands would take the money. Women conceded that it was not going to be easy to change these long-held beliefs that men should control the family resources.

The consensus among informants was that communal grazing areas were crucially important, but they also articulated their need for a small plot of land around the home, called 'shamba' in Kiswahili and livestock, which could feed the families better and raise cash for the necessities.

Rights to Land

One of the obstacles facing women regarding land, is social sanction through 'gossip' about any unmarried women who has managed to get land in her own right, which

discourages some women from trying to get land and ultimately a source of social control over women's actions. 'If a woman is without a man and she has lots of livestock and land, there will be gossip about her' (Nora, Women's Focus Group, Iramba, 10th May 2014). Tuuliki (2007) reported a similar situation in Kilimanjaro among the Chagga market trading women, where women's success at trading was the subject of gossip and suspicion. Tuuliki (2007) argues that gossip is a means of constructing moral value especially in a time of social and economic transformation, as gender relations and kinship responsibilities are being re-configured with the increasing monetized economy. Martha Naserian, the Gender Specialist from CORDS, reported that traditional values are so strong that sometimes women themselves do not agree with women owning land, or if they do own their plots they are reluctant to talk about it, for fear of reprisals.

There was unanimous agreement among both male and female informants, that unmarried girls do not own land or livestock, but have access to the land and livestock of their father's or after marriage, their husband's household. This opinion was later qualified as people explained that girls could receive gifts of livestock upon marriage or the birth of child. But even this livestock 'belongs' ultimately to the family and the woman must ask permission to sell the animals. Makko Sinandei (UCRT) explained that although women are given livestock at birth, when the girl marries she leaves all her property to her mother and her brother who will use it for the family. Once married it is accepted by all that a girl has rights to use the land and livestock resources of her husband. A married woman is entitled to the crops she plants, but women cannot have 'ownership rights' over the resources of the family or livestock, which belong to her husband and later pass to her sons. Lemely reported:

Even during the Land Use Planning exercise, men are allocated all the land, the Village Council hardly ever gives land to women, even when women are get land through their own efforts, the Village Council will decide to register it in the son's name, as the plot holder (Iramba, 11th May 2014).

Women in the focus group in Nangolo, were bitter that they could not access special grazing areas set aside for young or sick animals, called salaili. The justification for women not having livestock or land for themselves, was summed up by Grace, 'Girls are not given land as they go to another boma (home) to create a family there' (Grace, Iramba, 27th May 2014).

A group of young women who took part in a focus group in Iramba expressed disappointment that their education has ceased, as four out of the five young women were either married or their marriages had been arranged. Noorkiponi Mengoiki, who was already married, complained that:

Parents insist a girl marries the person they have chosen, and no girls can refuse their parents. The father must decide, and, after marriage, the girl can only relax in the boma. We have to stay the way without doing anything, no chance to go to school or do something. Just the father chooses the husband, but the mother is the person we can turn to for help (Iramba 11th May 2014).

Maanda Ngoitiko from the Pastoral Women's Council (PWC) described the persistence of early marriage in the community, although it has reduced compared to the past (interview, Arusha office, 15th June 2014). Maanda herself had experience of an arranged marriage. Her parents had arranged a marriage for her when she was only 16 years old, but she wanted to continue school, which she loved. She ran away from home, and found relatives to help her continue at school. Her life took a different turn from the expected one. She studied abroad and is now managing a well-known and successful NGO, the Pastoral Women's Council (PWC). The PWC has initiated, a Girls Education project, which has the twin objectives of preventing early marriage and through girl's education to improve their life chances (PWC 2013). Legislation

outlawing early marriage has resulted in a drop in numbers of girls married in the early teens, and was mentioned by one of the older male informants, as a major change in life from former times.

On the issue of divorce, most women claimed that divorce is unusual in the pastoralist communities. It is easy to live separate lives without going through the trauma of divorce, as a result, divorce is uncommon. Grace Mayseki explained that divorce would be a tragedy for the woman,

It isn't normal to divorce, but if a divorce happened, the woman would lose everything, their husbands would take over children, land and livestock and all property, then they would have to return to their natal home (Interview in Iramba, 27th May 2014).

Upon the death of her husband a woman may face the most difficult situation, as property must be divided among quite often large polygamous families. Polygamy is common and among the older men interviewed it was usual to them to have between four and seven wives and between twenty and forty children. Lemely had experience of women having problems on the death of their husband. When the husband of her relative died, his extended family arrived at the 'boma' to force her and her children to give up all the husband's property, livestock and land. The usual procedure is for the eldest son and the head of the family to bring everyone together and distribute the property of the husband among the families. Disputes can arise and the elders and clan leaders are brought in to mediate between the parties. The woman is allowed to continue using livestock and land until her son comes of age to take over and from then on, he is responsible for all the assets and must take responsibility for the family. Women did not voice concerns that becoming a widow would result in being deprived of all their possessions, there was a general confidence that the family would stand by the women and children. Two informants stated that the widow could not marry outside

of the village, which restricts women's choice of partner. Although women had heard of rare incidences when a widow was dispossessed of her deceased husband's property, it was related as an exception, an unusual occurrence. Despite the frustrations expressed by women over resource inequities in pastoralist societies, there appears to be a high level of solidarity and family support.

Pastoralists in Monduli district are undergoing economic and social changes, as land for livestock grazing is shrinking and population increases are putting a severe strain on the resources of communities. This has direct impacts on gender relations. The greatest concern for women in common with men, was to have tenure security on their grazing pastures and land to farm, fulfilling these basic needs was the most important issue for pastoralists male and female.

Civil Society Activism

Struggles over gender roles and what was considered to be true to 'tradition' preoccupied both NGO activists and women in conventional roles who were not activists. My female informants were concerned about restrictive practices which limited their ability to provide extra resources for their family. Nevertheless, women were not passively accepting their fate, and many Maasai civil society organisations have sprung up since the late 1990s to combat marginalisation and gender inequality. CORDS was among them, and has been promoting the inclusion of women into leadership structures within the community and raising awareness of gender issues with traditional leaders as part of their Land Rights Programmes (Interview with Emanuel Ndulet, Land Officer, CORDS, 18th February 2013). During the CORDS training at the start of the process to gain a Certificate of Village Land, the trainers encouraged the

Village Assembly to ensure the inclusion of women in Village Council and Village Land Committees (ibid).

Both CORDS and the Ujamaa Community Resource Team land policy is to support communal ownership through gaining Certificates of Village Land which ensures village land remains accessible to the community for grazing animals and access to water resources. The Pastoral Women's Council (PWC) and the Ujamaa Community Resource Team (UCRT) have been promoting equal representation for women in the society and taking women's concerns to leaders and government bodies. The PWC supports women gaining individual Certificates of Customary Rights of Occupancy for their residential plots. The Pastoral Women's Council (PWC) is one of the better known NGOs focusing entirely on women's empowerment and are committed to both transforming women's status in the Maasai community and upgrading the position of pastoralists in the wider society. The PWC have achieved a high level of success in helping women to access land and buy livestock; in two villages over 30% of land titles to small family plots were allocated to women due to lobbying by PWC (interview with Maanda Ngoitikio, Coordinator, Arusha, 16th June 2014). The Pastoral Women's Council in particular encourages women who are single, widowed or divorced to apply for individual titles.

The desire to transform gender relations is not embraced fully by other Maasai advocacy organisations, which tend to be male dominated. Makko Sinandei, Director of UCRT explained that there is a power struggle between older systems and new ideas:

The most difficult questions for Maasai advocacy organisations are related to "cultural values". What values are important to keep and what should be modified or rejected? These questions are subject to ongoing debate and negotiation. Modern ideas are challenging the older systems. We are well aware that cultural values are problematic, but should they be preserved or abandoned? There is a conflict of interest between

modern ideas and the older systems. The Ujamaa Community Resource Team works to create a balance, addressing both women and men, to rebuild the community (Interview with Makko Sinandei, Ujamaa Community Resource Team, 28th February, 2014).

The Pastoral Women's Council were instrumental in organizing Maasai women to protest in 2013 against the creation of a wildlife corridor by the Ministry of Natural Resources and Tourism (MNRT). The wildlife corridor, in effect, would mean that Maasai pastoralists would lose, 1,500 kilometres of grazing land. This was one episode in an ongoing saga of conflict going back to the 1990s, between the government of Tanzania and the pastoralist Maasai of Loliondo. In 1992, the Government of Tanzania granted a commercial hunting licence to Otterlo Business Corporation (OBC) on land belonging to Maasai villagers in Loliondo division, Ngorongoro District, Northern Tanzania (Femact 2009). The hunting license covered important areas of dry season grazing, salt licks and water sources within the eight villages affected, which are essential for the survival of the livestock during the often drought conditions experienced in the region (Interview with NGO activists, name withheld). The OBC is a Dubai based luxury tourism company aimed at royalty and high wealth individuals. During the hunting season the United Arab Emirates Royal families are entertained with their guests in Loliondo. Rose, the manager of a Tanzanian family owned hotel in Arusha, related her experiences of having young Emirati men staying in the hotel during the hunting season in Loliondo. 'The young men got very drunk and brought prostitutes back to the rooms, where they became abusive to the women and fought among themselves'. Rose was quite upset that they would treat the hotel and the staff in such a disrespectful manner and she reprimanded them severely and refused to entertain them in the hotel after several similar incidences. There were other reports from Maasai activists that the village residents and local herders are treated in an abusive manner by the staff of OBC. The general assessment is that the company does

not respect the local people and acts arrogantly towards Tanzanians. Loliondo has a long history of struggle between pastoralists, the Ministry of Natural Resources and Tourism and central government. Village lands are supposed to be protected by the Village Land Act No. 5 (1999) which states that village authorities and residents control village lands and their customary land rights will be respected. In addition, the Wildlife Conservation Act (2007) allowed for the co-existence of wildlife and human settlements in Game Controlled Areas. Despite their rights being enshrined in law, in July 2009, Ngorongoro District Council ordered the village leaders to instruct everyone to leave the OBC hunting grounds (Benjaminsen et al 2013). The people refused to leave as that year the dry season was among the worst and drought conditions were extreme and the 'residents complained of drought and hunger and brought in traditional leaders to plead their case to the district council' (Benjaminsen et al 2013:1099). The response from the government and the company was to send in the Field Force Unit, a paramilitary unit and the security guards of the company, who evicted 3,000 pastoralists and burnt their homes.

In 2012 there was a new Ministry plan to create a 1,500 km wildlife corridor in Loliondo. The Ministry claims that the decision to prohibit grazing in this area is to protect the valuable wildlife. The Maasai do not accept this claim and research has shown that wildlife can co-exist quite easily with pastoralism. Nelson (2012) asserts that pastoralist land management practices have shaped the landscape and helped to create an ecological habitats suited to many types of wildlife.

When the possibility of a repeat of evictions from the newly created 'wildlife corridor' was made known to the Maasai activists, the Pastoral Women's Council decided to organize a women's protest in solidarity with their community. Maasai women walked

for miles to join the protest, and the Pastoral Women's Council coordinated hundreds of volunteers to provide food and transport to bring the protestors to the parliament building in Dodoma to voice their grievances. The women used a novel approach to protest, collecting all their political membership cards for the ruling party, Chama Cha Mapinduzi (CCM) and threatening to destroy them as the party no longer represented their interests.

Maanda Ngoitiko, spokeswoman for the protesting women, told reporters that 'Women are gathering and demonstrating, because without land there is no life for them' (Maanda Ngoitiko, Executive Director of the Pastoral Women's Council). 'They've been empowered over the years, and have deep knowledge about what is happening and are therefore not willing to sit quietly as their livelihoods are stolen away from them.' (African Initiatives 17th April 2013). Sitting in her office in Arusha, Maanda Ngoitiko described to me how the women took the lead on the issue, initiating the mass action against the advice of caution from some of the elders. Maanda stated:

The women showed more courage than the men' at the same time, the protests were an act of solidarity by the women with their menfolk on behalf of their community (Interview Arusha, 16th June 2014).

Avaaz the media company, took up the issue of Loliondo and international protests added their voices to the local actions. This yielded results and in 2013 the government backtracked due to the volume of protests. However, by 2014 the Ministry of Tourism once again declared that the wildlife corridor was essential and once again there were protests nationally and internationally (Avaaz 2014).

Women and the Land Law

Land is for men not women. Rights to land and livestock is a problem for women. Men do not want to give rights to women. There must be a policy or law which will enforce changes of customary laws (Interview with Martha, Gender Specialist, CORDS 16th May 2014).

Martha Naserin from CORDS believes that a transformation of customary law is necessary to stop discrimination against women owning land and livestock. Her view is that the law does not enforce changes to customary practices. Yet, the Village Land Act states that ‘Customary rules are rendered void if they deny women access to ownership, occupation or use of land’ (VLA s. 20 (2)). This provision remains unknown to many Tanzanians even village authority figures as well as the general public. Moreover, enforcement of the law and sanctioning of transgressions of the law are difficult, the numerous land cases awaiting resolution in court attests to the difficulties of attaining just outcomes through the courts systems (Olengurumwa et al 2012). For the litigant to succeed depends on having the right amount of ‘capital’ social, cultural and economic. Thus, despite this legal provision, discrimination against women continues to take place, most often in the name of ‘custom and tradition’.

The influential Shivji Commission Report 1994 did not address gender issues in great detail. But many incidences of ‘unequal access to land and control over it by the female gender’ were found (1994a:249). The situation of women in relation to inheritance of property they concluded was the most problematic issue. In both patrilineal and matrilineal communities the heirs are male. Inheritance for the majority of Tanzanians is governed either by customary practices or religious legal prescriptions. The Shivji Commission (1994) therefore was sensitive to the deeply rooted belief systems underpinning inheritance rules. The Shivji Commission’s analysis was that the task of undertaking radical reforms to the customary traditions would not be welcomed by the

general population and the likelihood of success was minimal, thus from a democratic point of view, that was the ‘will’ of the people. Their recommendation was to allow customary law to evolve over time, rather than advocate an immediate end of customary practices, which it believed were deeply embedded in the communities and change would be resisted, ‘imposing a legislative change in personal laws from above has always proved to be very difficult’ (1994a:235). The Shivji Commission recommended vesting of radical title in the village assembly which would undermine the concept of ‘clan land’, a major cause of inequitable access to land for women. In addition, the Commission recommended making it mandatory to record spouses’ names on customary certificates. Before land is disposed of, the village authorities need to satisfy themselves that the family, wife and children have been consulted and consent to the disposition. This is to ensure that the family will not be left destitute as a result of the sale/disposition. The Shivji Commission (1994) proposed that changing the Laws of Succession would go some way to solving the problems women encountered over land rights. These suggestions were rejected by the central government committee drawing up the Draft National Land Policy upon which the new laws were to be formulated.

In 1995, the newly minted Draft National Land Policy (NLP) was ready. In the new Draft NLP customary law prevailed, while the inheritance of clan land was to remain governed by custom. The Draft NLP stated that ownership of land between husband and wife should not be subject to legislation, it was considered a private and personal matter. A Draft Land Bill based on the NLP was submitted to parliament in 1996. A coalition of gender activists came together to form the Gender Land Task Force (GLTF) to campaign against these provisions. The GLTF comprised eight women’s organisations led by the Tanzanian Women’s Lawyers Association (TAWLA). TAWLA

took the lead and provided a gender analysis of the Draft Land Bill and the Tanzania Women's Media Association (TAMWA) coordinated a media campaign (Benschop 2002, Mallya 2005). Tsikata (2001) interviewed many of the participants in the Forum and wrote a comprehensive review of the NGO process. Tsikata reported that the Gender Land Task Force members were not prepared to wait indefinitely for a more equitable system to evolve. The activists questioned the fairness of the Shivji Commission (1994) recommending a radical transformation of land relations in some areas, while expecting women to wait for customary law to gradually modernise. The argument was that while women were waiting for change, their means of sustaining themselves was being denied when they became widows or were childless. According to Tsikata, the GLTF argued that a uniform statutory law was the only way to enforce change and make a real difference in women's lives (Tsikata 2001:27). Although mandatory inclusion of women in village and national bodies was suggested, quotas for the court system were not included, which Gender Land Task Force criticised as that is where disputes are settled and it is vitally important for women to be represented.

A coalition of land rights advocacy groups led by Professor Shivji had also formed a lobbying group to change to the Draft Land Bill, the National Land Forum (NALAF). The NALAF criticised the Gender Land Task Force position which recommended introducing a uniform statutory law as the best means to ensure equitable tenure for women. Shivji, who was leading NALAF argued that using 'hard law' was not feasible as it runs against deeply held beliefs, religious and cultural (Tsikata 2001:11). There was also an issue of cultural diversity and democracy. Customary law was valued by the communities and their wished to retain it, while the religious mandate to follow Islamic law for example was the particular preference for many (ibid). Thus uniformity of law in such a multi-cultural setting was problematic. Additionally, on the question

of ownership, Shivji argues that ‘neither men nor women nor communities own land because it is vested in the State’ (Tsikata 2001:9). The Shivji Commission (1994) were also wary of statutory law bringing in individual titling and registration. Not all gender activists agreed with the position taken by the GLTF. Some group members were concerned that privatising land titles could lead to dispossession of the land from both men and women while others were in favour of a land market (Tsikata 2001). Manji (1998) criticised the gender activists as urban-based intellectuals who were insulated from the real issues affecting rural women. Manji noted the lack of attention paid to the concerns of poor rural women among the activists, whose class would benefit from open markets in land, as they had the wherewithal to buy (Manji 1998). The gender activists were concerned that women’s equal land rights would be side-lined as NALAF had taken on multiple lobbying points. Other members of GLTF were sensitive to the issues raised by the Shivji Commission, that the rights of all land holders were compromised by the state’s centralised control over village land, and that ‘gender rights’ without secure community rights were meaningless.

Under pressure from the campaign of the Gender Land Task Force, the law was amended to include a clause that customary law is only allowed if it is not contrary to the Constitution and principles of natural justice. But it is left up to individuals to take any issues to court. One positive change was that women are better protected, as all village members can apply for Certificates of Customary Occupancy (CCROs).

GLTF followed the path of liberal feminism which has traditionally campaigned for legal change as the means to transform society and create gender equality. However, the struggle for gender equality happens within specific political and social environments, which influence the construction of concept of equality and how best to

achieve this goal. Women have multi-dimensional identities which interlock and create particular burdens and opportunities for women to access their needs. Legal rights do not always translate into enforceable rights when the institutional framework underpinning legal rights is weak or the cost of pursuing those rights becomes prohibitive for ordinary citizens.

The Land Laws came into force in 2001. Alden Wily (2003) undertook a comprehensive analysis of the land laws, which she assessed were protective of the rights of vulnerable groups, including pastoralists and women. Alden Wily (2003) outlines the most important provisions which protect women's land rights. The Village Land Act No. 5 states categorically the principle which enshrines a woman's right to land: 'The right of every woman to acquire, hold, use and deal with land shall to the same extent and subject to the same restrictions, be treated as the right of any man' (Wily Alden 2003 p. 47). Customary rules which deny women access to land ownership, occupation or use are rendered null and void. The law presumes co-occupancy, that is unless otherwise stated on the Customary Certificate of Occupancy, 'both spouses are presumed to be joint owners' (ibid, 47). Any mortgages arising from the land must be agreed by the co-occupier. If the consent has not been given, this invalidates the mortgage. Village committees concerned with Land Matters must have female representation, i.e. three of the seven members of the Village Land Council must be women (ibid). The Village Land Manager is required to 'treat an application from a woman or group of women not less favourably than of those of men (VLA s.23 (2) c (i)). During adjudication, the Village Adjudication Committee is to 'safeguard the interests of women, absent persons, minors and persons with a disability' (VLA s.53 (3) (e)). Women may apply for land individually, with their spouse or in groups. A divorcee from the village may apply for land in their husband's village, thus avoiding

having to return home to their natal family. Purchasers, mortgagors, lessees of land are obliged by law to enquire if the consent of the spouses has been given and if they have been misled, the disposition will be void (Land Act s.85, s.112). The Land Laws provide strong protection for women in principle, however, problems arise at the level of implementation. Customary norms and Shar'ia rules of inheritance can contravene equity and justice for women, but these systems of inheritance dominate the social landscape.

Conclusion

The Shivji Commission (1994) identified the laws of inheritance which follow either customary or religious rules as a major source of women's inequity in land holding. Customary and religious laws are the dominant governance system for land administration in Tanzania, in spite of the detailed and relatively progressive land laws. Customary and religious law can be used to discriminate against women and dispossess them of their rightful property, particularly upon the death of their husband, or upon divorce. But when traditional practices discriminate against women in terms of access to land, women are not merely passive victims of patriarchal forces, they are active agents criticising and pushing those boundaries which restrict their life chances. Gender roles and expectations are not static nor are they insulated from outside forces, as women in Monduli explained, they are now involved in small businesses and going to school unlike in past times. In Monduli women are involved in income generating activities, when possible accessing land in their own right, and advocating for the rights of their community. Over half of the women in Manyoni are registered with their husbands as owners of the property. Many men and women stated they wished to leave their land to the son or daughter most competent to manage the land, or to all their children, not just the eldest son.

Customary tenure is not always the problem, as customary systems have been adapting and changing to modern conditions. Statutory law provision is not always the solution. Sally Falk Moore (1973) argued changes to statutory law are not guaranteed to engineer social change, this is especially difficult in a critical matter of power over a valuable resource such as land. Statutory law is not an entity separate or outside of society and immune from its influence. Statutory law alone cannot uphold human rights unless the political and legal systems also uphold human rights. The law is dependent on the social institutions and social legitimacy which support it. Therefore, having the law in place is only the beginning of an ongoing struggle to implement the law against the forces within government and more powerful male members of the community who intend to keep control over land for themselves and out of the hands of the less powerful. The next chapter will discuss some case studies of the various mechanisms which can be used to settle land disputes at village, ward and court level. Inheritance issues were pointed out by the Land Commission (1994) as being the main challenge for women accessing and holding onto to family land. The following chapter will discuss how the land law is applied in everyday life, and how smallholders, women and pastoralist villagers attempt to attain justice.

Chapter Five - The Disputing Process

The dispute settlement system is in a shambles. You find no solution to your problem (Frances Kiwanga, advocate Arusha, 24th April 2014).

I woke up in the middle of the night in my small apartment in Arusha, to shouting and banging noises. When I shook my mind free of sleep, I heard the thuds of feet hitting hard on the road and male voices shouting. I was fearful as the sounds were very close to my apartment and I lived alone. The noise continued for at least half an hour; running, then screams, shouts of many voices, too fast for me to make out a word, hard thumping noises, and finally the sounds subsided. I eventually fell back into an uneasy sleep. The next morning, Josephine, my neighbour, explained that thieves had been caught trying to break into one of the large houses in the cul de sac. They were caught in the act by the security guard on duty at the home. Security guards came from the other houses to help their colleague, and they beat the thieves ‘mercilessly’ until one had died and the other two had to be taken to hospital. My neighbour had heard the news from the maids who arrived very early and were told the story by the security guard. I checked with friends to see if the Swahili papers had carried the story, but they saw no report about it, nor was it mentioned in the local Arusha based English language paper. The death of one, and severe injury of the other thieves merited little comment. The same security guards remained at their post during the rest of my stay in Arusha.

Soon after that incident, I was given a lift by another neighbour, a European businessman, John, and we talked about the incident, which he had also heard about from his security guards. John had arrived in Tanzania twenty years ago to teach in a secondary school as a volunteer, and had ended up staying on to marry and later to raise a family. He explained that he was not surprised at the killing of the thieves, as people

take the law into their own hands, because they do not have confidence in the police force. He personally kept two large dogs and had a gun at home. He exclaimed that anyone who tries to break into his home will ‘regret choosing his house’.

Some months earlier, when I was doing my fieldwork in Mlala village, I had asked the Village Executive Officer (VEO) and the Village Chairman what happened to the previous Village Executive Officer who had stolen the money allocated for building the Land Office. I was told that he had left the village once his theft was uncovered and was not seen or heard from again. I asked if the police had come to the village to investigate the case, to take statements and they said that ‘no, nobody had come to follow up on the case’. Neither had the District Council officials. As far as they knew, nothing had happened. I enquired further with both the Ward Executive Officer and the Ward Councillor and they both confirmed that no follow up investigation had taken place and that to their knowledge, the Village Executive Officer simply ‘disappeared’ and was not pursued. He was not searched for and there was no investigation. He became a shadowy figure of legend, condemned for his action and remembered only for that one deed.

This opening vignette encapsulates the themes I wish to discuss in this chapter. I will present several examples of the everyday operation of the justice system. Firstly, I will briefly outline the provisions of the Land Dispute Act No. 2 2002. Secondly, I will explore how social position and poverty affects access to justice. In order to do so, I will analyse the opportunities and limitations of the current system to support the land rights guaranteed by law. Thirdly, I will examine the Ward Level disputing processes utilised by informants when disagreements and conflicts arise over land between village residents. Lastly, I present the case of the widow ‘Telesia’ who is fighting a

battle to regain land taken over by a ‘stranger’. Her case has been taken up by a free legal aid centre in Morogoro. Telesia’s case weaves together the themes of corruption, poverty and the many abuses of power. At the same time, this narrative evokes hope in a surprising way. The empathy shown to Telesia by ‘strangers’ and the collective strength of belief in the entitlement to justice shown by people from all walks of life, despite the challenges to achieving that just outcome.

Justice and the ‘Have Nots’

The very different reactions to the two cases of theft described above are indicative of the importance of not seeing law as only about legal ‘rules’, but rather as an indication of the way differences in social standing effect the outcome of a person’s interaction with the law. Marc Galanter (1974) in his seminal article *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change* investigates the question posed in the title, specifically, why do the better off, particularly wealthy corporations, tend to win in litigation cases against poorer people? Galanter (1974) starts his investigation into this question by looking at the litigants and lawyers themselves, rather than at the ‘rules’ of law. He prefers to seek answers through exploring the different kinds of parties using the law, and, the effect these differences might have on how they experience the system and the outcomes of their cases. He found that their relative positions in terms of both financial resources, and their capacity to employ expert knowledge and experience with the law, determines to a large extent the outcomes. As an example, government agencies win over 70% of all their appeal cases (Galanter 1974:15). The effect of this is ‘the haves’ tend to win their cases, while the ‘have nots’ rarely do (Galanter 1974:15).

In the article *The Force of Law: Toward a Sociology of the Juridical Field* (1987) Bourdieu argues that the legal field is closely allied with the structure of state power in any society, however, he rejects the proposition that the legal field is merely an instrument of the state. In Terdiman's words 'to Bourdieu, the juridical field is not simply a cat's paw of State power' rather, the relationship is one of competition and resistance (Terdiman 1987: 807). The legal field has its own 'habitus' a combination of traditions, norms and rationales which structure the positions and status of the agents within this field. The field is a site of struggle to exercise the symbolic power of defining the meaning of social practice. Possessing the ability to assign legality or illegality to behavior, grants the law a powerful weapon with which to exert symbolic violence. The volume of force with which the law can exercise its symbolic power is also predicated upon the relationship of the legal field with the state. According to Bourdieu (1987) both the legal field and the state compete for the right to define the meaning of social practice, but the law has a certain level of autonomy derived from the status it holds as a repository of arcane specialised knowledge and having a stated moral basis for its judgements and practices. Bourdieu points out that this elevated status of the legal field and its monopoly over knowledge of what are the 'universally' accepted norms of behavior facilitates the division of society into those professionals with knowledge and those without. The result of this process is described by Bourdieu:

Such a process is ideal for constantly increasing the separation between judgments based upon the law and naive intuitions of fairness. The result of this separation is that the system of juridical norms seems (both to those who impose them and even to those upon whom they are imposed) *totally independent* of the power relations which such a system sustains and legitimises (1987:817).

Bourdieu's analysis of the legal field can be fruitfully applied to two aspects of legal culture in Tanzania. Firstly, Bourdieu emphasises throughout his work that the power to classify and defines what practices are acceptable or not is critical to sustaining

dominance. Such specialised knowledge is a tool wielded by the socially dominant to both produce and reproduce structures of domination. In Tanzania, the gap in education and knowledge between the better off Tanzanian middle classes who occupy powerful positions in business, politics and legal fields, and the village communities and their leaders, has created a highly stratified and divided society. Village leaders in both regions had little or no knowledge of the land policies and laws before the MKURABITA came to Manyoni district and CORDS came to Monduli. Their lack of knowledge was not addressed in any of the major government initiatives to implement the land laws, such as the Strategic Plan for the Implementation of the Land Laws. Without the help of the local NGO's offering free training, such as CORDS and the Morogoro Paralegal Centre (MPLC) villagers would find it almost impossible to win their case in court.

Secondly, Bourdieu's argument about the contrast between legal rules and the sense of fairness at local level applies very clearly to the Tanzanian context. The historical record from the early colonial period points to the non-commodification of land and the custom which dictated that land should be granted to those in need, but never as a saleable commodity which could slip permanently out of the hands of the village, clan or lineage. Socialist era policies paid some tribute to this idea that land for subsistence should be available to those who need it. In the context of property rights in Tanzania, neoliberal policies of privatisation clash with deeply held beliefs that land should be available for those in need and for future generations. The village authorities in Manyoni district and the pastoralist villages of Monduli voiced concern over their inability to provide reserve land for future generations as land was becoming scarce in both regions. In the Kiteto case which is outlined in the following sections, landless farmers from other regions were given land by the village authorities as the custom was

to help those in need. But the example is a cautionary tale, as the custom was usurped by well off investors who employed land hungry farm labourers to request land, and then proceeded to employ the labourers to clear large plots and thus they accumulated large land parcels (Askew et al 2013).

The social field of the law, is a game played with rules written and unwritten and encoded in the dispositions of the players. Wealth education and legal training, are sources of cultural and social capital leading to both general knowledge of the legal world, and enough capital to pay for the expertise necessary. In addition, better off groups and individuals achieve stronger links to the locus of power within the court system. In court hearings, the die is loaded in favour of the well-connected and economically powerful, the dominant groups. Conversely, the dominated groups, namely poorly resourced rural residents without the necessary connections, are disadvantaged, and most of the time are consigned to the losing side. In Tanzania, significant financial resources are needed, to access the best legal experts. Additionally, the necessity to pay bribes where necessary, the fees for the advocate, court fees and the ancillary costs of transport alongside accommodation to the urban centres where courts are located, are a significant economic burden. Galanter (1974) emphasises the everyday practice of the law as the site of study of ‘justice’ rather than examining legal rules. The common response to injustice is to seek for rule changes, but Galanter (1974) argues that rule changes are ineffective as a means to bring about a more just outcome, as it is easy for the more powerful to find loopholes in the new rules;

Programs of equalising reform which focus on rule-change can be readily absorbed without any change in power relations. The system has the capacity to change a great deal at the level of rules without corresponding changes in everyday patterns of practice or distribution

of tangible advantages. Indeed rule-change may become a symbolic substitute for redistribution of advantages (Galanter 1974: 149).

A study on access to justice in East Africa, undertaken by the Danish Institute for Human Rights and the East Africa Law Society (DIHR and EALS 2011), found that the legal systems in this region are severely challenged. The Report (2011) identified long delays in hearing cases and noted that the concentration of legal aid services in urban centres was consistent across the East African region. In Tanzania in particular, the report noted the following problems ravaging the justice system:

corruption, unethical conduct and practices in the legal system; cumbersome laws and systems, and a lack of responsiveness to emerging social, political, economic and technological developments; inadequate numbers of legal professionals; and a low level of public trust in the legal system (DIHR and EALS Report 2011:37).

The researchers found that access to justice is constrained by the absence of legal aid services for the majority of criminal and civil cases. Galanter (1974) argued that the justice system could be improved, by increasing access to legal services for people on low incomes and disseminating information about the law to those who are normally excluded from both this knowledge and from high quality legal services.

Legal Pluralism

The study of law in the social sciences began with questions. What actually constituted the 'law'? How far could law be considered in relation to statutory rules? Could it include other authoritative centres with rule making responsibility or 'normative structures of other political or social units' (F. and K. von Benda-Beckmann, 2006:11). Durkheim (1893) regarded the law as a social phenomenon; not an objective set of rules (Clarke 1976). Law serves the function of maintaining stability through the social institutions. According to Karl Marx in *Das Kapital* (1867) law was one element of

the superstructure, without an independent existence outside of the economic forces.

Mark Skousen (2007) explains that for Marx:

the material or economic forces of society, determined the legal, political, religious and commercial ‘superstructure’ of national culture with the result that the law acts in support of the interests of the ruling class (Skousen 2007:96).

Thus, property laws are initiated which privilege the propertied class, maintain the inequality of access to resources necessary for survival.

Bronislaw Malinowski’s (1926) research was one of the earliest attempts to explain how a society conformed to social norms in the absence of external sanctioning authorities. Prior to Malinowski’s work, societies which did not appear to have such mechanisms were deemed not to have law, in the Western sense. Such analyses advanced an ethnocentric view of the law. Durkheim’s (1893) explanation for this absence of law was that in such societies people responded collectively, a group psychology operated. According to Mathiew Deflem ‘Durkheim studies law as the visible symbol of social solidarity’ (2008:63). Malinowski posited that every society has law in the form of rules which ‘are felt and regarded as the obligations of one person and the rightful claims of another (1926:55). Malinowski (1926) concluded that social control was the ultimate purpose of law, and argued that reciprocity was the key to maintaining the law, through conformity to social expectations. He found among the Trobriand Islanders, failure to comply with economic obligations between trading partners could result in the cutting of important ties between economically dependent persons. Therefore, the relationship itself contained the enforcement mechanism, rather than coming from an outside force.

The legal anthropologist Sally Falk Moore (1973) developed the concept of the ‘semi-autonomous social field’ which she described as a social space which generates rules

and customs, but is not closed entirely to the influence from outside forces. Moore (1978) also argues that the state is just one of these semi-autonomous social fields and that it does not possess the monopoly of defining and enforcing rules and individuals can belong to more than one social field. For Moore, in every society, semi-autonomous fields are the basic units of social control, each of which has 'rulemaking capacities and the means to induce or coerce compliance; but [that] is simultaneously set in a larger social matrix which can, and does, affect and invade it' (Moore, 1978:55-56). Moore (1978) asserted the importance of social relations in the definition of norms and she rejected the idea that state law could be utilised to engender social change. Clifford Geertz argues in *Local Knowledge: Further Essays in Interpretive Anthropology* (2000) that the law is a cultural discourse, a way of interpreting facts and turning them into judgements. According to Geertz, law is 'not a bounded set of norms, rules, principles values, or whatever, from which jural responses to distilled events can be drawn, but part of a distinctive imagining of the real' (2000:173). Geertz argues that studying the law is a means of understanding the moral prism through which a society structures reality, assesses the meaning of events and judges actions. In Bali, Geertz studied the meanings and practices of law, based on three distinct worldviews; Indic, Islamic and Malay. He found that in each society, the essence of what constituted the 'law' was different.

John Griffiths (1986) wrote one of the most influential articles in socio-legal studies, entitled, *What is Legal Pluralism*, in which he argues that 'legal centralism' is a false ideology which presents law as systematic and unified body of normative propositions which is supported by the coercive power of the state and accepted norms and customs. According to Griffiths (1986), 'Legal centralism is a myth, an ideal, a claim, an illusion. Legal pluralism is a fact' (1986:4). Griffiths (1986) utilises Moore's concept of semi-

autonomous social fields to underscore how the fundamental characteristic of legal pluralism is the existence of several overlapping semi-autonomous social fields, that each have their own rules, norms and enforcement mechanisms and that can be formal or informal.

Tanzania, in common with many post-colonial states inherited a plural legal system and post-independence continued to accommodate what Sally Merry Engle describes as ‘the existence of multiple legal spheres’ (1988: 879). Griffiths states that legal pluralism ‘has been a fixture of the colonial experience’ (1986:6). In Tanzania, three types of rule-making systems are recognised in governing aspects of social life; customary law, Islamic law and state law. However, state law is the predominant legal order, with customary and Islamic law, officially subservient to it. Legal pluralism, as implemented in Tanzania, is an example of what Griffith’s terms ‘weak legal pluralism’, where the state recognises as valid, diverse bodies of law for different population groups or according to occupation of territory (1986:5). Okoth-Ogendo (1979) accounts for this phenomenon throughout the African continent with the argument that the elite class, who took control in the post-independence period, considered a unified legal system would be the most appropriate option to achieve the national goals of unity and modernisation (1979:165). This account is confirmed when looking at the vision of society drawn up by President Nyerere, and implemented by the post-independence government which focussed on the objectives of national unity and modernisation with a socialist orientation (Nyerere 1968).

Customary law and Islamic law are recognised in the lower level Primary Court system, in respect of family and inheritance issues. But the state retains the higher court functions exclusively for statutory law and retains ultimate coercive power. This

accords with Griffiths (1986) assessment that in weak pluralism, recognition of plural legal orders is a pragmatic technique of governance.

The Living Law

Mainland Tanzania's legal system is based on English Common Law, but in addition to the statutory law, in respect of property or family matters, Islamic or Customary Law can be applied (Olengurumwa et al 2012). Five courts administer the judicial functions, with the Court of Appeal as the highest level court and which is presided over by a judge/judges (see Annex C). Next in line is the High Court of Tanzania, also presided over by a judge and which has three divisions; the Land Division, Resident Magistrates Courts/District Courts. Lastly, the lowest level of legal governance is the Primary courts (DIHR and EALS 2011). The Primary Courts, presided over by a magistrate, has responsibility for adjudicating criminal and civil cases. The Primary Courts may apply customary, or Islamic law, in respect of property or family matters. The District Land and Housing Tribunals (DLHT) adjudicates property cases. Ward Land Tribunals are the next level below the DLHT and have responsibility for property related cases, but they are not part of the judiciary. All judges and senior court officials including the Chief Justice, are political appointees of the President. The superiority of the Western influenced legal order is notable in the confining of non-Western legal orders to the Primary Courts. In addition, customary law is only allowed when it does not conflict with statutory law (Nyandugu and Manning 2006). The situation with Islamic law is not specified in that regard, nor has this question been tested through the courts.

Chris Maina Peter's influential work *Human Rights in Tanzania: Selected Cases and Materials* (1997) presents a detailed overview of the legal obstacles and hindrances to achieving equality and justice in Tanzania. He contends that, since independence 'the

Tanzania political and legal system has been tainted with the practices of non-adherence to the doctrine of the Rule of Law' (1997:305). Maina Peters (1997) argues that the judicial system has been subservient to the government, and the ruling party Chama Cha Mapinduzi (CCM) rather than independent as the separation of powers would indicate. The Legal and Human Right Centre (LHRC), the foremost civil society organisation working on human rights issues, identified the system of appointing judges and senior officials by the President, as curtailing the independence of the judiciary.

None of my informants wished to use the court system for dispute resolution. For smallholders and pastoralists, local mediation systems were the preferred form of dispute resolution. The courts were considered highly corrupt, and even elected village authorities were implicated in corrupt practices. In Nangolo village, Laizer, during the men's focus group, spoke about corruption:

forging documents for land is a problem with the Village Council, corruption can easily set in, it has happened. That is why, it is important to have the clan leaders and elders to balance out the council (Laizer, Nangolo, Men's Focus Group 13th May 2014).

Traditional leaders in Maasai communities, were considered a relatively safer option. Joel, a Village Council member explained the important role that traditional leaders played:

We work closely with traditional leaders, they help us out. Divorce is not very often in Maasai, that is one way traditional leaders are very important, they help to mediate family problems, they can even prevent divorce (Focus group, Nangolo, 13th May 2014).

Eugene Ehrlich (2001), an Austrian sociologist, drew attention to the importance of looking outside statutory law and institutions to understand the legal life of the community. He noted that norms of social conduct were a very important in the management of society. For Ehrlich, 'living law' which was applied and followed in

everyday life structured social relationships and was often given greater respect by the population.

The Constitution of Tanzania of 1977 provides for ownership rights to property and its protection. Article 24 of the constitution reads: 'Every person is entitled to own property and has a right to the protection of his property held in accordance with the law' (Olengurumwa et al 2012:138). This right is qualified by the provisions of sub-article (1) 'it shall be unlawful for any person to be deprived of his property for the purposes of nationalisation or any other purposes without the authority of law which makes provision for fair and adequate compensation' (ibid). Civil society organisations and legal reformers proposed that land should be included as a constitutional category (URT 1994a; Rwegasira 2012).

Maina Peters drew attention to the unequal status of customary rights before the law and concluded that 'customary land ownership was and still is regarded as an inferior form of land ownership' (Peters 1997:215). Maina Peters asserted that this inequality was clearly demonstrated by the manner in which the Ujamaa policy was implemented. Rwegasira states that the Ujamaa policy was undertaken without the consent of the people and without 'any sound legal framework and in the absence of clear terms as regards to compensation for the land that was to be taken for the ujamaa villages' (2012:75). The land reform process tackled the unequal status of customary land and the Village Land Act No. 5 (1999) was expected to upgrade the status of customary land holding to the same legal status as the statutory land holding. The Village Land Act No. 5 (1999) asserts that a Customary Right of Occupancy is of equal status in law to the Granted Right of Occupancy. It is imperative to note, however, that having legal rights in principle is not an absolute assurance that those rights can be defended. The

majority of the poor in Tanzania reside in villages and have the least financial means and social capital to enable them to fight legal cases when their land has been encroached. The following examples will demonstrate both the hazards and hardships encountered on the road to justice for the dispossessed.

Legal Traps: Emboley Murtangos- Kiteto District

The High Court reacted in the usual traditional manner of flaunting every claim related to pastoralists. The Judge did not even like the fact that when the Court visited Kiteto it was a large group of Maasai that accompanied the delegation. ... The perfunctory [manner in which] she treated each claim from the Villages and how she expunged evidence admitted to prove that the Villages had made a democratic people-centred decision to create 'Emboley Murtangos' betrays the dismissive attitude traditional courts held of anything pastoralist (Tenga 2011: 20).

In this section I will discuss a successful court case undertaken by pastoralists in Kiteto District, Manyara Region, whose land was encroached by relatively wealthy farmers who had migrated into the area and the poor migrant labourers who worked for them. The case is a landmark one, as few cases taken by pastoralists have achieved success. However, the case also demonstrates the challenges to achieving a just outcome in the present system. The success was a pyrrhic victory, as it absorbed a huge amount of resources and the situation remains precarious and unresolved, with the possibility of a repeat court case at a future date. The main sources of details on the case called *Emboley Murtangos* came from the paper by Ringo Tenga (2011), a prominent law professor and lawyer who advocates for pastoralist land rights, and also from research undertaken by Kelley Askew, Faustin Maganga and Rie Odgaard (2013). The director and staff of CORDS alluded to this case on a number of occasions in our discussions. The background to the case was as follows. In 2003, seven villages in Kiteto District, Manyara Region, whose villages were registered with Certificates of Village Land, decided through village meetings to set aside a portion of land as a Community Based

Natural Resource Management Area (CBNRM). The area covers 3,200 square kilometres of which 15 square kilometres are wetlands and salt licks which they called *Emboley Murtangos* (meaning ‘the place of salt’ in Maa language)’ (Askew, Maganga, Odgaard 2013). The area is important for livestock and for wildlife which move along the corridor during seasonal migration from the Serengeti and Tsavo National Park (Kenya) to the Ruaha National Park (ibid). Land degradation had taken its toll, mainly caused by farming, deforestation and illegal hunting by immigrant farmers. The pastoralists decided to prevent further degradation by creating a Community Based Natural Resources Management (CBNRM) reserve area, (henceforth called the Reserve), with each village allocating a section of land. Designating the area as a reserve meant that no farming or grazing of animals could take place on the land. The villages ‘carried out this task under a legislative regime that empowered Village Authorities to plan collectively for land use in their villages’ (Tenga 2011:20). The Reserve land was demarcated from land held by the Villagers under the Village Land Act, Cap 114 (ibid). The legal procedures were followed correctly, with approval for the creation of a reserve given by Village Councils to Village Assemblies and finally, the approval of a full council sitting of Kiteto District Council (KDC). The KDC and the villages developed a joint land use management plan. To create the reserve all residency was prohibited and both agriculturalists and pastoralists were asked to leave. Some farmers, most of whom had migrated from other regions where land scarcity exists, such as Iringa, refused to move. They had to be removed by force from the conservation area, with the assistance of the Kiteto District Council in 2006 (Askew et al 2013). A wealthy farmer named Tito Shumo along with 49 fellow applicants decided to sue the District Council, in the Land Division of the High Court at Dar es Salaam, as Land Case No. 6 of 2007, as provided in the Land Acts (Askew et al 2013). They

were given assistance by the Legal and Human Rights Centre (LHRC). The plaintiffs claimed, in the High Court, that they represented 17,000 agriculturalists of the seven villages who had lost 250,000 hectares of land. They claimed to have customary rights due to the fact that they had cleared ‘virgin bush’ in 1980 and occupied the land since that time. Thus, as their residency was over twelve years, in law, this occupation gives them rights to the land. They sought a Declaratory Order from the High Court that would recognise their customary title to the land they were occupying and demanded compensation for damages and loss of property and homes amounting to 8,000,000,000¹⁸ Tanzanian shillings (over three million euros) and general damages 200,000,000¹⁹ Tanzanian shillings (over eighty thousand euros) (Tenga 2011).

The farmers, when questioned in court, turned out to be less than five years resident in the village when the villagers decided in 2002, to declare the land a Village Reserve and the farmers were well aware that the Reserve was being created. The Reserve was formally instituted in 2006, and three years later, the farmers had not moved and refused all requests to vacate the area. In desperation, the villagers asked for KDC assistance to evict them. ‘In the opinion of the KDC the eviction was lawful and continued occupancy in the Community Reserve, lawfully established, amounted to trespass’ (Tenga 2011:12).

The judge in the Land Division of the High Court, accepted the statements from the farmers that they had been long occupiers. The judge argued that because some of the complainants were not in Court they may well have been in Kiteto since 1980. This

¹⁸ 8,000,000,000 Tanzanian shillings is equivalent to 3,328, 865 euros. Available at <http://www.xe.com/currencyconverter/convert/?Amount=8%2C000%2C000%2C000&From=TZS&To=EUR>. (Accessed 26 January 2017).

¹⁹ 200,000,000 Tanzanian shillings is equivalent to 83,221 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=200000000&From=TZS&To=EUR> (Accessed on 26 January 2017).

presumption was taken without any proof of residency forthcoming. Tenga criticised this action by the judge, claiming that ‘the High Court reacted in the usual traditional manner of flaunting every claim related to pastoralists’ (Tenga 2011:20). In January 2010, the High Court found in favour of the applicants, (Tito Shumo and others against the KDC) and awarded damages of the full one billion Tanzanian shillings requested in compensation and damages (roughly \$75,000 at that time) plus 20 per cent interest (Askew et al 2013:131).

Askew, Maganga and Odgaard (2013) visited the affected areas and were informed by the village residents how the situation with the migrant farmers had developed. Local authorities often gave a small piece of land to immigrant farmers if they claimed to need a place to farm. Social norms dictate that such a request must be granted, but the arrangement is understood to be temporary and involves a small payment. The immigrant farmers then proceeded to other villages making the same request until they had amassed large parcels of land. Some farmers cleared more land than they were given rights to, but when they were stopped by the villagers they showed documents signed by village officials to say that they had paid for that land. They were aided in this deception by retired village officials who kept their authorisation stamp and were paid to give illegal stamped documents to the farmers. Illegal immigrant settlements lined the main road in the Murtango reserve featuring hundreds of families, making substantial inroads into grazing for the pastoralists and environmental degradation. Often the land is being cleared and farmed for wealthy elites who bring in poorer agricultural day labourers from outside the area (Askew et al 2013:131). An investor from Iringa, the researchers were informed had ‘cleared several thousand hectares of bush in one operation by simply spraying diesel fuel and setting the area on fire’. The

response of the investor to questioning about this action was threatening the villagers ‘with guns’ (Askew et al 2013:132).

Kiteto District Council appealed to the Court of Appeal of Tanzania and in July 2010 the case was heard. The advocates for the Council argued that the original High Court ruling failed to determine the following facts and application of law. The Kiteto District Council argued that the plaintiffs did not qualify to represent their colleagues as demanded by the Civil Procedure Act (2002). The law requires that those who claim to be making a ‘representative suit’ which has numerous applicants, must demonstrate they share a common interest. As noted by Tenga, Tito Shumo and his fellow complainants did not have the same interest in the dispute (2011).

Additionally, the High Court was not given evidence of the costs of the improvements to the property which the Claimants were alleged to have made, those costs should have recorded evidence to substantiate the claim for damages for the said ‘unexhausted improvements’ (improvements to the property). The court of Appeal agreed with the Counsel for Kiteto District Council that specific damages were not proved, thus the damages and compensation requested should be not be granted, as it was mere guesswork as to how it should be calculated and there was no indication of how the money would be distributed among the applicants.

The most damning argument was that the High Court had actually failed to determine the ownership of the land in dispute. The Counsel for Kiteto District Council submitted that the Claimants were trespassers, as the farmers had not been formally allocated the land under dispute by the village authority. The vast majority of Claimants were migrants who could not prove they had followed the proper procedures of having cleared and lived on the land for twelve years or more, or of bringing their requests for

land to the Village Land Committees and of having the approval of the Village Assembly. The Court of Appeal agreed with the Advocates of Kiteto District Council in that the records from the High Court failed to show whether provisions of the Village Land Act No. 5 (1999) were followed, with regard to the granting of customary land title to long-term occupants of village land.

Additionally, there was a failure to determine the residence of the Claimants. The Advocates for the KDC argued that the High Court wrongly held that Tito Shumo and his co-complainants were villagers within the meaning of the Village Land Act, Cap. 114. Section 2 of the Act defines a 'villager' as a 'person ordinarily resident in a village or who is recognised as such by the Village council of the village concerned'. The complainants themselves admitted in court that they were moving from place to place. The High Court therefore, had no proof that they were actually villagers, ordinarily resident in the village. 'Proof of residence under Customary Law is essential as it goes to define one's membership in the community' (Tenga 2011:18). As a result, they did not fulfil the requirements to be considered villagers.

The Court of Appeal ruled in favour of the appellant Kiteto District Council, determining that the ownership of the disputed land resided with the village authorities. The outcome was a legal success, but the expenditure of resources was crippling on the villagers. It took five years to bring the dispute to a conclusion, during which time, huge attorney fees had accumulated alongside transport costs to collect evidence, to bring officials and witnesses to court cases due to the 600 kilometres between Kibaya (district capital of Kiteto) and Dar es Salaam. The final judgement did not include any compensation or costs for the 'winners', the Kiteto District Council nor for the villages. No punishment was recommended for those who had illegally farmed in an area set

aside for conservation. In addition to the direct costs of the case, the villages had to pay millions of Tanzanian shillings for security guards to carry out the eviction of the squatters by the Kiteto District Council and for the destruction of their houses, as well as re-grading the boundary of Emboley Murtangos reserve. The outcome for the vast majority of the Murtango squatters was that they were left without land or homes. They had migrated from their home districts for lack of livelihood opportunities, either land to farm or viable employment, with the result they faced an uncertain future. Askew et al (2013) point out that the losers in this case were both the pastoralists and land hungry migrants who were enticed with promises of work and land to farm. Pastoralists lost out by having to bear the costs of the court case to restore their rights and the subsequent costly eviction process. The problem of land invasion by farmers has not gone away either.

Askew et al note the fact that the Legal and Human Rights Centre (LHRC), a well-known advocacy organization for human rights awareness and legal education for the public, supported Tito Shumo and his associates in their pursuance of the case against the Council. The Centre had been working in Kiteto, training the Council, and Village Land Committees on aspects of land and environmental policy and legislation. The Legal and Human Rights Centre trained paralegal volunteers including a Mr Nyoki, who went on to promote himself as an advocate and who took cases on behalf of clients, even though volunteers were warned against portraying themselves as 'lawyers'. When Askew et al asked Legal and Human Rights Centre staff about their involvement with Tito Shumo and his associates, they revealed that the Centre got involved with the case on the information received from a former volunteer paralegal, a Mr Nyoki, that human rights violations were being perpetrated by Kiteto District Council against farmers.

The case is revealing of the complexity of land rights in Tanzania. Emanuel Ndulet from CORDS understood the case as follows:

The villages won the case, but it was a disappointment, even if it was a supposed victory. The costs were huge, the people are poor and have to spend a lot on transport and legal costs, they were almost finished by the case. The farmers are already coming back, how long do we have to keep going to courts ? Our land rights are not secure, there is no security for anyone (Arusha 29th April 2014).

Askew et al conceded that the case was successful, being one of the few instances of success for pastoralist land claims in court. However, the case is one of a number of court cases where land claims are instigated against less resourced opponents and the party taking the case can rest assured that they will probably succeed. Thus, Askew et al argue that the law is being manipulated to ‘wrest land from the rightful owners’, as the poor typically cannot afford to press their claims in court. If they cannot attend to make or defend their case, they almost always lose (Askew et al 2013:135). The justice system comprises diverse agents sometimes aiding the ‘have nots’ in their search for justice and at other times, oppressing them. The case above underlines the power dynamics of wealth and inequality. The pastoralists and landless migrants were taken advantage of by wealthier farmers, but in this case, the pastoralists were in a stronger position because the local authority Kiteto District Council, were on their side and they had followed all the correct procedures to define the conservation area. The wealthy farmers can afford to continue to fight against the pastoralists and defeat them through repeated attacks using the law.

This case prompted Askew et al to question the casting of the state as the ‘universal oppressor of indigenous minorities’ in opposition to the ‘people’ when the state itself is fragmented with internal contradictions (2013:135). The local authority, Kiteto District Council were allies with the pastoralists and the justice system delivered a

verdict in their favour. The justice system is not always against the poor or minorities, as the system is not composed of a unitary group of subjects, but a field of struggle with ‘competing tendencies’ (ibid).

This case demonstrates that despite the challenges it is possible for the ‘have nots’ to win their case, but when no compensation is given or sanctions are imposed against further litigations, winning may only be a temporary gain. Additionally, the case proves the importance of having Certificates of Village Land, which define the boundaries of villages and can provide evidence if need be, in court. However, documented evidence is not a guarantee of tenure security, even so, there is little possibility of defence without documentation, at least not until the disputing processes to deal with encroachment, trespass and dispossession are fair and equitable to all. When discussing the case with Emanuel Ndulet, he asked me a pertinent question, how many times can the villagers afford to fight the case?

Legal Tropes

The assessment of legal professionals in Arusha, Dar es Salaam and Morogoro confirmed the analysis of the de Soto researchers: that the formal property rights system works against the citizens and frustrates their efforts to follow the law and be secure in their property rights. The advocates revealed a legal system which places many obstacles in the way of citizens trying to get a just outcome to their case. Even well educated people with financial means have difficulties getting their property legally titled. Francis Kiwanga, the former head of the Legal and Human Right Centre and now running his private legal practice, stated that ‘it is a nightmare to get a title- totally bureaucratic’. He has failed after three years to get a title for his own one acre plot in Arusha. ‘I paid over 1,500 USD and still do not have a title’ (Interview in Arusha, 8th

April 2014). He stated that when the SPILL programme started in 1994, it was expected to solve the problem of bureaucratic delays in titling, but it also stalled and has achieved little success.

Legal professionals and researchers noted the problem of contradictory policies and laws which cause confusion, for example, the Land Act contradicts the Wildlife legislation, as outlined in Chapter Three. The Village Land Act No. 5 (1999) provisions are contradicted by the Land Act No. 4 (1999). Professor Kironde, an academic from the University of Dar es Salaam, pointed out that the definition of boundaries under the Local Government Act contradicts the Village Land Act, as each Act defines the boundary in a different way and these contradictions sometimes result in mismatched boundaries. Conflict, thus, arises over which boundary should be accepted as correct. Kironde noted:

there are many village boundary conflicts not reported in the media. There are many villagers living in unregistered villages, this means that their democratic right is denied, as citizens can only vote if they are living in registered village. Politics influence land administration, for example, district councils divide villages to improve their chances of election and this can mean that the village boundaries are re-drawn and conflicts arise with their neighbours (interviewed Dar es Salaam, 27th May 2014).

Overlapping administrative functions as well as contradictory laws can lead to conflict within the state bureaucracy, as well as with the citizens. During a controversial land case in Loliondo, Minister Kagasheiki of the Ministry of Natural Resources and Tourism, ordered all of the pastoralist villages to return their Certificates of Village Land, as he revoked their registration to increase the land for wildlife migrations next to the Serengeti National Park (interview with Mark Mathayo, Pastoral Women's Council, Arusha, 3rd May 2014). The Minister of Lands, Housing and Human Settlements Development (LHHSD), Anne Tibaijuka, clashed with the Minister of

Natural Resources and Tourism (MNRT) over the case and she asserted that land issues were her responsibility and not those of the Ministry of Tourism (Mark Mathayo, Pastoral Women's Council, 6th June 2014). Minister Tibaijuka stated that the CVLs were correct and should not be revoked as this goes against both the law and natural justice. The Prime Minister then intervened and said the people should retain their land and use it properly (Interview with Mark Mathayo, Pastoral Women's Council, 3rd May 2014).

The dispute settlement mechanism is barely functioning, and it can take years to have a case heard. There are only 49 Land Tribunals, but there are 150 districts in Tanzania (Interview with Professor Kironde, Dar es Salaam, 2014). Added to this is the widespread corruption in the system, which informants, village residents, academics and activists alike, emphasised was a major problem.

If a dispute occurs getting redress through the court system is prohibitively expensive.

Flora Msaaba the founder and Director of MPLC stated:

Access to justice is non-existent. The fees to take cases are too high. As well, fighting a case involves travelling out of the village long distances to access legal system. Where do the people get the transport money? Where does someone stay while they visit the land offices or courts, where do they find the money to pay for somewhere, if they don't have any relatives or friends in the town? (Flora Msaaba, Morogoro, 24th May 2014).

The Disputing Process in Manyoni District

The Village Land Council sometimes has problems settling disputes because the boundaries of lands are not demarcated, there is no natural markers, like a sisal bush or trees, nor is there any beacons. Other times, we have resolved a case between neighbours, then someone moves the beacons or markers again, and the case goes right back into the Village Land Council. Some of these disputants don't care (Mariam Paulo Mjumbe (Village Land Councillor, Songambe, 12th March 2014).

The government of Tanzania (GoT) enacted the Land Disputes Courts Act of 2002 to improve the functioning of the dispute mechanisms. This legislation puts in place formal land conflict handling institutions at every administrative level, from Village Land Councils, Ward Tribunals, District Land and Housing Tribunals, the Land Division of the High Court and the Court of Appeal (Ole Nasha 2005). The lowest level is the Village Land Council, made up of seven members; three of whom must be women. The Village Land Council is comprised of village residents approved by the Village Assembly, based on nominations by the Village Council. The Village Land Council keeps minutes and statements and are obliged to report annually to the District Council, via the Ward Executive Officer, conveying information such as how many cases were heard and the resolutions. The primary function of the Village Land Council is reconciliation; that is with the objective of mediating between parties to the conflict and arriving at a mutually agreeable solution. The Village Land Council is the first port of call and most popular body for dispute settlement.

The Songambele Village Executive Officer informed me that the Village Land Council is 'gender aware' so, if no woman is available to attend the meeting, it will be cancelled. In practice, numerous informants related that many meetings took place with only one or two women in attendance (not the statutory three) as the other female members were not available. But it was clear that the male members of the Village Land Council were at ease with the inclusion of women and did not appear to resent their presence. In common with the formal legal processes, disputes are settled when people come to them, they do not seek them out. If the dispute is not settled, the next step is the Ward Land Tribunal, or they can take it directly to the Land Division of the High Court. Informants involved directly with disputes revealed a preference for dealing with

disputes at village or Ward level. Going to higher courts was considered to be too expensive for most informants.

Emmanuel Pkitinka the Chairman of Songambebe Village Land Council, explained how the Village Land Council is chosen:

Their qualifications are they must have lived in the village for over ten years and most important, be of good character and behaviour. The person must not have not held any other government position or cannot ever have been an MP or a Ward Councillor or magistrate. The judgements are not based on rules, but use the customs of the ethnic groups and the social practices they not rule based, but they use their experience and understanding about social customs of the different groups in the village community. After nomination names are sent to the village assembly for choosing. The assembly could even refuse some nominations, they must approve. Then the council is formed and they are given training. But in our Village Land Council two members have not received any training (Focus group, Songambebe, 2nd March 2014).

The Village Land Council members are supposed to be given training on the laws and land administration, which are complex to understand and implement. There are extensive procedures for requesting the Village Land Council mediation of a dispute, firstly, the aggrieved party must write to the Village Executive Officer explaining the conflict and asking the committee to make a resolution. Secondly, the Village Executive Officer must write an official summons to the disputing parties to attend a meeting. The aggrieved parties must bring their witnesses, who must take an oath and are interviewed separately. The disputants are not allowed to have legal representation at the meeting. Thirdly, the letter explaining the dispute is read out at the meeting, and if they both agree with the contents, they then go to the farm or plot of land at the centre of the dispute. The statements of witnesses are used as evidence to either confirm or refute the testimony of the disputants:

Most cases come during the rainy season when everyone is busy on the farms. Many disputes are related to boundary conflicts. For those boundary disputes, each party shows the Councillors the boundary of

their land. The Councillors walk the boundary, draw it on a map, the exact size, and the secretary notes down everything. Each one brings their witnesses, neighbours are called as witnesses to say what they know to be the case. That is the basis for the resolution. The Land Council gives its judgment and if the two parties agree with the resolution the case is finished (Joseph Muyambwa, member of Village Land Council, Kiwawa, 12th March 2014).

Once the council has decided on the resolution, the Land Council members write a statement explaining how they resolved the case and it is taken back to VEO. The statement will be used by all official courts which later handle the case, therefore the council must exercise extreme care in how they write their judgment, because it could be used in the highest courts. Witnesses are very important and sometimes their testimony is the main reason a case is solved. The winner in the case does not pay costs, as the costs are borne by the loser. That is the theory or ideal case, whilst, in practice, the Village Land Council face serious challenges to their work. Cases are protracted due to ‘stubborn types’ using delaying tactics, Joseph a member of Songambebe Village Land Council, related the story of one young man who ‘after delaying everyone, gave in and then announced that he was ready to give in all along but was testing the resolve of the land council members’ (Songambebe, 2nd March 2014). Violence against the members of the Village Land Council can also occur, as explained below:

Some parties hate when they lose the case, and they start abusing us even using weapons, if they don’t get their way. Even the witnesses can experience problems, sometimes they are afraid to give evidence, they could be threatened. Sometimes they abscond before the hearings out of fear (Anna Mgasy, Village Land Council, Kiwawa, 12th March 2014).

If a dispute remains unresolved, the next step is to proceed to the Ward Land Tribunal which hears cases that the Village Land Council cannot solve. The Ward Land Tribunal is the lowest level of the land courts system and has the power to sanction and punish, impose fines for trespass, or return land to the rightful owners. The

punishment could be a jail sentence with those sanctioned sentenced to up to six months, but more often, a fine is imposed. Andrea, a member of the Ward Tribunal, sums up the requirements of the role:

We must follow the law. We must learn everything about the laws of the land and how they should operate. We also use our own life experience, we know about of the customs of all the different tribes living in the village, and we use our wisdom (Andrea Roba, Songambebe, 9th March, 2014).

The Ward Land Tribunal has a three-year term and then a new Tribunal is appointed. Each Village Council must send three or four nominees names forward to the Ward Development Committee. They then decide on two names from each village; six members participate in the Ward Land Tribunal because there are three villages in the Ward. The names are sent to the District level to give their approval.

The Ward Land Tribunal and Village Land Council are given training and a copy of the Book of Procedures. The Book of Procedures is a handbook to guide them on how to solve conflicts, the application of the land laws and the rights enshrined in the constitution. They must adhere to the Village Land Laws, even more strictly than the Village Land Council. They follow all procedures of a court, with one important difference, the disputing parties cannot use a representative or an advocate, as that is only permitted at District Level.

The cases coming to the Tribunal are varied, and can include family conflicts, grabbing of land by family members and or outsiders, disputes with neighbours, boundary conflicts, cattle tracks blocked, roads blocked, farming in protected areas or water catchment areas and the destruction of sources of water through misuse. Jackson, a Ward Tribunal member, gave an example of a ‘stubborn’ case they had to deal with:

Two men, who are living in Ilala town, had their farms side by side in Kiwawa village. Two years ago, one of them brought a boundary case

against his neighbour and went to the Ward Tribunal. The man who claimed the boundary said his neighbour was taking over a strip of land which belonged to him, which the neighbour denied. They were both hard headed and did not want to negotiate. We tried to get them to compromise but they refused. In the end, we moved the meeting to the site of the conflict, and they continued to argue about the boundary. The land involved was quite small, so we decided to make a compromise between them, giving each half of the strip of land. We placed new markers on the new boundary. When the meeting finished the two men removed everything, all the new markers and the conflict started again. Now the case should go to the magistrate's court, the Primary Court, not back to the Ward Land Tribunal, because it is a criminal case now, they can be sent to gaol for taking down the markers (Kiwawa, 9th March 2014).

Being a member of the Ward Land Tribunal is demanding both in terms of mental and physical stamina. Unexpected problems arise, such as some disputants refuse to attend the adjudication meeting. The Village Executive Officer has to be informed and the police are sent to pick them up. Those absentees can be fined for non-attendance or even imprisoned. Jackson explained that security is a recurring concern:

Some people are furious when they lose, they abuse the members of the Tribunal because they don't like the result. Some go as far as using weapons to attack the members with knives and machetes. We sometimes have to have a security officer travel with us to the conflict areas. (Jackson Luisinje, member of the Ward Council, Kiwawa, 9th March 2014).

When asked how they dealt with the threats of violence, Jackson, put it very diplomatically 'we take it calmly because we know we did the right thing' (ibid). Some problems are difficult to solve because there are no proper boundary markers, named 'beacons', natural or manmade, to help clarify the exact boundary. Some people decide to move the beacons put on the land to mark the new boundaries when they are not happy with the outcome. This is now a criminal offence and the police can take the case to the magistrate's court and the tribunal members are witnesses.

Joseph explained the ongoing problem of recruitment to the Tribunal. During the MKURABITA formalisation programme four years previously, the Village Council, the Ward Land Tribunal and the community received training on land legislation, land use planning and surveying. This training meant that the Tribunal members were both knowledgeable and experienced. From 2009 – 2012, the Ward Land Tribunal (WLT) was operating well as the members were trained and committed. But at the end of their term, the Village Council was legally bound to choose a new Tribunal.

The Village Council took off the whole group and nobody was left who knew the laws, the newly appointed Ward Tribunal members were not interested in the role, and refused to attend the meetings (Joseph, Ward Tribunal member, 13th March 2014).

The informants explained that firstly, the new members' lack of interest stemmed from the fact that feared for their safety. It was common knowledge that they would be subject to harassment from and abuse by some of the people involved in the disputes. The second reason was they felt unsure how to handle the cases, owing to the fact that they had not received any orientation or training for the position. Joel, a newer member of the Ward Land Tribunal, reported being 'uncomfortable in the role as he was not sure of the procedures and laws'. Finally, the Village Council had to request the former members of the Tribunal to return and they were re-installed. This was a short-term strategy, with the disadvantage that new people could not gain the knowledge and skill, as there was no plan in place to train others for the role. The claim that the Ward Land Tribunal members were trained and knowledgeable was called into question later. A Tribunal member outlined the following difficult case:

Shabani, bought land twenty-three years prior from his neighbour. He left a friend in charge of the land while he was away, but that person also left the area ten years later. Shabani returned to the village twenty-three years later looking for his land. He was not even sure where exactly his land was and there were people farming all around. He went to the Land Council to complain. When he opened the case, someone showed him exactly where the farm was, and told him that fifteen years

earlier, another farmer, Jeff, started using the plot and was farming since. The Village Land Council ruled that this is not Shabani's plot. The case was referred to the Ward Tribunal. When Jeff who was farming the land, was called to attend the tribunal, he did not appear. Jeff ran away from the village, out of fear of being in trouble over the case. Thus, Shabani won his case, as he turned up on the day, and he had kept the documents of the sale to prove his case (Joseph Ward Land Tribunal Member, Songambebe, 25th March 2014).

Afterwards the Ward Councillor, Enock Msimbira, invited us to his relative's house for some refreshments. In the privacy of the sitting room, I asked him about the judgement. Was it within the law in his opinion, as I had understood that there was a rule that twelve years of occupation of land means you have a customary right to the land? Enock Msimbira agreed that if land is abandoned by the original customary occupier, and if it was occupied and used for farming for twelve years, the person is now entitled to occupation rights. Any land abandoned and unused, after twelve years should return to the Village Council to be re-distributed. Enock Msimbira said that the problem was that often due to lack of ongoing training, the land laws are not being applied correctly. The Tribunal needs regular support in terms of training in order to do the job to the letter of the law. It was difficult for him to question their judgement, as it would be embarrassing for them and in addition, his father was one of the Ward Land Tribunal members.

The Village Land Council members and Tribunal members noted that the application of customary law regarding inheritance had become more equitable after the training and 'sensitisation' by MKURABITA and the Village Council. The Focus Groups I hosted, also, described what outcomes used to occur before the training:

When the husband dies, the elder son inherited the biggest share, as the custom was primogeniture, eldest male inherits the most. The widow and children got small portions, and sometimes the daughters got nothing. Knowing the Land Laws helped to make inheritance fairer for women and girls. The Village Land Council and the Ward Land

Tribunal now follow the law and share any inheritance among all the family (Joseph, Ward Land Tribunal, Songambe, 25th March 2014).

I was given this example of the numerous difficulties and attempts to solve them that the Ward Land Tribunal faces:

To give an example, there was a case of a polygamous family, about ten years ago when a husband died and left four wives and children, and the inheritance went to the eldest son. He inherited everybody and everything. When MKURABITA came, the younger kids were a few years older and they decided to argue their case for some of the inheritance, so they went to the Tribunal. The Tribunal heard the case and advised sharing a farm, the eldest got the largest share, the last got the smallest share. The Tribunal divided everything between the four widows and their children. Some of the family were still not satisfied with the outcome and continued to dispute again, but everyone got at some property (Joseph, Ward Land Tribunal 2014).

The work is physically demanding. The Ward Tribunal members travel from their village to the village where the hearing is taking place. The member must either walk or pay for a motorbike taxi to bring them to the village, only to find that sometimes, they have another long walk from the village to the farm still ahead of them.

The cost for the village dispute mediation is reasonable compared to higher level legal costs, but even minimal costs may still be too much for the poorest village farmers. It costs 10,000 Tanzanian shillings²⁰ to open a file and when the Tribunal goes to see the land, the disputing parties have to pay expenses, of between 25-50,000²¹ shillings for the field visit, depending on the distance. In Mlala and Kiwawa villages, where the farmland is very spread out, going to the farms can be very time consuming. The costs can then increase to 100,000 Tanzanian shillings²² for the members to visit the farm

²⁰ 10,000 Tanzanian shillings is equivalent to 4.20 euros. Available at:

<http://www.xe.com/currencyconverter/convert/?Amount=10000&From=TZS&To=EUR> .

²¹ 25,000-50,000 Tanzanian shillings is equivalent to 10.50 euros to 21 euros. Available at:

<http://www.xe.com/currencyconverter/convert/?Amount=25000&From=TZS&To=EUR> .

<http://www.xe.com/currencyconverter/convert/?Amount=50000&From=TZS&To=EUR> .

²² 100,000 Tanzanian shillings is equal to 42 euros. Available at:

<http://www.xe.com/currencyconverter/convert/?Amount=100000&From=TZS&To=EUR>. (Accessed 26 January 2017).

(Interview with Joseph Muyambwa 9th March 2014). The Tribunal members who are not from the village have to pay transport costs to attend the meeting and their costs are paid out of the fee meeting fee of 5,000 Tanzanian shilling.

The case can run into five meetings which is why the fee can rise considerably. Despite having little support the Tribunal members persist in their efforts, regardless of the challenges, as Andrea explained:

The work is so demanding, yet we are paid a pittance, but we do the job anyway. Some people try to ‘corrupt’ us, but we refuse to be corrupted (Andrea, Ward Land Tribunal Member, Kiwawa, 9th March 2014). The majority of the members of the Ward Tribunal avoid getting involved with corrupt practices, but ‘unfortunately, from time to time, someone succumbs to corruption’ (Andrea, Ward Land Tribunal, Kiwawa, 9th March 2014). When I asked why the Ward Tribunal members are prepared to work under these unattractive conditions they expressed personal pride in their work. The leader of the Tribunal expressed how the members were motivated by their identification with their village and desire to contribute to the community life:

It is important for the villages that the Tribunal is here to help resolve disputes, otherwise they might lead to more violence. Our work can even stand up in court, the statement we write about the case is signed by the witnesses and accepted even in the higher courts, even as far as the High Court in Dodoma (Joseph, Ward Land Tribunal member, Songambe, 25th March 2014).

Andrea acknowledged that their three villages were lucky to have a Village Land Council and Ward Tribunal, as many villages do not have any forum for resolving land disputes, which are the main source of conflict and disharmony in the villages.

Legal Aid in Morogoro

In order to understand the dispute resolution process and the kinds of legal assistance available to rural people to bring their cases through the Primary Court system, I applied to the Morogoro Paralegal Centre (MPLC) to visit their centre and interview some of their clients, volunteers and staff. The Morogoro Paralegal Centre hosted my research assistant Denis and myself on a visit for one week in March 2014. The Director, Flora Msaamba, one of the twelve founding members of the service explained the origins of the Centre. In 1993, lawyers from Women's Legal Aid (WLA) in Dar came to Morogoro to conduct a seminar on legal rights and to ascertain if a project could be started in Morogoro. There was a large gap in women's access to legal aid, especially outside of the large urban centres, so the lawyers conducted seminars on women's legal rights around the regions. After the seminar in Morogoro, twelve people were motivated to volunteer and set up a paralegal centre. The volunteers included the secretary of the ruling party (Chama Cha Mapinduzi) local branch women's wing secretary, who was able to find the group accommodation at the CCM offices. This became a liability later, as Flora explained that when multi-party politics came into Tanzania, 'We stopped using the CCM offices as this made us look too political, that is being pro the ruling party, so we moved to more neutral ground, the YMCA' (Flora Msambi, March 2014). Their first donor was the German agency, Freidrich Stifung, an educational foundation of the German Social Democratic Party which supports civic education and human rights projects worldwide. From that point onward, the Morogoro Paralegal Centre attracted more funding and grew as an organization. Their mission is to provide free legal advice for cases involving women and children, as very often they are in danger of losing their land or property. The Centre has developed expertise in using both the laws of succession and inheritance law. The Centre has four

programmes, two programmes are direct legal advice services for women, the Women's Clinic and a walk-in clinic on land and marriage issues. The other two programmes are advocacy and information, a Legal Advocacy programme informing policy makers on land rights issues, and a Legal education programme targeting the wider public within Morogoro district, on the Land Laws and the legal system. Communities in ten villages in Morogoro district were given training sessions on the Land Laws and women's rights to access and occupy land.

The legal centre has three small cramped offices, with files piled high on the desk of the two advocates, and in the filing cabinets behind. A group of paralegal volunteers sit in one room around a large table where they wait between seeing clients. A veranda facing onto a small garden provides a quiet relatively private space, for the paralegals to meet the clients and to take details of the case for the advocates. The local district council provides the office space, which is now becoming too small for the seven paralegal volunteers and five full time staff. The paralegal volunteers receive training and payment for their travel and food expenses. When asked why he took on the voluntary work, Mahmood Nkuku, said that he was 'Motivated by a spirit of being a volunteer'. Mahmood was a teacher and later became a civil servant, in his younger days. But now, in his retirement, he became interested in volunteering as a paralegal volunteer. He stated: 'I don't care that the work is hard and the centre is far from my village. I am happy to do it, I am satisfied when cases get solved' (Mahmood Nguku, Volunteer 10th April 2014).

I conducted interviews with a number of clients, but one in particular had a difficult and complicated case which illustrates the obstacles to justice for the rural poor. Notwithstanding the challenges which would crush any confidence in the system, the

actors in this case, believe that a just outcome is possible, and they are prepared to make sacrifices to achieve it. Telesia related her story to me and staff filled in some of the legal background over the course of a five day visit to the legal centre, as detailed below.

Telesia's Story

Telesia lives in Mfifa, Mvomero District. She is a widow with six children and four dependents, including two grandchildren who were orphaned when her son and his wife passed away. In 2003 she and her husband were allocated a plot of twenty-five acres by the Village Council. The couple were among a number of villagers who were given land at that time. The Village Council did not measure the farm exactly, it was only an estimate, but the Council members said to her and her husband, that 'this uncultivated land is for your family'. She and her husband 'cleaned' the bush and they took down huge trees. 'It was very hard work' she said, and they had to hire some people to help. They made boundaries with traditional hedges and planted fruit trees, oranges and mangos around the farm boundaries. She grew crops of maize, cassava and legumes. Tragedy struck in 2007, when her husband died after a brief illness.

Telesia continued to farm without any problems until 2008, when she found a man cutting down the maize she had planted. She walked around the farm and found that he had cleared trees from the boundary and planted two acres of ufuta (sunflowers) on part of her farm, while leaving uncultivated land next to the farm untouched. She was shocked and could not understand what was happening. He refused to answer her when she asked him why he was cutting down her crop. A couple of days later, she found a woman planting more ufuta on another part of her farm. She asked the woman what she was doing there and the woman said she was just a labourer working for the owner, Juma Bang'ala. She found out that Juma Bang'ala, was not from the village, but had a

farm in another village quite far away. Telesia reported the encroachment on her farm to the balozi, (the representative of the village ten cell system). The balozi, or representative, was the intermediary between the government and the people and was responsible for keeping the peace. The balozi wrote a letter asking Juma Bang'ala to come for a hearing. He did not arrive for the meeting, but the woman who worked for him arrived alone. The balozi wrote a letter of referral to the sub-division chairman, who then referred the case to Village Land Council. At the end of 2008 she was called to the Village Land Council and the two disputants were heard and witnesses were called. The man claimed he had bought the plot at the same time the Village Council had allocated the land to Telesia. The whole group visited the farm. Her case was helped by the fact she could show the document she had received from the Village Council allocating her the land. Telesia won the case.

She forgot all about it then. But the Village Land Council is not a court, it is only for reconciliation, and it does not have legal status. When her crops were ready for harvest, she went to the farm and harvested the cassava. Life went on until one day in 2009 when she received a letter from the Ward Land Tribunal requesting her to come to a hearing. She arrived at the Ward Land Tribunal and Juma Bang'ala was already there. Instead of having a meeting first, the whole group, members of the Tribunal, Juma Bang'ala and herself, went directly to the farm. The Ward Land Tribunal members questioned her about the farm, and spoke to her in an abusive manner, claiming she was telling lies. There was only one woman in the Tribunal and she tried to support Telesia, even telling the other members of the Tribunal that what they were doing was not right, and that they were 'abusing Telesia'. The Tribunal refused to accept Telesia's document from the Village Council as evidence. Juma Bang'ala claimed he had bought the land in 2008 and her that her documents were fake. When they returned to the

village, Telesia and Juma Bang'ala were told to come back with their witnesses. She brought the Village Council members as witnesses. The Ward Land Tribunal members were abusive to the Village Council and accused them of helping to deprive the rightful owner of his land. Finally, the Tribunal members told her to wait to hear the judgement. On the day of the judgement, only two Ward Land Tribunal members were present; the secretary and a woman she had not seen before. Juma Bang'ala was declared the winner and was given the whole 25 acres. They announced the judgement to Telesia outside of the Village Land Office under a mango tree. Telesia was in shock over the judgement, but nevertheless, she decided to appeal her case as she felt it was unfair and unjust that she loses the land. She asked for a copy of the judgement and she was told she would have to pay 100,000²³ Tanzanian shillings for a copy. Telesia was surprised as normally it is free and she needed the judgement in writing to make an appeal. She did not have the money to pay for it so had to return home empty-handed. Throughout this time Telesia was still in mourning as she had lost her son and his wife. She was very depressed at this turn of events. She decided to ask the Ward Executive Officer for help over the issue of payment for the judgement. He asked one of the female Ward Tribunal members to do something to help Telesia and she said Telesia must pay the 100,000 shillings, but that she could pay in instalments.

Without her knowledge, a trespassing case was taken by Juma Bang'ala against her, for being on 'his farm' was going through the courts. The case first went to the Ward Land Tribunal and as Telesia was not informed about it she did not appear for the hearing. This meant that the case was transferred from the Ward Land Tribunal to the Primary Court. As Telesia was not sent any notification that the Primary Court were

²³ 100,000 Tanzanian shillings is equivalent to 42 euros Available at: <http://www.xe.com/currencyconverter/convert/?Amount=100000&From=TZS&To=EUR>. (Accessed 26 January 2017).

hearing the case against her she did not appear in court and was considered as an absentee.

Some weeks later, while she was at home, security officers from the police post came to her house and arrested her on charges of trespassing on Juma Bang'ala' farm and took her away. She spent the night in the cell in the local police post. The next day Juma Bang'ala came and she heard him loudly talking with some police officers. She heard him making a deal with the men to have her locked up, one of whom she thought was the Head of Police Post. Then she heard Juma Bang'ala telling the police woman on duty to write the sentence as 'twenty-eight years and six months'. The policewoman did not want to co-operate with them, and she refused. She could hear the policewoman shouting at the man: 'I won't write 28 years and six months, I won't, you don't have to put me in hell for what you are doing' she said. The policewoman also refused to authorise a police vehicle. She shouted at them saying 'the vehicle is for criminals and she is not a criminal'. She told them to use their own car. and she threw away the documents of the case in disgust. Juma Bang'ala and the police officers had to hire a taxi to take Telesia to the prison in Morogoro. She served her six-month sentence in Morogoro Prison. In 2009, while she was in prison, the Legal and Human Rights Centre (LHRC) officers visited the prison. It is part of their mission to visit prisons and identify cases of human rights violations. The Legal and Human Rights Centre decided to take up her case. Telesia was delighted and she wondered how she had never heard of them previously.

After serving her sentence, she returned home to find that all her crops had been harvested by Juma Bang'ala, the maize, sunflowers, cassava and legumes. It was a very difficult time for the family who were still in mourning for the eldest son and his

wife. Juma Bang'ala was very aggressive towards her and her family. Whenever he saw her children he shouted at them, threatening that they would end up in jail, he even called to the house to abuse them. The family depended on help from other family members and neighbours to survive. In spite of serving her sentence of six months, Telesia was summoned to court to pay the court costs for the trespassing case totalling, 280,000²⁴ Tanzanian shillings. The magistrate when he heard the details, said that Juma Bang'ala was responsible for bringing the case, so he should foot the bill, and he dismissed the case.

That was not the end of Telesia's ordeal, however, as Juma Bang'ala later reported her to the police; accusing her of destroying his house and stealing his gumboots and cooking oil. He then took a case against her to the Primary Court. The court sent security officers to his house to verify the damage and they saw that the house was in fine condition and that there was no evidence to support his claims. The Primary Court found her not guilty.

The staff from the Legal and Human Rights Centre (LHRC) visited Telesia at home when she was released and they referred her case to the Morogoro Paralegal Centre. Morogoro Paralegal Centre took on her case and agreed to appeal against the judgement of the Ward Land Tribunal. The staff and volunteers in Morogoro Paralegal Centre were shocked by the case. The Legal Officer and Flora the Director both emphasised that it was very unusual that someone would spend six months in jail for trespassing, as this was not a criminal case. Msamba, one of the more experienced volunteers, went to Morogoro prison to investigate what the prison authorities knew about the case. The

²⁴ 280,000 Tanzanian shillings equivalent to 118 euros. Available at: <http://www.xe.com/currencyconverter/convert/?Amount=280000&From=TZS&To=EUR>. (Accessed 26 January 2017).

prison guards informed him that everyone in the prison service knew that Telesia was innocent and that she had been set up by the man who had stolen the land. The prison staff were informed by contacts at the police post that Juma Bang'ala had bribed the Police Post manager and the Head of Police to have her locked up.

Telesia had to travel eighty kilometres from her village to Morogoro town to follow up on the various administrative issues involved in trying to appeal her land case. Having no relatives or friends in Morogoro, she had to sleep at the bus station as she could not afford to pay for lodging. Her daughter travelled from Shinanga, about forty kilometres away, to stay with her mother at the bus station because it would not be safe for a woman to be there alone at night. When Flora, the director of MPLC realised Telesia's predicament, she offered her a room and board in her home during her visits. The staff and volunteers helped her with food and transport money from time to time.

The paralegals made a visit to Telesia's village and asked for a meeting with the Ward Land Tribunal. They found a new Tribunal, as the old one had been disbanded after its three year term of office. The new Ward Land Tribunal knew little of the case and they could not find the judgement written by the previous Ward Land Tribunal on it either. As the judgement was missing and time had elapsed, the Morogoro Paralegal Centre asked them to open a new case. A few days later, the Tribunal found the judgement. But the paralegal staff could see that the official stamp on the judgement was forged, therefore it was null and void. They believed that this was now a criminal case, as forgery constitutes a criminal act. In 2010, Morogoro Paralegal Centre returned to the village and convened a meeting with the Village Council, Telesia and Juma Bang'ala. Juma Bang'ala had to be dragged there by the security people. The Village Council confirmed that the original Ward Land Tribunal case had not been conducted properly

according to the official procedures. Morogoro Paralegal Centre took the case to the District Land Tribunal. Unfortunately, the case was lost on the grounds that Morogoro Paralegal Centre had not provided enough proof that the judgement document was forged. The paralegal staff were taken by surprise with the judgement, Msaamba summed up the situation: ‘We were not strong enough to show that it was a forged document’.

Today, Juma Bang’ala is still actively farming on her land. The rumours circulating in the village about him are that he is renting a few acres of the farmland and had raised a mortgage on the rest, partly to pay for the court cases. The case is now pending in the District Court. Telesia’s case is still ongoing, Morogoro Paralegal Centre continue to act for her and hope that a better outcome is possible. Telesia’s only document for her land, a letter from the Village Council, saved her when she faced her adversary at the local level, but once outside her village, she was disadvantaged against an opponent with greater wealth and was let down by a system where bribery is commonplace. Even having a CCRO in this instance probably would not have helped her. This case illustrates the corrosive effects of corruption which disproportionately affect the poorest in the communities. The case reveals the level of corruption in the system, at each stage; the double allocation of the land, the distorted judgement of the Ward Land Tribunal, the bribe taking by the police officers etc. The obstacles to achieving justice are almost insurmountable, but not completely impossible. Despite this, it is important to balance this one sided negative vision. Many people sympathised with Telesia’s fate and tried to help her, the police woman, the prison guards, the magistrate who threw out the case for Telesia to pay court costs, the Morogoro Paralegal Centre staff and volunteers to name a few of her supporters.

What Chance for the ‘Have Nots?’

Despite the support received, Telesia is one of many Tanzanian citizens who are having grave difficulties getting a just outcome when their land is unlawfully encroached upon. The court system cannot fulfil the promise of justice for those whose land rights are compromised by neighbours, strangers or the state. Smallholders, farmers and agro-pastoralists cannot afford the official exorbitant costs of court level litigations, nor the unofficial bribes. Village residents were aware that they lacked the language, legal knowledge and financial resources to sustain years of litigation. Their lack of cultural capital results in only the better off winning. The ‘haves’ most often win against the ‘have nots’. Even when the have nots appear to win in court, the better off can appeal the outcome and the poor can find themselves ‘outspent, out-lawyered and out-lasted’ as happened with the pastoralist communities (Askew et al 2012:134). When the pastoralists of Kiteto brushed with the court system, it left them impoverished and facing new threats from the next set of farmers encroaching on their land, without the means to fight their case.

That Telesia’s struggle for justice continues years after the initial usurpation of her land rights, constitutes just one example of the initial usurpation of her land rights, a painfully arduous and fruitless search for a just outcome. An email from Flora Msaamba in the MPLC in late 2015 confirmed that Telesia was still waiting for her case to be resolved. The volunteers, staff and Telesia herself remain quietly determined to continue the fight. Telesia demonstrated in her interviews a strong commitment not to give up on her land.

My informants living in villages or working at local level, without exception, confirmed that they preferred engaging in village level mediation, and found it to be

the most appropriate forum for dispute resolution. Decentralisation of authority over land to village level, in theory, should mean that villages can provide locally appropriate levels of mediation and adjudication of land disputes. Land law and policy bestow on villages a high level of responsibility for local land allocation, management of resources, recording of land rights and mediating disputes. Yet, village authorities receive the least amount of support, in terms of financial assistance, capacity building or infrastructural development. Support to village level structures is not prioritised at central government level, the failure of the government Strategic Plan for the Implementation of the Land Laws (SPILL) initiative to address the needs of village level bureaucracy being one such instance. SPILL instead of supporting villages to fulfil their responsibilities, supported District Level land administration.

Many villages do not have Land Adjudication Committees, Village Land Councils or Ward Land Tribunals, although this is changing as according to Pedersen by 2010, all villages in Handeni had Village Land Councils in place (Pedersen 2013). My informants had reservations about the effectiveness of many Village Land Councils, although they were the preferred option. The main barrier to tenure security lies in the power imbalance between village communities, their leadership and state authorities. Village communities lack the cultural capital, the knowledge and expertise which they need to manage the system well, and they lack the social capital to press their claims on an uninterested centralised state bureaucracy. The examples used in this chapter illustrate the numerous obstacles placed in the path of the poor on their journey to seek justice.

Chapter Six – Conclusion

This thesis started life reflecting on the question of whether land formalisation can achieve tenure security and facilitate smallholders and pastoralists accessing loans for development. This chapter will review the conclusions from the research undertaken to answer those questions. The discussion of these findings is organised into three main parts. Firstly, the role of policy and legal frameworks in defining what land formalisation is and how it should be applied is considered. Secondly, the experience of village residents of the process of formalisation, their perception of tenure security and insecurity and the role of gender in structuring land rights. Finally, a discussion of the legal frameworks in practice and how the implementation of legal rules, can either enable or constrain the tenure security of village residents will be completed.

It is important to underscore that despite the barriers to achieving a just outcome in land disputes outlined in the previous chapters, I met informants who expressed a profound belief that justice could and should be attainable and demonstrated resilience in the face of challenges. The agency of my informants was evident in their attempts to seek redress for disputes and their critical approach to tradition and custom. Despite the uncertainty attached to using the law to enforce land rights, some of my informants who had the financial means were prepared to fight for their entitlement to land in village or district level courts. The story of Telesia is one of courage and tenacity in the face of great difficulties, but also attests to the strength of the bonds of sociality and concern for fellow citizens shown by the police woman, the prison guards, volunteers and staff of the local NGO. Both Telesia and the NGO staff were certain they would not give up the fight. Even in the face of police censure the bonds of sociality were visible in the work of the human rights lawyers who offered their services to pastoralist communities and the support shown by the sympathetic District

level official who worked closely with CORDS and the Ward Councillor who expended time and energy advocating for resources to improve life for his constituents. Most informants were willing to join the drive for formalisation in Manyoni, despite their uncertainty about the outcome. When their certificates were delayed, they did not hesitate to make their annoyance known to their representatives and the staff at the District office.

Tradition was utilised by my Maasai village informants to garner international support for their cause. Opportunities to benefit from the tourist trade were grasped by pastoralists and successful craft and photo-tourism businesses were developed. Traditions which reduced the life chances for females were debated in public and in private and very often challenged. For example, the majority of my female informants in both Manyoni and Monduli districts conducted their businesses, sought to educate their children both female and male, and expressed their desire to see their female offspring inherit a share of the land or property, despite the ‘shackles of tradition’. Maanda Ngoitikio and the staff at the Pastoralist Women’s Council supported a successful girl’s secondary boarding school for members of the pastoralist community. The school had gained a good reputation and hundreds of students, with waiting lists of eager students, despite the public discourse that Maasai families do not wish to educate their female children.

As I listened to my informants and took part in discussions on formalisation, I quickly learned that tenure security was the highest priority for all rural residents. Informants from every walk of life, with high levels of education or very little agreed that tenure insecurity was pervasive. One of my first interviews in Dar es Salaam took place in the offices of Haki Ardhi with the Director, Yefred Mwenzi, who stated unequivocally ‘nobody in Tanzania has tenure security, the President owns all the land’ (Interview

with Yefred Myenzi, Dar es Salaam, 28th January 2013). Research on land questions in Tanzania has led Haki Ardhi to the conclusion that formalisation is irrelevant at best, as titling all the land in Tanzania will take over ‘forty years’, and in the worst case scenario, will ultimately endanger the land rights of the poor (ibid).

I argue that formalisation, in the context of Tanzania, is neither the cause of land conflicts and dispossession nor is it the solution to tenure insecurity. It is vital to clarify the meaning of formalisation in Tanzania, which is not equivalent to the Western concept of outright ‘ownership’ in the sense which freehold titles implies. Firstly, the act of formalising land in Tanzania, constitutes a legal recognition of the right to occupy land on an extended lease. Secondly, there are two crucially different types of formalisation possible, firstly, Certificates of Village Land (CVL) which denote the land rightfully under the governance of the village authorities, and secondly, individual or group Certificates of Customary Rights of Occupancy (CCROs). It is my assessment that formalising village land is critical to ensuring that village authorities and village residents have clearly documented evidence of the extent of their territory and have security of tenure over their land, farms, water sources, forests, and wetlands. Formalisation of individual plots and farms is of secondary importance to securing village land, but it is an important strategy in some circumstances, but not all. For example, pastoralist organisations regard titles for individual farms as inappropriate for their grazing systems. The opportunity to formalise group held communal land is clearly stated in the land laws, but in practice, this has not been encouraged by any of the agencies assisting villages with formalisation (Fairley 2013:7). This, I believe, represents a missed opportunity, as certain types of resources, grazing pastures or water sources may be utilised communally and titles which reflect such practices are very useful when the need arises to prove rightful occupation.

For the government of Tanzania, formalisation represents a technical means to support investment in land with the priority being to ensure access to land for investors (URT 1995a, Sundet 1997, SAGCOT 2016). This aspect of formalisation is a cause of profound unease over land rights. To understand the origins of tenure insecurity, it was important to delve into the historical record, to assess the legacies from prior political regimes as well as considering the present moment. Colonial, socialist and neoliberal eras, each in different ways, have contributed to this uncertainty and insecurity over land rights in Tanzania. The bridge which links these ideologically diverse political projects is their commitment to a particular vision of 'development'. To achieve the goal of development for the colonial administrators, the socialist project designers and the private sector partners of the neoliberal reforms, two essential changes to African lifestyles were deemed necessary; customary land tenure must be formalised and African agriculture must be transformed. The transformation was envisioned as the modernisation of agriculture, commercial, mechanised and capital intensive. The impulse to transform African agriculture manifested itself in the socialist time as settlement into villages, or villagisation programmes for smallholders and ranch development for more 'progressive' pastoralists. The most recent neoliberal inspired form of this vision, is the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) initiative. SAGCOT is a flagship of the public/private partnership model, which aims to open up one third of Tanzania's arable land to commercial agricultural investment. This modernisation drive is expected to involve local smallholders as contract farmers and labours, playing a secondary role to the large scale enterprises. The failure of past programmes to transform agriculture in Tanzania has not induced any critical reflection on the efficacy of this model of development. I use the idea of the 'fetish' to capture this obsessive belief in a concept, which has proven to be a failure

in terms of development more often than a success, yet, continues to attract faithful believers.

The adoption of these policies and legal reforms has been attributed to pressure from the IFIs and donors, driven by neoliberal policy prescriptions. There is a widespread belief among activists in Tanzania and national and international scholars that international donors have compelled governments of the developing world to change the focus of their policies and laws away from reducing poverty and the welfare of their people to making their country attractive for ‘capital’ (Harvey 2005, Shivji 1999, Amanor and Moyo 2008). Securing investment from abroad is a strategy pursued by most low income countries in order to develop their economies in an unequal global market (Carmody 2015). In the context of the land laws and policies, I would argue that the Tanzanian state has shown agency in relation to international pressure, refusing to accept both international and local recommendations on the formation of property rights when those recommendations clash with the objectives of the state. The agents involved in formulating the policies and law pertaining to property rights followed their own agendas and pursued strategies to maximise control by the state over ‘the means of production’ and resisted a fully open private land market (Sundet 1997).

Sundet’s revelations on the development of the National Land Policy 1995, demonstrate how the process was captured by the Ministerial agenda, with limited input from other national stakeholders, such as parliamentarians or civil society actors or donor agencies. When Sundet interviewed senior civil servants involved in the creation of the National Land Policy 1995, he was told that the story of Mtwara acted as a wake-up call for the government and alerted them to the unforeseen problem of accessing land for development (Sundet 1997). Most villages in Mtwara had been mapped and

registered and were found to be co-terminus, with the result when land was sought by the government for development purposes, there was no land to spare for development, which for the technocrats was not to be tolerated. When land is in such short supply, the only option for government is to expropriate village land for development projects. This state led approach to development contrasts with the aim of neoliberal policies, i.e. the IMF ten point plan, which emphasises reducing state control over productive forces of the economy, reducing state spending on services and releasing the power of the private sector (Williamson 1989).

Tanzanian land policy reform retained state control over land the greatest national resource land. The state enshrined ultimate power over land matters, with the President, and the Commissioner of Lands as his/her representative. The National Land Policy 1995 and the Land Laws of 1999 in principle granted more autonomy to villages in matters of the administration of Village Land, but with many built in limitations to their power. The right to allocate land to village residents or outsiders is one of the most important functions of the village authorities. However, restrictions have been placed on their power of allocation. The Village Assembly has the right to approve or reject all allocations to outside investors of 250 hectares or less. However, land parcels greater than 250 hectares are administered by The Commissioner of Lands, who has automatic rights of allocation to investors. If villages agree to allocate land to investors, once the investment term has ended, or if the investor reneges on the investment, the land is automatically transferred out of the category of Village Land and becomes General Land, which is government controlled land. Thus, in agreeing to investment in their village land, communities are surrendering control of their land. In the best scenario, they will receive compensation for the land transfer, but only for improvements made to the land, and not for the true economic value, i.e. the loss of the

means of livelihood and food security which results from the loss of large tracts of land.

Nelson and Sulle (2009) noted that compensation to villages for land taken for biofuel production

was being calculated not on the real economic value of the land and its resources, such as the economic value of forest products, but instead on 'improvements' to the land such as cultivated areas, trees planted or permanent structures (Nelson and Sulle 2009).

Village communities are also subject to the authority of central and local government in fundamental matters of village governance; the election of village officials, the Land Use Plans and the creation of bye laws. The approval of the District Councils must be sought for the elected officials and the Ministry must ratify Land Use Plans and byelaws.

There is also a fundamental question of what legally constitutes Village Land?. The two Acts, the Village Land Act No. 5 1999 and the Land Act No. 4 1999 are contradictory, i.e. the Village Land Act 1999, clearly states that all land within the boundary of the village is considered as Village Land. However, according to the Land Act 1999, 'unused village land' can be taken into the category of General Land, and may therefore be appropriated from the village, to be allocated by the government to investors or to well-connected individuals. Land may be 'unused' for valid reasons, such as it may be lying fallow or be retained as 'reserve land' not cultivated, but kept for future needs. This ambiguity creates uncertainty for village residents and opportunities for the unscrupulous.

Semi-autonomous villages

The challenge for us in the village is that the chairman is not paid, any problem night or day is brought to his door and he is expected to solve it. The other problem is that in some villages, the chairman will sell the land to an outsider (Interview with the Village Chairman, Nangolo, 13th May 2014).

In 2004, the MKURABITA programme was heralded as a transformative event in Tanzania. The programme started out generously funded by the Norwegian donors and promising legalisation of the land rights of poor citizens' properties alongside helping them to realise the value of their assets. By 2013, MKURABITA was a much reduced programme, still piloting land titling initiatives, but with a small government budget and no donor funding. MKURABITA's main objective was not land titling, but instead consisted of recommending reforms which would streamline the legal framework and administrative procedures to reduce transaction costs for small businesses and land holders. The expectation was that the reforms would eliminate the need for the unofficial or 'extra-legal' arrangements which proliferated when properties were not registered. In 2007, fifteen proposals for reform were recommended by the programme, which involved radical changes across the Ministries, changing laws and policies on land, business and property rights laws. The MKURABITA Coordinator confirmed in January 2014 that the fifteen land reform proposals submitted by MKURABITA had not yet been approved by the Ministry of Lands, Housing and Human Settlement Development, seven years after they had been submitted for consideration. The Coordinator reported that the reforms were being discussed by the stakeholders and that only one reform to the legal structure of business, relating to the death of the owner, had been instituted out of the recommended fifteen reforms in the 2007 report. During the interview, the Coordinator admitted that it was difficult to bring about change as 'power gets in the way' (February 2013). The reality was that the Ministries had their own agendas and priorities and were resistance to change.

I had further reason to reflect more on 'power and its disguises' as I realised that my visit to Manyoni District and specifically to those three villages, had been orchestrated by the Coordinator with a specific purpose in mind. When I walked into the

Coordinator's office, I presented an opportunity for the programme to tackle an intractable problem of delayed certificates in the Manyoni district. The strategy employed by the Coordinator was to send the foreign researcher to the villages which had been left without their certificates. A report from a foreigner being sent to the higher echelons of the MKURABITA programme and the District Council should galvanise the funding needed and the enthusiasm to complete the registration process. Indeed, this covert plan had the desired outcome, and my visit was instrumental in pushing the MKURABITA programme staff and district officials to complete the certificates for the village residents. The MKURABITA programme in Manyoni succeeded eventually in helping over 2,000 residents gain their Certificates of Customary Rights of Occupancy.

In addition to gaining certificates for the residents of the villages, MKURABITA had several other intended and unintended effects; the three village communities became more aware of what formalisation entailed and of the value of land. Ibadaa Njoghomi, a village resident of Kiwawa stated 'we were asleep before MKURABITA to the value of land'. Without the financial assistance of the MKURABITA programme, the villagers could not afford the significant costs involved in surveying and demarcating the village and preparing all the documentation for CCROs. The Chairman explained that 'we would not even know how to do it without MKURABITA training'. The Village Council members, however, attested to the fact that even before formal titles, land sales and transfers were regularly taking place in the communities, even during socialist period when land sales were prohibited by law. Sales were usually witnessed and a paper recording the transfer was signed by a member of the Village Council, which was accepted by the villagers as a binding contract.

Land value had risen sharply in the last three to four years owing to land scarcity in the three villages. Many farmers with small plots would like to purchase more land, but it had become too expensive for the majority of village residents, and vulnerable groups, such as widows or young people, have little chance of buying plots. Three key reasons were given for this change; the introduction of lucrative cash crops, such as lentils, which was gaining in popularity due to high returns; migration into the village from other parts of Tanzania, as the migrants sought what they believed was cheaper land prices in Singida, and finally the competition between the need for grazing land and land for crops was intense.

The effectiveness of documented rights; Land Use Plans to the village and Certificates of Customary Rights of Occupancy to the village residents was ambiguous. The Village Councillors in Mlala reported that even with a Participatory Land Use Plan (PLUP), many individuals did not adhere to the plan and farmed or grazed animals in places designated for other purposes.

Before MKURABITA people invaded each other's land, every piece of land is in the land use plan. Even before this one, a land use plan existed and some people would still invade areas for fallowing and start cultivating (Christopher, Village Chairman, Mlala).

Nonetheless, having a CCRO was considered beneficial by my informants. The chief benefits of CCROs for smallholders in Manyoni, were firstly, tenure security, secondly, being able to pass on their land to their family through inheritance, and thirdly to use the land as collateral for a loan. Selling land was last on the list of priorities for all of my informants, as land was the main source of livelihood for the village community. The Maasai pastoralists living in Monduli district have an even greater concern for tenure security than the villagers living in Singida, as northern Tanzania has been the site of the land dispossession from pastoralists for conservation and tourist projects

since colonial times (Nelson 2012a). Alienation of land to both local and international investors takes place with little or no consultation with local users, nor do they receive compensation for their loss of homes and livelihood (Nelson et al 2012). Maasai organisations have used the image of the nomadic pastoralist as an 'indigenous' African, living a lifestyle governed by customs and traditions emanating from a pre-colonial Africa world. This timeless, apolitical and ahistorical representation of pastoralist Maasai has been appropriated by pastoralist NGOS as a means to attract funding from international donors for 'community' organisations, leading to a mushrooming of NGOs. This strategy has also been successful applied to attract photo tourism projects to pastoralist villages.

For pastoralist organisations, formalisation functioned as a means of defining boundaries and having documented evidence of rights to land. For CORDS, gaining a Certificate of Village Land (CVL) is the best protection against land dispossession for pastoralists. Having documented evidence of the extent of village lands is a precautionary measure in case of land disputes which could end up in court. A Certificate of Village Land (CVL) was also of practical importance for pastoralist villages through the creation of the Land Use Plan which determines which areas are kept for grazing, farming and residential plots. Village communities are expected to be involved in drawing up land use plans and mapping their resources. Many informants voiced the opinion that the Land Use Planning exercise was essential to clarify how land should be used within the village. CORDS personnel explained that their policy was against individualised titles, which fence off land parcels and can block access to water or grazing and cause land disputes.

The CVL, it was hoped, will also ensure more control over access to wildlife dispersed across pastoralist lands, and the revenue through wildlife photographic tourism, which has brought resources to some village communities (Nelson 2012: 368). Even with boundaries defined on paper, there is scope for villages to negotiate to share resources communally, such as special grazing areas, forests or water sources or to develop conservation areas across several villages for photo-tourism projects. One problem which has reoccurred for CORDS and the villages, is that after much effort to gain a Certificate of Village Land, the District Council can split villages and render the title void, which is what had happened in Nangolo in 2005. The village of Nangolo was demarcated and beacons were placed at the boundaries. Later, it was divided into three villages and thus the Certificate of Village Land was rendered null and void. This is wasteful of resources and frustrating for the village authorities who spent time and effort on preparing the certification process.

Negotiations between villages are not always successful, as the case of the reservoir on the land adjoining the villages, demonstrated. The reservoir was part of a large commercial farm which was created out of land belonging to the original Olomotoi village. Olomotoi had grown so large in population that it needed to be divided into two villages, Olomotoi and Mindoi. When the company leasing the farmland came to the attention of the District Council for breaking the terms of the lease, the Council had grounds to revoke the license and terminate the lease. Thus, the farmland, which contained a very large reservoir became potentially available to the villages as a water and grazing resource. This became an intractable contest between the villages, with village leaders holding out for control over the reservoir, rather than being prepared to share the resource equitably. In the end a new third village, Olenashai was registered which was given the entire farm as part of its territory.

The Land Laws of 1999 have put in place strong safeguards for women, The Village Land Act No. 5 enshrines the principle that ‘The right of every woman to acquire, hold, use and deal with land shall to the same extent and subject to the same restrictions be treated as the right of any man’ (Wily Alden 2003:47). Any mortgages arising from the land must be agreed by the co-occupier, thus if the wife has not given consent, the mortgage is invalidated. The Village Land Council must have female representation, and three of the seven members must be women. Customary rules which deny women access to land, occupation or use are now rendered null and void. The land laws are based on the equality of male and female entitlement to hold land and as such to outlaw discrimination. But one can ask what does this really mean when customary laws which discriminate against women are codified? Furthermore, inheritance laws based on religious precepts contravene the notion of gender equality?

Customary practices are being challenged and modified; by women’s rights groups and as more women and men are educated and in response to socio-economic change. In Manyoni, the majority of land was recorded in joint names of husband and wives and this is a radical departure from tradition.

In Maasai communities, the ties to traditional practices are stronger and many of the older women interviewed were less likely to be educated or own livestock or land than their male counterparts, but even those traditions are changing. More women are becoming educated, running small businesses and questioning their subordinate position. Women have become outspoken in campaigns for Maasai land rights as exemplified by the women’s protest against land dispossession in Loliondo which was coordinated by the Pastoral Women’s Council. Hundreds of women took part in the

protest against the creation of a wildlife corridor which would remove 1,500 kilometres of village lands from village control.

While customary inheritance rules are challenged, there is much less debate or questioning of Islamic inheritance rules which discriminate against women. Under Shar'ia law as practised in Tanzania, women must receive only half the share of inheritance of a male relative, son, brother, nephew, i.e. daughters receive half the share of the deceased parent's estate that their brothers receive. A widow with children may only receive one-eighth of the estate, while a widower with children is entitled to a quarter of his spouse's estate. Men may marry up to four wives under Islamic law, and for women in polygamous marriages this has serious repercussions, as all wives receive a portion of the wife's share of one-eight, therefore, if there are four wives, each receives one-thirty second of the estate. The situation of women under Islamic law has not yet been challenged in court to date and the Shivji Commission (1994) advised caution in attempting legal reforms which affect deeply held religious belief, and argued that such changes have little chance of success (URT 1994a:256).

Finally, whatever value land titles as documented evidence can have, depends largely on the strength of institutions which administer land and the legal system which must uphold and defend those rights under the law. This is where reality hits hard, as defending rights to land in court presents numerous obstacles in the way of the poor. The everyday operation of the justice system conspires against the poor, who lack the knowledge, wealth and connections to make their way through the barriers placed in their path.

Getting Justice

Can land titles be a defence against dispossession? It is possible, but much depends on the social capital of the parties involved. The legal framework can be used to dispossess landholders as well as it can be used to defend their rights. There are many obstacles blocking the way in the search for justice. At the macro level, these include state centred control over land in Tanzania, the over-riding priority given to investment in land as a development goal, and the legal means at the state's disposal to effect this. Additionally, the limitations placed on the rights of villages over their territory dilutes the effectiveness of devolution of powers to the village authorities. At a micro-level, the corrupt practices of the state institutions responsible for administering justice leaves many poor people without any recourse to justice when their land is encroached.

Legal pluralism operates in Tanzania and one of the strengths of the Land Laws 1999 is the recognition of customary rights to land on an equal basis with statutory rights, with or without documentation (Alden Wily 2003, Knight 2010). For the vast majority of my informants, the mediation structure best suited to settle land disputes is the one closest to the people involved. In this context, the Village Land Council and the Ward Land Tribunal. There was a general agreement in both Manyoni and Monduli districts, that mediation of land disputes by village leaders, elders and clan leaders was trusted to be fair and less susceptible to corruption than the court system, and indeed was the most practical option. Although there have been instances of corrupt practices by village leaders, my informants found merit in having village leaders, such as the balozi, the Village Chairman and one's immediate neighbours, vouch for the long term occupancy of the rightful land holder in a dispute. Their knowledge of the history of land occupation in the village is invaluable and is a resource that is not available anywhere else. The findings of the Shivji Commission (1994) confirm this view.

Village dispute mediation is also the most trusted and practical for village residents both in Manyoni district among small holder farmers and in Monduli district among pastoralist Maasai.

In contrast, the court system was viewed with suspicion and considered to be inherently corrupt. Even those better off individuals who could afford to take a court case, relayed to me that they had little confidence in the official legal systems of redress or dispute resolution. The detailed case of Telesia in Morogoro demonstrates the level of corruption throughout the system, from the police service to Tribunal officials and court personnel and the devastating effects this has on the most vulnerable people.

Unfortunately, the ability of village level dispute resolution processes to operate effectively is hampered by the lack of a sanctioning authority for the Village Land Council and the lack of financial and logistical support for the activities of the village committees and councils. The Village Land Council has responsibility for dispute mediation and reconciliation, but can only recommend actions, but cannot sanction those who transgress. All cases which cannot be amicably resolved are sent to the Ward Land Tribunal, which can make a judgement and sanction transgressors.

Both the Village Land Council and Ward Land Tribunals were dependent on outside help for the training on the laws and procedures and basic equipment and materials needed to fulfil their remit. Officials from the village, members of the Tribunal and Committees asked the NGO staff and myself for training on the land laws, as they felt that their knowledge was inadequate to the tasks they were asked to undertake. There was a general feeling of frustration conveyed that ‘the government was not helping us, rather, expecting NGOs to step in to provide resources’ (Interview with Tingide Letuu Village Chairman, Nangolo, 13th May 2014). The costs involved in dispute resolution

are borne mainly by the parties involved, so the costs are kept as low as possible. This means that the remuneration for the mediators barely covers their expenses to travel to the village, not to mention the time which must be devoted to resolving sometimes protracted disputes. When the poorest members of the village communities are not satisfied with the Village Land Council resolution, or the disputing party refuses to comply with the negotiations, then the aggrieved party has no recourse other than taking an expensive case in the Ward Land Tribunal.

Nevertheless, land formalisation in Tanzania is utilised by small holder farmers and pastoralists as a strategic 'tool' to protect their property and defend against outside threats. Just as amulets promise to protect the wearer against harm, and have been used by people across the world over millennia, so land titles are a source of strength for people struggling in an environment where land dispossession, by neighbours, strangers or the state, is a very real threat. If the protection strategy fails, the hope is that having a Certificate of Customary Right of Occupancy, could just swing the case in their favour.

Post script

This thesis opens with a quote from the advocate, Shilinde Ngalula which sums up how titles can be used both as a protection and a weapon, depending on the context. Shilinde provided me with a very informative interview in 2013. He is a well-respected human rights lawyer who has defended pastoralist villages in cases of land encroachment or dispossession. He also acts as an advisor to the Pastoral Women's Council. I was shocked to read about his arrest in August 2016. I pieced together the sequence of events from a statement issued online from the Tanganyika Law Society (TLS) and from two emails which briefly described the events, one from Shilinde himself and one from Jill Nicholson a former staff member of PWC and below is a composite summary of the situation:

On Friday 22nd July 2016, Shilinde Ngalula was arrested in Loliondo district and questioned in connection with alleged 'community incitement and espionage' (Tanganyika Law Society 2016). This arrest took place while Shilinde was investigating a case related to his clients, i.e. he appeared at the police post asking for access to his clients. He was acting for human rights activists from the Pastoralist Women's Council (PWC) who had been arrested and detained by the Tanzania Police Force for several days without any formal charge being made against them. The arrest of the two activists, Maanda Ngoitiko and Samuel Nangira from the PWC was part of a security operation related to an ongoing land disputes between Maasai communities and foreign investors in Loliondo and Ngorngoro Conservation area. Later on the same day, Shilinde was released and told to report to the police for further questioning on the 25th July. He duly complied with the request and reported to the police post on the morning of the 25th. He was told that he was not needed for questioning and the police denied that they had made any such request of him. He then returned to the High Court

and was consulting with his clients when the police came into the court and arrested him. Shilinde emailed me the following description of events:

Dear Anne, ... regarding my arrest in Loliondo. It is true that I was arrested and put in a police cell when attempting to defend in Court my colleagues, human rights defenders who were arrested by the police and denied bail, legal assistance and communication for unfounded accusations relating to public incitements and espionage. In fact, the victims are Maasai land right advocates who have been fighting against Maasai/pastoralist land grabbing in Ngorongoro district (email correspondence 7th October 2016).

Shilinde was handcuffed by police officers in front of the court, without being given any formal charge, and was forced to walk in full court attire to the police post and kept in the cell, without explanation or any legal procedures undertaken. Shilinde's arrest promoted a protest march by his legal colleagues, who assembled wearing their full law court regalia and walked through the streets of Arusha town. The march set off in a dignified and peaceful manner but ended in chaos, as the notorious Field Force Unit threatened the lawyers with batons and then proceeded to beat them as they tried to disperse.

The Tanganyika Law Society (TLS) issued a formal statement condemning both the arrest of Shilinde and the manner in which it was carried out, to the Attorney General's Office (Tanganyika Law Society 2016). The statement read:

That the TLS is convinced that the re-arrest of Advocate Ngalula while undertaking his noble function as an officer of the High Court of Tanzania while inside the perimeters of the court is illegal, improper, irregular and unprocedural (Tanganyika Law Society 2016).

Shilinde is now out of prison, but under surveillance and constantly harassed, he wrote:

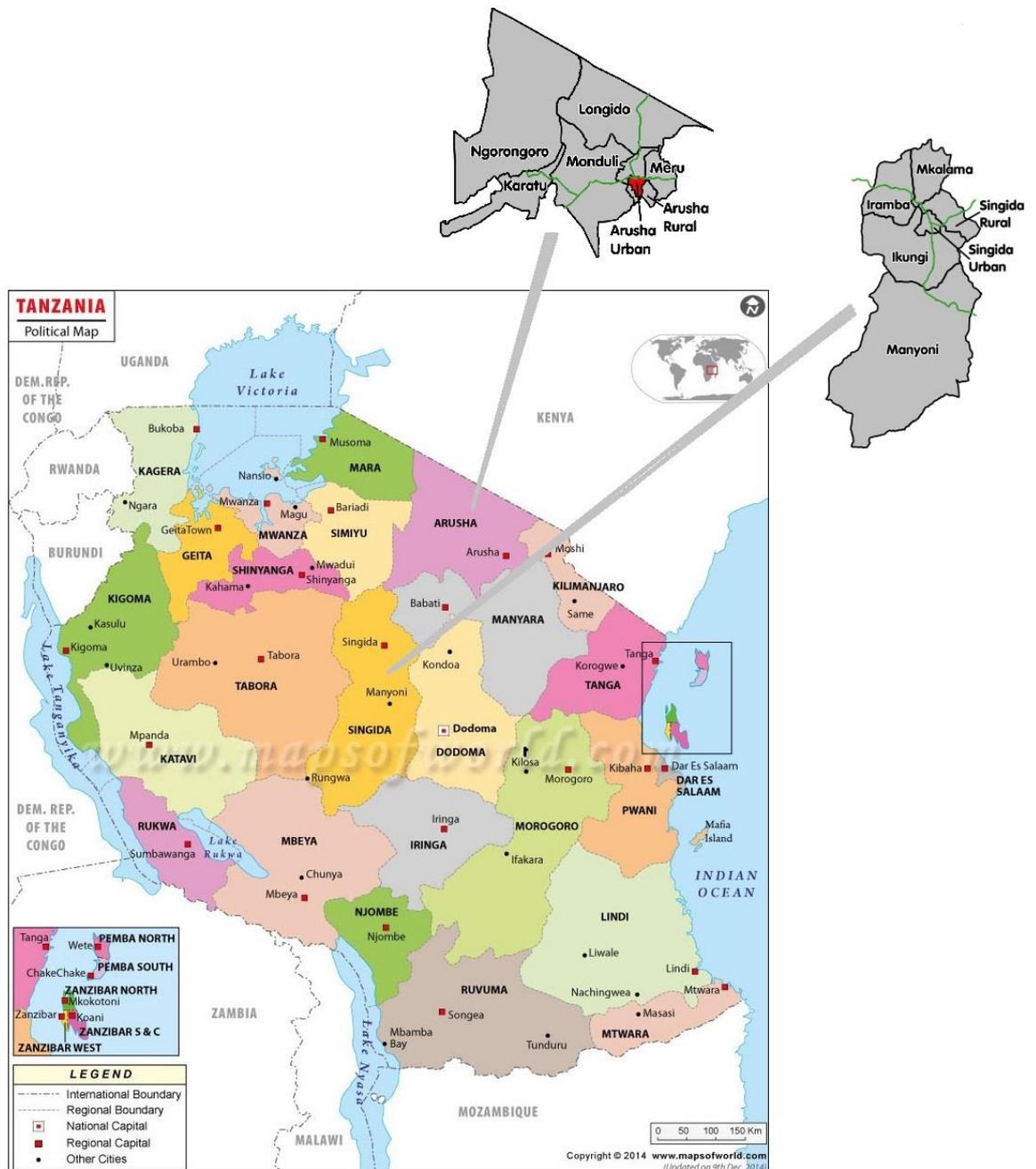
Anyway I am free now, but highly intimidated by the authority in line with the notorious Cyber Crimes Act which the state is still making investigation for the information I released to the media regarding my arrest (Shilinde, email correspondence 7th October 2016).

A new law the Cybercrimes Act No. 14 (2015a) came into force last year to combat crimes perpetrated online, such as fraud and exchanging child pornography (URT

2015). This law is now being used to prevent activists and journalists from disseminating news reports which portray the government in a negative light. This serves as an example of how even high levels of social capital in one setting can have no value in another. Shilinde's social and cultural capital as a prominent lawyer was not sufficient protection against the intention of the governing elite to silence dissent.

ANNEX A

Map of Tanzania and research field sites, Manyoni district in Singida Region and Monduli district in Arusha Region.



Map of Tanzania sourced at: <https://www.pinterest.com/pin/213146994835437661/>.
Map of Manyoni District, Singida Region and Monduli District, Arusha Region, sourced at: <https://commons.wikimedia.org/wiki/File:Arusha-Monduli.svg> and https://en.wikipedia.org/wiki/Manyoni_District (Accessed 26 January 2017). Map modified by Simon Aherne, Maynooth University.

ANNEX B

Map of Tanzania with National Parks



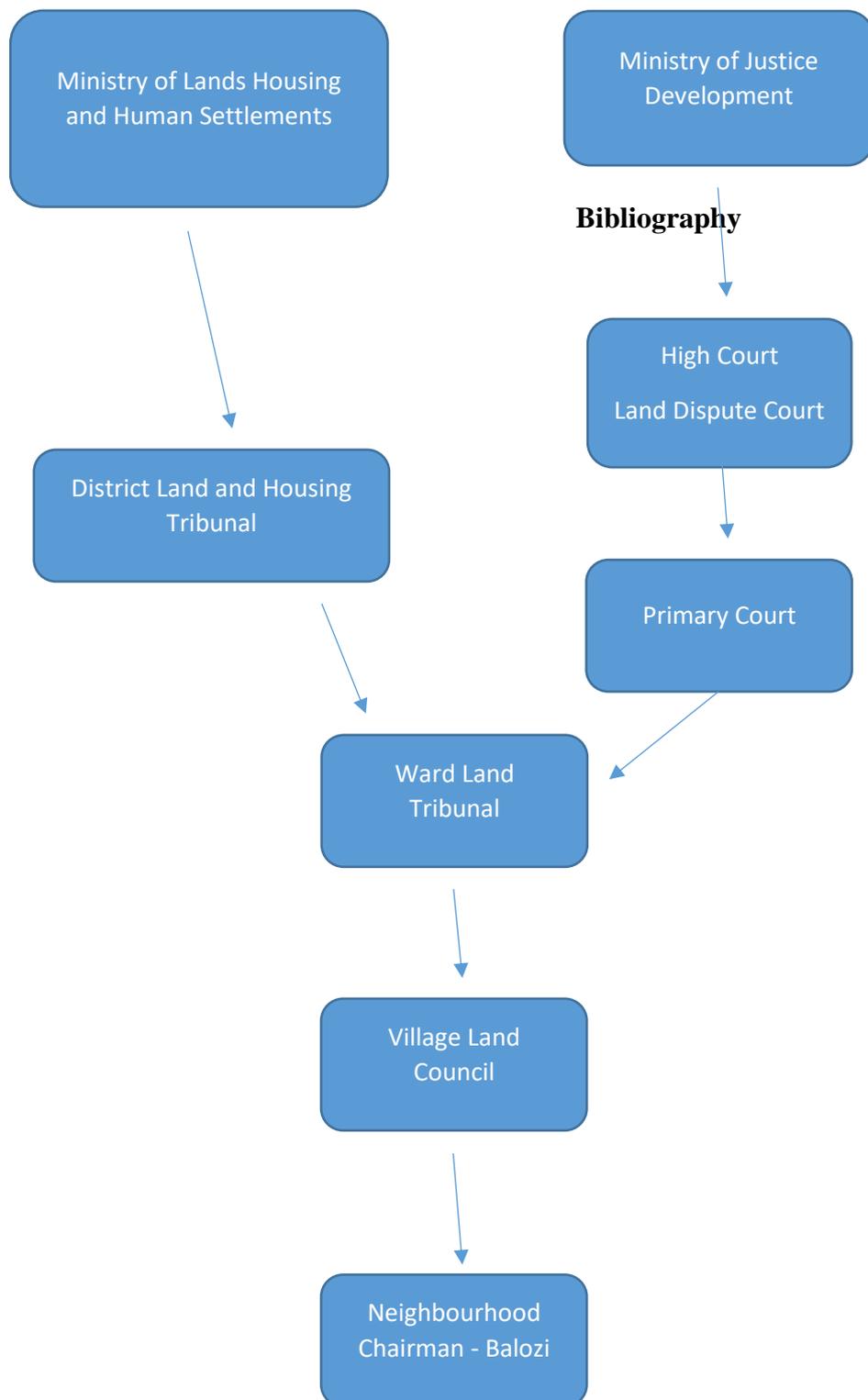
Sourced from:

<http://kilimanjaro.malinkaushik.com/KilimanjaroMapScans/TanzaniaNationalParks.JPG>

ANNEX C

Main bodies responsible for the administration of the Land Disputes Resolution system

(Simplified version)



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