

# **JOURNAL FÜR ENTWICKLUNGSPOLITIK**

herausgegeben vom Mattersburger Kreis für Entwicklungspolitik  
an den österreichischen Universitäten

vol. XIX, No. 1–2003

## **LANDREFORMEN IN AFRIKA**

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**Mandelbaum** Edition Südwind

**Journal für Entwicklungspolitik (JEP)**  
**Austrian Journal of Development Studies**

Herausgeber:

Mattersburger Kreis für Entwicklungspolitik an den Österreichischen Universitäten

Projekt Institut für Internationale Entwicklung / Zentrum für überfakultäre Forschung der Universität Wien

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ped land. For example, it takes place when a person who is allocated a plot at a subsidised price arranges to sell it (at a higher price) to someone that might not be eligible to apply for the land direct.

- 11 Illegal transactions included the unauthorised subdivision and/ or sale of arable land for residential and other purposes and the transaction of land allocated for residential purposes before it had been developed for that purpose.
- 12 Land administration refers to the process of allocating land and determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies. Land management is concerned with the management of land as a resource, both from an environmental and an economic perspective.
- 13 See endnote 10.
- 14 Notable exceptions are issues relating to the land rights of the San and other minorities and the related problem of privatisation of the commons for ranching.
- 15 This includes, Land boards, the Land Tribunal, the Department of Surveys and Mapping, the Department of Lands, the Department of Town and Regional Planning and the Attorney General's Chambers Lands Division & Deeds Registry.

**BIRGIT ENGLERT**

**From a Gender Perspective: Notions of Land Tenure Security  
in the Uluguru Mountains, Tanzania**

**1. Introduction**

Land tenure within customary systems is dynamic and flexible. Whereas in the past communal forms of landholding dominated, individualisation of rights to land within customary systems has occurred for some time now. Privatisation however, i.e. the registration and titling of rights to certain plots of land is a more recent development, apart from freehold titles to land which were introduced during colonialism but intended only for a very limited part of society. Formal titling has long been regarded as the only way to ensure land tenure security to peasants (smallholders), thereby enabling modernisation of the agricultural sector. Experiences from countries such as Kenya showed that certain assumptions concerning the consequences of titling such as higher rates of investment and thus increased productivity do not hold true. (compare e.g. Hilhorst 2000, Yngstrom 2002, Jacobs 2002) Instead land concentration and landlessness have been on the increase and the practice of registering land in the name of the head of household, predominantly men, led to a further erosion of the generally marginal land rights women had held within the respective customary systems. By now even the World Bank acknowledged that private titling might, besides being too costly, not necessary as the customary system can work just as effectively. The Bank now favours to „increase security of property rights within given constraints.” (World Bank 2001:7) In the land laws that were newly created in quite a number of African countries during the 1990s, this realisation is however little reflected. And also its impact on the actual policies of the World Bank, an influential player in the creation of new land legislation, remains to be seen.

In this paper notions of security in relation to access and/or ownership to land will be discussed in reference to Tanzania in general and the Uluguru mountains in Morogoro region more specifically. On the basis of more than 40 qualitative interviews some hypothesis will be formulated for discussion. The interviews were held in summer 2002 with women and men from a village, Ruvuma, and a rural part of Morogoro municipality, Nugutu. Both places are situated in the Uluguru Mountains to the south of Morogoro, the regional capital of Morogoro region. The names of all interview partners have been changed.

## 2. The process of land reform in Tanzania

In the following part a short sketch of the process that led to the formulation of the new land laws in Tanzania will be drawn.

In 1999 two new pieces of land legislation passed the Tanzanian parliament, in May 2001 they came into force: the Land Act, dealing with general (inclusive of urban land) and reserved land, and the Village Land Act, dealing with village land.<sup>1</sup> Before that, the Land Ordinance which had been issued by the British in 1923, has been the basic land law.

The need for a new one emerged from two sides: because of a rising number of land conflicts from part of the rural population, and pressure for the liberalisation of the land market from part of businessmen and the government, itself apparently under pressure from the World Bank and the International Monetary Fund.

Similar to their policies concerning other sectors of the economy, these institutions demanded easier access to land for foreign investors as well as a stronger orientation of the agricultural sector towards exports. The government-appointed „Commission of Inquiry into Land Matters“ under the leadership of Issa Shivji embarked on a relatively far reaching consultation process which included serious efforts to gather the opinion of the rural population.<sup>2</sup>

The Commission's proposals, however, were largely ignored by the government, which did not get the expected legitimisation of its liberalisation agenda. The usual issuing of a white paper did not occur and the following process which led to the formulation of a National Land Policy (NLP) in 1995 and the Land Acts in 1999 was dominated by American and British experts and firms which were hired by the government on request of the World Bank (Manji 1998:649; Shivji 1999a:1)

While the very comprehensive Land Acts have been acknowledged to “set a new precedent in legal methodology in Tanzania” (Manji 2001:2), criticism concerning the practicability and legitimacy of the new laws has been widespread. Although it had started so promisingly, the process of land reform in Tanzania proved to be rather undemocratic. It was characterised by secrecy on the side of the government which allowed very little public debate.<sup>3</sup>

### 2.1 The gender dimension

In this context a number of Non-Governmental Organisations (NGOs) became active and lobbied for a national debate on the land question. Two groupings of NGOs emerged: the National Land Forum (NALAF) and the Gender Land Task Force (GLTF). The former was especially lobbying for the ultimate title to village land to be vested in the village assembly and the ultimate title to general and reserved lands in an independent Land Commission which would be

accountable to the National Assembly.<sup>4</sup> NALAF also referred to women's rights – however in the context of the rights of marginalised groups such as pastoralists or gatherers and hunters. GLTF on the other hand, lobbied more specifically on women's rights to land and their representation in the management and conflict resolving institutions.

Eventually some changes were made in the Bills in terms of gender equity in rights to land and GLTF is said to have been more successful in its lobbying efforts (Kibamba/Johnson 2000:11). But nevertheless, they did not manage to seriously challenge the marginalisation of gender issues in the Land Act and the Village Land Act. (Manji 1998:646) Manji criticises the gender activists for not paying enough attention to rural issues and being urban biased in their lobbying efforts. It seems however that this has changed in the past few years when the land issue gained such in importance that almost every NGO put it on its agenda.<sup>5</sup>

The marginalisation of gender issues was however already manifest in the report of the so-called “Shivji-Commission” which reserved only few pages to the gender issue on which it focused almost entirely on the issue of succession, regretting that it had not had enough time to look at the issue in depth (Report Vol.1 1994: 250) A similar argument – that looking at gender issues had not been part of the mandate – was brought forward by the British expert McAuslan who drafted the Land Acts (Manji 1998).

Though Shivji recognises the provision of secure tenure, especially for women and children as the most important aim of the land law in Tanzania, he emphasises that the security of those most vulnerable groups was strongly related to the security of the rural community as a whole. (Shivji 1999c:2) He argued that equality with men was not a goal worth striving for as long as the land rights of the communities as such are threatened because then equality would be equality in landlessness (Shivji 1999a:7) – a point for which he was heavily criticised by the gender activists and which eventually split the Tanzanian Land Coalition<sup>6</sup>:

The recommendations of the Land Commission in regard to women's rights were, firstly, to entrench representation of women on village decision-making bodies and secondly, to make it mandatory that certificates of customary rights carry the names of both spouses. While the latter is not being mentioned in the Acts, the representation of women on village land councils and on the national advisory board has been provided for.

## 3. Reflections on the debate of land rights and gender

### 3.1 Wrong answers to the wrong question

In her paper “Land reform: still a goal worth pursuing for rural women?” Susie Jacobs tries to answer the increasingly brought up question why to bother about women's land rights at all in a context of increasing *deagrarianisation* – a new

important term in the land rights discussion. This question is not only cynical but also out of touch with a reality in which the agrarian sector is certainly still going to play an important role for a huge part of the population in most countries in the South for quite some time to come. For Jacobs the answer is that more and more secure land rights for women would have an impact on poverty reduction as for women the achievement of food security for her household is of greater importance than for men. (Jacobs 2002: 18, compare also Palmer 2002: 1)

But such an argumentation, although frequently heard, is in fact unsatisfying as economic and social reasons are used to justify the need of secure land rights for women. Thereby the reality that women contribute more to the welfare of their families than men is taken as a positive asset of women that helps them qualify for more rights on their own – without questioning this situation as such. Also sentences like the following by Liz Alden Wily indicate a functionalist view of land rights for women: “Women’s rights in land, that is, is a fundamental structural concern of development, and one of central concern to the modernisation of agrarian states.” (Alden Wily 2001: 10) And Jacobs argues: “Even though more secure access to land cannot ensure total security [...] this is no reason to downplay the importance of lessening the risk of hunger and malnutrition in the lives of the rural poor, which female land rights would facilitate. Many women are highly motivated to achieve food security and to improve their incomes.” (Jacobs 2002: 18)

This kind of argumentation somehow reminds of the one brought forward by the World Bank which praises the high degree of efficiency of smallholders and wants to encourage them to take up loans by using their land as collateral. Ambreena Manji who is currently working on a critique of the latest version of the Policy Research Report (PRR) by the World Bank from a gender perspective, criticises rightly that “the World Bank is seeking to build economic development on the fact that women will demand less in terms of wages and conditions than waged labour. [...] Rather than trying to get rid of patriarchal, feudal gender relations, the World Bank plans to encourage them in the name of economic development.” (Manji 2002: 2)

Land rights for women do not need any justification, them being human beings should suffice as explanation for equal rights as enjoyed by men. The question remains as to why advocates of women’s rights still have to make use of arguments, which illustrate the economic benefits of doing so?

### 3.2 Which path to take?

It has often been argued that women lack tenure security because in most cases they are secondary right holders, which means that with the formal registration of land their informal but effective rights to land will be abolished. This

has led some to the argument that women should therefore have land registered in their own names. But this approach seems to ignore the more general problematic aspects of private titling. By focusing on the negative impact of private titling in terms of gender the possible negative consequences of titling as such are being overlooked. This view also puts too much emphasis on the possibility to achieve change through legal reform. More effective change is taking place where women who are aware of their rights to access and own land on equal terms as men, are pushing for change “from within”. Women everywhere in Africa use different strategies in order to gain access to land and control over their produce. Women’s rights as well as their strategies vary not only from country to country but also from region to region and therefore detailed studies of the specific conditions prevailing in a certain area become imperative. (compare Hilhorst 2000, 185)

### 3.3 Matrilinearity – Patrilinearity?

In the context of Tanzania one rough difference can certainly be made between the about 80 percent of ethnic groups, which are organised in a patrilineal way and the remaining 20 percent which have a principally matrilineal structure. But, as Longway notes, inheritance patterns are eventually changing towards the patrilineal model. However, in general women in matrilineal societies do have better access to land although there are a lot of variations between the various communities. (Longway 1999 cited in Hilhorst 2000, 187)

This also seems to be true for the Waluguru people, the main inhabitants of the Uluguru mountains. Whereas no “system” as such seems to exist, it is certainly true that within the so-called matrilineal framework more options and choices are open to women and men regarding inheritance, ownership and decisions about land. Which one is taken depends on pragmatic decisions and personal preferences and experiences. In the literature however, such “systems” are often presented in an idealised form, as a coherent set of rules.<sup>7</sup> Thereby also overlooking that what is now termed “traditional” is in fact often the product of colonialist intervention, which benefited men and disadvantaged women and also strengthened male controls over female labour. (Palmer 2002:1; Jacobs 2002)

The ability for daughters to inherit land is far from exclusive to societies, which are characterised as matrilineal. Yngstrom for example states for the patrilineal society of the Gogo population of Dodoma region in Tanzania that in the late 19th Century, unlike livestock, could pass from fathers and mothers or grandparents to daughters or sons. [...] Over time, with population increase, land available for clearing has declined. [...] In order to maintain control over production, senior men began to assert greater control over land, by limiting land transfers made by lineage members to female family members. Many women not

only began to inherit little or no land from their families, but also found that land was being “taken back” by male relatives.” (Yngstrom 2002: 30)

This picture of an emerging gendered access to land suggests that no or limited options for women to access or own land within customary forms of land tenure are not based on an ideology that denies landownership to women as such. What rather seems to be in play, is an ideology, which favours the more powerful members of society in case of competition for limited resources, them being generally men – also in a so-called matrilineal society. They try to secure their control over the increasingly rare resources by excluding the less powerful members, to which women generally belong.<sup>8</sup>

#### 4. The case study

Nugutu, a former village, which is since 1994 part of the municipality of Morogoro, has about 500 inhabitants, about 200 of them consider themselves locals (*wenyeji*), the other 300 moved there (*waliohamia*), many of them from other regions in Tanzania. Migration certainly contributed to the weakening of matrilineal and matrilocal structures, as the example of Ruvuma illustrates where no migrants have acquired any land yet and where matrilocality is practised much more widely. Ruvuma, still being a village by status, consists of 75 houses with a total number of about 180 inhabitants.<sup>9</sup>

In Nugutu and Ruvuma, land can be generally inherited by female and male children alike, whether in equal parts or not varies from family to family. In some families the eldest child, regardless whether boy or girl, gets a bigger part of the family land than his or her siblings. In other families the land is shared in equal parts. That boys inherit more land only by their virtue of being male is not common. Inheritance practices seem to be mainly led by pragmatism.

Also whether the husband moves to the homestead of his wife's family or the other way round depends first and foremost on individual factors, the choice being mainly based on the consideration of who disposes of more of the resource land. The individual who inherited (or bought) a certain piece of land is the one with the power of decision, the one with the final say (“msemaji mkuu” or “mwenye sauti” in Kiswahili). She or he decides whether to have the certain plot of land registered or not, what to grow and whether to sell the plot or not. There might be consultation with the spouse and other affected family members about the selling of certain plots of land, but the final decision lies with the “msemaji mkuu”. This practice is not really in line with the provision of the new Land Acts, which says that: “Property that is used by both a husband and a wife can not be sold, mortgaged, leased or given away without the written consent of both (or all in the case of polygamous marriages) spouses.” (WAT 2001:20)<sup>10</sup> A clause that was intended to increase tenure security for women, could in the case study

area even have the effect to actually weaken the individual land rights of women who effectively had full decision powers over the land inherited or bought by them. This shows the difficulty of achieving meaningful solutions for a heterogeneous country such as Tanzania by introducing legislation on a national level. On the other hand the Land Acts are still far from having an impact as their contents are virtually unknown in Nugutu and Ruvuma and this situation does not seem to be limited to the Uluguru mountains.

#### 4.1 Attitudes to and practices of registration

That tenure security and privatisation are not necessarily related is no longer disputed. To the contrary: for the majority of the local population titling may increase tenure insecurity as privatisation of land tenure brings benefits for the more powerful players in the game for (secure) access to land. Untitled land may be allocated to locals or outsiders with the means to register it. Foreign investors and the elite within the country achieved a legislation that strengthens first and foremost their own position. However, villagers also seem to have strategies to cope with the changing situation as will be shown below (compare Lund 2000).

In Nugutu the process of registration has not proceeded very much, in Ruvuma it has not even started. As mentioned above the person who has inherited or bought a certain piece of land is the “*mwenye sauti*” – female or male. Some had opted for joint registration, another popular option being registration in the name of the children. In most cases the husband who had moved to his wives' house had inherited a field from the part of his family, which was situated in the village where he came from. His exclusive rights to decide over this piece of land were not questioned either. Tania Mgoto's case is typical for many women in Nugutu. She states: “The field would be registered in my name, not in the name of the husband because I inherited the plot from my father” (“*kwa sababu ni urithi kwa baba yangu mimi*”). Her husband moved into her house and he does not have his private *shamba* (Swahili term for field/farm). If she died her husband would inherit the plot but for (*kwa niaba*) the children: “If the children are to inherit the land it will be divided equally because all of them are children.” (“*kwa sababu wote ni watoto*”)

As Nugutu belongs to Morogoro municipality registration of titles to houses and fields has been possible for some years now, in contrast to the Ruvuma, which enjoys village status. Nevertheless only a small portion of villagers has had their land registered for a fee of Tsh 2000 per year and per unit.<sup>11</sup> That the fee has to be paid per unit is a big obstacle for many as it is very common to own various pieces of land in different locations. This situation is exacerbated by the mountainous environment where Nugutu and Ruvuma are situated and, which inhibits larger continuous plots. It is not rare for one person to own up to eight or nine

different “shambas” (fields), which taken together do not account for more than a few acres.

#### 4.2 Preferred informality

In a situation where formality is connected with non-available financial resources the more secure option for most is to remain in the informal sphere. Herman Dilunga’s explanation as to why many prefer to remain without a title deed, suggests that resistance to the introduction of formal titling is related to a more general resistance against the demands of the state. Apart from a small plot in Nugutu, he has got seven acres of land in Kundi which is located out of Morogoro town. The land in Kundi was distributed by the government. Although people have the option to have their land registered, very few of them actually do so. For Herman Dilunga this decision is obvious: From his point of view a registered title to land would lead to tenure insecurity whereas he feels secure simply having access to this allocated land. He explains: “If you got a title they [the government] only annoy you and you will have to pay a lot of money. There are plenty of taxes and once you apply for a title deed you also have to pay all those other taxes. Therefore many people prefer to stay without a title deed. You can use the plot of land for free but if you fail to pay your taxes the government could even sell your plot. [...] Where do you want to stay then? Therefore, is it better to go and apply for a title deed or simply to live? (*“Bora kwenda kutafuta hati au kuishi tu?”*) And if the government needs your plot of land they go and get you another one – that is much better.” The logic is that failure to pay the taxes would result in even higher insecurity than remaining without a title to land.

In general the customary system of land tenure functions well and people trust in it. The statements by Berta Bulole reflect the optimistic attitude of most respondents concerning the functioning of the customary system: “because it is the land of the parents and nobody can take it” (*“kwa sababu ni mali ya wazee na mtu hawezi kuingilia”*), “every person has his/her own belongings” (*“kila mtu anamiliki mali yake”*), “nobody can annoy me because it is my belonging” (*“hawezi kunisumbua kwa sababu ni mali yangu”*)<sup>12</sup>

Notions of insecurity are mainly related to negative personal experiences. Such as being not compensated for land taken by the municipality– in contrast to promises given (compare also examples in the Report of the Land Commission 1994 Vol.2). People experience their inability to challenge the authorities and accept the land grabs. Natalia Balunga lost about two acres of her land, which were taken by the municipality and allocated to someone else for construction purposes. She was trying for about a year to get the plot, which was promised to her for compensation but every time she went to the municipal office she was told to come back another day (*“kila ukienda: njoo tarehe fulani”*). Tired of this proce-

dure she eventually gave up on her right. A similar experience was made by Andrea Buhimbo who thinks that she does not have the power to challenge the municipality: “my means are little, if someone like me goes there, are they really going to understand me?” (*“uwezo mwenyewe mdogo, utaenda utafuatilia kama mie, watanielewa kweli?”*) She has seen other people in similar situations fail to challenge the authorities and therefore decided not to try it altogether as she views it as a waste of energy.

Tenure insecurity is thus not the result of the absence of registration but rather a possible consequence. In areas with a more dynamic land market the notion of insecurity is much stronger than in areas with few transactions. In Nugutu, at the outskirts of Morogoro town and subject to urban land legislation, land grabbing by individuals occurs on quite a large scale whereas Ruvuma, which is located a bit more remote in the Ulugurus has not been affected yet.

#### 4.3 Coping with the changes

In Nugutu land is being bought from villagers at ridiculously low prices. But this process is not only to the disadvantage of the villagers. Some of them manage to take advantage of the process of urbanisation and their decisions whether or not to sell parts (only in rare cases a person sells all her or his land) of their land are well grounded. Reasons for land sales are not mainly financial distress but related to the increasingly bad quality of land. Unfertile plots are being sold in order to be able to acquire land in more fertile areas. As Thomas Ngota explains: “Well, about five or 10 years ago the plants were very big. But now the earth is tired. We are cultivating, we are very tired, therefore some think that it is better to sell this unfertile land to someone and then I go and find another shamba” (*“bora nimuzie yule [...] halafu nitafute shamba nyingine”*)

The buyers usually want the land for construction and not for cultivation purposes. And the sellers want a plot in a fertile area. For the people living in Nugutu a popular place to have a shamba is Mikese, located some 30 kilometers away on the road leading to Dar-es-Salaam. In Mikese there is more than enough space for farming and, more importantly, the soil there is fertile enough for crops such as rice and bananas, whereas in Nugutu only plants, which do not need much water like beans and cassava grow successfully. However people do not move there (in some cases they move temporarily at the time of planting and then harvesting) although to cultivate fields, which are far away from their homestead means a lot of extra work. Regular commuting or the employment of paid labour are possible solutions. But both require money to either pay the travel fees or the wage for the labourers, which makes a field in Mikese an expensive acquisition. However, the reluctance to move is strongly related to the lack of infrastructure in the “new agricultural centres” and not to emotional ties of people to their ho-

me villages. As Nancy Ndombe points out: “There is no school and no hospital close to Mikese, therefore people do not move there”. In Mikese however, lack of water, which prevents people from moving to some of the other new agricultural centers is not a problem. In Kundi for example, water has to be brought by bicycle from another village which means that farming has to rely on rain alone, plants that need some form of irrigation cannot be planted. Herman Dilunga, who has got a field there, therefore concludes: “It is a good place for farming, but not for living, you cannot even grow vegetables there.” (*“Kule kuzuri kwa kulima, lakini kwa kuishi, hata kulima mboga mboga huwezi.”*)

A dual structure seems to develop. Most people welcomed the inclusion of Nugutu into the municipality of Morogoro which led to an increase of infrastructure and mentioned the increased quality of life as Nugutu is getting more and more urbanised. That however does not lead to more people working in non-agricultural sectors of the economy. But as land available for farming is getting more and more scarce in terms of quantity as well as quality, people acquire fields relatively far away and develop strategies to cope with the problems caused by the distance between the place of living and the place of work. At least in the Uluguru mountains “deagrarianisation” is not on the agenda, instead, what is occurring is the creation of what I would call “new agricultural centers” which are the result of changes in the socio-cultural environment (migration from other areas, land “grabs”) as well as in the natural environment (land degradation, erosion). In this context even the option to sell unfertile land to outsiders constitutes a form of security if it is defined as a way to secure sustainable livelihoods.

#### 4.4 “That would be equal to giving away my house and field” – titles as collateral?

In its last version of the Policy Research Report (PRR) the World Bank wants to encourage smallholders to use their land as collateral. The danger that many households will end up landless because of their inability to pay back the loans is, though mentioned, not seriously considered by the Bank. And – as Manji points out – in the context of increasing privatisation of public goods pushed for by the World Bank, credits are not likely to be invested in the improvement of agriculture but rather needed to pay for public services such as healthcare and education. (Manji 2002:2)

In the beginning of this paper it was argued that the fact that women are more concerned about food security of the household should not be used (needed) as argument to justify land rights for women. But if this holds true – as seems to be the case in Nugutu and Ruvuma – this tendency gives hope that, where women are the ones with the final say the World Bank’s policy of pushing for land to be mortgageable might not have the disastrous consequences that have to be

expected. In Nugutu and Ruvuma women were found to be much more cautious about the possibility to take up loans in general, and about mortgaging their land specifically, than men. Most women there are aware of the danger that they might lose their houses and fields and stated that doing so would be irresponsible behaviour towards the family and especially the children. Again Tania Mgoto’s words reflect the opinion of many: “I would prefer not to use my title in order to get a loan because I have a family – if I take up a big loan it would be equal to giving away my house or field” (*„sitopendela kutumia hati kwa kupata mkopo, ninayo familia – nikichukua mkopo kubwa ni maana ni sawasawa nishatoa ile nyumba au shamba“*). Only few reacted like Natalia Balunga for who the possibility to use a title deed in order to get a loan is a question of self-confidence: “it is not bad, it is good, it is about believing in oneself” (*„siyo baya, ni nzuri tu, ni kujiamini“*). Much more popular seems to be the widely used credit scheme called “Purse of the President”/“*Mfuko wa Rais*”. This scheme which is intended for women only has been operating for five years now and works as follows: five women sign up together for a loan which they have to pay back on a weekly basis. If one of them fails to return the money, the remaining partners have to come up for it. However, concerns were raised that the modality, which necessitates to pay back every week means a lot of stress and does not allow for starting a bigger business. Some women who have participated in this loan scheme said to have stopped now because they think that they might not be able to pay back the money and some had to experience the consequences of making debts with the credit scheme and had their belongings taken (*“wanachukua kitu cho chote cha ndani”*) (Petra Raffael)

#### 5. Pragmatic approaches– evidence from the Pare mountains

I would now like to discuss some of the findings of another case study carried out by Omari in the beginning of the 1990s in another mountainous area of Tanzania: the Pare mountains in the North-East of the country. Omari studied patterns of access to land and landownership within the so called patrilineal society of the Pare people. Some 41% of the women<sup>13</sup> were found to own land, albeit with huge differences between different villages. Omari came to the conclusion that differences were due to “the level of exposure to modernity, especially in relation to the control of economic activities” (Omari 1995: 136) In the village where the majority of land owning women came from, women had been associated with informal business for a long time. Women were found to have acquired land through inheritance, allocation and also purchase. The main source of capital for women who buy land is the informal businesses they conduct. Some buy land as an investment for old age and the future of their children and also with the intention to build on these plots since, as Omari puts it, “at the family level,



they are not allowed by their brothers to have fixed assets like houses.” While Omari asserts that this view was brought forward by few women only he reads it as an indicator of a “new direction of women’s awareness about their rights” which is likely to grow. (Omari 1995: 138).

I think that this case study underlines the findings from the Uluguru mountains in that they both show the enormous potential of change within customary systems, be them patrilineal or matrilineal; that women find ways to acquire land rights in a context of gender discriminatory legislation and the absence of legal support. Omari stated in 1995, in the midst of the process to achieve a new land law for Tanzania: “Whether the state is ready to change the law or not, the women through their creative minds are finding ways to go about their business in acquiring land and owning it in their own right.” (Omari 1995: 139)

## 6. Conclusion

This seems to confirm the thesis that pursuing land rights for women through legislation is not really worth it, as Susie Jacobs asked provocatively in the title of her paper. But this is not supposed to mean that women do not need land rights because “deagrarianisation” is on the increase anyway. Rather increased business activities in the formal or more likely the informal sector might help women to gain the confidence and experience to challenge assumed patterns of “tradition”. In light of the slow progress of implementation of the new land rights legislation in general and the difficulties to enforce it, women might be better advised to change their situation by exploiting the flexible and changing nature of customary systems than to lobby the government to do so. To have pro-women legislation is of no use when women are not conscious about their legal rights or/and lack the means to enforce them. On the other hand, where women are conscious about their rights to land on the basis of human rights, they find ways to ensure them – even if supportive legislation is lacking.

## Abstracts

This article first gives a brief overview on how the gender debate featured in the process of land reform in Tanzania and asks why socioeconomic arguments have to be used by advocates of gender equitable land rights. It then focuses on the area of the case study, the Uluguru mountains, and shows that the need for registration is rather a consequence of its possibility and not of deficiencies of tenure security within the customary system and that informal access to land can be experienced as more secure than formal registration. It further argues that demand to use land as collateral is low and risk-awareness especially among women high. The article concludes by pointing out that lobbying for change of legislation might not be the most effective way to achieve gender equitable rights to land.

Dieser Artikel gibt zunächst einen kurzen Überblick über die Gender-Debatte im Landreformprozess in Tanzania und fragt warum sich Befürworter von nicht gender-diskriminierenden Landrechten sozioökonomischer Argumente bedienen (müssen). Der Artikel geht dann auf das Gebiet der Fallstudie, die Uluguru-Berge, ein und zeigt, dass das Bedürfnis nach Registrierung von Land eher eine Folge dieser Möglichkeit ist und nicht die Folge von Sicherheitsdefiziten innerhalb des Wohnrechts. Weiters wird aufgezeigt, dass der Wunsch nach mit Land belehnten Krediten gering ist und das Bewusstsein über die damit verbundenen Risiken, besonders unter Frauen, sehr hoch. Im Schlussteil wird argumentiert, dass Lobbying für Gesetzesänderungen möglicherweise nicht der wirkungsvollste Weg ist um eine gendergerechte Landrechtslage zu erreichen.

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- 1 Tanzania has got three categories of land: general land which is placed directly under the Commissioner of Lands, reserved land which is under statutory or other bodies, while the ultimate power lies with the Commissioner and village land which is under the village council, who is essentially an agent of the Commissioner. Besides his virtually unlimited powers over general land, reserved land and perceived unused village land, the President also has the option to transfer village land to general land if this is done in the case of „public interest“ – a definition which also includes „investments of national interest“ (Shivji 1999c:4)
- 2 The Commission consisted of twelve people of which there was only one woman. The members travelled widely through Tanzania and held about 277 meetings, which were attended by more than 83000 people, among them 25000 women. (Report of the Presidential Commission 1994: 3)
- 3 On a cartoon referring to the land reform debate which shows the government torn up between the foreign investors on the one side and the „wananchi“, the people of Tanzania, on the other, the government is called „sirikali“ instead of „serikali“ – an allusion to the word „siri“ meaning secret in Kiswahili. The poster with this illustration was drawn by Marco Tibasima and published by the Dar-es-Salaam based NGO „Kikundi cha Uhakika wa Chakula“ (KIHACHA) or „Rural Food Security“ (RFS).
- 4 Compare Azimio la Uhai
- 5 For example: Tanzania Gender Network Programme (TGNP), Women Advancement Trust (WAT), Tanzania Media Women's Organisation (TAMWA), Tanzania Women Lawyers Association (TAWLA), Rural Food Security (RFS/KIHACHA)
- 6 The Land Coalition comprised NALAF and GLTF.

- 7 Salha Hamdani for example states in her recent (but undated) study which actually focuses on “Female Adolescent Rites and the Reproductive Health of Young Women in Morogoro Tanzania” referring to the Uluguru mountains: *“Residence is to this day matrilineal. In case of divorce, children are automatically retained by their mother in accordance with the traditional customs. In fact in case of divorce, the husband leaves with nothing but his shirts and pants.”* (Hamdani n.d.: 3) Vocabulary like “automatically” and “traditional custom” suggests a firm and static tradition which however does not exist in this part of the Uluguru mountains anymore and it is doubtful whether this presented ideal version of a supposedly traditional pattern of land tenure ever existed.
- 8 Yngstrom also states this explicitly: “Women, it is said, can still inherit lineage lands on the understanding that their brothers have “enough” land.” (Yngstrom 2002: 30)
- 9 figures are estimates by the respective village chairmen
- 10 Unfortunately I cannot cite from the original as I did not manage to get a copy of the Land Act, which was impossible to come by in Tanzania in summer 2002. Conversation with activists from Hakiardhi, the Dar-es-Salaam based NGO lobbying for land rights suggested that the government does not make any effort to make the laws available to the public, to say the least.
- 11 2000 Tsh was in the period July-August 2002 worth slightly more than 2 Euro which – although I cannot give any meaningful relation – is not little money for a family in the case study area.
- 12 Nevertheless would she like to have the shambas registered: “kama ikitokea naweza kufuatilia tu, ningependelea”.
- 13 out of a sample of 135 women

**CHRISTIAN LUND**  
**Conflicts and Contracts in Burkina Faso.**  
**Land and Local Law between State and Community**

**1. Introduction**

Land tenure systems are changing throughout the Sahel region at different paces, more or less profoundly and probably not in one single and clearly predictable direction (Benjaminsen and Lund 2002). The transformation of tenure systems is not a smooth process but one of conflict and confrontation as well as creativity and innovation. In this article I first focus on the institutional capacity to manage land disputes inscribed in a structural competition, namely between herders and farmers in the Boulgou region in Burkina Faso. These conflicts have social, political and cultural dimensions as well as the more legal ones. This puts serious demands on the societies’ capability to resolve or manage disputes. Secondly, I focus on the popular recording of land transactions in Western Burkina Faso. Various practices of formalisation of land rights are important in people’s strategies to legitimate and secure rights – to turn claims into rights, as it were. Both issues demonstrate how the actual legal practices at the local level neither represent the formal legal rules and institutions as prescribed by the legal texts, nor totally disregard state institutions and formal law. Rather, it emerges as a negotiated, creatively crafted amalgam of rules and practices in that very tension mediated through power relations.

Conflicts over land in the Sahel have received increasing political and scholarly attention over the past decades. Conflicts are normal social processes and social order does not depend on the absence of conflicts but on society’s capacity to deal with them appropriately (Le Roy 1991:165). Far from all conflicts and disputes have ‘happy endings’. Some negotiations break down and are ended by force rather than settled with mutual recognition of the outcome. Others do not really end as such. In persisting relationships there may often be a chronic eruption of conflicts rooted in a structural competition over resources. In Burkina Faso, as in other African societies, the institutions and norms related to land are plural and often quite ambiguous. The colonisation and modernisation processes engendered a split in the legal system between state law and more customary regulation of social life. While the two types of law are not always internally consistent respectively, colonial and independent government administration inculcated a dichotomy in the legal system over time. The dichotomy often develops ambiguity and contradictions in terms of which institution is authorised to intervene in a conflict and which principle should be applied. A central institution respon-