WOMEN’S ACCESS TO LAND IN TANZANIA
The Case of the Makete District

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Real Estate Planning and Land Law
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To my husband and friend, Nominate  
For his endless love, courage and support  

To Sofia, Medson, Peresi, Rehema & Johnson (Jojo),  
For their patience and understanding  

To my mother, Bernada  
For her prayers  

This is a tribute for the seven of you
Abstract

Access to land is crucial for combating discrimination. Women who are denied such access tend to be disadvantaged, a pattern that results in economic powerlessness. Tanzania is among the most undeveloped nations in the world, where gender inequalities with respect to accessing land are central problems. This study consequently aims at investigating women’s access to land through customary land tenure in the Makete district in Tanzania. A case study strategy was adopted to address the research problem, whereby interviews, focus group discussions and documentary reviews were the main data collection methods.

The findings indicate that the majority of women within villages are illiterate; unaware of any existing entitlements and lacking in sufficient assets to fight for their rights, and that their involvement in land administration institutions is limited. At the family level, daughters and women are deprived of any right to possess land through inheritance because relatives believe they will be married to other families from which they will then gain access to land. This generally has been proven not to be the case. After marriage, women commonly are apportioned land strictly for crop cultivation (usufruct rights). Consequently, there are many challenges in realising women’s property rights in Tanzania. These challenges include the dualism of the property rights system: customary tenure operates alongside statutory tenure; inadequate knowledge about women’s property rights by both women and men; negative attitudes towards women’s influence, position, capability and reputation; outdated customs; archaic and conflicting interests in laws; and the lack of legal capacity (empowerment) as to property rights.

The most important tools for meeting these challenges include education and awareness campaigns that are designed to build the capacity of citizens as to the necessity of equity in access to property rights (land) using various legal tools at varying levels. Other measures include amending and repealing outdated laws, including provisions discriminating against women’s property rights and contradicting constitutional provisions and other international instruments. Other avenues are advocacy and working for behavioural changes can also be invoked by empowering individuals at all stages of life, supporting their involvement in productive activities and creating group networks, and facilitating the formation of community-based organisations as well as building capacity by mainstreaming land administration institutions.

**Key words:** access to land, women, property rights, customary law, customary land tenure
Sammanfattning

Tillgång till mark är avgörande för att bekämpa diskriminering. Kvinnor som nekas sådan tillgång tenderar att missgynnas, ett mönster som resulterar i ekonomisk maktlöshet. Tanzania är bland de svagast utvecklade nationerna i världen, där genusskillnader avseende rätten till mark är centrala problem. Denna studie syftar följaktligen till att undersöka kvinnors tillgång till mark med stöd av traditionell sedvanerätt i regionen Makete i Tanzania. En fallstudie har genomförts för att undersöka problemsituationen, där intervjuer, fokusgrupp-discussioner samt litteraturstudier var de huvudsakliga datainsamlingsmetoderna.

Resultaten tyder på att flesta kvinnor i byarna inte är läskunniga; omedvetna om sina eventuella rättigheter och saknar tillgångar för att kämpa för sina rättigheter, och att deras deltagande i administrativa organisationer är begränsad. På familjenivå berövas döttrar och kvinnor rätt att inneha mark genom arv, eftersom släktningarna förutsätter ingifte i andra familjer där de sedan kommer att få tillgång till mark. Detta stämmer inte. Efter giftemål tildelas kvinnor vanligen mark enbart för odling av grödor (nyttjanderätt). Följaktligen finns det många utmaningar i att förverkliga kvinnors markrättigheter i Tanzania. Dessa utmaningar omfattar dualismen i rättighetssystemet; traditionell besittningsrätt gäller vid sidan av den lagstadvade besittningsrätten; bristfällig kunskap om kvinnors rättigheter både hos kvinnor och män; en negativ attityd till kvinnors inflytande, ställning, kapacitet och rykte; bristande implementering av gällande lagar; samt avsaknad av rättskapacitet avseende markrättigheter.

De viktigaste verktygen för att möta dessa utmaningar innefattar utbildning och informationskampanjer som är utformade för att bygga upp kapaciteten hos medborgarna om nödvändigheten rättvis tillgång till markägande, med hjälp av olika rättsliga verktyg på varierande nivåer. Andra åtgärder inbegriper ändring och upphävande av föråldrad lagstiftning, inklusive bestämmelser som diskriminerar kvinnors äganderätt i grundläggar och andra internationella instrument. Andra vägar är opinionsbildning och att arbeta för beteendeförändringar, stödja kvinnors deltagande i produktiv verksamhet och att skapa nätverk, underlätta bildandet av samhällsorganisationer samt att stödja kampanjer mot diskriminerande traditioner, normer och attityder, samt kapacitetsuppbyggnad genom att integrera kvinnor i administration och myndigheter.

Nyckelord: Markrättigheter, kvinnor, äganderätt, sedvanerätt, traditionell markbesittning
Acknowledgements

Writing this thesis has been one of the most significant academic challenges I have ever faced. Without the support, patience and guidance from the following individuals, this study would never have been successfully completed. To them I owe my deepest gratitude. I thank the Almighty God for His guidance, protection, grace and mercy offered to me in my studies as well as throughout my life: "I can do everything through Him who gives me strength" (Philippians 4:13).

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Despite my debts to all those who contributed to this thesis, any errors, omissions and misrepresentation of facts remain solely my responsibility.

Kerbina Moyo 2017
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<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<tr>
<td>AFB</td>
<td>African Development Bank</td>
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<tr>
<td>AUC</td>
<td>African Union Commission</td>
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<tr>
<td>CBO</td>
<td>Community Based Organisation</td>
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<tr>
<td>CCRO</td>
<td>Certificate of Customary Right of Occupancy</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of Discrimination Against Women</td>
</tr>
<tr>
<td>CLEP</td>
<td>Commission on Legal Empowerment of the Poor</td>
</tr>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organisation</td>
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<tr>
<td>DED</td>
<td>District Executive Director</td>
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<tr>
<td>ECA</td>
<td>Economic Commission for Africa</td>
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<td>ETLR</td>
<td>Evolution Theory of Land Rights</td>
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<tr>
<td>EU</td>
<td>European Commission</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organisation</td>
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<td>FGD</td>
<td>Focus Group Discussion</td>
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<td>GLTF</td>
<td>Gender Land Task Force</td>
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<td>GN</td>
<td>Government Notice</td>
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<tr>
<td>HA</td>
<td>Hectare</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
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<tr>
<td>IFAD</td>
<td>International Fund for Agricultural Development</td>
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<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<tr>
<td>IRA</td>
<td>Iringa</td>
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<tr>
<td>JALA</td>
<td>Judicature and Application of Laws Act</td>
</tr>
<tr>
<td>KJ</td>
<td>Kijiji (village)</td>
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<tr>
<td>LA</td>
<td>Land Act No. 4 of 1999</td>
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<tr>
<td>LAMP</td>
<td>Land Management Programme</td>
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<tr>
<td>LAND ACTS</td>
<td>Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999</td>
</tr>
<tr>
<td>LCL Order</td>
<td>Local Customary Law Declaration Order No. 4 GN 436 of 1963 R.E 2002</td>
</tr>
<tr>
<td>LHRC</td>
<td>Legal and Human Rights Centre</td>
</tr>
<tr>
<td>LRCT</td>
<td>Law Reform Commission of Tanzania</td>
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<tr>
<td>MASUPHA</td>
<td>The Makete Support People living with HIV/AIDS</td>
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<tr>
<td>MKURABITA</td>
<td>Mpango wa Kurasimisha Rasilimali na Biashara Tanzania</td>
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<tr>
<td>MKT</td>
<td>The Makete</td>
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<tr>
<td>MLHSD</td>
<td>Ministry of Lands, Housing and Human Settlements Development</td>
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<tr>
<td>NBS</td>
<td>National Bureau of Statistics</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>NLP</td>
<td>National Land Policy</td>
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<td>PBFP</td>
<td>Property and Business Formalisation Programme</td>
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<td>PLUM</td>
<td>Participatory Land Use Management</td>
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<tr>
<td>PWC</td>
<td>Pastoralist Women Council</td>
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<tr>
<td>R.E</td>
<td>Revised Edition</td>
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<tr>
<td>REV.</td>
<td>Reverend</td>
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<tr>
<td>SACCOS</td>
<td>Saving and Credit Cooperative Scheme</td>
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<tr>
<td>SILC</td>
<td>Saving in Loan within Community</td>
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<tr>
<td>SPILL</td>
<td>Strategic Plan in the Implementation of Land Laws</td>
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<tr>
<td>SUMASESU</td>
<td>Support the Makete through Self-Support</td>
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<tr>
<td>TAMWA</td>
<td>Tanzania Media Women Association</td>
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<tr>
<td>TASAF</td>
<td>Tanzania Social Action Fund</td>
</tr>
<tr>
<td>TAWLA</td>
<td>Tanzania Women Lawyers Association</td>
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<tr>
<td>TLR</td>
<td>Tanzania Law Report</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UNCHS</td>
<td>United Nations Centre for Human Settlements</td>
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<tr>
<td>UNHRC</td>
<td>United Nations on Human Rights Centre</td>
</tr>
<tr>
<td>URT</td>
<td>United Republic of Tanzania</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>VC</td>
<td>Village Council</td>
</tr>
<tr>
<td>VEO</td>
<td>Village Executive Officer</td>
</tr>
<tr>
<td>VETA</td>
<td>Vocational Educational Training Authority</td>
</tr>
<tr>
<td>VICOBA</td>
<td>Village Community Bank</td>
</tr>
<tr>
<td>VLA</td>
<td>Village Land Act No. 5 of 1999</td>
</tr>
<tr>
<td>VLC</td>
<td>Village Land Council</td>
</tr>
<tr>
<td>VLUMC</td>
<td>Village Land Use Management Committee</td>
</tr>
<tr>
<td>WEO</td>
<td>Ward Executive Officer</td>
</tr>
<tr>
<td>WLAC</td>
<td>Women Legal Aid Centre</td>
</tr>
<tr>
<td>WT</td>
<td>Ward Tribunal</td>
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<tr>
<td>WWF</td>
<td>World Wide Fund</td>
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*Sammanfattning* 

*Acknowledgements* 

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1 Introduction

“Women’s entitlements in using and managing land and other possessions are a powerful tools paving way to women’s well-being and empowerment especially in least developed nations.” (UNCHS 1999:1)

1.1 Background

Access to land by women is a topical property rights issue that has garnered substantial attention around the world. The term “access” can be defined as the “ability to derive benefit from material objects such as persons, property, institutions, social and political, economic relations, actions, entitlement, relations of production and their respective histories that shape benefit flows” (Ribot and Peluso 2003:153). Access not only means a right but is more akin to a bundle of powers. Therefore, access to land is one among a bundle of the property rights and powers one would expect to exercise in controlling, owning, transferring and utilizing resources.

“Access to land\(^1\)” means the power of women to acquire property rights through various ways, the rights to use as well as decide how to use the land and enjoy that produced from the land (e.g. income, food crops, timber, wood) (FAO 2006). Access to land also includes the right to exclude persons from the land; the right to transfer land rights to members of the family or non-family through bequests, gifts, selling, or renting; to use the land as loan collateral; and to use other resources related to the land. The term also covers the enforcement mechanisms of property rights institutions existing at all levels (family to national) including participation in managerial bodies in solving land conflicts and the right to access property rights information. In accessing land, the individual (woman or man) should be able to make use of such land (Bruce 1998), as access is a right. Access may not, in contrast, necessarily include ownership or possession as emphasized by Lastarria-Cornhiel (1997). However, access should include the power to decide over production processes, products and land use while disposing over the land (sales, mortgages, subdivision, leasing, etc.).

Women’s property rights are essential, as secured access to land and other natural resources is at the heart of progressive living (Mutangura 2001; Pallas 2011; Rehmtullah 1999; Aliber et al. 2004). Women’s property rights also contribute to individuality, self-respect and social inclusion for those within deprived and most susceptible groups, those whose property rights are in most cases unofficial and defenceless under the law (Pallas 2011). Furthermore, women’s property rights to land are an important factor in social status, economic well-being and empowerment, and

\(^1\) The definition as used in this study.
for their struggle to achieve equity and equality (Rehmtullah 1999; Aliber et al. 2004) in society. Property rights access for women, as long as they are human beings, should be sufficiently defined as equal rights understood by other groups (Englert 2003). Women’s rights to land are a fundamental structure necessary for the modernisation of rural nations (Alden Wily 2001).

As a bundle of property rights, access to land by women is one of the most fundamental instruments against discrimination, which lack of may contribute to the vulnerable position of many women, causing them to be powerless economically. Women are indisputably major actors in productive and reproductive activities and thus, their access to land is extremely significant. Although secured access to land does not ensure complete “security” of their rights, access to land for women remains paramount because they require land for diversified purposes, farming being one (Jacobs 2002). In the least developed nations, access to land is paramount because land ensures subsistence (Cotula 2007b), wealth accumulation, and investment and asset transfers between generations (Deininger 2003). Land is a primary source of job creation, essential for farming contributions as well as a key aspect of a farmer’s access to useful assets and other services.

In a good number of African states including Tanzania, farming is a core economic activity, and access to land is a necessary opportunity whereby the underprivileged, including women, are able to guarantee family food requirements in the attempt to decrease hunger and malnutrition for the rural poor (Jacobs 2002) and generate income. An average of 75 percent of the population (the majority of agricultural households) in Tanzania and in other Sub-Saharan African states are small scale farmers living in rural areas (Mutangadura 2005; ECA 2003), depending on the land for their livelihoods (ECA 2003). In most Sub-Saharan African countries, women’s roles in farming activities have recently increased due to the migration of the rural productive working force to metropolitan cities and their engagement in formal occupations, mining or business-related activities.

Women represent between 60 to 80 percent of the farming labour force and also perform additional fundamental responsibilities in natural resource management, producing more than 80 percent of all foods on the subsistence level (New Agriculturist 2010) in the world. The significant role of women in contributing to economic activities is well-recognized in Tanzania. Women perform a considerable function in the country’s economy and are highly active in agriculture. The number of women employed in agriculture in Tanzania reached 79 percent (URT 2012) by 2006, and that number is expected to rise. Women engaged in agriculture in Kenya and Uganda account for 80 percent of all rural women (Institute of Economic Affairs 2008; Stevenson and St-onge 2005) and rural women working in agriculture in India account
for 86 percent (Giovarelli 2009). The number of women heading rural households is also increasing, 25 percent in Tanzania (URT 2012), 20 percent in Bangladesh and India, and 30 percent in Sub-Saharan Africa (Giovarelli 2009).

As the main producers on land, women’s access to land varies between societies globally and within Tanzania. For example, women, whether in patrilineal societies or in matrilineal areas under customary tenure systems, have indirect access to land (Tsikata 2003) and through husbands, fathers, sons or administrators, they receive secondary rights as land title normally follows the male line (Rehmtullah 1999; Aliber et al. 2004; Mutangadura 2005; Tsikata 2003). The rights to access land also vary among different groups according to gender; age; social status such as religious leaders and intermarriages; and family status - father, mother and offspring (Tsikata 2003).

Customary laws, traditional values and multiple roles hamper the advancement of women in accessing land. Access to land and other resources is imperative for creating economic benefits for women (Ellis et al. 2007). Women’s access to land improves their well-being, efficiency, parity and empowerment. If women hold rights and control over their land, what they produce is likely to reduce their threat of poverty to their families; intensify farming output as their returns will be highly secured, and enhance their ability to challenge and modify existing power relationships (Agarwal 1994).

Efforts and struggles have been made to increase women’s property rights, including access to resources such as property/land. Many countries, including Tanzania, participate in some of these platforms. Beginning in 1975 to date, positive changes as to women’s property rights have occurred globally through various platforms. The first and most significant was the World Women’s Conference held in Mexico in 1975, followed by others in Copenhagen in 1980, Nairobi in 1985 and Beijing in 1995. In 1979, another women’s conference was held whereby the UN Convention for Elimination of All Forms of Discrimination against Women (CEDAW) was promulgated (Mallya 2005). CEDAW participants raised concerns such as the need for interventions to guarantee women rights including the right to property and inheritance.

1.1.1 Women’s property rights: The Tanzanian context
The property rights system in Tanzania comprises two components, customary and statutory tenure. Access and other rights to land therefore fall within one of these two tenures. Statutory tenure is the main system in urban areas, while in peri-urban and rural areas, customary tenure is predominant. The majority of rural Tanzanian women are under customary land tenure and dependent on the land. Over 80 percent of all farmland is occupied by farmers for their livelihood, whether engaged in small scale agriculture, livestock farming or other activities. The rural population also accesses land through various ways, such as bequests, purchases, allocations by village leaders
and lease arrangements, while customs including traditions govern its access. The majorit
y of the population, about 80 percent, includes patrilineal societies as men control close to
80 percent of the land solely or jointly and women occupy about 20 percent. Within househol
ds, men occupy about 47 percent of the land. Mixed ownership reaches almost 37 percent, while
women occupy only a small portion, which is a little over 15 percent of the family land (URT
2013).

The legal framework for property rights to land and other associated rights is also
well-defined in different statutes, such as the Constitution, the 1999 Land Acts (the
Constitution of the United Republic of Tanzania and other laws concerning land issues recog
nise equality in accessing land for both genders while instilling equality considerations in acce
ssing land and other resources. For example, the LA and VLA, approved by the governmen
t in 1999 and coming into force in 2001, explicitly recognize women’s property rights, and there
is now an increasing acceptance of such rights among the country’s patrilineal societies. These
Land Acts clearly state that “the right of every woman to acquire, hold, use, and deal with land
shall receive equal treatment and restrictions as a right of any man.” This provision demonstrates
that in any land undertakings, customary law should not show favouritism against women.

The legal framework for property rights further gives room for women’s rights to par
ticipation in governing bodies such as Village Councils (VC), Village Land Councils
(VLC) and Ward Tribunal committees. Likewise, the Marriage Act (1971) is also comparativel
progressive on women’s property rights. This Act recognizes both monogamous and polygamous
marriages subject to registration. Married women are also permitted to hold property individually whether in monogamous or polygamous marriages. Wedded people are to own land together; the matrimonial land/house is jointly-registered, and husband/wife approval is compulsory when matrimonial
property is transferred. Moreover, the Land Disputes (Courts) Act of 2002 provides procedures
for filing claims as to any land conflict starting at the village level and going up to the national level. Women are free to use the established land dispute resolution mechanisms in their areas to claim their rights upon any infringement of their property
rights.

Women’s property rights in urban and rural areas, in one way or another, have been
strengthened. Rural areas in the Dodoma, Singida and Arusha regions and the Kiteto and
Simanjiro districts have also benefited from the establishment of civil society organisations
in the country (LAMP 2005; Ngoitiko 2008; Carpano 2010, 2011). Some of
these organisations include the Pastoralist Women Council, Dodoma Environmental

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2 See Chapter 5 for a more detailed discussion.
3 See usaidlandtenure.net.
Network, Land Management Programme, Land Rights Research and Resources Institute, Tanzania Women Lawyers, Tanzania Media Women Association, Women Legal Aid Centre and others. These organisations are agents of change in shaping women’s property rights in the country.

1.2 The research problem

Despite the legal protections as granted by the laws and enforcement mechanisms in place, discrimination against women in accessing land persists in Tanzania. This discrimination emanates from the frequent application of customary laws, and an unfamiliarity with the law among local leaders, local authorities, women and men. Poor and underrepresentation of women in decision-making bodies, such as in village councils, hamlets/streets (sub-wards) is also a factor. Ritual practices, polygamous practices, a lack of legal aid centres as well as community-based organisations (CBOs) and non-governmental organisations (NGOs), the individualisation of customary rights, a duality in the property rights regime including the poor and weak enforcement of property rights and laws can also be seen as contributing. Other factors include conflicting and outdated laws and an understaffing of land administrators, budget constraints, and geographical distance, which all together contribute to the magnitude of the problem.

This study explores women’s access to land under the customary land tenure system in patrilineal societies in the Makete district within the Njombe region of the Southern Highlands of Tanzania, using research data from the three villages of Bulongwa, Lupalilo and Mwakauta. The customary land holding system is the main mode of land occupation in these villages.

1.2.1 The knowledge gap

The study of women’s access to land is not a new topic among scholars focusing on women’s property rights. Much has been documented on the topic of women’s property rights worldwide. However, few studies on women’s access to land in Tanzania, particularly in the Makete district, have been done. Many of the existing studies address the need for governments to strengthen women’s property rights, placing less of a focus on access rights, such as the right to use land for production, power relations as to the use of land, the involvement in decision-making processes over use, as well as the production and products obtained as a result of accessing land.

Studies on women’s property rights in Sub-Saharan African countries, Latin America and Asia reveal several constraints that place women in marginalized positions (see Agarwal 2003, 1994; Manji 1996; Ezer 2006; Daley and Englert 2010a, 2010b; Killian 2011; Tsikata 2003). The most important observations include the need to abolish
customary laws with bad practices, amend those constitutions and provisions in existing laws that are unfair to women’s property rights, and enact land laws including policies that allow control over resources. In responding to pressure from land activist groups and international institutions, many land tenure reforms from several governments in Africa have been implemented in recent decades (1990s to 2000s). The land tenure reforms are of different natures, either by amending constitutions and/or by introducing new land laws (such as in Kenya, Malawi, Uganda and Tanzania) and implementing land formalisation programmes.

Despite such developments, the problem persists. More studies are called for in the field of women’s access to land in specific geographical areas as opposed to generalizations, such as in this work. This allows for the study of the phenomenon and attempting by identifying possible local root causes of problems, examining the mechanisms (such as empowerment issues, workshops, seminars, formation of groups) as efforts toward alleviating the problem. From this view, this research was conducted in the Makete district in the Lupalilo, Bulongwa and Mwakauta villages to document the existing situation as to women’s access to land under customary land holding systems in patrilineal societies. The way women exercise their use rights, and their involvement in decision-making regarding use of land and production at family/clan or village levels, and the enforcement of women’s property rights by local governments, were also studied.

1.3 The research aim and objectives
This research aims at investigating women’s access to land in rural areas of Tanzania, where a customary land tenure system strongly exists and contradicts constitutional provisions and land laws. In line with this aim, the main objective of the study is to examine how women access land in these areas (in patrilineal societies) and how customary laws are applied in allocating land to society with regard to women.

This study has the following specific objectives:
1. To identify differences among women and men as to accessing land in the Makete district under the customary land tenure system;
2. To assess the constraints and opportunities affecting access to land by women;
3. To assess the influence of religion and intermarriage on women’s access to land;
4. To identify any institutional mechanisms existing to protect women against any possible loss of their access rights; and
5. To identify the contributions of on-going land reforms in increasing women’s access to land in their respective areas (villages).
1.4 The research questions

The study is guided by the following research questions:
1. How do Makete women perceive land tenure (land rights) issues?
2. How do customary and statutory land laws influence women’s access to land and what have the trends been over time?
3. How effective are women’s strategies in increasing their access to land under the current land tenure systems?
4. How can women’s property rights be improved?

1.5 The scope and limitations of this study

This study focuses on women’s access to land in the Bulongwa, Lupalilo and Mwakauta villages in the Makete district. The focus on access to land does not entail that the inherent linkages to other property rights, such as occupation and inheritance, are ignored. These issues are also covered in the study. The inclusion of many rights significantly shapes the context the research addresses. However, ownership rights are not covered here as in Tanzania, persons, whether a man, woman or a community, do not own land. Land is under state control as stipulated in Sections 3(1) LA and VLA. Rights available to persons are of occupancy (use rights, lease and transfer). Rights are usually defined in the form of access and utilisation of land rather than possession.

The study was conducted in the Makete district, which covers a total land area of 5,800 km². The larger part of the district is mostly mountainous with steep hills, ridges, valleys and escarpments. It has 97 villages divided into 17 wards. Most parts of the Makete district are located in remote rural areas and accessibility is problematic, especially during the rainy reason. It was too difficult to cover many villages, therefore only three were chosen for the study due to time and resource constraints. Research assistants and other officials involved provided the necessary information.

1.6 The structure of the thesis

This thesis consists of nine chapters. This first chapter contains the introduction, providing the background to the study; the research problem; research aims and objectives; research questions; knowledge gap; limitations and the scope of the study. Chapter Two describes the research design and strategy, and employed data collection methods. Chapter Three explains and identifies relevant concepts for analysing property rights. The chapter describes how rights and property rights to land evolve; property rights as institutions; property rights regimes such as common, private and state property rights and open access are examined; the overlapping of rights (plural legal tenure) – customary and statutory rights including others are also explored.

Chapter Four presents customary land tenure and women’s access to property rights from an African perspective. The concept of customary law; the practices and features
of customary tenure and how it affects women’s rights to land; factors limiting women’s access to property rights; gender, empowerment and property rights details are discussed. Chapter Five examines the legal framework of property rights in Tanzania. The discussion is from a historical background of the property rights structure to current legal instruments that protect or undermine women’s property rights (both statutory, customary, Acts and Orders) including the Constitution; the LA and VLA of 1999; the Marriage Act of 1971, and the Customary Laws Declaration order of 1963.

Chapter Six provides information about the Makete district. Various aspects including background information on administrative units, boundaries and population growth (showing a decline in the 2012 census report) are covered. Land use patterns are identified, of which three categories have been found to be the most prevalent, forest reserve, agriculture, and secondary or natural forest are also discussed. Land tenure is of two types - customary and statutory - whereby 97 percent of the population occupies land through customary laws. Rural land titling programmes, PBFP and SPILL, have been carried out in the district. Results show that more residents are applying for certificates of customary rights of occupancy though legal empowerment on property rights has not yet been a priority issue to the council and councillors.

Chapter Seven describes the three villages studied, Bulongwa, Lupalilo and Mwakauta, including their historical context, land use, economic activities, population, power relations in allocating land, and changes of land tenure relations. The chapter further traces the history of gendered property rights. Chapter Eight presents the results and analyses on women’s property rights in the Bulongwa, Lupalilo and Mwakauta villages. Chapter Nine is the conclusion of the study, drawing together all the discussions in the thesis. The chapter also reflects on the lessons learned and the work’s contribution to the current knowledge as to women’s access to property rights.
2

Research design and methodology

This chapter presents the methodological approaches used in this study, setting out the research design, approaches and methods used to conduct the fieldwork (data collection) and analysis plan. Research designs are “plans and procedures for research that cover the assessment from wide statements to in-depth techniques of data gathering and analysis” (Cresswell 2009:18). A research design clarifies the procedures for collecting empirical data, being a flexible set of guidelines tying together theoretical paradigms and strategies of inquiry (Denzin and Lincoln 2000). Research methodology refers to an “extensive method to scientific investigation indicating how research questions should be asked, general preferences for design, sampling logic, analytical strategies, inferences made on the basic findings and the criteria for establishing quality” (Teddlie and Tashakkori 2009). Data collection methods are tools used by a researcher to gather information, including, for example, observations, interviews, artefacts, questionnaires and focus group discussions. The following sections describe the research methodology adopted for this study.

2.1 Research approaches

This study investigates women’s access to land under customary land tenure arrangements in patrilineal societies in rural Tanzania. The debate on the importance of women’s rights to land including access (Radcliffe 2014), centred on supporting women in obtaining their property rights, is highlighted. In order for women to gain their rights, while also increasing their bargaining power over land in rural areas, much needs to be done at the grassroots levels - from family, clan, village and ward up to the national levels. To explore this in detail, a “mixed research approach” is deployed. This approach combines fundamentals of both qualitative and quantitative research approaches (Cresswell 2009). The method is useful when either a qualitative or quantitative approach in itself is insufficient to best understand a research problem. The strengths of having both qualitative and quantitative research approaches is being able to present the greatest comprehension (Cresswell 2009). Therefore, in order to better understand women’s access rights to land in the rural areas of the Makete district, it is of crucial importance to integrate these two research approaches.

Both qualitative and quantitative research approaches are found to be suitable for studies calling for answers in the form of why and how questions (Yin 1994). These approaches are combined to minimize their respective limitations while making use of their respective strengths in order to provide insights and analysis into the desired goals (Gilbert 2006:208). With a qualitative method, feelings and insights are considered important (see Orodho and Kombo 2002), relying on a research strategy
that is flexible and interactive (see Kombo and Tromp 2006). A quantitative research approach is adopted to answer “how” questions (see Gillham 2000).

2.2 The study design and strategy: A case study

This research is based on a case study strategy. A case study is “an empirical investigation that examines contemporary phenomenon in its real-life environment, particularly when the limits between the phenomenon and context, are not clearly evident” (Yin 1994:13). The case study strategy is adopted here because it allows or is invoked to study selected issues, cases or events in depth and detail (Stake 1995; Orodho and Kombo 2002; Kothari 2004). Several issues are investigated with the intent of determining women’s access to land and associated rights in a customary tenure system. This strategy also allows the researcher to exploit a diversity of sources, types of data and research methods including multiple data collection methods such as verbal reports, interviews, focus group discussion and text analysis (Yin 1994; Ghauri 2004; Denscombe 2007; Gillham 2000).

Under a case study strategy, concepts and variables are often difficult to quantify because there are many variables to be considered, which render experiment or survey methods inappropriate to use (Bonoma 1985; Ghauri 2004; Yin 1994; Denscombe 2007). The case study strategy is therefore chosen to overcome any shortcomings as to using other research strategies. The focus is to have an in-depth study, but during a limited period of time within a few areas. The choice of case study strategy is also made because it is expected to advance the understanding of the research phenomena (Stake 1994).

The choice of a case study strategy is also intended to optimise the understanding of particular situations concerning women’s property rights, especially access to land, the influence of customary laws on land allocation, the contribution of religion and intermarriage in gender relations, the impact of land reforms on women and their related land problems such as lack of legal capacity, land grabbing, polygamy and ritual practices together with Human Immunodeficiency Virus/Acquire Immune Deficiency Syndrome (HIV/AIDS) disease under a customary tenure system rather than simply a generalization. Thus, multiple case study strategies are deployed to offer empirical evidence as to the status of women economically, legally, culturally and socially in patrilineal societies in the Makete district.

The main thrust of a case study can be a description, exploration or explanations (Yin 1984 cited by Keddie 2006). The case study here follows an exploratory research design. This is an exploratory case study research aimed at studying and understanding women’s property rights in terms of access,\(^4\) rights to exploit land, together with their

\(^4\) See www.landandpoverty.com for more details.
participation or involvement in managerial procedures in at the family/clan to village levels. Women’s participation in resource control (produce from farm and income) and in decision-making bodies is also examined.

Case study strategy has been appraised as a distinctive form of empirical inquiry. However, it has been viewed as a less than desirable form of inquiry compared to experiments or surveys. This is due to a perceived lack of rigor in case research, such as biased views influencing the direction of findings or little basis for scientific generalization. Case studies can also take too long to accomplish and result in massive and unreadable documents (Yin 1994:9). Despite these shortfalls, case study strategy remains the most suitable of all studied strategies here. The use of more than one research method is compatible with a case study strategy (Denscombe 2007). Furthermore, since case study employs multiple methods, it adopts multiple sources of evidence and data. As a result, data validation through triangulation is possible (Denscombe 2007). Triangulation intensifies data reliability and the gathering process (Yin 1994).

2.3 The selection and description of the area studied

This study is carried out in the Makete district within the Southern Highlands of Tanzania. The district is located about 110 kms from the headquarters of the Njombe region. Undulating plains characterize the landscape. The district occupies a large and sparsely-populated area. Other areas of a similar nature could have been studied, but the selection of the Makete district is due to the following reasons:

(a) This research examines important issues such as women’s access to land in rural areas and customary property rights systems operating under patriarchal societies where customary laws are strongly applied in the allocation of land to both women and men;

(b) The availability of baseline information about the area is documented in the Makete district profile as many studies have been conducted in the district concerning different issues, such as widows’ vulnerability with respect to property rights in the era of HIV/AIDS (Dworkin et al., 2014);

(c) The Makete district comprises patrilineal communities with many communities still organized based on customs, norms and traditions in questions of land allocation and distribution to family members including women;

(d) There is less intermarriage to influence patriarchism;

(e) the presence of religion (Christianity) does not appear to influence patriarchism; and

(f) there is a lack of legal and economic empowerment.
2.4 A description of the villages studied

As Ghauri (2004:114) states, “there is no upper or lower limit to the number of cases to be studied in a study.” One case is often enough because it is the research problem and research objectives that influence the number and choice of cases to be studied. Case study research may involve single or several case studies (Yin 1994). Due to the nature of this research problem, this study uses multiple case studies. Yin (1994) holds that evidences from multiple case studies are regarded convincingly, and generally, the study is then considered to be strong.

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Figure 2.1: A map showing the location of the Makete District

Prepared by Mwakapuja, F. from the Department of Geoinformatics at Ardhi University, January 2015.
Hence, three villages, namely, Lupalilo, Bulongwa and Mwakauta, out of the 97 in the Makete district were chosen from the three different wards of Lupalilo, Bulongwa and Iniho. The selection of the three villages is due to the facts that the villages have very small geographical coverage in terms of settlements with low population rates (Makete District Profile 2008). Studying only one village could lead to the collection of insufficient data, which would not allow for generalization and representations about the district. Another reason is to explore and compare, wherever possible, different dimensions of the research issue in a systematic way. Comparable issues are the differences in land occupation between women and men, traditions and customs used in land allocation for women and men, the role and ethnic composition of village leaders, elders and religion in enforcing property rights in the villages, and the power structure as well as relations at family/clan and even at village and ward levels.

Moreover, the villages in which data were collected have the following common characteristics:

(a) The villages are easily accessible. They are located near main roads and passable throughout the year. Moreover, they all have certificates of village land because they have been surveyed and boundaries demarcated, for example, in Mwakauta land use plans have been carried out.

(b) The villages practice the customary land tenure system and they produce permanent cash crops such as pyrethrum and wheat. For the past 20 to 30 years, pyrethrum was the major cash crop though its production declined due a decrease in demand. Consequently, pine timber logging and wood harvesting have become major cash crops in recent years. Almost every family (household) has a pine timber tree farm although small in size and quantity.

(c) Residents’ livelihoods rely on cultivation as their main economic activity. Livestock farming is a small percentage. Maize is the major and most important food crop, more often than not mixed with other leguminous vegetation during planting. Others are wheat, Irish potatoes, sweet potatoes, millet, beans and sorghum. Women are the major producers on land parcels.

(d) The major ethnic group is Wakinga. In all the villages, however, inhabitants include other ethnic groups such as the Wahehe, Wabena, Wasangu, Wanyakyusa and others who migrated to the districts for various reasons including the timber trade, formal employment (teaching, nursing), community services, marriages and so forth.

(e) There is a high illiteracy rate among the majority of elders/adults. The highest education level for the majority is primary education, though a good number have dropped out of school before they reached the highest educational level.
2.5 Sampling design and techniques

Sampling procedures involve two techniques; simple random sampling and purposive sampling. The former is an approach that allows or is likely to provide a representative sample on a cross-section of an entire population (Denscombe 2007). A purposive sampling procedure entails deliberately selecting a particular population size to constitute the sample. This can be for various reasons, by virtue of the positions the individuals hold, such as village chairperson, executive village officer, and other government and non-governmental officials. The primary sampling unit here is the village, whose selection was conducted for purposes of achieving representativeness of the studied population. Other interviewed respondents selected were land officials, district solicitors, community development officers, village leaders, and ward executive officers, members of the VLCs and ward tribunals. A purposive sampling procedure is also used to reach individuals working with NGOs in the Makete district as well as famous and experienced elders including religious leaders. Other members were those meant to form focus group discussions.

Likewise, a simple random technique is used to select women to constitute the sample for detailed interviews. Such women were randomly selected by the researcher with assistance from village executive officers and chairpersons. As a result, a total of 112 women were selected. The selection criteria were marital status (married, unmarried or widows); the capacity and willingness to participate in the study; availability; education level; ability to read and write; experience of customary laws and its influence on land allocation.

According to statistical information obtained from the village government offices, the three villages had a total of 789 households. With such number of households, the sample size was to be 130 households in accordance with a 92 percent confidence level and 8 percent margin of error (+0.08) as based on Slovin’s formula \((n= N/1+ Ne^2)\),\(^6\) where \(n\) is sample size; \(N\) is number of households and \(e\) is a tolerance level (margin error). However, due to time and financial constraints, low population, willingness and readiness of respondents to participate in interviews and the high illiteracy level; the elders’ group composed of a high number of women (>65) compared to the middle age (30-50 years) population. The sample size of 112 respondents was used and evenly distributed: 40 respondents from the Bulongwa village, 35 from the Lupalilo village, and 37 women from the Mwakauta village.

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6 This formula was introduced by Slovin in the 1960s and is extensively employed when deciding population samples in various types of research. The error margin is typically determined by the researcher while population size is well-known.
2.6 Data collection methods

Data were collected from both secondary and primary sources. Both primary and secondary data were gathered from relevant sources including written documents such as legislation, reports, books, journals, published theses/dissertations and so forth. The data collected were both quantitative and qualitative (Doss et al. 2014). Information was gathered from the three villages of Bulongwa, Lupailo and Mwakauta. The research was carried out by fieldwork divided into two phases, from November 2012 to January 2013 and from December 2013 to January 2014.

Primary data were collected using multiple or mixed data collection methods. As pointed out by Cresswell (2009), the use of a diverse type of data provides an understanding of the research problem. Similarly, Denzin and Lincoln (2000) concur that research needs to have several methods for collecting empirical materials. The common methods, as put by Green and colleagues (1989), are focus group discussions, in-depth interviews, household surveys, and questionnaires. Others are documentary review, artefacts and observations.

The discussion above explains the major data collection methods deployed by the study in gathering information to improve the quality of findings and checking for bias in research methods as emphasized by Denscombe (2007). For detailed explanations on various tools for data collection and the type of data collected as incorporated with specific and general research questions refer to Appendix 1.

2.6.1 Interviews

Interviews constitute the major data collection method used in this study due to its nature. This method is relevant because of its purpose, which is to collect varied opinions and experiences as shared by individuals in the Makete district. It is an outstanding method for gaining access to information about events, opinions and experiences. Due to the fact that opinions differ among groups by terms of age, education level and sex; the method allows the researcher to understand how meanings of various aspects differed among villagers and other officials. Several interview methods are deployed for the different groups, supplemented by an interview guide (for each specific group) as follows.

In-depth interviews

The in-depth interviews were guided by a set of questions with unstructured and structured questions (see Appendix 2). These were administered by the researcher and a research assistant for consistency in recording answers as many women (especially the older group) respondents in the studied villages were illiterate. The majority of

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7 See Creswell and Tashakkori (2007) and Green et al. (1989) for a detailed definition of mixed methods.
respondents in this method were women, married, unmarried and widows. Women respondents in each village were interviewed separately to avoid external influence or consultation between them. Before conducting the interviews, respondents were introduced to the purpose (academic purpose) and expected outcomes from the study so as to enable them to participate by listening and responding to questions. Interviews were crucial for gaining information on the informant’s social, economic and cultural issues and to understanding the driving forces behind any threats to property rights based on use of land, control, inheritance, and other factors. In fact, Patton (2002) notes that in-depth interviews are best suited for accessing perceptions, motivations and feelings. A further advantage is confidentiality between the researcher and respondents.

Key informant interviews
With this method, data is gathered from well-informed and experienced individuals who are inhabitants in the villages and knowledgeable about the subject. A total of six (6) elders, two (2) from each village who were aware of the customs and practices were interviewed. A detailed interview was based on gathering information about the historical evolution of customary land tenure in their respective villages. Moreover, the history of the village, customary law and relations, changes in the land tenure system for the past two decades, whether customs and laws changed or still persist, and how they affect women’s rights over land, were necessary pieces of information sought by the researcher. Information associated with the relations between individuals as to land allocation and decision-making processes on use of land; the influence of intermarriages, the influence of politics and religion on realising a balance with regard to property rights were also asked. An interview guide was prepared and used during interviewing. A tape recorder verified the process by recording the conversation on site.

Expert interviews
Expert interviews were conducted with various governmental and non-governmental officials in order to gather additional data, including useful information as explained in the following.

(a) Land officials
Land officials (land administrators) were three in number from the Makete district, including a land officer, town planner and head of department responsible for land, natural resources and environment. The data gathered included types of land tenure and coverage; land rights trends in the district- the awareness of the laws on land (women and men); land reform programmes (PBFP or SPI) together with changes brought about by such reforms, and women’s participation in the programmes. Other information was based on the training of villagers through
capacity building, and whether they embraced property rights laws to land and the existence of land dispute institutions.

In addition to these officials, a District Community Development Officer and District Solicitor were interviewed. Through the Community Development Officer, important data were gathered related to gender and empowerment - efforts by the district to empower women economically and socially. Likewise, with the District Solicitor, aspects on legal training to VLC and ward tribunal members on the legislation [VLA, Local Government (District) Act and Ward Tribunal Act and Courts Act] were explored.

(b) Village leaders
In this group, three Village Executive Officers (VEOs), three VC chairpersons and seven VLC members were interviewed. Types of information gathered concerned the village history; population trends, household sizes and type; economic activities; land tenure status, power relations among groups, extent of intermarriages; women representation in village meetings and councils; customary laws as applied to land; changes in behaviour and attitude towards women in society; land-related disputes and reported cases; and challenges in bringing litigation.

(c) Ward Executive Officers (WEOs) and tribunal members
Under this category, three Ward Executive Officers and eight ward tribunal members were interviewed. The information collected included women representation in various committees; knowledge on property rights for both groups (women and men) including inheritance practices; the practice of customary land tenure in the ward (trend and changes over time for the past 20 years) and in the villages; efforts to empower women economically, legally and socially; and reported land cases including those mediated by the tribunal.

(d) Non-governmental organisations (NGOs)
In this category, two officials from two different organisations (Support the Makete Self-Support and the Makete Support People with HIV/AIDS) were interviewed. Information gathered included the establishment and incorporation of women’s issues in the NGO’s strategic plans; and their achievement and coverage in the villages; cooperation between NGOs and district governments and their future strategies and plans on women’s property rights.

2.6.2 Focus group discussions
Focus group discussions are a powerful exploratory tool used in this study to facilitate exploring thought patterns, expressing feelings and allowing the use of detailed information about various topics relevant to this study. The informants in each village
were divided into one group of women and another group of men composed of 6 to 8 participants per group. A sum of 6 groups, 2 from each village, participated in the discussions. None of those participating in the discussions had contact with the researcher prior to the discussion sessions. The groups were purposively selected to ensure a cross-section of interests, needs and socio-economic and cultural experiences including political leaders, decision-makers and elderly, middle-aged individuals; married, unmarried and widows for the case of women.

Focus group exercises incorporating various participatory methodologies including mental mapping and ranking exercises were used. Before the discussion, a brief introduction of the research and its purpose as well as the importance of their participation in the discussion was provided. The group participants also introduced themselves to the researcher. The researcher led and moderated the topics of the discussions as deemed appropriate in some instances and the discussions were between 2 to 2.5 hours.

2.6.3 Documentary review
Prior to the study, secondary sources were used as background resources. The secondary sources included relevant documents such as legislation (the LA and VLA of 1999, Courts Act of 2002, Marriage Act and others), written reports such as the Makete District Profile, Housing and Census reports together with the report of the Law Reform Commission of Tanzania on succession and inheritance. Other sources were books, journal articles, published theses/dissertations and Internet sources. Other types of secondary information and records were those relevant to the history, demography, environmental characterization and natural resources of the studied area including materials on women’s property rights gathered from libraries, relevant offices and organisations.

2.7 Data processing, analyses and presentation
The data processing and analyses were guided by specific research objectives, research questions and the theoretical framework of the study. Qualitative data were divided under research themes; the general questions and other specific aspects on access to land and HIV/AIDS disease status; knowledge of the laws on property rights, access to property rights information; empowerment issues and land disputes and available legal mechanisms. The applied approach was the use of research questions, which involved categorising and grouping the data, after which similarities and differences were checked. It involved summarizing information collected from respondents in a manner yielding answers according to contents of the interviews and documentary sources.

The primary information gathered from women respondents through the interviews is analysed using descriptive statistics such as frequency, percentages and cross-
tabulation to obtain quantitative information. The information is presented in tables and figures. An interpretation of results is then offered and appropriate comparisons made. A ranking method is used and the results are presented either in tabular, graphic or descriptive formats as to certain information. Descriptive tools are supplemented by qualitative analytical techniques like interpretation and explanation of assorted opinions, views and concepts; summarizing, categorising, and arrangement in suitable form. This is done through the content analysis of the information obtained from the secondary sources, focus group discussions and key informant interviews. A manual analysis of qualitative data from key informants and focus group discussions is thematically carried out among major variables and concepts developed to distinguish and explain ideas expressed from generalizations, direct quotations and made summaries.
According to Haddad (2003), theories of property rights explain how and why property is created, allocated and why such rights are needed. These theories also categorise ownership and/or property regimes as a subset of rights having the same characteristics. A comprehensive definition of the elements of property rights and their relationships to similar rights are inbuilt within such theories (Haddad 2003). Such an approach also accounts for the dynamics of why and how theories on property rights change and the justifications for such changes.

Various concepts relating to property rights are discussed in this chapter. The discussion includes definitions of property rights, their evolving features, types of property rights regimes, evolution theories and property rights in a plural legal system.

3.1 Property and property rights: Context and meaning

“Property” not only refers to a physical object, but also to the rights related to the property’s use (Blocher 2006). Thus, property has been defined as a collection of rights, relating to the use and transfer of resources (e.g., Ciriacy-Wantrup and Bishop 1975). Property consequently should be associated with the idea of entitlements and distinguished from the notion of ownership. Honore (1961) lists eleven items that form a collection of rights defining property:

(i) The right to have exclusive control to the property;
(ii) The right to use the property;
(iii) The right to manage the property;
(iv) The right to income emanating from the property;
(v) The right to capital - power to alienate, consume or destroy the property;
(vi) The right to security - immunity from arbitrary appropriation of the property;
(vii) The right to transfer the property;
(viii) The absence of term and perpetual ownership of the property;
(ix) A prohibition of harmful use (limitation of no bad externalities) of the property;
(x) The liability for execution (full ownership involves the liability of the owner’s interest to be used to settle debts); and
(xi) The right to residuary character and social rules to govern situations when the ownership rights lapse for any reason (for example, due to war or constitutional amendment, *ibid.*).
Rights to use; exclude and transfer property are important features of property and have a significant economic impact on the whole idea of property rights (e.g., Snare 1972). The existence and observance of these rights, duties and other relationships distinguish property from non-property as well as one type of property from another. With resource extraction (e.g., in a common property regime), the sets of rights and duties for both participants and non-participants are discerned: the absence of rights and duties means that the institution of property as such does not exist (Stevenson 1991). Whereas rights are relationships between persons, property rights refer to relationships between persons regarding the use of a thing (Bruce 1998). In other words, it is not the resource itself that is possessed; rather, it is a collection or part of rights to utilise a resource that is possessed (Alchian and Demsetz 1973:17).

Property rights can be defined as an overlapping “bundle” of rights rather than complete and exclusive ownership, including control of a resource (FAO 2002; Meinzen-Dick et al. 2004). There are many combinations of such rights that can broadly be grouped into three types: The right to use; control; and transfer the property:

- **Use rights** are rights to access the resource including land. Use rights may be limited to rights where the property holder is able to exclude all other land uses (Gray and Kevan 1999). She/he may decide to share with various right holders permitted to use the land in specified ways at specified times (Migot-Adhola 1994; Shipton and Goheen 1992). Use rights often also go together with responsibilities to carry out a specific action (Gray and Kevan 1999);

- **Control or decision-making rights** include rights to manage (plant a crop) and rights to exclude (prevent others from accessing land); and

- **Transfer rights** are rights standardizing how and to whom the property-owner should be able to relocate land, including charitable, bequests (whether *inter vivos* or to heirs), leasing out, pledging, and mortgaging or selling land to others (Lastarria-Cornhiel 2002).

Property rights concern a relationship among the right possessors, third parties and institutions supporting claims by placing a corresponding duty on others to uphold the right (Werthmann 2012; Di Gregorio et al. 2008; Bromley 1992 & 2001). The nature and distribution of property rights are important in defining how resources are used and preserved. Property rights limit *who* can do *what, when and how* within a particular resource, such as a land parcel (Wiebe and Meinzen-Dick 1998; Meinzen-Dick et al. 2004; Bromley 1991 & 1992). Specified claims and associated responsibilities of different actors (individuals or groups) relating to the benefits of a resource are clearly stipulated (see, e.g., Meinzen-Dick et al. 2004). Public agencies play an important part in shaping property rights. They help to create the preliminary allocation of entitlements (or access) to resources within the public, impact the manners by which such entitlements might be operational among members of the
public and may themselves be involved in transactions for rights in land and other resources (Wiebe and Meinzen-Dick 1998).

Property rights are also described as accepted benefits in land or property vested in a person or group, and should exist independently to land or any improvements. Property rights not only take into account titles and paper documents, but also other features of access to and use of resources are considered as they cover a varying set of tenurial rules (Meinzen-Dick et al. 1997). These rights can also be sanctioned by quantity, time and other facets of resource utilisation including administration.

Generally, there are various ways by which access to property (including land) can be attained by groups in a community. These include (de Janvry and Sadoulet 2001; Meinzen-Dick et al. 1997):

(i) Access to property rights through intra-family transfers such as inheritances, *inter-vivo*\(^8\) dispositions, and the distribution of land parcels to particular household members;
(ii) Access via public partisanship and unofficial land markets;
(iii) Access by the way of market purchase;
(iv) Access due to a specific enforceable policy intervention scheme such as de-collectivisations and decentralizations, tenurial reforms or villagisation processes;
(v) Labour or other ventures in recuperating a resource; and
(vi) Long occupation over land (adverse possession, prior appropriation or “squatters’ rights”).

### 3.2 Property rights regimes

The growth of property rights regime is an ongoing process in which the state performs a fundamental function in view of property rights (Vascovich 2012). A system of property rights cannot operate without influential institutions and the ability to describe and implement the laws, and provide adjudication in disputes between parties (European Union 2004). Four types of property rights regimes are described below, namely, (i) common property regimes, (ii) private property regimes, (iii) open access regimes, and (iv) state regimes.

#### 3.2.1 Common property regimes

A common property regime refers to a formal or informal property regime that assigns a collection of rights to a group (Hess 2006). Such rights may include possessing, managing, using and excluding the right to a joint resource (Hess 2006; Schlager and Ostrom 1992). Common property regimes are defined primarily in the form of collective rights and can include varied privileges for both individuals and groups such

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\(^8\) Access by way of unofficial recognitions decided by persons and granted to relatives or friends (Agarwal 1994).
as access, withdrawal, management, exclusion and alienation (Schlager and Ostrom 1992). The word “common property regime” embodies a set of organisations, rules and management procedures focusing on joint decision-making. In general, a common property regime denotes the existing tenure institutions, not the resources themselves (Fuys and Dohrn 2010). Thus, common property resources (such as village forest, common grazing land) are governed by institutions claiming ownership and management rights over the resources in question on behalf of a known group.

Seven essential and satisfactory conditions are necessary in order for a common property to evolve (Stevenson 1991). Such conditions exist with a common property as all other resource use regimes (in particular, various forms of open access and private property) lack at least one of the following (ibid.):

(i) Physical, biological and social parameters defining the boundaries of a resource unit;
(ii) A clearly-defined group of users distinct from other individuals prohibited from using the resource;
(iii) Several users taking part in resource extraction;
(iv) Precise or implied clearly understood rules existing between users as to their privileges and responsibilities with respect to one another in terms of resource extraction;
(v) Users sharing joint, non-exclusive entitlements to in situ or fugitive resources prior to capture or use;
(vi) Users contending for the resources, and in that way, inflicting negative externalities on one another; and
(vii) A well-delineated group of rights holders that might or might not overlap with the group of users.

Other features of a common property regime include individuals having rights of utilisation (and duties), property owning groups as mostly social units with some interaction, common interests, definite membership and boundaries, common cultural norms and endogenous authority systems such as land priests (Kirk et al. 1998). The Swiss Alps provide a good example of such a regime. Although common property regimes have been in existence in Tanzania for a long time, the land is not collectively-owned. The Wahadzabe ethnic group in North Central Tanzania, who collectively own the forest where they collect mushrooms and honey and also hunt wild animals, presents a good example of a common property rights regime. Under a common property rights regime, both power relationships and cultural influences determine enforceability and the rights of individuals.

Despite the several advantages to a common property regime, several economists argue that such are inefficient. These inefficiencies include: (i) rent dissipation; (ii) high transaction and enforcement costs and, (iii) low productivity (Ostrom 2000; Ostrom and Hesse 2007). The establishment of common property institutions does not
guarantee equitable access, cooperation among beneficiaries or wise resource management. A common property regime may allow resource degradation whilst under threat of disappearance resulting from the individualisation of the commons, commercialisation and external investment, demographic pressures, legal and governance frameworks and resource-based conflicts (Fuys et al. 2008). In Tanzania, many common property resources have been depleted and environmental degradation is extreme in the central, western and northern parts of the country. Much of the village forests and common grazing lands no longer exist as a result of uncontrolled and unregulated use, population increases and competing uses.

3.2.2 Private property regimes
Private property rights entail the assignment of rights to private parties who may be individuals, married couples or groups of individuals (FAO 2002). The owner is given full and exclusive rights to decide as to the property including the right to exclude others from using (Dogmo and Sicco 2012) and possessing the property (Snare 1972). The rights attached to the owner include the rights to use, possession, revenue or alienation. For example, single families within a community may be limited to certain rights such as residential land parcels, agricultural land parcels and certain trees. Other community members may be barred from using these resources without the approval of the right holders (FAO 2002).

By excluding others, private property rights internalise externalities at a lower cost in comparison with communally-owned rights (Vascovich 2012). This is only possible where the resource is assigned a value, as a system of private property is created when a resource becomes sufficiently valuable and cost effective to use property rights to force the internalisation of externalities (Demsetz 1967). Although private property rights provide maximum benefits for pulling out financial surplus, they involve excessive transaction costs (Bromely 1991). For example, demand for grazing land can increase due to improvements in the transportation infrastructure, and may result in an increase in local cattle prices. Populations also grow and increase the commercialisation of land and consequently, cause an increase in the scarcity of land.

Private property rights allow for the free exchange of land and property, including its development, and property markets where a balance between supply and demand is achieved through the pricing mechanism. This also aims at guaranteeing the most effectual and adaptable use of land, including the transformation of rural land into urban use, which is easily done subject to statutory controls and their enforcement. A title(s) and written document(s) might be issued identifying ownership of a specified part of land or other resource (Payne 2002). However, the inability to ensure equitable

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9 Fuys et al. (2008) researched 41 countries including 20 African countries, Asia and Latin America and confirmed this.
access to land or property as to lower income groups in many countries is a matter of concern (Payne 1996).

Private property rights (in land) are a Western concept introduced into many developing countries by Europeans. These rights arose under a specific legal order by the original acquisition of land (occupying and making the land arable) or changes in ownership (conquest, contract, inheritance). These can be seen in contrast to the rules of feudal society, where land lords had greater land ownership rights and all tenants in the area paid him “fees” (Payne 1996). In developing nations, such as Kenya, Uganda, Zimbabwe, South Africa and others, the concept of private property rights is alien and is mostly common in urban areas where it was introduced or strengthened by colonial administrations for the benefit of European settlers (Mabogunje 1990). The concept of private property can coincide with other concepts such as customary tenure.\(^\text{10}\)

### 3.2.3 Open access regimes

An open access regime is one in which there are no property rights for anyone (Bromley 1992, 2001; FAO 2002; Alston and Mueller 2005; Ostrom 2000; Stevenson 1991). Under an open access resource setting, the first individual or group of individuals to appropriate resources becomes, by default, their “owner.” However, ownership under such situations arises from capture (as ownership has never been established), not from a prior interest legitimated by the state or for the reason that no constructive supervisions are in place, or feasible, that is, the costs of exclusion outweigh benefits (Bromley 1992, 2001).

Under open access regimes, individuals are also free to use a resource without regard for the implications accruing to others. An individual in such situations has the *privilege* to utilise the resource, but also has *no right* to prevent others from using it, which may lead to resource depletion and thus, a “tragedy of the commons.\(^\text{11}\)” An open access resource is free of charge for all, by which the rule of capture drives all users to take as much as possible and as quickly as possible. There are no property rights in open access regimes (Bromley 1991, 1992 and 2001). However, the state can sometimes successfully convert open access property into private, common or public property by legislation in a bid to define rights and enforce them.

\(^\text{10}\) See chapter 4 for a further discussion on the concept.

\(^\text{11}\) The “tragedy of the commons” concept was introduced by Hardin in 1968. The concept explains the effects on a common property resource when the intensity of use reaches a level where rivalry becomes an issue and the resource is over exploited leading to depletion; “Freedom in a commons brings ruin to all” (Hardin 1968). He suggested that private property rights held by individuals, corporations, communities or trusts should be introduced and granted based on resource users in order to avoid the tragedy of the commons.
3.2.4 State property regimes

State property regimes involve rights in land, including ownership and control thereof (Kirk et al. 1998), which may be vested in the state instead of in individuals or the public (Clarke and Kohler 2005). Property rights are designated to some authority in the public sector and to institutions (FAO 2002). While possession of a particular resource is vested in the state or any branch thereof, such as a local authority including a city, municipality or a district as is the case for Tanzania, individuals may, nonetheless, be allocated user rights of various types or even limited management or control rights.

Under this regime, the state can acquire property rights through various ways, such as conquest, nationalization (e.g., Tanzania after independence) or expropriation with or without compensation, as in the case of Ethiopia (Kirk et al. 1998). A shift from state property to other property types is also possible. National forests, national parks, military reservations are examples of state properties, for which the state cannot grant occupation rights to an individual. However, should it become necessary, the state can acquire part of properties and establish other property rights. The latter can be vested in an institution (group rights); or to the public by the way of tender or auction, thereby creating individual/private rights, common/public rights (on village land) or family rights.

Major limitations of the system are the demands that it places on the capability and integrity of administrative systems and their ability to respond efficiently to changes in demand (Payne 1996). Countries such as Ethiopia and Tanzania portray good examples of state property regimes, and the institutional arrangements vary considerably between countries. Dual land tenure\(^\text{12}\) (customary and statutory tenure) is a common phenomenon in a state property regime, where diverse rights might be obtainable, ranging from purchase to lease rights. Likewise, persons or groups can comprise different forms of entitlement as to the same resource (Meinzen-Dick et al. 2004). Access modes can also vary (c.f. sections 3.4, 3.5 and Chapter 4).

3.3 The evolution of property rights and institutions

Property rights may arise from law, custom or the operation of markets (Wiebe and Meinzen-Dick 1998). They emerge, grow and disappear in reaction to financial, public and ecological demands and political processes. They are malleable, changing within institutional frameworks that differ in space and time domains. The point to which a rights structure offers advantages over alternatives ultimately determines whether it survives (Guerin 2003). Property rights also emerge from individuals’ long political

\(^{12}\) “Land tenure” simply means a land holding system and the rights derived from the system including those property rights identified and implemented under customary/and or statutory arrangements. The duo land tenure system is often recognised as legal pluralism.
struggles aimed at improving their well-being. They can emerge as the effects of complex interactions between government administrators managing social institutions due to their monopoly over the use of force and the exclusive function they play in the legislative processes and free agents challenging the institutional structures to fit them into their own (Sened 1997).

Property rights may further originate with resource users (Schalger and Ostrom 1992). In some situations, defining and enforcing rights among users is done cooperatively by the resource users. Such rights are de facto as long as they are not recognised by government authorities (Schalger and Ostrom 1992). The emergence of new property rights in a society can be in response to the aspirations of the interacting persons (Davidson 2008) for adjustments to new cost and benefit possibilities (Demsetz 1967). In the evolutionary process of private property rights, Demsetz (1967); Alchan and Demsetz (1973) suggest that property rights evolve out of socio-economic factors. They occur when it benefits the economic interests of those who are affected by externalities to internalise costs and benefits.

Institutions play the most significant part in establishing, modifying and enforcing rights to property. Thus property rights are regarded as social institutions. Property rights institutions range from official arrangements, including constitutional clauses, statutes, and court decisions, to unofficial rules or standards including traditions concerning allocations and uses of property (Bromley 1991, 1992; Wiebe and Meinzen-Dick 1998). Conditions of access to and control over resources including land are governed and defined by these institutions. Decision-making strategies regarding resource use are critically affected by such institutions and, hence, affect economic behaviour and economic performance (Swallow 1997).

Political processes, including dialogues between closely-related group members or the lobbying activities taking place at higher levels of government circles, determine property rights institutions. The political process of defining and enforcing property rights may cause a lot of disagreement because of the distributional implications of different property rights allocations (Libecap 1989).

3.4 The transformation of property rights systems in Africa
An increase in population pressure, density and land scarcity are key driving forces as to the transformation of property rights systems in certain African countries. Other driving forces include investment options and the underlying resource value of land (Cleaver and Franks 2009), increasing the commercialisation of land-based activities, better access to markets and the introduction of improved technology to exploit the land and increased payoffs from land investments (Fitzpatrick 2005; Deininger 2003; Deininger and Feder 1998; Platteau 1992, 1996 & 2000). These changes can be
described using the evolution theory of land rights (ETLR),\(^\text{13}\) articulated by Platteau in the 1990s. ETLR provides a detailed explanation of the rise of property rights in African countries within the agricultural sector (Platteau 1992 & 1996) as an effect on changes in African land tenure systems.\(^\text{14}\) The theory also predicts a paradigm shift from comparatively loose customary tenure arrangements to well-defined (Fitzpatrick 2005), statutory/individualised rights\(^\text{15}\) that may be inherited and traded.

The ETLR assumes that as land scarcity intensifies, individuals claim additional land tenure security such that property rights to land tend to emerge, see Figure 3.1. Once established, these claims tend to develop into a higher measure of individualisation and formalisation (Platteau 2000). The theory also assumes that the land tenure systems develop into individualised structures of ownership with better market incorporation and increases in land transactions. Such transactions are supported by written documentation, while use rights possibly expand to include other commercial uses (Platteau 2000; Yngstrom 2002; Lastarria-Cornheil 2002). Public sector (institutions such as cities, municipalities and districts) participation is called for as the demand for legally protected land titles becomes vital due to the extreme scarcity of valuable land.

The ETLR acquired recognition in Africa during the 1990s in the discussions on tenure restructuring undertaken by many African states, including Tanzania, Kenya, Uganda, Nigeria, South Africa, Namibia, Mali, Niger and others (Yngstrom 2002). The ETLR systems, including the policies and reforms they create, thus present an example of an evolutionary growth in property rights towards private (formal) rights. Growing population pressure and increasing market penetration for commercial crops such as cocoa, coffee, palm, cotton, and groundnut have thus given rise to changes in land tenure relations, including practices in the direction of the enhanced individualisation of property rights, marked larger land sale transactions and the increased use of money in connection with land loans (Platteau 2000).

The transition from customary to individual property rights furthermore becomes pragmatic, and is historically affected by exogenous interventions. As land obtains a new scarcity value due to growing pressure on land resources, landowners declare additional individualised rights in land because they experience uncertainty about their customary rights which cannot be protected under the existing customary system.

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\(^\text{13}\) This theory was introduced by Jean Platteau in 1996. He has used the term “land rights”, however in other scholarship the term “property rights” has been used interchangeably, see Yngstrom 2002; Lastarria-Cornheil 2002; and Deininger 2003.

\(^\text{14}\) The land tenure systems as referred in the theory are customary, sometimes known as traditional or communal tenure, and individualised (modern or statutory accompanied by privatisation of property rights through land formalisation and registration programmes).

\(^\text{15}\) For further details, see for example Platteau 1996 & 2002; Yngstrom 2002; Lastarria-Cornheil 2002; Fitzpatrick 2005 & 2006; Deininger 2003; and Deininger and Feder 1998.
(Platteau 1992 and 1996; Yngstrom 2002). This leads to multiple disputes over land (as to the occupation of land, inheritance and boundaries), social tensions and rising litigation costs (Deininger and Feder 1998; Lund 2011). The state often resorts to protecting\textsuperscript{16} emerging rights and ends costly litigation by providing private titles in land through land registration and formalisation programmes (see SPILL and PBFP programmes in Tanzania).

\textbf{Figure 3.1: Schematic of the evolution theory of land rights (ELTR)}\textsuperscript{17}

\textsuperscript{16} A local informal order is embedded in rural community guarantees of basic property rights to all villagers (including migrants) and these are sufficient to induce investment. There is no need for the state to intervene through centralised procedures aimed at transferring land rights (Platteau 2000).

\textsuperscript{17} Adapted from Barnes and Griffith-Charles (2007).
3.5 Property rights in a plural legal system

Legal pluralism is defined as the presence of several legal orders (two or more legal frameworks) coexisting in a given social situation (Wollenberg et al. 2005). This is similar to the definition by Paradza (2011) with respect to property rights regimes stating that legal pluralism is a system where multiple legal orders regulate access to resources (and land). Legal pluralism operates in both formal and informal ways. The nature of the context and local power relations has strong influences as to which law will take precedence (Wollenberg et al. 2005). The wealth of legal orders in such a system may originate from the lowest local level (village, town, district, municipality or city) to the highest and global levels (national, regional etc.) where there is a functioning of different types of laws (Tamanaha 2008).

Many property rights regimes have a co-existence and interaction between multiple legal orders, laws and rules, which provide a basis for claiming and enforcing property rights. Their sources also vary. Meinzen-Dick and colleagues (2004); Meinzen-Dick and Pradhan (2002); and Tamanaha (2008) identify several multiple sources of property rights:

(i) International treaties, e.g. Universal Declaration of Human Rights Article 27;
(ii) Statutory law as passed by legislatures and enforced by governments;
(iii) Religious law, including both law based on documented policies and well-established religious practice, e.g. Muslim inheritance law;
(iv) Customary laws that might be documented customs or living interpretations of customs;
(v) Project (donor) law including project or programme regulations;
(vi) Organisational law such as rules made by use groups; and
(vii) A variety of local norms, which may incorporate elements of other laws.

The rights granted to individuals differ in various legal systems as do the kinds of rights acknowledged (Paradza 2011). Individuals can opt into one or another type of mentioned legal structures as a starting point for their claims as to on a resource (Meinzen-Dick and Pradhan 2002). The more diverse the institutions accessible to an individual, the better the options that they have. Individuals’ access to various rights is indomitably influenced by their grade, maturity, gender, financial influence and their negotiation of power relations (Paradza 2011). Women are at greater risk than men in not accessing various legal orders. This is because the dual legal system is considered persistently discriminating against women in the matter of land entitlements,

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18 Sets of laws that include formal written policies, decisions, orders and rules as well as informal, unwritten customary rules, all of which in principle share sanctions if they are broken (Wollenberg et al. 2005).
permitting a very few influential individuals to dominate powerless individuals.\textsuperscript{19} The capacity to access and use legal institutions is unequally distributed as women possess fewer resources than men (\textit{ibid.}).

### 3.5.1 Legal pluralism: Statutory versus customary laws

Legal pluralism in many property rights regimes most often involves the co-existence of customary and statutory laws as to land claims or access to land with associated benefits. Legal pluralism exists in many places in the world (Wollenberg et al. 2005). In Africa, for example, legal pluralism is common in the property rights structures for many countries, for example, Tanzania, Uganda, Zambia, Malawi, Mali, Somalia, Sudan, Ghana, and Nigeria, to mention few. The existence of dual tenure to land in large parts of Africa is a result of colonialism as the colonial regimes imported systems of common and statutory law for their own purposes that worked jointly with existing structures of customary law (Adams and Turner 2005).

There are problems associated with such types of property rights systems, including statutory and customary laws, in their operations and enforcement. Many shortcomings hinder the effectiveness of the operation of statutory laws compared to customary laws, ranging from inadequate knowledge as well as lack of application and enforcement. Occurrences are attributed to a number of factors, such as socio-economic and logistical factors (Kapur 2011), which, in turn, are affected by the number of lawyers, intensity of legal training, community legal education status and community awareness on significance and power over statutory law. Lack of enforcement is also blamed on the central governments of many countries, resulting from the lack of financial, human and logistical resources vital to effectively guaranteeing rights in practice (\textit{ibid.}).

Legal pluralism was identified in eastern African countries to be among the key land issues and challenges.\textsuperscript{20} This is because most of the countries in the region have juristic or diffuse plural legal systems governing land. The region is characterised by the coexistence of multiple sets of rules and laws. It is easy to find different legal systems, institutions and mechanisms controlling ways land is accessed, transferred and used in one country. Consequently, multiple sources of property rights coexist: customary and statutory tenure where the two systems interface. In countless circumstances, state laws are seen to override other legal orders because they have an ultimate authority. For instance, several countries in the region guarantee equitable rights and protection

\footnotesize{19} In certain situations, especially from the perspective of central government and local community links, statutory law is always influential and applied by government officers, e.g., in proclaiming and effecting rights to land (forest) as state property (Wollenberg et al. 2005).

\footnotesize{20} A joint report produced by the Africa Union Commission (AUC), Economic Commission for Africa (EAC) and Africa Development Bank (AFDB) in 2010.
under the law, but normally, statutory laws supersede customary laws. In Tanzania, the land law provides equal status for both customary and granted rights in land occupation but customary rights are inferior to statutory rights.

The coexistence of dual legal systems may be utilized and manipulated. This creates a further complexity in the property rights structure. Legal pluralism as a system has an embedded element of discrimination, and the most disadvantaged groups are minorities and women. In such systems, elements of discrimination against women include that: (i) plural family laws\(^{21}\) frequently having disproportionate requirements for women and men; (ii) traditions and religious fairness structures normally do not have sanctions against gender-based violence and; (iii) the legal frameworks are at times procedurally unfair to women (Progress of the world’s women 2011-2012). Despite this, though statutory law is more favourable to women than customary law, it is often difficult to see this until a judgment is issued (Toulmin and Quan 2001). In many circumstances, customary rules are influenced by an understanding of religion or culture that has a tendency to limit women’s rights (Progress of the world’s women, 2011-2012).

\(^{21}\) Family laws on matrimony, separation, maintenance, guardianship and property/land laws, which have a direct effect on women’s existences, are largely subject to legal plurality. The family is a key to social identity and therefore, the clauses in the Convention on Elimination of Discrimination against Women (CEDAW) relating to family law are those which States have regularly made reservations, referring to ethnic or religious aspects, preventing the implementation of these clauses (Progress of the world’s women 2011-2012).
4

Customary land tenure and women’s access to property rights: An African perspective

“The dominance of patriarchy in regulation, policy, and practice proves that the land has holders although they are not women.” Patricia Kameri-Mbote (2005)

This chapter gives an overview of customary law and land tenure based on various concepts, characteristics and practices and women’s property rights under customary tenure with reference to some Africa countries including Tanzania. Factors affecting women’s access to property rights are explored in detail, including the individualisation and commoditisation of land rights; the HIV/AIDS pandemic; legal issues (such as patriarchy laws, relationship between customary and statutory laws); institutional factors (underrepresentation, cumbersome regulatory frameworks, expensive procedures, inadequate information and bribery); and social economic factors (poverty, urbanisation, domestic violence). Other aspects covered include property rights and gender and property rights and women’s empowerment.

4.1 Customary law and land tenure

4.1.1 Customary law

Customary law embodies traditional norms or customs with common practices known and acknowledged by a local community and given the force of law by the state. It is a framework (normally undocumented) of rules instituting its authenticity in “tradition” (Cotula 2007a and 2007b) as the community expands and executes according to decision-making procedures and organizations (Pritchard et al. 2013). In Tanzania, for example, customary law has been defined in the Interpretation of Laws Act No. 4/1996 Cap. 1 to mean “any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African community in Tanzania and accepted by such community in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made” under Section 11 of the Judicature and Applications of Laws Act of 1961 R.E 2002.

The contents of customary law are very different, depending on their history and setting (Pritchard et al. 2013) and varying from one rural community to another (Cotula 2007a and 2007b). The extent of internal uniformity also varies, extending from (rare) systematised sets of laws (Cotula 2007b) to time and again a “loose order.” Such

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22 Customary law is a group of conventions governing individual status, communal resources, and local associations in many parts of Africa (see Joireman 2008; Berry 1993; Knight 2010; Cotula 2007b; Alden Wily 2008, 2012; and Fitzpatrick 2005 for detailed discussion).
variation is due to a range of ethnic, environmental, social, economic and political factors (Cotula 2007a). Because of this variety, generalities should be circumvented (Cotula 2007b). Traditional laws are also rarely rigid, immobile or fixed (Pritchard et al. 2013). Rather, they evolve continuously to meet new requirements and challenges as a result of varied causes such as increases in population, political progressions, cultural relations, and socio-economic transformations (Pritchard et al. 2013; Cotula 2007a and 2007b; Knight 2010; Joireman 2008; Alden Wily 2008 and 2012). A basic strength to customary law is that each community’s traditions are embedded in and react to the specific past record, cultural principles and economic needs of that community (Pritchard et al. 2013).

Similarly, customary law is a result of the colonial era in many African countries (see e.g. Joireman 2008; Clover and Eriksen 2009; Nelson 2004; Berry 1993 and Akuffo 2009). Colonialism indisputably had a major influence on several customary tenure systems across the continent. For example, individuals and local groups and the colonial administration influenced customary law for their own ends. Colonial courts in-charge of implementing traditional laws deformed customary law by filtering its customs or norms through European lawful notions (see e.g. Chanock 1985; Berry 1993; Mamdani 1996 as cited in Cotula 2007b). During the British colonial era, for example, the duo structure of law was functional in areas under “direct rule” and “indirect rule.” Areas that were governed through the “direct rule” applied English law, while areas that were under “indirect rule” implemented customary or traditional laws to local populations under the supervision of the British (Kane et al. 2005).

In Tanzania, the English law was applicable to areas occupied by English descendants while customary law was applicable to Africans who “opted out” of the English law. For example, in the 1940s-1950s, urban settlements in Dar es Salaam were planned according to race (Kironde 1995). However, severe offences against the state, or illegal offenses were usually dealt with under the English law.

Today, customary laws are a consequence of mores, values and traditions of indigenous ethnic groups. They are also, however, influenced by other sources.

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23 The discussion was drawn from Uganda and Sierra Leone while Tanzania also shares the same scenario, as the country was colonised by the British. However, the distinguishing feature in countries like Kenya and Tanzania is that there were no customary tribunal systems created to administer customary appeal cases. Instead, the formal judiciary adjudicated on matters of customary law while informal customary law tribunals continued to operate at the levels of the village and community, in several forms, including councils of elders, clan or family tribunals and village associations (Kane et al. 2005).

24 Today arguably very little pure "tradition" remains; today's "customary law" is a mixture of various practices that have been inherited, observed, transmuted, learned and adopted (Knight 2010).
including Islamic\textsuperscript{25} and Christian morals, state managerial policy statements, statements of high courts of record (mandated to interpret customary rule), customary court records where the customary laws are kept and, district councils\textsuperscript{26} and chiefdom bylaws (Kane et al. 2005).

Customary law has been implemented since the colonial era as an alternative system of organisation to statutory law. In addition, the evolution of customary law is significantly influenced by the non-formal justice sector. Dispute settlement approaches and civil society organizations advocacy undertakings, welfare staff as well as matrimony and other public counsellors, all affect the evolution, understanding and operations of customary laws (Kane et al. 2005).

4.1.2 The nature of customary land tenure and its characteristics

Customary tenure\textsuperscript{27} denotes privileges that are conveyed through community arrangements, whose legality is entrenched in tradition rather than statutory laws (Cotula 2007b). Customary land tenure is a land administration regime consisting of standards, rules, taboos and enforcement procedures vested in identified customary authority such as traditional chiefs (e.g., in Ghana, Zambia, Malawi) or elected VCs in the case of Tanzania. Such regimes are unique because they are indigenous, not imported from Western countries, and are rooted and maintained at the community level, neither occurring nor provided through government means such as statutes or statutory land tenure (Alden Wily 2008; Grigsby 2004). Thus, a customary land tenure system is overwhelmingly a communal structure with a formal code and from the former achieves its considerable resilience, permanence and flexibility (Alden Wily 2012).

Customary land tenure has the following characteristics:\textsuperscript{28}

(i) Consists mainly of unrecorded laws in nature and based on localised systems and rules. Customary land tenure is adaptable, unfixed and developed over long periods of time in response to location-specific conditions.

(ii) It is both regional and inter-ethnic in nature and provides and differentiates entitlements of access to different social groups based on social status such as age, gender and other aspects. The way of life, class and production systems also affect how most individuals’ access and uphold property rights.

\textsuperscript{25} For example, in much of West Africa, customary tenure systems have been influenced by Islamic law (Cotula 2007b). Religion thus is also a factor, perhaps best seen in the manner by which customary norms of inheritance in Mauritania, Chad and Senegal are entirely determined by Shari’a (Alden Wily 2012).

\textsuperscript{26} Local Government (District Council) Act, 1982 governing the establishment of local governments in Tanzania.

\textsuperscript{27} See Grigsby (2004).

\textsuperscript{28} Berry 1993; Cotula 2007b; Nelson 2004; Toulmin 2008; World Bank 2003; Cotula et al. 2004; and Joireman, Alden Wily 2008.
(iii) Customary land tenure rights can be circulated across numerous but diverse land parcels for several reasons, but most of such rights cannot be sold. However, they are repeatedly divisible, and individual rights can be transferred between individuals or groups within the community/villages.

(iv) The customary land tenure system recognises overlapping interests in land based on the household relations of the individuals implicated and the laws of succession. These interests diverge in social structure and drop down in specific and identifiable types, depending on the ethnic group or clan in question.

(v) The common customary property rights include access to common grazing land, village reserve land (e.g. forests, catchment areas, etc.) and individual land parcels. These rights are developed locally in the surrounding community. The rights might also be enforced under a statutory system.

4.1.3 The practice of customary land tenure in African countries

In contemporary Sub-Saharan Africa, up to 75 percent of the land is estimated to be held under forms of customary tenure. It is the system that most rural African communities use to assert rights - operating to express and order ownership, possession, and access, and to regulate use and transfer (Joireman 2008 and Nelson 2004). In many societies, customary tenure still prevails based on kinship, membership or relationship with traditional land holding groups such as the village chief, traditional rule of council of elders (Botswana) or elected VCs (Tanzania). In some Sub-Saharan Africa societies, for example, property rights derived from customs predominate in rural and even urban areas (UN HABITAT 2008). A vivid example can be drawn from countries such as Ghana, Uganda, Zambia and Malawi.

In developed countries, the customary rights of the majority (including common property rights) depend on the statutory support - country or state laws drawn from acts of elected legislatures (Alden Wily 2008). Customary land tenure systems frequently operate alongside statutory systems, but their complexity often runs deeper than so. In most African countries, customary tenure systems tend to be multiple and highly diverse. Some statutory laws in Africa extend legal recognition to customary land rights such as in Uganda, Mozambique, Botswana and Namibia and, in some cases, to customary authorities as well as in Ghana and Tanzania.

Despite this legal recognition, customary rights, as is the case for customary laws, suffer from a multitude of factors affecting the way by which customary land relations are formed and regulated in Africa (Alden Wily 2012). Such factors include demographic pressure; land scarcity and competition; growing urbanization; commercialisation of land (Cotula et al. 2004; Cotula 2007b); state policies (legislative); education and economic polarisation of communities (Alden Wily 2012; Knight 2010);
inter-group and wider civil conflicts; breakdowns in customary authority; and conflicts arising under pluralistic legal systems (UN Habitat 2008).

Changes in customary land tenure systems correspond to central principles expressed in property rights theory, where demographic growth and agricultural intensification have been driven towards better individualisation including the commercialisation of property rights, which are accompanied by formalisation programmes through land titling and registration. However, due to its complexity and fluidity, customary land tenure tends not to advance well to recognized policies such as land registration irrespective of the beneficiaries (Grigsby 2004). Even its codification, which has been tried by different African countries including Tanzania and Kenya, “solidifies” what is an intrinsically fluid structure, leading to unintended outcomes (Platteau 1996). The privatization and individualization of customary land tenure systems have fuelled land intensity and landless societies in Africa (Bruce and Migot-Adhola 1994).

Customary land tenure systems work efficiently in circumstances where land is in abundance and titling is not essential (Platteau 2000). In most parts of Africa, including part of the Makete district in Tanzania, land has become scarce. Under such conditions, many customary land tenure systems cannot guarantee that households (particularly women) have access to adequate land parcels. Consequently, marginalised and powerless individuals such as widows and separated or abandoned women are incapable of accessing land. In the context of land and property rights, the effect of the privatization of customary land tenure has increased the individualisation of land ownership and rights in land, which in turn, has engendered a routine alienation of land through selling (Akuffo 2009).

Land sales in customary land tenure systems are rampant in mainly high-value land areas, coupled with processes ensuring the local acknowledgment of transactions, such as written documents/contracts and the use of witnesses (Chimhowu and Woodhouse 2006 and Cotula 2007b). This is now a common phenomenon in rural Tanzania, especially in areas with land of high agricultural potential, such as the Bagamoyo, Kisarawe, and Mkuranga districts in the Coast region; Kilindi and Handeni in the Tanga region; and Turiani, Kilombero and Mvomero in the Morogoro region.
4.2 Women’s property rights and access to land under customary tenure

The issue of women’s property rights is important both now and for the future (Agarwal 2003). Women’s rights over land have always been problematic as traditionally, land management by women is not common (Fall 1997). In some cases, women's customary land-use rights are acquired de facto by residence, translated into a stable arrangement where land used for subsistence agriculture was passed on from one generation to another (ibid.).

The period from the late 1980s to 1990s has been characterised by an economic liberalisation for many parts of Africa including Tanzania, Kenya and other countries (Izumi 1999). It was during this period that women’s rights to land (Izumi 1999) were highly pretentious by country policies, market driven factors, and long-established social structures in diverse ways at varied amounts (Agarwal 1994). Women’s access and rights to land are not only affected by institutions but also by authority relationships initiated in various institutions; nationwide and local government arrangements, the market itself, the community/or village, and the family (Pasura 2009; Agarwal 1994). In turn, several issues such as gender, status, ethnicity and way of life determine such power relations (Izumi 1999; Tsikata 2003).

The traditional African land tenure principles protected access to land by family and other community members during the period of economic liberalisation. However, in patrilineal societies, women’s rights to land are typically influenced by their connections to males though arrangements in a traditional property rights system (Izumi 1999) thus are extremely different. Nonetheless, in some African communities to some extent, women were assured access to land (Lastarria-Cornhiel 1997).

Furthermore, in property right issues, men are considered superior to women, who then have to constantly bargain as secondary applicants through a male’s family, such as a father, brother, spouse or son. In the case of a spouse’s death, it is ordinarily ruled that women do not inherit the matrimonial home, which is a matter of high concern especially now due to the high rates of death from HIV/AIDS plague in much of the continent (Toulmin 2008). Women’s entitlements are frequently and clearly established in constitutions, although customary law, in which they do not have the same entitlements, generally prevails in reality (ibid).

4.2.1 Factors affecting women’s access to property rights

Property rights are only a first step towards greater autonomy for rural women (Jacobs, 2004). For example, property rights for women are worth having despite many problems related to their provision and enforcement as seen from Table 4.1 on the multiple functions of property rights.
Table 4.1: The multiple functions of property rights

<table>
<thead>
<tr>
<th>Function</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic function</td>
<td>- Productive activities (livestock rearing, crop etc.)</td>
</tr>
<tr>
<td></td>
<td>- Land transactions and leasing</td>
</tr>
<tr>
<td></td>
<td>- Advantages from rise in land value</td>
</tr>
<tr>
<td></td>
<td>- Investment incentive effects</td>
</tr>
<tr>
<td>Food security function</td>
<td>- Source of food and income</td>
</tr>
<tr>
<td></td>
<td>- Buffer against sudden price increases</td>
</tr>
<tr>
<td>Reduced vulnerability to shock</td>
<td>- Basis of foodstuff and occupation</td>
</tr>
<tr>
<td>mitigation</td>
<td>- Loan security</td>
</tr>
<tr>
<td></td>
<td>- Earnings from land transactions and leasing</td>
</tr>
<tr>
<td>Social function</td>
<td>- Public position/negotiating arrangement in families,</td>
</tr>
<tr>
<td></td>
<td>communities and country</td>
</tr>
<tr>
<td></td>
<td>- Relationship in groups</td>
</tr>
<tr>
<td></td>
<td>- Social status and recognition</td>
</tr>
<tr>
<td></td>
<td>- Spiritual roles</td>
</tr>
<tr>
<td>Conservation</td>
<td>- Power to make decisions, savings</td>
</tr>
<tr>
<td></td>
<td>- Motivations for sustainable management</td>
</tr>
</tbody>
</table>

Source: Adapted from Meinzen-Dick et al.²⁹ (2007)

Furthermore, women’s impediments as to property rights have been attributed to several factors as articulated in the following sub-sections. Interactions between the multiple barriers affecting women from acquiring property rights under customary and statutory systems are also summarised in Table 4.2.

1. The individualisation and commoditisation of property rights

Population pressures and growing competition for land have and as continue to shape property rights systems in Eastern Africa. More so, the increasing individualization and commoditisation of rights to land coupled with private rights of use, including occupancy within customary tenure, are progressively becoming the custom (Daley and Englert 2010a, 2010b). Commoditisation and change processes result in a weakening of some women’s customary land rights in Eastern Africa (Pedersen 2015; Daley and Englert 2010a, 2010b) and other African countries because of an increase in the uncertainty of women’s access to land. For example, land title registration may imply losing land for most women because a majority of women are weaker in market competition. Although increased commoditisation of land causes most women to lose their land, some have been able to possess their own land by way of purchasing through opportunities offered by the commoditisation process (Daley and Englert 2010b).

2. The HIV/AIDS pandemic

The HIV/AIDS pandemic is another cause upsetting women’s property rights to land in Eastern Africa and perhaps all over Africa. With increased treatment costs, families cannot afford the higher hospital bills. Thus, they resort to selling family

²⁹ Available at www.ifpri.org.
land in order to pay for treatments. Unfortunately, selling family land often occurs without the knowledge or consent of women and plays a role to the rising situation of women (and children) lagging behind in possessing land (Daley and Englert 2010a and 2010b). The increasing occurrence of HIV/AIDS normally exposes women to a high danger of being expelled when their male partner dies, since the rights of the deceased relatives, by and large, take precedence over those of a widow (Mutangadura 2005; Manji 1996; UN-HABITAT 2008; Rwebangira and Tungaraza 2003). Therefore, access to land can function as a financial source to cover expenses linked with HIV as well as recuperating women’s capacity to deal with the financial and social effects of the epidemic (Gomez and Tran 2012).

3. **Legal issues**

Legal issues may involve ethnic group laws and traditions that prevent women from occupying and inheriting land. On top of that, divergences in the execution, supervision and enforcement of laws resulting from the relationship between customary law and statutory law do not acknowledge women’s equal privileges to possession (Strickland 2004). Such divergences may be intensified by women’s inadequate knowledge of their rights, and by countrywide practices in relations and social standards and managerial rules opposing women’s interests (Strickland 2004).

4. **Institutional factors**

Institutional factors include difficult regulatory frameworks, expensive processes, inadequate information, distance and bribery that may weaken women’s capacity to maintain their rights. In addition, where women have little knowledge of the public institutions, and are underrepresented in structures of local and national governance, their desires and standpoints are not effectively integrated into policies and programs (Strickland 2004).

5. **Socio-economic factors**

Social factors affecting women from obtaining property rights and possession comprise poverty, urbanization, domestic violence, and natural and human-made disasters. There has been an increase in female-headed households recently due to economic, social and cultural changes (UN-HABITAT 2004; Strickland 2004). Most families are poor and live below local poverty levels, characterised by a deficiency of resources to purchase land or property on the market and an inability to develop pieces of land allocated to them (UN-HABITAT 2004). On the other hand, cultural practices and other pressures, such as religion, deny women an equal opportunity to education and inheritance. For example, in some situations, the community does not allow women to own land at their parental homes because they believe that when women get married, they will automatically occupy the marital property (Strickland 2004).
A lack of rights to rural land is a push factor for some women to go to urban areas where they hope to secure property though most often with poor results. In addition, violence against them threatens their eviction during family disputes or breaks their demand to family land/or property after the demise of a spouse coupled with the occurrence of property grabbing (Strickland 2004).
Table 4.2: Barriers to women in acquiring property rights and initiatives to alleviate them

<table>
<thead>
<tr>
<th>SN</th>
<th>Type of a barrier</th>
<th>Barriers</th>
<th>Solution to the barrier</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Socio-economic well-being</td>
<td>1. High female illiteracy rates</td>
<td>1. Education and literacy campaigns</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Ignorance of property rights</td>
<td>2. Legal education for women</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Lack of resources to claim rights</td>
<td>3. Economic empowerment of women through provision of credit and market access</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Internalised discrimination</td>
<td>4. Affirmative action (waive fees for land registration, land quotas for women)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Limited participation of women in decision-making bodies on land tenure issues</td>
<td>5. Improved participation of women in decision-making bodies on land tenure issues</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6. Lack or non-existence of enforcement of legal rights to land</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>7. Increased extended family responsibilities</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>8. Lack of support from community and within household level</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>9. Lack/limited access to supplementary wages</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>10. Limited access to credits and other inputs</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Customary or traditional law</td>
<td>1. Limited rights to own land due to patriarchy</td>
<td>1. Disseminate new land laws and build capacity and knowledge of traditional leaders to avoid discriminating against women</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Land allocation administered by traditional leaders/elected councils</td>
<td>2. Educate all members of society on women’s land rights</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Leaders vested with power ignorant of land laws providing for women's rights</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Unequal balance on division of labour among women and men (women have a larger workload than men)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Limited participation of women in decision-making at household and community levels</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>6. Traditional rights of use favours male</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Statutory law</td>
<td>1. Land law is non-discriminatory but is not harmonised with other laws in the system (e.g. laws on inheritance or marriage)</td>
<td>1. Ensure land law has a clause promoting the land rights of women</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Lack of capacity or knowledge among implementers of the law</td>
<td>2. Harmonize land laws with other laws in the system (marriage laws, inheritance laws)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Some legal codes do not allow joint ownership of land</td>
<td>3. Disseminate new land laws and build capacity and knowledge of implementers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Women who marry may become legal dependents depending on the type of marriage and the property law applied (for instance, in Lesotho and Zimbabwe).</td>
<td>4. Translate laws into effective programs for implementation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>a. Introduce joint titling programme to reduce gender imbalances in access to land</td>
</tr>
</tbody>
</table>

Source: Adapted from ECA (2003:31) and FAO (2002)
4.3 Property rights and gender

Gender is a social concept placed over a cultural meaning on top of a sexual identity. Gender differentiation has existed for a very long time in many societies, as documented by several studies showing changes in the relations between community members in different periods (Seeley et al. 2004; Cotula et al. 2004). Discussions on gender and property rights are also complicated due to the multiplicity of occupation and bequest arrangements (Seeley et al. 2004:92) between countries and societies. This complexity is exacerbated by the existence of a dual legal structure, western supported statutory law and customary law, having both common grounds and at times contradictory jurisdictions (Seeley et al. 2004; Cotula et al. 2004).

Women in the developing world take part in the most important functions in food production and other economic activities. Women frequently are given secondary social status and economic well-being in the family (Padmaja et al. 2006) due to gender inequalities. Gender studies show that social rules and habits are perpetuated by males in command of property, and in most places, patrilineal heritage disadvantages women as collateral is broadened by deep-seated inequalities in control of assets (Seeley et al. 2004). Similarly, gender bias found in labour markets and the lack of voice in the power struggle in controlling resource allocation (land) lead to women’s vulnerability (Padmaja et al. 2006).

In many rural areas where small-scale agriculture is practiced, gender differences result in a substantial effect as to resource allocation and agricultural efficiency (Alderman et al. 2003). Men are constantly favoured by gender inequalities while women are often disadvantaged in both the control of domestic wealth (Fafchamps and Quisumbing 2003) and the allotment of household tasks and in the community. Women tend to be perceived of as more low-grade than men as they lack possessions and access to rights, which male members of their family units normally benefit from (Padmaja et al. 2006). Equally, as soon as a woman leads a family and is in control of family wealth, gender disparities appear across female-headed households and their male-headed counterparts (ibid.).

Gender disparities on property rights can also be observed (as women often face discrimination) in formal, customary and informal systems of property rights. Men remain central heirs and holders of property rights in patrilineal communities under customary land tenure systems, and in the formalised property relations (statutory land system). Such unreasonable gender stratification in all property rights systems is culturally engrained. As a matter of concern to many governments, in recent decades, a number of African countries (Tanzania in 1990s, Uganda, Malawi, Mali, South Africa, Zambia, Kenya, Rwanda and Mozambique) have carried out land law reforms whereby provisions for women’s property rights to land and other rights are offered in their
land laws, such as the land policy, constitution or land legislation, to address gender imbalances, which appear to be problematic as shown in Table 4.3.

Table 4.3: Addressing gender issues in the constitution or other land laws

<table>
<thead>
<tr>
<th>SN</th>
<th>Country</th>
<th>How women’s rights are addressed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Uganda</td>
<td>1998 Land Act recognises women’s equal rights to buy their own land and housing</td>
</tr>
<tr>
<td>2</td>
<td>South Africa</td>
<td>1996 Constitution provides for gender equality</td>
</tr>
<tr>
<td>3</td>
<td>Niger</td>
<td>1993 Rural Code provides for equal rights of access to national resource without discrimination</td>
</tr>
<tr>
<td>4</td>
<td>Mali</td>
<td>Land Code of 2000 has a provision for women to register land independently</td>
</tr>
<tr>
<td>5</td>
<td>Mozambique</td>
<td>1997 Land Act provides rights for both women and men to use and benefit from land</td>
</tr>
<tr>
<td>6</td>
<td>Tanzania</td>
<td>Both Land Policy and Land Acts 1999 provide women’s equal rights to land</td>
</tr>
<tr>
<td>7</td>
<td>Namibia</td>
<td>Married Person Equality Act 1996 gives rights for both women and men to asset accumulated through marriage</td>
</tr>
<tr>
<td>8</td>
<td>Nigeria</td>
<td>Land Use Act of 1978 codifies the system of land ownership which does not exclude women</td>
</tr>
</tbody>
</table>

Source: Compiled by author (2013)

4.4 Property rights and women’s empowerment

The term empowerment has been defined and used by various authors in many settings (see, e.g., Kanji 1995; Friedman 1989; and Deere and Leon 2001). For this study, women’s empowerment is loosely taken to mean “the transformed process that ends at people possessing an improved aptitude to have power over resources (land) and influence decisions that affect their lives.” It is also a political process that entails a joint effort against unfair social relations (ILC 2009). Empowerment consists of three types:

(i) *economic empowerment* – includes getting proper skills, capabilities and resources and access to incomes;

(ii) *social empowerment* – a process that assists individuals to increase influence over their lives and to be competent to take steps on issues that are important for their lives; and

(iii) *political empowerment* - the ability to scrutinize, coordinate and mobilize, contribute in joint deeds for change, to make citizens capable of claiming their rights and entitlements; and legal empowerment which seems to be a subset of political empowerment.

The core element for women’s empowerment is control and influence over households including other resources (SIDA 2009). The power to access land and to apply for use as well as protect rights is contingent to the process of empowerment (Pallas 2011). Therefore, property rights and, in particular, land possession and occupation are far far

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30 For further details see Pallas (2011).
more important prerequisites than other conditions for women’s empowerment. Land possession influences economic autonomy for women because it reinforces her fall-back position and strengthens her command to bargain not only within the household but also with the community and a wider society (Deere 2011; and Deere and Leon 2001).

Equally, when women have secure property rights over land including its access, they often secure an enhanced social status which contributes to their empowerment and superior influence over family rulings (Gomez and Tran 2012). For example, lack of access to land has been associated with domestic violence and the attention a woman gets from other relatives (Agarwal 1994) and hinders women’s productivity. It is confirmed that in the Northern Peruvian highlands, India and the Nepal, women who own land or houses or who have land titles face significant lower risk(s) of marital violence and are granted an enhanced attention by other male relatives, contrary to those who lack property rights (Panda and Agarwal 2005; Roy and Tisdell 2002; Allendof 2007).

Furthermore, land possession is a symbol of rural political power because it provides more security, which is a powerful stand for political participation. Even though impediments to women’s (individual) involvement in managerial institutions (Agarwal 1994) can still prevail, including women with land, property rights can be enough to facilitate such kinds of involvement (Agarwal 1994; Roy and Tisdell 2002). Likewise, property rights for women might lend a hand in decelerating further increases in HIV infections by supporting women’s economic empowerment, while lessening and improving their exposure to some elements of gender-based violence together with other HIV-related risk causes (Strickland 2004; Gomez and Tran 2012).

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31 Agarwal (1994) points out the major elements of a fall-back position for a person’s well-being especially in rural household to include; 1) ownership and control of property, particularly land; 2) access to employment and other means of income generation; 3) access to communal recourses (such as forests and grazing pastures); 4) access to traditional external social support systems (within the community and extended family); and 5) access to state support or that of NGOs. All these factors influence a person’s ability to meet subsistence needs outside households.
The legal framework of property rights in Tanzania

“Property rights in Tanzania for a long time have been a topic of discussion and continue to be a challenge and conflict-ridden matter. Generally, marginalized groups and inhabitants, such as women and youth, have had complexity in applying and maintaining property rights” (Landesa 2011)

This chapter provides the framework for the historical evolution of property rights systems as a background to this study of the laws, rules and orders governing women’s property rights in mainland Tanzania. The laws on property rights, including succession and inheritance laws, are examined here. Specific provisions of the laws, the Constitution of the United Republic of Tanzania, the Land Act No. 4 (“LA”) and the Village Land Act No. 5 (“VLA”) of 1999, the Marriage Act of 1971 and others, are explored as well as the underlying reasons for the status of property rights issues, including those directly or indirectly related to women. The chapter ends by looking at initiatives taken by women’s groups and by government in protecting and strengthening property rights (especially those of women), as well as international conventions and treaties pursuing women’s rights signed by Tanzania. The information in this chapter is derived from published documents such as national laws, scholarly articles, and interviews with property rights experts.

5.1 Background information
Tanzania is located in East Africa between Longitude 29° and 41° east and Latitude 01° and 12° south. It is bordered by Kenya and Uganda to the North; Rwanda, Burundi and Democratic Republic of Congo to the West; and South West by Zambia and Malawi; Mozambique to the South; and to the East by the Indian Ocean (URT 2011). Tanzania occupies an area of 945,087 km², out of which 61,500 km² are water. Administratively, Tanzania contains 31 regions (Figure 5.1), 26 regions in mainland Tanzania and 5 regions in Zanzibar. Policy and legislation related to land including natural resources differ between mainland Tanzania and Zanzibar (Kironde 2006 and 2009).
According to the 2012 population census, the country has a total population of 44.9 million (Tanzania Population and Housing Census Report 2012). The population of Tanzania has more than tripled from 12.3 million in 1967 to 44.9 million in 2012. Figure 5.2 shows trends in the population growth.

Tanzania is basically an agricultural economy. Seventy-five percent of Tanzanians live in rural areas, although statistics differ according to use and users (USAID 2011). More than 80 percent of the rural population completely depends on land by way of subsistence farming, growing maize, sorghum, millet, rice, wheat, sweet potato and cassava; livestock farming; mining; fishing; hunting and gathering, or performing a multiplicity of tasks such as tourism and others (Myenzi 2009). Meanwhile, 39 percent of Tanzania’s land is categorized as suitable for farming. An estimate of 9.2 million hectares (ha) is for crops including prominent cash crops meant for exportation (coffee, tea, cotton, cashew nuts, tobacco, pyrethrum and sisal), between 1.1 and 1.3 million ha are grouped as permanent cropland (USAID 2011).

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32 Prepared by Mwakapuja, F. from the Department of Geoinformatics at Ardhi University, January 2015.
There are two legal land tenure systems in Tanzania, statutory and customary tenure. The President of the United Republic of Tanzania is the custodian of the land. The President has been vested with the power to oversee all land in Tanzania, as land is public property (LA and VLA of 1999). Property rights under the statutory tenure prevalent in urban areas, are derived through a granted right of occupancy with a maximum of a 99 year-leasehold subject to renewal with certain limitations. For customary tenure, predominant in rural areas, rights to use and occupy land are granted through a customary right of occupancy with perpetual possession (LA and VLA of 1999; Land Regulations 2001). A possessor of a right of occupancy is free to transfer the right to another individual by sale, will, etc., without restrictions (Shivji 1999). Land in Tanzania is of three main types; namely, village land, reserve land and general land.34

5.2 The evolution of the property rights structure

The current property rights structure and tenure relations for land owners including users’ dates back to 1923 when the British colonial legislative assembly enacted the Land Ordinance Cap. 113 to guide and regulate land use and ownership in Tanganyika, which by then was a Protectorate Territory under the British. The scholarship on land tenure in Tanzania indicates that the property rights structure changed after the establishment of colonialism in 1885 up through to the Berlin Conference. However, more developments were observed in 1920s following the German defeat by British at the end of the First World War (see e.g., James and Fimbo 1973; Kironde 1995 and 2009; Kilian 2011; James 1971; and NLP 1995). The history of property rights and

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33 Tanzania 2012 Population and Housing Census Volume 1.
34 See section 5.2 for details on these land types.

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colonialism has a close link in Tanzania. Indeed, before colonialism, societies had their own established tenure systems as illustrated in the subsequent subsections (see e.g., Kauzeni et al. 1998; James and Fimbo 1973; Kironde 1995 and 2009; Kilian 2011; James 1971; and NLP 1995).

5.2.1 The Pre-Colonial Era
Tanzania is a large country, which prior to 1800 was sparsely populated by kin groups that had the freedom to expand their territory according to population pressures. Members of kin groups in some areas were organized in a hierarchical manner under powerful ethnic group chiefs. In most cases, however, the groups were not under chiefs but ruled by elders. Some areas with strong chiefs were Wahaya, Wachagga, Wanyakyusa, Wahehe, Wazigua, Wangoni, Wayao and Wasambaa. Even before the colonial era, the country (Tanganyika) evidently had its own legal system based on customs and practices. Customs were enforced by elders and clan leaders (and in some areas kings/chiefs) who performed both civic and spiritual duties.

The powers exercised by clan elders were determined by the community. Such powers often included keeping the peace, settling disputes involving marriage, divorce, the marital status of women, the rights of children, inheritance, election of customary heirs and land, performance of rituals, protection of gods and shrines and guarding against drought, famine and other disasters (UN Habitat undated).

Property rights systems in the pre-colonial communities of Tanganyika (mainland Tanzania) were customary in nature, as customary laws prevailed and were not codified during that era as there was no legal framework on land management. There were some forms of feudal systems in some parts of Tanganyika. They involved the Nyarubanja of Bahaya in Kagera, Kihamba of Kilimanjaro and Obusi of Ukerewe. In customary tenure, communities shared land under the influence and guidance of community elders, clan heads and/or kings and chiefs.

The bundles of rights (including access and grazing rights) in the same land could be held by different persons and groups, such as chiefs’ authorities, and sometimes common property rights existed. Decisions on how particular land should be apportioned were made by clan heads, but were preceded by discussions at family and clan levels, guided by customs that took into account the needs of various persons in the group (NLP 1995; UN Habitat undated). It was also possible to transfer different rights in land from one generation to another.

The customary tenure system of landholding in Tanzania was first disrupted by the advent of colonial powers (James and Fimbo 1973:30; Cooper 2008). As chiefs, headmen and elders had the domination of land supervision in trust for the community, they became constrained by newly-introduced German and later British
property rights systems (statutory systems) whereby all pieces of land were stated to be crown and public lands, respectively.

Prior to colonialism, landholding was based on customary laws of different ethnic groups in Tanzania (almost 120 ethnic groups), which varied between ethnic groups. They were organised along either a patrilineal system that accounted for 80 percent, or 20 percent by matrilineal societies (James and Fimbo 1973; NLP 1995; Hayuma and Conning 2006). Title to land was given by following traditions and customs of the respective ethnic groups. Generally, to date, customary land tenure exists in several places even though it has been codified. With the abolition of chieftaincy by the African Chiefs Ordinance (Repeal) Act No. 13 of 1963 Cap 51, powers held by traditional African leaders over land have been transferred to elected VCs (NLP 1995; Hayuma and Conning 2006).

5.2.2 The colonial period
Tanganyika (mainland Tanzania) was under German colonial rule from 1884 to 1916 and British rule from 1917 to 1961, after which the country became a sovereign state in 1961. After the Berlin Conference (1884-85), Germany occupied Tanganyika, which was known as German East Africa. The German administration in Tanganyika introduced a dual system of property rights (statutory and customary tenure), which endured through the British colonial period (Kauzeni et al. 1998) to-date.

a) The German period: 1884 - 1916
Germany took over the administration of Tanganyika in 1885 and established a land decree known as the Imperial Decree. The Imperial Decree, announced on 26th November, 1895, declared that all land in the territory (occupied or unoccupied) no longer was privately owned but rather Crown land unless proven otherwise, and bestowed the power on the Governor who became the custodian of that land. Exceptions were made for lands that had property titles offering possession to private individuals, chiefs, legal persons, or native communities (Hayuma and Conning 2006).

Crown land could also be disposed of by the Governor either as a conveyance of possession, which was a perpetual tenure with a section permitting the government to get hold of property on a number of public interest grounds, or as a leasehold with an alternative to buy and broaden the tenure to possession (Kauzeni et al. 1998; James 1971). Doing this assumed that natives lacked any lawful arrangements regulating land issues. Thus, the Germans established a new legal structure by initiating freehold land (freehold rights) in favour of their interests with introducing private occupation, the right to use land accompanied by an authorized procedure (ibid.).

The German government also distinguished between claims and rights, whereby claims had to be verified by written proof, while occupation was proven by the facts of
farming and ownership (Hayuma and Conning 2006). In practice, only settlers occupied in agricultural estates such as sisal, coffee, rubber and cotton were able to confirm their titles to land and enjoyed security of tenure. Natives lacked titles and therefore were unable to verify possession. For this reason, they enjoyed simply permissive rights of occupancy (Hayuma and Conning 2006). Natives and their property rights system were accepted by the German rule and their use of rights was established based on this system (Kauzeni et al. 1998). Peasant production was accommodated by the Decree’s recognition of the property rights of chiefs or clan heads of communities (NLP 1995; James 1971; Fimbo and James 1973).

The German administration introduced the Land Registration Ordinance of 1903 that established a registry system by which land titles had to be recorded and the documents given to the owner. The Ordinance further allowed for the documentation of community lands provided that these were situated within the boundaries of the villages. The goal of having titles registered was to eliminate the communities from getting titles and to have a lawful defence against a person who desired to get the titled land. Indeed, the German government administration had a huge impact on individuals because it established certain practices and principles that impacted native property rights (NLP 1995; James 1971; Fimbo and James 1973).

The following main types of property rights were established during the German colonial period:

(i) Freehold arising from the conveyance of property through purchase/sale which was only granted to certain classes of individuals and subject to a reversion clause;

(ii) Leasehold as granted by the Governor;

(iii) Crown land could be granted by the Governor either as conveyance of ownership, which was a perpetual tenure or as leasehold; and

(iv) Customary land tenure did not have any kind of papers, and was not registered (holders had no access to the registry).

b) The British colonial period: 1916 - 1961

When World War I ended in 1918, the League of Nations proclaimed the Tanganyika territory a British protectorate and the British Government assumed responsibility over Tanganyika. The British administration maintained the basic parameters of the German land administration. One major difference was the policy of indirect rule through chiefs. By then, the population was scattered and most communities had less-developed chief systems with an exception of a few like in Bahaya, Kilimanjaro, Ukerewe, Mbeya and Uzungua and Iringa (Kauzeni et al. 1998; James 1971). One of the principal objectives of indirect rule was to increase the concentration of the population by relocating government centres of local leaders and by assigning demarcated territories (James 1971). The policy resulted in the emergence of non-traditional chiefs.
who became agents of the British administration. Thus, chiefs were mandated to administer land but they were under the ultimate power of colonial government (Tsikata 2003).

In strengthening land administration, the British administration approved a new law called the Land Ordinance Cap. 113 in 1923. This ordinance recognized all lands whether in use or not as public lands except for any title or interest to land that had been lawfully obtained prior to this Ordinance. Everything was to be under the administration of the Governor of Tanganyika (James 1971; James and Fimbo 1973). The new land law introduced a statutory property rights system called the Right of Occupancy, which was either a granted or deemed right (found within/or outside urban areas) that had specified a maximum term of 99 years but neglected the existence of customary land tenure.

The Land Ordinance was adjusted in 1928 to take care of the shortcomings entrenched therein to protect customary law titles. Therefore, a re-definition of the right of occupancy was made to include “the title of a native or a native community lawfully using or occupying land in accordance with native law and custom” (James and Fimbo 1973; James 1971) This redefinition of the right of occupancy led to the acknowledgement that customary titles were deemed to be a right of occupancy in perpetuity, with different features and incidents of statutory rights of occupancy. This laid the basis on which the customary land tenure in the Land Ordinance was accepted by the British government (James and Fimbo 1973; James 1971). Thus, the 1923 Ordinance remained the main part of land law until it was repealed under the 1999 Land Acts (Sundet 2006). The Governor was authorized to offer rights of occupancy, which were government leases up to 99 years. Local residents, on the other hand, would hold their land through customary law (James and Fimbo 1973; James 1971).

The British colonial administration also introduced in 1923 the Land Registry Ordinance recognising property rights as granted by the German government. The purpose of introducing the registration system was to make exclusive rights of access to land by colonial officers as well as to get rid of natives using the land. The Land Registry Ordinance of 1923 was subsequently replaced by the Land Registration Ordinance No. 35 of 1953 (Cap. 334).

The following were principal property rights under the British colonial administration:

- **Freehold** was only allowed for titles offered through the German colonial period.
- **Rights of occupancy by grant:**
  - For 99 years: Granted as a result of the transformation of perpetual leaseholds for “property” constructions or inherited building rights granted during the German colonial period. Granted specifically to Europeans and titles could be registered;
- Also granted to East Indians and Asians who only had access to registry by exception; and
- Granted to natives for a shorter period but not considered as registered titles or certificates so that the rights could be revoked by district authorities.

- **Deemed rights of occupancy located within urban areas**: Associated with customary tenure to native and community lands within a city in a planned area. This type of tenure had neither a deed/document nor access to a registry, but could be expropriated in exchange for compensation and subsequently, reallocated with granted rights of occupancy.

- **Deemed rights of occupancy not located within urban areas**: Customary tenure granted on land belonging to indigenous people and communities located outside urban areas. Such rights had neither documents nor access to registry but were governed by customary law.

- **Public lands**: All lands were state property. The power to control was vested under the state through the Governor.

5.2.3 Post-Independence period

The post-independence government continued the conceptual framework of property rights from the colonial systems (Sundet 2006; Larsson 2006). The style used by the colonial governments, which bestowed land to the state as the supreme landowner, is still vital and was adopted without modification by the independent Government of Tanganyika with an exception for the concept of property rights. All sorts of freeholds and enfranchisements (feudal and chiefdoms) were transformed to leaseholds for specified periods under the right of occupancy system (Larsson 2006). All land was declared to be public land. The idea of public land in Tanzania entails that the state functions both as the political sovereign and landlord. Tanzania continued to retain the colonial legislation governing property rights systems for over 40 years (from 1960 to 1999). The Land Ordinance with its notion of “public land” was acknowledged and maintained (James and Fimbo 1973).

A blend of customary land tenure and statutory law has in practice shaped individuals’ access and rights to land. Customary law is acknowledged as a segment of the formal legal system in some spheres including inheritance laws (Ikdahl et al. 2005). The fundamental rule of customary land tenure is that land is held for use, and provided that it is exploited, the occupant maintains control over it. Women’s access and rights to land are demanded, recognized and challenged within the same legal connection, and the influences of the diverse normative structures can differ in various locations and state of affairs (Ikdahl et al. 2005).

The government implemented the villagisation programme in the 1970s. The first attempt was in 1968 after Arusha Declaration in 1967. Thereafter, from 1973 to 1976, the villagisation plan or Operation Vijiji (villages) was implemented by the government (Lugoe et al. 2005; Kikula 1996). The plan aimed at facilitating public services delivery
and supporting the formation of extensive communal cultivation, where an estimated 75 percent of the rural inhabitants were shifted from dispersed farmsteads and smallholdings to reside in communal (ujamaa) villages of 2000 – 4000 inhabitants (Lugoe et al. 2005; Shivji 2009; Kikula 1996). They were allocated land by VCs who were in charge of land distribution and supervision (Lange 2008; Dondeyne et al. 2003; Maoulidi 2006; Lugoe 2006 and 2008; Lugoe et al. 2005; Shivji 2009; Kikula 1996).

The villagisation programme was implemented under the Villages and Ujamaa Villages Act No. 21 of 1975. The villagisation programme did not produce a new legal framework for village property rights nor did it provide security to village land as that act lacks provisions for the protection of property rights (Lugoe 2006; Shivji 2009). As a result, the programme was blamed for the failure to protect the security of property rights particularly for women. Villagisation had a major impact on the property rights of rural land users, which amounted in major land reforms (Shivji 2009; Lugoe 2006 and 2008; Lugoe et al. 2005; Land Commission 1994). Consequently, at the end of 1970s, the customary property rights structure was moving towards more individualized ownership accompanied by the development of the market, opening up more opportunities for land alienation, land degradation and environmental damage (NLP 1995; Kikula 1996; Shivji 2009; Lugoe 2006 and 2008; Lugoe et al. 2005; Land Commission 1994).

Tanzania adopted liberalization programmes in the early 1980s including Structural Adjustment Programmes towards a market-oriented economy (Izumi 1999). The adopted liberalisation policies created conditions that threatened an actualization of the fears of rural landholders (Shivji 2009). During that period, substantial disarray was observed in the subjects of property rights and administration, for example, insecurity and uncertainty associated with access to land, which was prevalent due to factors such as contradictory laws and the double-allocation of use and occupation rights (Ikdahl et al. 2005; Kironde 2009; Land Commission 1994). These and other factors of a similar nature gave rise to many complaints, caused a number of land conflicts and enhanced awareness of the land value, resulting in the advancement of informal land markets. The international push to facilitate a market for property rights was also intensified (Land Commission 1994; Kironde 2009). A need to protect vulnerable land from alienation and increased property rights security for customary land holding was required (Kironde 2009).

As a response to both internal and external pressures (from international agencies and donors), the government appointed a Land Commission in the early 1990s, The Presidential Commission of Inquiry into Land Matters. The Commission’s tasks were to re-examine existing laws, collect opinions from stakeholders and recommend a new legal framework to the government (USAID 2011), and completed its report in 1994.
One of the most important areas in the report is that requiring village assemblies to own village land, and state land to be owned by the national assembly (Lange 2008; Dondeyne et al. 2003; Maoulidi 2006). The report paved the way to the establishment of the National Land Policy in 1995. This policy sets out the fundamental principles guiding land rights and land management in the country and was later incorporated into the 1999 Land Acts. The principles are summarised as follows:\textsuperscript{35}

\begin{itemize}
\item[(a)] To recognize that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
\item[(b)] To ensure that existing rights in land and recognized long-standing occupation or use of land are clarified and secured by the law;
\item[(c)] To facilitate an equitable distribution of and access to land by all citizens;
\item[(d)] To regulate the amount of land that any one person or corporate body may occupy or use;
\item[(e)] To ensure that land is used productively and that any such use complies with the principles of sustainable development;
\item[(f)] To take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;
\item[(g)] To pay full, fair and prompt compensation to any person whose right of occupancy or long standing occupation or customary use of land is revoked or interfered with to their detriment by the State or is acquired;
\item[(h)] To provide for an efficient, effective, economical and transparent system of land adjudication;
\item[(i)] To enable all citizens to participate in decision-making on matters connected with their occupation or use of land;
\item[(j)] To facilitate the operation of a market in land;
\item[(k)] To regulate the operation of a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;
\item[(l)] To set out rules of land law accessibly and in a manner which can be readily understood by all citizens;
\item[(m)] To establish an independent expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay; and
\item[(n)] To encourage the dissemination of information about land administration and land law through programs of public and adult education using all forms of media.
\end{itemize}

The National Land Policy of 1995 was followed by the adoption of the 1999 Lands Acts, the LA and VLA, respectively. Public land in the Land Acts is of three types, (1) reserved land; (2) village land; and (3) general land.\textsuperscript{36}

\begin{itemize}
\item[(a)] Reserved land includes statutorily protected or designated land such as national parks, forests, water catchment areas, land for public utilities (for roads, way leaves, water pipelines etc.), wildlife reserves and land classified as “hazardous” (see section 6 LA; Alden Wily 2003a).
\item[(b)] Village land under Section 7 VLA includes land within the boundaries of a registered village as per the Local Government Act (District Authorities) of 1982, land designated as per the Land Tenure (Village Settlements) Act of
\end{itemize}

\textsuperscript{35} See also section 3(1) LA and VLA.
\textsuperscript{36} See sections 4(4) LA and 7 VLA.
1965, demarcated and agreed to as village land by relevant VCs, and land (other than reserved land) that the villages have been occupying and using as village land for 12 or more years (including pastoral uses) under customary law. All other land is classified as general land.

(c) General land is classified as all public land, which is not reserved or village land and includes unoccupied or unused village land (Section 2 LA). Woodlands, rangelands and urban and peri-urban areas that are not reserved for public use are examples of general land.

While the LA regulates reserved land and general land (LA; Alden Wily 2003a), the VLA oversees rural land including registered village land.

5.3 The legal setup of property rights in Tanzania
Tanzania’s legal structure is characterized by a pluralistic legal system whereby statutory, Islamic, Hindu and customary laws operate side-by-side within approximately 120 ethnic groups (see e.g. Hyden 1969; James and Fimbo 1973; Rwebangira and Tungaraza 2003). Such legal frameworks regulate the livelihood of the community in question. For purposes of this study, the legal frameworks are grouped into three categories: statutory laws, customary laws and Islamic laws, as applied when granting and protecting property rights including inheritance to women. A discussion on Hindu law is omitted here. Instead, this study is confined to applied laws relevant to Tanzania. Other related-laws will be simply mentioned when relevant.

5.3.1 Constitutional and statutory laws

a) The Constitution of the United Republic of Tanzania of 1977
The formal legal rights protecting women’s rights to property in Tanzania are basically strong. Women’s socio-economic and political rights are stated and protected in the Constitution of United Republic of Tanzania of 1977, which is the source of all citizen rights. Article 9 of the Constitution accords the same opportunities to all citizens. Article 12 also declares that all human beings are born free and are all equal. Moreover, the Constitution evidently supports women’s property rights by prohibiting favouritism on whatever ground and gives emphasis to the parity of all individuals (Myenzi 2009). Pursuant to an amendment passed in 2000, sex or gender as reasons for bias/or favouritism are prohibited in clause 13(1): “All people are equal before the law and are entitled without discrimination to protection and equality before the law” (URT Constitution Art. 13(1)).

The right for both women and men to possess land and property is provided for in Articles 24 and 24(1), which hold that women and men may hold, own, and dispose

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37 Hindu laws are often applied to individuals of Indian origin where intermarriages with other races are not common. Laws of such a nature are specific to Indian couples residing in Tanzania.
of property. Any denial of an individual’s possession is against the law unless supported by law, which makes provision for fair and adequate compensation. Article 29 (3) of the Constitution provides that “no citizen shall have a right, status or special position on basis of lineage, tradition or descent”. Other legislation also provides relatively strong legal protection for women land occupiers.

Therefore, women as other citizens are permitted to own land as land is a property to which every citizen is entitled. This implies that women are not to be discriminated against when accessing land and even controlling it. An explicit guarantee, that women have a right to property, is missing. Rather, each individual is permitted to possess assets (Article 24), which constructively includes women. On the other hand, property rights established through formal laws in the country are far more progressive than those under customary law. Most significantly, any law contradicting the provisions of the Constitution is null and void under Article 64(5).

b) The Land Act No. 4 and the Village Land Act No. 5 of 1999

These laws were enacted in 1999 to administer and regulate land matters in Tanzania, coming into force in 2001. Both acts markedly articulate that women’s rights “to acquire, hold, use, deal with and transmit land” are identical to men’s rights (Section 3(2) LA) and require land co-occupation by matrimonial couples. The VLA defends existing rights in land, which de facto eliminates women, who by no means occupied land under the customary law. However, it also prohibits favouritism against women in the enforcing customary law.

i. Women’s property rights under the 1999 LA and VLA

Women’s property rights in the Acts, as discussed in Moyo (2006:96) and Myenzi (2009), are examined below:

(a) Co-occupancy

This right is under Section 161(1) LA regarding the registration of land in the customary form or in the granted right of occupancy. Where land is acquired by a spouse for co-occupation and use by both spouses and where there is more than one wife, there is a presumption that unless otherwise stated, the spouses will occupy the land as occupiers in common and the Registrar is to register the spouses as occupiers in common unless the presumption is rebutted. Section 161(2) LA goes further by stating that in case the presumption is rebutted, the security of the spouse in occupying the land is assured by virtue of taking part by contributing through their labour to the productivity, upkeep and improvement of the land. By doing so, the spouse obtains an interest in that land in the form of occupancy in common. Spouses, particularly women, are guaranteed a land tenure security of a kind under this section.
(b) Disposition and mortgage

The provision about disposition and mortgage of land (others are assignments and transfers) in a marital property/land including a customary matrimonial home the parties (the borrower and his/her spouse) to provide evidence by issuing a consent in the form of a written document or form used in applying for a disposition or mortgage as prescribed in Sections 63, 98 and 112 LA. The responsible authority/institution is under the obligation to investigate whether the spouse(s) have assented to that mortgage or other assignments or transfers. Sections 112 and 160 LA also stipulate that where the aforesaid spouse undertaking the disposition deliberately misleads the assignee, transfeee or lender as the case may be, the disposition or mortgage is null and void at the option of the spouse or spouses who have not consented to the disposition or the mortgage. Section 33(1) (d) VLA also provides that the VC is to determine whether to grant consent to private disposition of a derivative right and ensure that the requirements of women for land within a village are met.

(c) Surrender of a customary right of occupancy

Section 35(1)(2) VLA provides that a villager or group of villagers or any other person holding a customary right of occupancy be allowed to surrender it at any time. Nonetheless, if the intended surrender has the effect of deputising or replacing impediments in the way of a woman from occupying land, it is not to operate and is of no effect. In a re-granted or surrendered customary right of occupancy, the law provides for the VC (section 35 VLA) before publicising that land is available, to give a first offer to his wife/wives and if he has no wife to his dependants; likewise, if the woman is the one who surrenders her right, the first offer must be to her husband or her dependants.

ii. Women’s land rights as per the 1999 VLA

Women’s rights of access, control and disposition, rights of representation and participation in decision-making bodies are provided for in this Act. Section 3(1) (2) VLA declares and acknowledges the equal rights of women and men to access, own, control and dispose of land under similar conditions and situations as described above. Section 20(2) VLA further defends women from biased traditions and habits that hamper their lawful access to ownership, occupation and use of land. The following are other rights as granted in the VLA.

Right of access to adjudication bodies

Sections 23(2)(c) and 57(3) VLA confer the same treatment of women in an application of customary right of occupancy by both the VLC and the adjudication

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38 It is a right to occupy and use land created out of a right of occupancy and includes a lease, sub-lease, licence, usufructuary rights and any interest analogous to those interests (Section 2 LA).
committee. Section 22(1) VLA also offers women the privilege to obtain land following a separation.

**Right to participate in decision-making**

The VLA also provides for a mechanism for resolving land disputes. It sets up instruments for dispute determination that spring from the village level (VLCs), Ward level (Ward Tribunals) to District and Housing tribunals, High Court (Land Division) up to the Court of Appeal. The involvement of women in village and ward level instruments is absolutely obligatory.

- Section 60 VLA and the Land Disputes (Courts) Act of 2002 entail that out of 7 members of the VLC, women should not be less than 3 and out of 5 to 8 members of the Ward Tribunal, women should not be less than 3.
- In a VC consisting of 25 members, at least one-quarter of the members must be women. The VC is in charge of village land administration.

Thus, the Act emphasizes a wider participation of women in the decision-making institutions taking charge of and controlling land, including determination of conflicts, adjudication committees and VC committees. The presence of women in various decision-making institutions implies that women’s property rights will be better upheld.

c) The Marriage Act of 1971: Property rights and marital status

The Marriage Act of 1971 is another key legislation regulating the rights of women with respect to property and land. The Act standardizes matrimonial, individual and property rights between spouses. The Act, which by assumption succeeds customary and Islamic laws, grants women the right to retain and have power over their own property whether they purchased it prior to or during their marriage (Ellis et al. 2007; LRCT 1995; Ezer 2006; Rwebangira and Tungaraza 2003). Sections 58, 59, 60, 114 and 160 of the Marriage Act are the most notable and crucial, giving preference to the rights of women. For example, subject to Section 59, Section 58 allows women to acquire, hold or dispose property acquired through her efforts during marriage.

Section 59 places restrictions on the matrimonial home or estate. This section specifically defends the rights of a spouse staying in a marital home possessed by the other spouse by prohibiting transactions or disposals of the house where proof in form of written consent is lacking from the non-owning spouse while the marriage subsists. In reality, these clauses function only in situations where a wife is familiar with and can enforce these clauses (Ellis et al. 2007). On the presumption that the property was acquired during marriage, Section 60(a) states that where during the subsistence of the marriage, any property acquired:

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39 See also sections 63, 98 and 112 LA which provide protection as to this.
“In the name of either the husband or the wife, the presumption is that property belongs absolutely to that person to the exclusion of his or her spouse” (The Marriage Act 1971:26)

If the house is in the name of the husband, which is the case for the vast majority in Tanzania where less than 15 percent of the registered land is in the name of women or in co-occupancy, the assumption is that the property is possessed by the husband, except where the wife can provide evidence that she played a role in its purchase or possession. Section 60(b) provides relief to property, which has been “registered in the names of the husband and wife jointly; there shall be a rebuttable presumption that their beneficial interests therein are equal.”

The Marriage Act further sets out rules under Section 114(1) that operate during the granting of a decree of separation or divorce, and distribute the property obtained by the couple during the marriage through their joint efforts. Protection is also provided to cohabiting couples. Section 160 (1) of the Marriage Act states that, “Where it is proved that a man and woman have lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married”.

5.3.2 Customary laws

Customary law is the system of law most criticised on inheritance issues. Most customary law is undocumented and its survival has to be substantiated. Customary laws to land and inheritance in Tanzania are governed by various legislations including declarations such as the Judicature and Application of Laws Act R.E of 2002 (JALA) and the Local Customary Law Declaration Order No. 4 GN 436 of 1963 R.E 2002 (LCL Order). Customary laws of inheritance are relevant to natives of patrilineal societies, which constitute 80 percent of Tanzania’s communities (Ellis et al. 2007; James and Fimbo 1973).

Customary law is also applicable to aspects of a civil nature between community members (LRCT 1995) in which rules of customary law pertinent to the matter are recognized and acknowledged as stipulated under Section 11(1) JALA. The Act also deals with procedures on the administration of an estate (house and land) under customary laws upon death of the owner. Section 88(1)(b) JALA stipulates that, “the estate of a member of a tribe shall be administered according to the law of that tribe unless the deceased at any time professed Islam religion” and the court having jurisdiction over the estate is contented that the deceased from any oral/written declaration or act or manner of life indicated that she or he anticipated the estate to be administered wholly or partly under that law. Therefore, unless a contrary intention appears, the administration of the estate of a deceased member of an ethnic group will follow customary law.
The administration of estates under customary law was generalized in 1963 by way of statute under Section 53A of the Local Government Act Cap 333 of 1982. The Minister for Local Government was empowered to issue a declaration of what could be regarded as a uniform code of customary law. Therefore, a series of codifications were undertaken. Thus, for administration of estates and inheritance in general, the Minister passed the Local Customary Law Declaration Order in 1964.

**Local Customary Law Declaration Order No. 4 GN 436 of 1963 R.E 2002**

The Local Customary Law Declaration Order of 1963 was an endeavour to codify customs and practices of patrilineal communities in order to consider individual matters in areas such as inheritance in mainland Tanzania (Ikdahl et al. 2005). The LCL Order concerns patrilineal ethnic groups, which rules were not mandatory because they depended on adoption by the relevant District Councils.⁴⁰ Thereafter, most District Councils adopted the rules with very few modifications, for example, Government Notices 436, 474 and 605 of 1963. Uniform customary law procedures are outlined in Section 9A JALA. The rules are relevant only to patrilineal communities as matrilineal communities in mainland Tanzania are excluded. Matrilineal communities are exempted from these rules as customary law in such communities’ needs approval before the court as a question of fact (James and Fimbo 1973).

There are three schedules in the LCL Order covering different aspects, with the second schedule relating to rules of inheritance and providing property rights to land to daughters, women and widows as well as men. There are various ways by which rights to land can be acquired: through self-acquired land, inheriting family or clan land, etc. The rights of daughters for self-acquired or clan land are contained in the LCL Order. In relation to self-acquired property, it is clear that females are not prohibited from inheriting this category of property as Manji (1996) noted.

In relation to family or clan land, rights of daughters are set out in Rules 20 and 31 LCL Order. These stipulate that a female child may inherit family or clan land and may use such land for life, but is prohibited from selling it or from disposing of it by will.⁴¹ In

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⁴⁰ See section 12 JALA. The customary rules of testate and intestate inheritance are incarnated in the LCL Order and operate in all local communities in the districts where the declaration was specifically extended. Intestate inheritance refers to situations where a person dies without leaving a will disposing of his or her property.

⁴¹ In a judgment by the Tanzania High Court, this provision concerning the incapability of a woman to dispose or devolve clan or family land is seen as outdated (Manji 2000), see *Bernado Ephrahim v. Holaria Pastory* in 1989. In the case, Justice Mwalusanya decided in favour of the woman, holding that the customary law barring only female heirs from disposing of clan land by sale is unconstitutional. This is a landmark judgment for women’s property rights in Tanzania.
contrast, a male\textsuperscript{42} who inherits clan or family land may sell it, although if he does so without the consent of clan members, they may redeem it (ibid.).

In customary law, a wife is not regarded as a member of her husband's family for purposes of her rights to land. As a result, any contribution a woman makes towards the acquisition of property such as land is not regarded as bestowing on her any rights to her husband's property upon his death. As widows, they are thus highly vulnerable. They do not have rights of their own, only through children. Rule 27 LCL Order provides that "a widow has no share of the inheritance if the deceased left relatives of his own clan; her share is to be cared for by her children just as she cared for them." Worse, any daughters have no or limited rights in inheriting their father’s land or house (Rules 48 and 49 LCL Order). A widow can only inherit if there are no children and no male relatives, but such situations are very rare (Ikdall 2008).

5.3.3 Islamic laws

Islamic law is central to the customary law of many countries and is a way of determining how property rights (land and housing) are distributed. While women are allowed to own and inherit land, housing and property, they are not given the same rights as men (UNCHS 1999; Kameri-Mbote 2005). Islamic inheritance law demonstrates an advantaged arrangement for men with respect to land as seen by the portions widows and daughters receive. A widow is allowed to have a fixed share of one-eighth of her late husband’s estate if they had children (not necessarily by her) and one-fourth if they had no children. In cases of multiple widows, they split that share. A widower in a comparable circumstance would get twice as much: one-fourth if he and his deceased wife had children and one-half if they were childless. Daughters take over a flat portion of one-half of the estate if the deceased had no sons. In a situation where there is more than one daughter, they share two-thirds of the estate. If there are sons, they will be the first heirs and daughters then will be given only one-half of the shares of the son. Despite the fact that women can be offered possessions and inheritance privileges under Islamic law, social norms can force women to surrender such privileges (UNCHS 1999; Kameri-Mbote 2005; LRCT 1995).

In mainland Tanzania, Section 11(1)(c)(ii) JALA provides for the applicability of Islamic law in matrimony, separation, custody, bequest, \textit{wakf} and similar matters (LRCT 1995) for those community members who pursue that faith. Enforcement of Islamic Law in mainland Tanzania is granted pertaining to issues of succession where the parties are of the Islamic faith (LRCT 1995) as seen from following legislation:

\textsuperscript{42} Males take over movable and immovable properties absolutely under the LCL Order, but females can become heirs to immovable property but only for their daily use. Transfers of any kind to women in such properties are prohibited unless there are no male members in the family.
The Succession (Non-Christian Asiatic) Act/Ordinance (Cap. 112/Cap 28 RE 2002) Section 6(1);
- The Probate and Administration of Estates Act Cap 352 R.E 2002) Section 88(1)(a);
- The Judicature and Application of Laws Ordinance (Cap.358 R.E 2002) Section 11;
- The Magistrates Courts Act No. 2 of 1984 Section 18;
- The Law of Marriage Act No. 5 of 1971;
- The Mohamedan Estate (Benevolent Payments) Ordinance, Cap. 25;
- The Re-statement of Islamic Law GN.22 of 1967; and
- The Wakf 43 Commissioners Act, Cap. 109 44.

The Probate and Administration of Estates Act R.E 2002 provides the statutory basis for an Islamic law of succession in cases of specified natives, and how such is to be assessed. If the deceased professed belief in the Muslim religion and the court is satisfied that from the documented evidence or verbal pronouncements of the deceased or his deeds or manner of life he planned his estate to be administered either entirely or partially according to Islamic Law, Islamic Law will apply.45 If the estate is that of a ‘Swahili’ then Islamic law applies, otherwise ethnic group law is applicable. However, to merely profess Islamic belief is not satisfactory to apply Islamic Law in a division of the deceased’s estate, documented evidence or verbal pronouncements of the deceased’s intent must exist to have the estate managed according to Islamic Law or that his deeds/mode of life induces the court to find that the deceased proposed Islamic Law to apply.

5.4 Struggles and initiatives in improving property rights in Tanzania
Tanzania, as any other country in Africa, has undergone various reforms since the late 1990s in different sectors including legal tenure land reforms. The country has ratified a number of international treaties aimed at protecting individuals from any kind of discrimination in the occupation, control and access to resources. To ensure these protections, various approaches and strategies were adopted not only by the government but also by advocacy groups (civil society organisations).

5.4.1 Women’s advocacy groups
Since the early 1990s, there has been a growing concern among many scholars as to women’s property rights in Tanzania, and many NGOs and women’s activist groups have become active in the country. From 1993-1997, the number of civil society

43 A wakf is a religious, charitable or benevolent endowment or dedication of any property (such as land, house, and car) in accordance with Muslim law. Wakf lands are types of lands used for charity or specific purposes, whose lease or usufruct raises/provides funds for those ends.
44 For an intense discussion on the laws, see The Tanzania Law Reform Report, 2002. The present study only covers the JALA and Marriage Act.
45 Section 88(1)(a) of the Probate and Administration of Estates Act R.E 2002.
organisations increased from 224 to 8,360 of which 80 percent were women’s associations (Tripp 2000:15). Kilian (2011) further explains that the need to achieve equal access to resources (land inclusive) has entailed that political pressure and economic improvement have been increased in various fronts since the mid-1990s. Women’s organizations have pioneered the struggle for more political involvement and representation, equal employment rights, land rights and educational opportunities (Kilian 2011). Women’s struggles for uniform access to land occupation and exploitation of land have created a foundation for the evolution of a structured women’s land rights pressure group in the 1990s.

The most notable example is the Women’s Council of Tanzania (“Baraza la Wanawake la Taifa”, BAWATA). The Gender Land Task Force (GLTF) was created in 1997 to champion gender equal opportunity in land law. GLTF worked together with policymakers in preparation of the draft for the land act, and has had a vibrant influence on Land Commission forums. However, GLTF was dissatisfied by the powerlessness of the Commission and policymakers in defending the incorporation of provisions that would insist community change (Dondeyne et al. 2003; Maoulidi 2006) in the newly-formed Land Acts. Women’s land rights are also championed by other women’s associations and groups such as the Women’s Legal Aid Centre (WLAC), Tanzanian Women Lawyers’ Association (TAMWA), Tanzania Lawyers’ Association (TWLA) and HakiArdhi (Land Resources Centre).

5.4.2 Government strategies

Different strategies have been used by the government to protect and promote property rights, operating at different levels with different authorities. These are listed below.

a) Proposal on the enactment of a Succession Act

The government, due to pressure by women’s property rights activists and by trying to abide by international covenants including protocols, realized the need to have an act that could govern many issues concerning women and succession rights. In the “reforms in laws” discriminatory to women in late 1987, the Tanzania Law Reform Commission was given the mandate to study the problems in the law of succession/inheritance and recommend its reforms to the government. The Government desired a uniform succession law applicable to all citizens. Three main systems were in operation regarding inheritance: customary law, Islamic law and Hindu law. The Commission submitted its report in 1995. A bill proposing a new Succession Act has been presented. The main purpose of the Bill is to launch a new law to help

47 The Tanzania Law Reform Commission submitted a report to the Government in 1995, which is still today tabled in the Parliament for discussion. In other words, the government is undecided. In a similar vein, women’s activist groups and legal forums have raised great concerns as to the current Marriage
achieve a proper supervision of the deceased’s estate or properties and procedures thereof. It also seeks to specifically protect widows and orphans from all forms of likely problems by the deceased’s family.

The Bill is designed to assure and encourage gender parity in all spheres connected to bequests, including the management of the deceased’s estate, such as choosing estate administrators. It also proposes repealing and amending some of the current laws linked to succession that are gender-biased and in conflict with the Constitution and other international conventions including the Protocols on Human Rights. Some of the laws proposed to be repealed include: The Indian Succession Act of 1865 (applicable to individuals of Hindu in nature); Local Customary Law (Declaration) order G.N.436 of 1963 R.E 2002; Administration (Small Estates) Cap.30; and the Law of Persons G.N.279 (1963).

b) The formalization of property rights
Various initiatives were taken by the government to formalize property rights after adoption of the LA and VLA in 1999 and the Land Disputes (Courts) Act of 2002. The major ones are the Property and Business Formalisation Programme and the Strategic Plan for Implementation of Land Laws (Lugoe et al. 2005; Lugoe 2008; Pedersen 2010; and MLHSD 2005).

i) The Property and Business Formalization Programme (PBFP)
The Property and Business Formalization Programme (PBFP) or in Kiswahili, Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania, (MKURABITA) was launched in 2004. The Programme is conceived within the National Strategy for Growth and Reduction of Poverty (NSGRP), which is attempting to transform properties and businesses in the informal sector to units held and functioning within the boundaries of the current law in the formal sector of the economy. The formalised property and businesses are expected to facilitate access to additional funds in the recognized financial sector and gains from extended market opportunities, among other merits, for the owners. The anticipated results from the programme include the following:

(i) The reduction of household poverty at the individual level;
(ii) The improvement of living standards of the targeted groups; and
(iii) The expansion of the national market economy as following the rule of law.

Act. They have called for the government to amend those sections which in principle discriminate and undermine women’s (widows’) property rights generally and/or overhaul Sections 60 and 114. The notable changes for much of the legislation discussed above are the amendments which have been done to JALA, LCL Order, the Probate and Administration of Estates of 2002 and the Land Act 2004 Amendments. These amendments, however, have been insignificant as to changing women’s property rights.
The PBFP is one of the initiatives to implement the operationalisation of the Land Acts. The programme is aimed at economically empowering the poor majority of the population by broadening their access to property and business opportunities and goings towards the development of a strong expanded market economy through the formalisation of property rights and business (Pedersen 2010). The PBFP programme emphasizes the following: the surveying of village boundaries; the preparation of village land use plans;\(^{48}\) land registration (certification of land parcels); and capacity building of local leaders from district to village levels using participatory rural appraisal techniques on the better management of rural land.

A number of projects have been carried out by PBFP using the Land Acts as the framework for formalisation. The two major pilot projects were in Handeni at the end of 2006 and in Bagamoyo 2007/8. In 2008/09, the districts covered by PBFP were Rufiji, Nachingwea, Makete, Njombe, Manyoni, Serengeti, Musoma, Mpwapwa, Mvomero and Wete (Pemba Island). From 2010, PBFP executed the projects in 14 districts, namely, Meru, Moshi Rural, Mwanga, Masasi, Mbinga, Sikonge, Sumbawanga, Mbarali, Kasulu, Kahama, Geita, Muleba, Mkoani (Pemba) and Kaskazini ‘A’ (Zanzibar).\(^{49}\)

The PBFP programme faces many challenges, such as villagers’ readiness to accept the programme, bureaucracy in the disbursement of funds at the district level, weather, and the lack of cooperation between PBFP and district authorities including understaffing in some of the districts. As of December 2013, the number of districts covered by PBFP was 41 with a total of 177 villages having their land, land parcels, surveyed. A major issue emphasized by the project when implemented was that couples should register their land under joint occupation as stipulated under Section 161 LA.

**ii) Strategic Plan for Implementation of the Land Laws (SPILL)**

SPILL was launched by the government and aimed at streamlining land laws into socio-economic life. The LA and VLA of 1999 were the earliest laws dealt with by this plan, followed by the Land Disputes Courts Act No. 2 of 2002 (Lugoe et al. 2005). SPILL was a reaction to the need for land titling, which had been identified through implementing an Agricultural Sector Development Programme in the Ministry of Agriculture (Pedersen 2010; Lugoe et al. 2005). The project was executed by the Ministry of Lands Human Settlements and Development.

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\(^{48}\) Land use plan means any plan prepared or adopted by a planning authority, be it a village, district, municipality or city as provided under section 2 of the Land Use Planning Act of 2007. This Act provides procedures for the preparation, administration and enforcement of the land use plans in Tanzania. In the implementation of PBFP in villages, many villages were lacking such plans to identify existing land uses, thus, it was one of the prerequisites in the programme before the land registration exercise.

\(^{49}\) See [www.mkurabita.go.tz](http://www.mkurabita.go.tz).
The first pilot project was carried out in Mbozi District by land officials from the ministry of land. Mbozi was selected as a pilot project site as it had a reasonable number of commercial plantations. By March 2004, the first certificates of customary right of occupancy (CCROs) were issued to Mbozi farmers. The data collected showed that up until June 2012, the boundaries of 175 villages were demarcated and surveyed and 158 certificates of village land were issued. Meanwhile, 1,117 CCROs were issued to villagers, 765 being males, 42 females and 310 being joint registration (MLHSD 2013).

The project was replicated in other districts. such as Iringa where it covered 40 villages; Monduli 49 villages; Namtumbo and Ngorongoro 1 village each; Muleba 2 villages; Kilindi 10 villages; Babati 5 villages; Kiteto 6 villages; and Kilolo 9 villages. All these villages have been issued certificates of village land. A general report on the implementation of VLA 2004-2011 shows that the project has been extended to almost all districts in Tanzania. Thus, more than 90 districts were reached with a total of 7,169 villages having their certificate of village land whereby 158,030 CCROs have been issued (MLHSD 2013).

5.4.3 International human rights instruments

Article 1 UDHR emphasizes the rights of all individuals as they are freely born and equal in dignity and privileges. This article, which has formed a fundamental standard on which the entire concept of human rights rests, represents the idea of fairness and self-determination. Consequently, the right to equal opportunity and dignity has been the frequent subject of matters in all international

53 Accepted on June 1981 by OAU country members, came to force on 1986.
54 The Protocol on the Rights of Women in Africa was adopted by the African Union in 2003 and entered into force in 2005 after being ratified by 15 African governments. To date it has been ratified by 30 countries (Equalitynow 2011).
human rights instruments. These all provide non-discriminatory rules including women’s protection as to ownership and inheriting of property and land.

The rule as to removing bias, entrenched in CEDAW and the African Protocol on the Rights of Women, operates in both public and private spheres, cutting across market, nation and household land dealings. It demands nations and international development organisations to value, defend and effect rights to resources that are imperative for occupation, including foodstuffs, water, accommodation, well-being and education (Ikdahl et al. 2005). For instance, the African Charter on Human and Peoples Rights declares in its preamble that “Freedom, Equality, Justice and Dignity are indispensable goals for the attainment of the lawful ambitions of the African people.” The Charter also insists on the protection of women’s rights from any discriminatory practices in its Article 18(3), which states that, “the State shall guarantee the abolition of any kind of bias not in favour of women as well as warrant the rights of the woman and the child as set in international pronunciation and conventions.”

The Women’s Rights Protocol is a significant move towards securing and uplifting the rights of women in Africa. It is the first international law instrument to condemn all sorts of violence against women, whether private or public (Equality now 2011; Njoroge 2005). The Women’s Rights Protocol requires the parties (those States ratifying and signing the protocol) to certify that women have privilege to become heirs to and possess property as provided in Articles 2 (elimination of discrimination); 6 (on marriage); 7 (separation, divorce and annulment of marriage); and 21 (right to inheritance). The African Protocol on the Rights of Women further validates the rule of non-favouritism regarding land and food security. In tackling the right to sustainable development, Article 19(c) requires States to ‘boost women’s access to power over productive resources such as land and ensure their right to property’ (Ikdahl et al. 2005).

Moreover, Article 14 CEDAW corresponds to Article 19(c) of the African Protocol on the Rights of Women, both requiring member States to deal with particular hindrances as identified by rural women. The states are to act to ensure that women specifically have equal access to land, as well education and training. Apart from these, there still are many other areas that challenge equality for women in Africa as pointed out by CEDAW (2005), including:

(i) Agriculture modernisation and laws favouring access to land for men;
(ii) The existence of dual modern and customary legal systems in some countries;
(iii) Preference given to men in social, economic and cultural situations;
(iv) Marital custody goes to men;
(v) Access to educational opportunities;
(vi) Restricted or no right to a voice;
(vii) Failure to grant responsibilities for women as hallowed through time and custom;
(viii) Limited access to information due to simple ignorance of existing opportunities; and
(ix) Ignorance of administrative procedures and rights.

Women’s property rights have been furthered strengthened in various protocols. Article 16 CEDAW compels the parties to institute equal property rights for women concerning matrimony, separation and bereavement. As a follow-up, CEDAW in its General Recommendation\textsuperscript{56} No. 21 (equality in marriage and family relations) states that “any regulation or tradition that offers men a privilege to a larger share of property at the end of a marriage or de facto relationship, or on the death of a relative, is biased and will produce a severe effect on a woman’s reasonable aptitude to divorce her spouse, to sustain herself or her family and to live in dignity as a self-sufficient person” (Equality now 2011).

\textsuperscript{56} CEDAW Committee’s General Recommendation No. 21 emphasizes the elimination of any form of discrimination against women in any matter relating to marriage and family relations, particularly paragraphs 34 and 35.
The Makete District

This chapter presents the Makete district, with a focus on the historical and administrative set-ups in the district, its economic activities, population size, population density and land use patterns. Other aspects examined are land tenure and administration as embodied in the functions of the VC and district land office; and the land dispute mechanisms. Rural land titling programmes and legal empowerment issues are also discussed. The information in this chapter was mainly gathered through interviews and existing documents, such as the Makete district profile and population census reports.

6.1 Background information
The Makete district is one of five districts in the newly-formed Njombe region, founded in 1979 during the socialism (Ujamaa) policy. The district headquarters are located in the Iwawa Ward. The latter was declared a township in 2004, though yet to be launched.

Figure 6.1: Makete District Administrative Units (Source: Makete District Profile 2008)
The district has a total land area of 5,800 km², mostly mountainous with steep hills, ridges, valleys and escarpments, located about 110 km from the Njombe regional headquarters. The Makete district is bordered by the Wanging’ombe (formerly Njombe) district on the east, Mbarali district on the north, Ludewa and Lake Malawi on the south, with Rungwe district on the west (Makete District-Planning Office 2012).

Administratively, the Makete district is divided into 6 divisions and 17 wards with a total of 97 villages and 444 sublets (hamlets) distributed unevenly as indicated in Figure 6.1 and Table 6.1. Ikuwo division covers about 21 percent of the total land area of the district, followed by the Ukwama and Lupalilo divisions accounting for 20 percent, respectively. Bulongwa division has the smallest land area in the district with 9 percent, the Magoma with 11 percent and finally Matamba covering 18 percent (Makete District Profile 2008).

<table>
<thead>
<tr>
<th>S/n</th>
<th>Division</th>
<th>Land Area (km²)</th>
<th>No. of Wards</th>
<th>Ward Name</th>
<th>No. of Villages per ward</th>
<th>No. of sublets per ward</th>
</tr>
</thead>
</table>
| 1   | Lupalilo | 1,187.7        | 3            | 1. Lupalilo  
  2. Iwawa  
  3. Mang’oto | 18         | 101         |
| 2   | Ukwama   | 1,154.3        | 4            | 1. Ukwama  
  2. Ipepo  
  3. Mbalte  
  4. Lupila | 23         | 117         |
| 3   | Bulongwa | 1518.2         | 2            | 1. Bulongwa  
  2. Kipangalo | 17         | 61          |
| 4   | Magoma   | 664.3          | 3            | 1. Iniho  
  2. Ipelele  
  3. Kigulu | 13         | 57          |
| 5   | Matamba  | 1,038.9        | 3            | 1. Matamba  
  2. Mlondwe  
  3. Kitulo | 19         | 78          |
| 6   | Ikuwo    | 1,236.6        | 2            | 1. Ikuwo  
  2. Mfumbi | 8          | 30          |

**Total** 5,800.0 17 97 444

**Source:** Department of Land Natural Resources and Environment - Makete District Council (2012)

The transportation infrastructure in the district is still very poor despite some significant improvements. Roads are the basic mode of transportation for goods and persons within and outside the district. Access to the district from Njombe town is via tarmac and a graded gravel road. The transportation infrastructure to other areas from the Makete headquarters are in very poor condition though passable year-round. During the rainy season, severe problems exist for the district feeder roads and village roads. The topography and weather influence the road network conditions greatly. The
roads are poor with a high degree of roughness, potholes and erosion (Makete District Profile 2008).

6.2 Ethnic groups
The dominant indigenous ethnic groups are the Wakinga and Wawanji, of whom about 98 percent are Christian. The Wawanji occupy the northern part of the district, while the Wakinga occupy almost the entire district. Moreover, within Wakinga, there are sub-ethnic groups, the Mahanji and Magoma. The district is also occupied by small groups of Wanyakyusa, Wasangu, Wabena and Wahehe. The latter resulted from intermarriages, the presence of institutions such as schools (both primary and secondary schools), three large hospitals (Bulongwa, Makete and Ikonda hospitals) and a vocational training centre (VETA).

6.3 Population: Size, growth and density
Contrary to the other districts, the population in the Makete district has experienced an insignificant growth as shown in Figure 6.2. In the 1978 census, the population was 91,220, while in 1988, the number increased to 102,600 and 105,700 for 2002 census. The district currently has a total population of 97,260 with an average household size of 3.7 persons (2012 Population and Housing Census Report).

![Figure 6.2: Population trends of the Makete District from 1978, 1988, 2002 and 2012 censuses](image)

The population density stands at less than 30 persons per km². Between 1988 and 2002, the district had the relatively lowest population growth rate of 0.2 percent compared to the regional growth rate of 1.6 percent and the national average of 2.4 percent (Makete District Profile 2008). This problem is attributed to the Makete
district’s relatively small area of arable land, a decrease in the cash economy (pyrethrum and timber), the HIV/AIDS pandemic and few job opportunities in rural areas.

The district is experiencing emigration, with a tendency for individuals to move to neighbouring districts or towns such as Mbeya, Njombe, Makambako and Songea. The most influencing factor is proximity. They also move to Dar es Salaam, Morogoro, Dodoma and other urban centres. There is more male lifetime emigration than female. This pattern has resulted in economic consequences as a major workforce is unavailable in the villages. The majority of the rural population is composed of the old age group, elders and school children. Women are forming the greater part of the rural population. From the 2012 census, the number of female was 51,966 in contrast to 45,421 male.

The population also varies at the division and ward levels as evidenced from three censuses (1988, 2002, and 2012). In 1988, Bulongwa had a population density of 30.1 persons per km$^2$, which made it the most densely-populated division in the district, followed by Lupalililo with 21.4 persons per km$^2$ and Ukwama 17.3 persons per km$^2$. Matamba was the least densely populated division after the Magoma division.

![Figure 6.3: Ward population data as per 2012 census](image)

In 2002, Bulongwa was again the most densely-populated division, with 44.8 persons per km$^2$, Ukwama division the least densely-populated with 3.7 persons per km$^2$ followed by Ikuwo division with 8.9 persons per km$^2$. While the 2012 population and
housing census report indicates slight changes, the Matamba and Iwawa wards became the most populated, while Kigulu is the least but registers the highest household size of 4.6 as shown in Figure 6.3. Individuals are much more concentrated in a few divisions for various reasons including the availability of arable land, economic infrastructure and social services.

6.4 Land use patterns and economic activities

Land use patterns
The Makete district has the smallest average land area, 187 km² per ward and 32 km² per village. The land use distribution pattern is limited due to geographical factors. However, there are three identified major land uses. Agriculture accounts for 72 percent of the total land. The second is forest reserve (e.g., Kitulo game reserve), which occupies about 2 percent and the third is natural and secondary forests (individual forest and tree plantations), which account for 26 percent of the total area. Economic activities in the Makete district correspond to the land available. Arable land available for agricultural production is only 4,195 km². Out of that, only 8.8 percent amounts to 371 km² actually cultivated annually, leaving 3,824 (63 %) km² lying idle due to its infertility, used instead for grazing or as edges and river beds.

Economic activities
Farming is the prime segment of the Makete district economy followed by livestock. Agriculture provides livelihoods for most residents in the district. Life for the majority of residents in the Makete district, estimated at more than 80 percent, is based on a subsistence economy whereby food production for immediate consumption is the primary focus and surplus produce, if there is any, is sold at local markets for cash. Wheat and round potatoes are widely cultivated due to the temperate climate. They are often intercropped with pumpkins, beans and peas. Other food crops of great importance are maize, sweet potatoes, paddy, wheat and beans. Because of the temperate climate, fruit trees such as plums, peaches, apples and pears are also cropped in the district.

Significant cash crops are pyrethrum and timber harvest. Both activities have declined in production (see Chapter 7). The former was a result of a market decline for the product and the low price. The latter has been caused by an extended harvest without replanting, a pattern leading to depletion in the number of trees for timber production. Such pressures are driving forces on an increasing number of residents involved in another form of cash economy by moving from their childhood villages to towns in order to participate in opportunities presented by the modern economy.
6.5 Land tenure in the Makete District

Land in the Makete district comprises two major types, customary land (village land as described in the VLA 1999) and general land as per the LA 1999. Reserve land occupies a very small percentage. In urban centres, such as Iwawa and Tandala, there is a blend of customary tenure, statutory tenure and informal tenure. Customary land tenure accounts for a massive 97 percent of land in the Makete district. Therefore, customary land is the basis of life for the vast majority of the Makete population. It feeds and sustains them, both physically and spiritually, and it is the foundation upon which the indigenous Makete district is built.

6.5.1 Customary land tenure and its gradual changes

The majority of the Makete population is patrilineal and the customary allocation of land follows the male line. There are four major ways of allocating land at a particular village based on customary laws: either through the village government (during and after the villagisation programme), inheritance (the most common way), purchase or gift (which is very rare) and leasing.

Traditionally, households jointly cultivate family land under a man influence of a male (de Javnry and Sadoulet 2001) though women are the major producers and spend much of their time farming. Food produced on family land parcels is used to support the family, while any surplus is sold to obtain cash for home expenditures, such as buying fertilizer, clothing, and hospital care and school services. However, cash from the sale of any food surplus or cash crops generated on the family level is under the control of a man. This situation still exists in the Makete district today as production is organized at the family level.

Makete men have been vested for decades with the power of controlling and owning land. Women were not given the opportunity to possess land as already noted. However, a gradual change in this practice is occurring. In some clans, women (daughters and unmarried daughters) were traditionally given land in their fathers’ homes before marriage with no restrictions bestowed as to use and possession of the land after marriage. This somehow is a type of empowerment for women contrary to the other patrilineal ethnic groups where women absolutely were disowned from land, whether their own or the husband’s families and clans land. Manji (1996) noted that in traditional law, a wife is not regarded as part of her spouse’s family for the purpose of her rights to land. As a result, any contribution which a woman makes through her own labour with respect to the acquisition of property such as land is not regarded as bestowing on her any rights to the husband’s property on his death.

Myenzi (2009) notes that there is an uneven distribution of wealth in matters of inheritance as women are regarded as inferior. Women are deprived of their right to
own property including land upon divorce or the death of a husband because their traditional marriages are not subject to registration. However, customary law and rights are not static but rather flexible and accustomed to changes. A similar situation is observed in the Makete district. There are main reasons facilitating an alteration in customary land rights, such as the introduction of cash crops; intermarriages and religion; changes in legislation and policy (rural land titling programmes); villagisation programmes and changes in land inheritance patterns.

**Introduction of cash crops and land sales**

Increased agricultural commercialization from the colonial times with the introduction of commercial crops such as cocoa, cotton, oil palm, pyrethrum, groundnuts and coffee occurred gave rise to slow but significant changes in land rights practices. This occurred in several nations, including Tanzania, in the direction of an enhanced individualization of tenure and a larger incidence of land sale transactions (Platteau 1996). This has been the case in the Makete urban and surrounding villages where land transactions have been taking place as land is appreciating values in the villages (especially those located by road sides with arable and fertile soils such as Ikuwo and Matamba). Land selling, buying and leasing encompass a common feature in many villages. The transaction is between villagers and foreigners (non-villagers). The latter are buying large tracks of land under the umbrella of investment, and thereby resulting in resource use conflicts.

**Intermarriages and religion**

With the presence of churches and religious institutions, the traditional way of allocating land within the family or clan and within community has changed in recent years. The majority of the population in the Makete district is Christian. The introduction of Christianity in the late 1950s has had a profound impact on indigenous relations. Religion brought “civilization” and education. Religious institutions introduced schools in areas of influence (Bulongwa and Ikonda). Later on, schools became pervasive in many areas and hence, individuals were at least able to access formal education in the mission schools and government schools. These schools shaped individuals’ minds as well as cultural practices (as more individuals became formally educated) towards land inheritance patterns and women (and daughters) rights to land, in general.

Churches also play a substantial function in addressing equal rights of both women and men in matrimonial properties. They have departments established to deal with women’s empowerment and related matrimonial matters. Moreover, intermarriages have counteracted patriarchal practices in the allocation of assets (land) among

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57 www.hakiardhi.org.
community members in the Makete district. Through intermarriages, women have realized their rights on access, control and participation in decisions regarding land.

**Operation Vijiji (Villagisation programme)**
The villagisation programme was introduced by the post-independence government and implemented from 1968 to 1976. The Makete district villages were affected by the programme implementation, with Bulongwa, Lupalilio and Mwakauta among the nucleated villages. This programme had an impact on the traditional customary tenure arrangement, bringing changes to land ownership and inheritances patterns. Through the programme, traditional village communities that were scattered over homesteads were organized and brought together into formal villages to foster rural development. The main legislation in place as to operation *Ujamaa* was the Village and Ujamaa Village Act of 1975 whereby administration of land was under household heads who usually were men.  

The clearing of bushes and virgin lands for new settlements or land parcels at that time involved men to a greater extent, and therefore, they automatically became land owners, while marginalised women who were farm producers were left with nothing to own or possess. The Village and Ujamaa Village Act of 1975 provisions for example and other legislation neither placed less nor more emphasis on women’s property rights. The laws did not empower women to have control over land, including the right of accessing it for various uses as women needed permission. Through the programme, cooperative land tenure was introduced in the registered villages. However, the growing population (ethnic groups from other areas looking for life and other opportunities) and the increase in demand for agricultural land (for cash crops such as pyrethrum, trees farms) brought changes in land tenure. Customary tenure gradually transformed into individualized private tenure confined to the family level and kinship groups.

**Legislative changes**
The reform in land laws and policy (the Land Acts 1999 and the National Land Policy 1995) brought about changes in land ownership in rural parts of the Makete district. Consequently, rural land titling programmes have been carried out since 2009 to 2012 (see Section 6.6). There is an increased awareness of property rights issues compared to previous years through these programmes. For instance, land titles, which customarily were issued in the name of the male household head, are now more often issued to the couple as joint occupiers.

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58 See www.hakiardhi.org.
6.6 Land administration institutions and their roles

Tanzania devolves responsibility for land upon existing local governments as a result of the 1982 reforms in the Local Government Act. This choice has been widely praised for devolving much power downwards, which should improve the prospects of implementation (Cotula et al. 2004; Alden Wily 2003b). Tanzania experienced reforms in local government activities in 1982. Countless activities were affected by the reforms including land resources. The administration and management of land in Tanzania had been decentralised to local authorities (District councils, City councils and Municipal councils), while the ministry of lands retained its central overall control. In respect of village land, the VLA decentralizes “the management of the whole village land to the village council.” Accordingly, two institutions deal with land administration in the Makete district.

i. The District Council

The District Council handles the administration and management of general land in the district on behalf of the Commissioner for Lands through an authorised land officer (land manager) located in the district. For village land, district authorities monitor, assist and guide the villages with expert know-how and advisory functions. However, Section 9(1) VLA bestows autonomy to VCs to reject advice given by district authorities. The District Land Officer has the responsibility of issuing certificates and for the preparation of registers at the district level. The officer’s power is exercised through the necessary procedure of signing and sealing offers including certificates, and the maintenance of registers for certificates of village land with a district copy of each customary right of occupancy issued in the district.

When villagers are dissatisfied with decisions made by the VC, they are to file their complaints with the district council, the political nominee with full authority (Alden Wily 2003a), which decides the maximum amount of land a single person may hold in an area. In order to encourage equal access and distribution of land, local key aspects like population density, relative land scarcity and land degradation in the area (see Section 3 (1) VLA and Regulation 75) are taken into consideration.

ii. The Village Council: Establishment and functions

There are three acts devolving real power to the villages in Tanzania, namely, the Local Government Act, the VLA and the Forest Act. The VC is established according to Section 56 of the Local Government Act of 1982. The composition of the council members varies in accordance with the area coverage and number of sublets found in the village, but should be 15 to 25 members. The district councils are empowered to receive suggestions from the villages and decide on the number of sublets, including members

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60 See www.nlupc.org.
78
of the council, for each village. The members include the VC chairperson elected by the village assembly; the sublet leaders within the village and other members voted by the village assembly. The composition of women in the council is not to be below one-quarter of the entire members. The Village Executive Officer (VEO) is an appointee/employee of the district council and acts as the secretary for both the VC and village assembly (Soko 2011).

The VC has authority as to decision-making and suggestions on a daily basis on the administration and supervision of village land. The council can prepare suggestions for land use plans on village land, formulate by-laws, joint contracts on land use, the allocation of land, issue certificates of customary rights of occupancy, establish various committees on land use and thereafter, submit suggestions to village assemblies. A village assembly can approve or disapprove the suggestions submitted by the VC. The council is to convene meetings at any given time when deemed necessary. However, the council is to sit and convene a meeting at least three times in a year (after every three months), aiming at preparing the agenda for the general village assembly. The quorum to convene a meeting is one-half of the total members.

6.7 Land conflict resolution mechanisms
According to the Courts (Land Dispute Settlement) Act of 2002, there are three main three bodies which resolve land disputes at the district level: The VLC, the Ward Tribunal and the District Land and Housing Tribunal. Section 167 LA and Section 60 VLA present set-up of dispute resolution mechanisms going from the village to the highest levels (High Court - Land Division to Court of Appeal). The Courts Act of 2002 provides for the functions, composition and procedures in the establishment of these bodies. Currently, only VLCs and ward tribunals exist in the Makete district.

Several lower land courts (VLCs and Ward Tribunals) have been established in the district since 2004. The guidelines on their establishment are provided in the Ward Tribunal Act of 1985 (for Ward Tribunals, the VLA 1999 and the Courts Act 2002). However, the District Solicitor has to ensure that the directives as to establishment, functions, tenure and composition as required by law have been duly followed. The Makete District Land and Housing Tribunal is not yet in place. All petitions from the Ward Tribunals are directed to the Njombe District Land and Housing Tribunal.

6.7.1 Village Land Councils
The VLC is the first land court mediating land disputes found at the village level. The establishment, function and composition of council members are stipulated under the VLA. Section 60(2) para 291 VLA provides for the number of members of a VLC to be seven, of whom three are to be women (see also Section 5 Courts Act 2002). The members are nominated by the VC and approved by the village assembly (Section
60(2)(a)(b) VLA). The tenure of office is three years subject to reappointment. A convenor is to be appointed, as the VLA provides that:

“the appointed council shall elect one of the members to be a convenor of the council who shall keep the records of the council and preside at all meetings at which he is present; and if at any meeting the convenor is absent, the members present shall elect one of themselves to preside at that meeting” [Section 60(8) VLA].

Furthermore, Section 61 VLA provides for the functions of the VLC in mediating dispute(s) where members are to act as mediators to the parties in dispute to arrive at a mutual agreement. Any party aggrieved by the council’s ruling in mediating the dispute is to appeal to the Ward Tribunal within a prescribed period of 14 days. The Act further prohibits any VLC member from acting as a mediator in a dispute, in which the mediator or their family has an interest therein. Section 7 Courts Act of 2002 states that functions of the VLC are to include:

- receiving complaints from parties in respect of land;
- convening meetings for the hearing of disputes by parties; and
- mediating between and assisting parties to arrive at mutually acceptable dispute settlements on any matter concerning land within its jurisdiction.

Section 61(4) VLA details the procedures the VLC is to follow when mediating a dispute, including:

- any customary principles of mediation;
- natural justice in so far as any customary principles of mediation provide for such; and
- any principles and practices of mediation in which the members may have received any training.

6.7.2 Ward Tribunals

Ward tribunals are the second land dispute resolution mechanism at the ward level as per the Courts (Land Disputes) Act of 2002. Each Ward Tribunal established under the Ward Tribunals Act of 1985 is a court for the purpose of the act. Section 11 of the Courts Acts provides for the members of a tribunal in accordance with Section 4 of the Ward Tribunals Act of 1985 to be not less than four and not more than eight, of whom three are to be women elected by a Ward Committee.

The central role of each tribunal is to secure peace and harmony in the area in which it is established by mediating between and assisting parties to arrive at mutually-acceptable solutions on any matter concerning land within its jurisdiction as provided under Section 8(1) of the Ward Tribunal Act of 1985. Section 13(2) of the Courts Act further stipulates that the Tribunal is to have jurisdiction to enquire into and decide disputes arising under the Land Act and the Village Land Act of 1999. Section 13(3)
describes the procedures and ways to be followed by the tribunal in executing its role in arbitration, including:

(a) any customary principles of mediation;
(b) natural justice in so far as any customary principles of mediation do not apply; and
(c) any principles and practices of mediation in which members have received any training.

Section 16 (Courts Acts) sets out the powers of the tribunal in proceedings of civil nature relating to land. The tribunal may:

(a) order the recovery of the possession of land;
(b) order the specific performance of any contract;
(c) make orders in the nature of an injunction both mandatory and prohibitive;
(d) award any amount claimed;
(e) award compensation;
(f) order the payment of any costs and expenses incurred by a successful party or his witnesses; or
(g) make any other order, which the justice of the case may require.

The Act also provides for an appeal by an aggrieved party as to the findings of the Ward Tribunal to the District Land and Housing Tribunal within 45 days.

6.7.3 Challenges faced by the dispute resolution mechanisms
While executing their day-to-day operations, the VLCs and Ward Tribunals are faced with a number of problems, some of which are set out below.

i. Lack of training
The lack of training is the major problem facing the dispute resolution bodies. Eighty-five percent of the existing VLCs and Ward Tribunal members lack important knowledge in land rights (for example, the provisions of the VLA 1999). Only 5 out of 17 Ward Tribunals have members who have undergone training on land rights with assistance from Ward Councillors. They are Iwawa, Isapulano, Ikuwo, Kigala and Tandala (District Solicitor 2012). Members in those bodies use their experience based on their local knowledge in adjudicating the disputes. These problems are exacerbated by the next two deficiencies.

• Lack of Trained Personnel
The office of the District Solicitor has only one legally-trained person who has worked in that position for about 2 years by then. For the past 5 or 10 years (from 2000 to 2010), there was no legal officer in the whole district council. The solicitor has a backlog of cases ranging from land disputes to other matters for
the whole council. The manpower is not sufficient for the tasks, and this shortage is also a reflection of the lack of trained personnel available generally.

- **Lack of funds (for legal issues) and low priority**
The council has not paid attention to legal issues on land rights, an oversight that is in violation of the mandate set out in the law. Consequently, no budget for legal training has been approved by the council. This leads to difficulties and discouragement for the officer in-charge with respect to disseminating land rights education and workshops for tribunals. Several efforts to conduct seminars for the Ward Tribunals (WTs) had been made by the district solicitor’s office from 2010 but have proven futile since the office of the District Executive Director (DED) did not set up funding for such training during the budget session (District Solicitor 2012). For example, the 2012 budget for education awareness was changed and redirected into another activity (District Solicitor 2012). This implies that education on awareness on land matters is not a priority issue to the council and attracts no preferences in terms of budget allocation. In some instances, no budget is set aside for training or workshops for individuals dealing with land dispute resolution.

ii. **Preparation of proceedings**
Other problems facing the dispute resolution bodies are the unclear procedures when filing cases, a lack of knowledge and conflicting interests between members (Ward Tribunals) and the interference of Ward Councillors in case proceedings. As a result, these issues complicate the decision-making processes.

iii. **Geographical distance**
Members of the tribunals are selected based on the number of villages in the Ward. The distance between villages and the ward tribunal headquarters is sometimes far. Villages can be very remote, as much as 10-15 km and it can take more than an hour to reach the tribunal’s office. The transportation infrastructure is poorly-maintained and roads are not passable during the rainy season. This disrupts participation in the regular tribunal sessions for some members.

Despite the presented challenges, VLCs and Ward Tribunals have so far mediated cases brought before the councils or tribunals with few complaints from the individuals concerned. They have a timetable, which is mostly adhered to by the members who meet twice a week (Iwawa, Lupalilo, Matamba, Bulongwa, Iniho and Mwakauta to mention few). Women’s representation is increasing in the visited councils and tribunals.
6.8 Rural land titling (certification) programmes

As discussed in Chapter Five, the rural land titling programmes in Tanzania were implemented through two plans, the Property and Business Formalisation Programme (PBFP) and Strategic Plan for the Implementation of the Land Laws (SPILL). These two major programmes as initiated in the district anchored the formalization of the customary land tenure in the district.

6.8.1 SPILL

The SPILL programme involves the identification and surveying of village land and individual land parcels upon request. This programme is implemented by the Ministry of Lands. As of 2011, all 97 villages had surveyed their lands and established boundaries through SPILL. The spot adjudication method was employed in surveying the land parcels and identifying the boundaries. This is an ongoing process in all villages and for individual farm owners. A number of residents have shown an interest in applying for customary certificates of rights of occupancy (CCROs). Many of these were from the Isapulano, Mfumbi, Ludilu, Masisiwe, Utanziwa, Ipelele, Mago, Ikuwo, Malembuli, Mlondwe, Kimani, Kitula, Ikovo, Ilevele, Iyoka, Bulongwa, Imagi, Mwakauta and Iniho villages, to mention but a few (District Land Office 2012). By the year 2011, a total of 222 CCROs had been prepared and issued to villagers from different villages.

6.8.2 PBFP (MKURABITA)

The Makete district is among many districts benefitting from the PBFP programme in titling “village land.” The programme was introduced in January 2009 and conducted in two wards whereby three (3) out of 65 villages with certificates of village land were selected for a pilot implementation. These are Mwakauta and Iniho, both from the Iniho ward, and Malembuli found in the Mang’oto ward. The criteria used to select villages for the programme were based on readiness and willingness of the villagers as to accepting the changes.

PBFP is a participatory project whereby education awareness is conducted in villages by PBFP officials in collaboration with district officials. The education primarily focused on the provisions of the VLA, the LA, Courts Act of 2002, the Land Use Act of 2007 and the National Land Policy of 1995. Land use plans for the villages were prepared for various land uses, with surveying and identification of boundaries for individual farm/plots completed as well. The systematic adjudication method was used to survey and identify the boundaries. This method seems to be simple and cost-effective. A total of 1,322 parcels have been surveyed, 511 in the Malembuli and 811 in Mwakauta villages.

The preparation and issuance of customary certificate of titles has been ongoing. Certain costs are involved in the preparation of the certificates, which are born by the
applicant. As of November 2012, a total of 509 certificates of customary rights of occupancy have been prepared by the district land office. The process is underway for constructing the village land registries.

6.9 Gender and empowerment
Gender empowerment is to ensure that the disadvantaged group, particularly women, is participating in the policy and decision-making processes and in all aspects of economic, socio-cultural and political life (Makete District Profile 2008). By 2008, various measures were already in place to minimise time spent by women and girls in attending home activities and to allow more time to be used in production activities. Measures included the use of family planning, opening operating day care centres, the establishment of women’s economic groups, participation in Savings and Credit Cooperative Societies (SACCOS), Village Community Bank (VICOBA), Savings for Internal Loan in the Community (SILC) and other cooperative activities. The initiatives have been implemented in the Makete district since 1990s.

6.9.1 Economic empowerment
The district council is concerned with raising the living standards by reducing poverty among its citizens. In its yearly budget, the council proposes setting aside 10 percent of its budget for community group activities (youths and women) while the Ministry of Gender, Women and Children Development supports the council by disbursing certain amounts of funds annually. Presently, the council’s internal collection (revenue) is low and insufficient to finance community activities. 61 In addition, during three years (2010 to 2013), the Ministry of Gender did not disburse funds to the council for reasons unknown. Hence, the council relied heavily on its budget and donor funds to finance the groups within the district. Despite these deficiencies, since the 2008/9 financial year, the council issued loans to various groups including those led by women.

Financial credits - SACCOS, VICOBA and SILC
The majority of residents in the Makete district have no secondary or vocational education; therefore, employment in the agriculture sector is the most feasible alternative for them. However, employment in agriculture requires some initial preparations including capital. Access to credit is important to develop potential as contributors to the district and national economies (Makete District Profile 2008). The Makete district in that regard has managed to establish 178 cooperative development associations commercially known as Savings and Credit Cooperative Societies (SACCOS) in all 17 wards, but the most effective and efficient are as follows; Faraja Saccos, Mwakavuta (Kinumba Saccos); Iniho Saccos, Kilovo Saccos and Ujuni Saccos.

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61 Interview with District Welfare Development Officer, January 2014.
The Village Community Bank (VICOBA), Savings for Internal Loan in the Community (SILC) schemes have also existed in various community areas. As of January 2014, the number of VICOBA groups reached two (one each from the Ikuwo and Kimani wards), while SILC groups amount to 72 spreading all over the district. More, the level of women’s participation in these communities is encouraging. Female members accounted for 59.9 percent of the 3,538 SACCOS members in the Makete district by 2006. Male members accounted for 40.1 percent. At the ward level, the Ikuwo ward had the largest number of women who accounted for 514 (74 percent) of the 694 members in 17 registered economic groups, followed by Iwawa with 450 women from 652 members. Conversely, the Kipagalo ward had the lowest number (5) of women members, after Lupila with only 10 women. The number of women members has grown mainly after the establishment of SILC due to the fact that the majority of members in this scheme are women.

**Women’s economic groups**

Efforts made by the government, development partners and religious institutions have successfully managed to encourage women to organise themselves into 118 income generating groups in 2007, from 103 in 2006, and 28 groups in 1996. Loans are issued to these groups. These groups and their members are increasing annually (Makete District Profile 2008). In recent years, the council, in collaboration with Tanzania Social Action Fund (TASAF) and *Pamoja Tuwalee* (Together We Care), a church-based NGO, have assisted several women, particularly widows, in launching smaller trades like milking, beekeeping, gardening and livestock farming (pigs and poultry). The groups are from Luwumbu and Inhio (women’s milking groups), Matamba and Lupila (beekeeping), Kisinga (poultry) and Unyangala (pig-farming) and others from Bulongwa, Mbalatse, Ikuwo of this nature. Furthermore, there are widows’ milking groups funded by TASAF with two groups from Iwawa and Kipagalo, respectively. The groups are advanced by small loans coordinated by the Community Welfare Department.

Empowering individuals economically has been associated with challenges for the districts and within the groups themselves. These challenges include: (i) breakup of groups due to the physical distances between project areas and homes, (ii) provision of livestock medicine after donors’ withdrawal from financing projects, especially for pigs and poultry groups, (iii) diseases attacking animals such as pigs, discouraging the groups from continuing the business as they lack control due to financial difficulties, (iv) lack and/or inadequate funds to finance all groups applying for loans and (v) reluctance of group members to reimburse the loan issued to the group. To overcome the problem of loan non-repayment to the different groups, the council decided that

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62 United National International Children Fund (UNICEF), World Wide Fund (WWF), International Fund for Agriculture Development (IFAD) and Tanzania Social Action Fund (TASAF)
from the financial year 2013/14, loans will be advanced to SACCOSs instead of groups after considering their performance in repaying the loans. It is easier to follow-up in SACCOS than in other groups. Thus, individuals were advised to join SACCOS.

6.9.2 Legal empowerment
The general trend shows that legal empowerment is an issue needing more attention from the district management and councillors. The most affected sector is land. The district council is lagging behind in disseminating land rights education to its residents. The land rights education is strongly insisted on by various stakeholders including VC leaders, VLCs and Wards Tribunal members, the councillors, villagers, non-villagers (investors in various projects) and so forth. Unfortunately, apart from those villages where specific projects were implemented (like Mwakauta, Iniho and Malembuli), no other village in the past five years (2008 -2012) has had education on land rights provided by their council despite seminars and workshops by NGOs targeting particular groups (widows and orphans).

Efforts were made to inform the general public on land rights issues through a local radio, Kitulo, in early 2009. The radio station is owned by the council, which came into existence in January 2009 under the United Nations Children’s Fund (UNICEF). The council through the Department of Lands, Natural Resources and Environment, initially allocated an airtime programme for one hour per week on education awareness regarding rights to land, covering the implementation of the Land Act and Village Land Act of 1999. The programme existed merely for the first six months (January to June 2009). Land conflicts and complaints, including problems with open spaces (targeting urban dwellers), were the main focus. It is unclear as to the extent of knowledge that reached the targeted population including rural women, most of whose time is spent on farming. The limited coverage of the radio also prohibits wider access to this important information.

6.9.3 Social empowerment
Another important component in the matter of empowerment for both women and men is social empowerment. The council, through a community development office, regularly provides education to its residents. The knowledge taught is always based on basic rights. In many cases, education is often requested more often by women than men. The main working tool here is women’s development policy, which emphasizes women being independent. Education also basically relies on the use of surrounding resources such as opportunities brought by agriculture, charcoal business and shifting livestock farming. Furthermore, the Community Development Office enhances skills

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63 When disputes arise between villages as to boundaries, which is common in rural areas; the Land office can be called to intervene.
64 See www.ardhi.go.tz.
and knowledge by providing education on brick manufacturing and selling. With support from *Pamoja Tuwalee*, special training is also offered to women needing assistance in starting savings and credit schemes in their areas. Thus, there are no particular and/or special programmes and schedules that take care of women as to entrepreneurial skills. Education is usually provided in their regular community development meetings.

### 6.9.4 Women’s participation in policy and decision-making

Despite efforts made by international and local organisations, together with government efforts, women’s participation in managerial, professional and political posts in the Makete district is very disappointing (Makete District Profile 2008). There is a general indication of a low level of women’s involvement in policy and decision-making in the district. However, the current statistics reveal that women’s participation in decision-making bodies has increased. For example, some women are members of VLCs including as chairpersons (Mwakauta), ward tribunals and hamlet chairpersons and secretaries (Bulongwa and Lupalilo). The discouraging fact is women’s participation levels in legislative bodies, including membership in the District Council and the National Assembly. The district total representation of women by 2013 was only 26.6 percent (8 councillors) out of 30 district councillors and no woman is a member of parliament.
The Bulongwa, Lupalilo and Mwakauta Villages

This is an introductory chapter preceding the empirical findings, setting out some of the important aspects of the studied villages of Bulongwa, Lupalilo and Mwakauta. These villages bear similar features in terms of land issues. Foremost, they were all communal villages established during the villagisation programme from 1974 to 1975. Moreover, they still practice customary laws in allocating land to members of the family, clan or other villagers. Furthermore, the different modes of accessing land exist in all three villages, such as purchasing, leasing, allocation by village leaders and inheritance, which is significant. The chapter further presents the history of each village, population, households, geographical location, economic activities, social services, infrastructure, land access and transactions and tenure formalization programmes. Presented findings in this chapter are based on key informant interviews.

7.1 The Bulongwa Village
7.1.1 Historical background
Bulongwa is a registered village, number 20MKT. It is divided into 5 hamlets, namely, Ihomeke, Kivumba, Amani, Lupaso and Utege. This traditional village is organised into different clans, where each clan, dispersed within different village subdivisions or hamlets, holds a large track of land. The indigenous ethnic group is Wakinga, though the Wabena, Wanyakyusa, Wahehe, Wapare and Warangi also live in the village. The villagers generally live a community life led by Senguruma Sanga, and Chief Serelo Sanga. The history of Bulongwa goes back to 1968 when it was under party leadership before it became a communal (Ujamaa) village in 1974.

During the Ujamaa period (1974-77), individuals were encouraged to participate in different activities, such as road construction, pine trees plantations and farming. Since villagers lived a community life, they worked together to accomplish most of their activities. For example, in farming, men from different clans would work as a group to finish one piece of land before shifting to the next, done to improve production on land. As a result of this high cooperation, 11 acres of timber trees were planted. The village was also among the first in the district to have access to formal education due to the penetration of the Evangelical Lutheran Church in the early 20th Century. The church acquired a large amount of land, built a primary school, church buildings and a hospital. The church leadership under Rev. Tupevilwe Sanga provided villagers and others education. In that way, the village became famous as many of the Makete elite received their formal education through the primary school built by the church.
7.1.2 Geographical location and locality
Bulongwa is among the largest and oldest villages in Bulongwa ward, located in the northwest about 20 km from the Makete district headquarters. The village is accessible throughout the year except for a few times during the rainy season. Access to the village is via the gravel road to Mbeya region. Village landscaping is on varying levels with flat terrain and escarpment. Some areas are unsuitable for human occupation and farming activities. The village is bordered by Ilolo on the north, Utanziwa on the northeast, Idende on the east and Mahulu on the south. On the west side, it is bordered by Lumage, while Mwakauta borders the village in the northwest.

7.1.3 Population size and growth
The population of Bulongwa village is about 687, 329 men and 358 women (VEO Bulongwa 2012). This includes youth and children but excludes students in boarding secondary schools, colleges, teachers and pastors. The population growth shows some changes from the year 2000. The trend is contributed to by a number of reasons such as the presence of different institutions owned by church and government; commercial activities such as kiosks, shops, restaurants and timber plantations and wood harvesting. The population varies among the hamlets. Ihomeke has a high number of residents followed by Utege and Amani, while Lupaso has the smallest number compared to Kivumba (Table 7.1).

<table>
<thead>
<tr>
<th>SN</th>
<th>Hamlet</th>
<th>Total Population</th>
<th>No. of Men</th>
<th>No. of Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ihomeke</td>
<td>234</td>
<td>111</td>
<td>123</td>
</tr>
<tr>
<td>2</td>
<td>Kivumba</td>
<td>72</td>
<td>28</td>
<td>44</td>
</tr>
<tr>
<td>3</td>
<td>Amani</td>
<td>161</td>
<td>88</td>
<td>73</td>
</tr>
<tr>
<td>4</td>
<td>Lupaso</td>
<td>54</td>
<td>26</td>
<td>28</td>
</tr>
<tr>
<td>5</td>
<td>Utege</td>
<td>166</td>
<td>76</td>
<td>90</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>687</td>
<td>329</td>
<td>358</td>
</tr>
</tbody>
</table>

The total households for the entire village is 337, 169 male households and 168 female households as indicated in Table 7.2.

<table>
<thead>
<tr>
<th>SN</th>
<th>Hamlet</th>
<th>No. of Households</th>
<th>No. of Male-Headed households</th>
<th>No. of Female-Headed households</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ihomeke</td>
<td>78</td>
<td>56</td>
<td>22</td>
</tr>
<tr>
<td>2</td>
<td>Kivumba</td>
<td>40</td>
<td>4</td>
<td>36</td>
</tr>
<tr>
<td>3</td>
<td>Amani</td>
<td>53</td>
<td>11</td>
<td>42</td>
</tr>
<tr>
<td>4</td>
<td>Lupaso</td>
<td>38</td>
<td>27</td>
<td>11</td>
</tr>
<tr>
<td>5</td>
<td>Utege</td>
<td>128</td>
<td>71</td>
<td>57</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>337 (100 %)</td>
<td>169 (50.1 %)</td>
<td>168 (49.9 %)</td>
</tr>
</tbody>
</table>
7.1.4 Economic activities

Bulongwa is a village characterized by dwelling units, church, hospital, schools, primary court and other amenities managed by a spiritual centre aimed at providing charitable services and propagating faith. Thus, there are formal and informal activities undertaken to enhance individual incomes. The formal sector of the economy includes teachers who are employed in various schools and colleges, nurses and doctors as well as ward and village officers. Informal activities include food vending; selling liquor in local bars, groceries and kiosks, carpentry, wood and timber harvesting, stores, and the like.

Generally, a larger section of the population is engaged in small scale agriculture for subsistence (grown food crops) such as maize, wheat, sweet and Irish potatoes together with various fruits such as local apples; and cash crops such as pine, timber plantations and pyrethrum. The latter changed to a large extent individual ways in the village. For example, through pyrethrum agriculture, they were able to take their kids to school and improve their houses by building with burnt bricks and roofing with corrugated iron sheets. Villagers also practice in-house livestock farming of cows, goats, pigs/guinea pigs and sheep.

Strategies were deployed in an effort to improve living standards and raise incomes. These include the formation of groups dealing with livestock and gardening; reviving pyrethrum agriculture and the formation of saving and credit groups. The livestock farming group is composed of both women and men involving mainly poultry and pigs. The second group deals with farming, especially gardening (green vegetable). Likewise, an attempt to revive the cash economy in the village was made through the pyrethrum crop, with about 15 households engaged. They were motivated by the Mafinga Pyrethrum Company based in Iringa, which informed them and provided free seeds. Although the response is very slow, there are about 30 households having showed an interest in embarking on pyrethrum agriculture (WEO 2012). The cash crop is now gaining impetus after a sharp decline in 1990s-2000s.

Women from hardship environments are further being helped to start small saving and credit scheme environments with assistance from Pamoja Tuwalee(Together We Care), a non-governmental organisation(NGO) formed from a savings group called Upendo. The project is called Savings for Internal Loan within Community (SILC). Members are motivated to save every week by buying shares, each worth Tanzanian shillings (Tsh.) 1000/= (US$ 0.652). They use the collected money to issue credits to members who wish to take it. It is estimated that about 142 residents are living in hardship environments, including those affected by HIV/AIDS.
7.1.5 Social services and infrastructure
The village has a great number of social services. It is served by a rough gravel road accessible throughout the year. The village possesses a number of social services divided into three categories. The first category includes those owned by the government, such as a primary court, ward and village office buildings, primary and vocational training schools and a secondary school, tape water and electricity. The second category includes those owned by the church, such as Bulongwa Health and Allied Science College, Usalilo Secondary School, Bulongwa Home Economics College as well as the hospital and an orphanage centre. The third category involves other services such as local bars, shops, kiosks, groceries and restaurants owned and run by individuals. However, some of the services are not operating due to various reasons including lack of staff. The primary court is a good example, with individuals having to go elsewhere to obtain court services.

7.1.6 Land access and transactions
The village occupies about 1200 ha of land. It has vast land compared to other villages in the ward. Land use distribution patterns fall under dwelling units, gardening, timber plantations and small scattered farms. A large portion of land is possessed by the Church and its institutions, followed by clans (few but very strong) and family. Even before and after colonialism, at independence and during Ujamaa periods, the village community was still living in unity. Land possession was mainly based on men, while women/daughters were not given any priority during the 1950s-1970s; they were regarded as wives to be and eventually shifting to another clan. Allocation, granting or transfer of land within family and community were based on prevailing customary laws. The trend shows that the situation of customary laws started to decline from the 1980s, but substantial improvement was seen from late 1990s to date. Conversely, customary laws applied in accessing family or clan land especially for women.

The church also brought about many changes in terms of land possession and occupation in this village. The church acquired and owned a large part of the land before 1980, leaving most of the villagers landless, approximately three-quarters of the land was taken by the church. However, from 1982 onwards, a portion of land approximated to be 200 ha was surrendered to the village leadership as a result of a decentralisation process. It was expected that the land would belong to the village but this was not the case since most of it was sold by the village leaders to an individual. In respect of the latter, a case has been filed in a court of law seeking justice in recovering possession of land by the village authority.

The land transaction system has changed and rarely occurs. It is estimated that up to the 1990s, residents were still practicing community life because they previously gave each other land (intra and interfamily allocation) as a gift or with some specific
arrangements due to prevailing customs. However, the circumstances changed in recent decades after the realisation of value of the land. A number of individuals from the Makete town have bought land in the village. Thus, the villagers, about 30 percent and generally women, are renting land. The other means of getting land is through inheritance. Consequently, no land transactions were observed in the past year in the Bulongwa village.

7.1.7 Tenure formalisation programme
There is no land use plan for the Bulongwa village. However, the SPILL programme was implemented to establish village boundaries. The work was finished and a village land certificate was issued. Consequently, residents have shown interest in surveying their farms and getting the title to their land despite the unawareness of the exercise by the majority population. In December 2012, 11 residents filed their applications for customary certificates of rights of occupancy to the district’s land office. Out of them, women were 3, 6 males and the rest (2) were for joint occupation.

7.1.8 The Village Land Council and its activities
The current VLC is in office since June 2012 when it was elected by the village assembly. There are seven (7) members of the council, 3 are women. They meet twice a week on Mondays and Thursdays. Since they got into power, they have not received any kind of education in terms of workshops or seminars on land laws except when a community development officer from Bulongwa ward visited for the purpose of educating them on some issues related to dispute resolution. Hence, the members of the VLC are conducting their daily tasks using experience and knowledge of the area and its residents. From June to December 2012, 4 cases were brought to the council for mediation. Out of the 4, only 1 case was referred to the Ward Tribunal. The major causes of the disputes are wrongful dealings and disappointments. Furthermore, the nature of the disputes turned on a lack of evidence on land transactions (witness) and encroachment on timber tree plantations (boundaries). A large number of cases are among villagers.

7.2 The Lupalilo Village
7.2.1 Historical background
Lupalilo is a surveyed village with registration number 32MKT. The history of the village dates back to 1956 when Chief Mwalikisa was head. The village continued to be under the chiefdom up to the time of independence when the new government abolished that system. Thereafter, the new village leadership was formed under Mr. Kimbisa, Mr. Bathwel and Mr. Severani in different periods respectively from 1960s. Other leaders were Mr. Katawa Sanga (1977-1982) and Mr. James Almasi (1982-1987).
During the period between 1950s and early 1970s, there were unequal power relations between villagers. As a consequence of the chiefdom, superiority among villagers had emerged; some individuals were reluctant to engage in development activities and projects such as road construction and participation in group farming. The situation existed up to 1974. That same year, the government initiated the Villagisation Programme and Lupalilo was incorporated into the programme. Thus, the current Lupalilo village is a collection of former traditional scattered homesteads from Kisinga, Luwuyo and Kijomba. The indigenous Lupalilo people did not shift; they remained in their respective areas even still today. Migrants, as a result of villagisation policy, were located on land by the village authority. The village officially was established in 1975 through “Operesheni vijiiji” (Villagisation Programme).

Administratively, the Lupalilo village is divided into 6 hamlets, namely, Ikiligano, Mtakuja, Kidimilo, Sokoni, Ludewa and Ipenza. There is a chairperson for each hamlet. The VC has a calendar for general assembly meetings. They meet quarterly but sometimes the number of meetings exceeds four, depending on the urgency of the matters under deliberation.

7.2.2 Geographical location and locality
The village is one of several forming the Lupalilo ward, on the south side of the district about 22 km from the Makete district offices. It is located along the main road from Njombe to the Makete, which divides the village into two on either side of the road. The village is accessible throughout the year. It borders the Ihela village on the east side while on the west it is bordered by the Ilevelo village. On the south, it bordered by Usagatikwa, whereas the Mago village is on the north and north-west borders the Ugabwa village.

7.2.3 Population size and growth
According to the village population census (November 2012), the village had a total of 1,123 residents, 520 men and 605 women. The figures for both groups include girls and boys. The population size differs from one hamlet to another with varying household sizes. There are about 340 households in total where female-headed households account for 111 (33 %) in all the hamlets.
Table 7.3: Lupalilo households according to hamlet (December 2012)

<table>
<thead>
<tr>
<th>SN</th>
<th>Hamlet</th>
<th>No. of Households</th>
<th>No. of Male-Headed Households</th>
<th>No. of Female-Headed Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ikiligano</td>
<td>76</td>
<td>57</td>
<td>19</td>
</tr>
<tr>
<td>2</td>
<td>Mtakuja</td>
<td>54</td>
<td>28</td>
<td>26</td>
</tr>
<tr>
<td>3</td>
<td>Kidimilo</td>
<td>30</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>4</td>
<td>Sokoni</td>
<td>44</td>
<td>29</td>
<td>15</td>
</tr>
<tr>
<td>5</td>
<td>Ludewa</td>
<td>58</td>
<td>43</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>Ipenza</td>
<td>78</td>
<td>57</td>
<td>21</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>340</strong></td>
<td><strong>229 (67%)</strong></td>
<td><strong>111 (33%)</strong></td>
<td></td>
</tr>
</tbody>
</table>

7.2.4 Economic activities
Farming and timber cutting are the major economic activities. The majority of villagers depend on farming for food. The major crops grown are maize, sweet and Irish potatoes, wheat and peas. Although the timber business is the major economic activity in the village, the haphazard harvesting of wood and timber has resulted in a decline in the business in recent years. Other economic activities are on a very small scale such as kiosks, shops, restaurants and local bars.

In order to increase individual incomes at the household level, the villagers joined together and formed two different groups dealing with agricultural and livestock farming. The livestock group is associated with individuals living with HIV/AIDS. The group is called TUPENDANE (“Let Us Love One Another”) Lupalilo, established in 2009 with 17 members, 3 males and 14 females. They were involved in pig and goat farming for selling purposes. Pyrethrum Agricultural Group is the second group, formed in 2011 with 21 members, 9 men and the rest women including the chairperson. They meet weekly to deliberate on a number of issues. This was an initiative from Tanzania Pyrethrum Company based in Mafinga (Iringa) to revive the cash crop in the highland zone. As noted in the previous Chapter, this cash crop has been declining in production for many years.

7.2.5 Social services and infrastructure
There are several social services provided in the village compared to Mwakauta. These include a primary court, church, primary school, dispensary, tap water and electricity, ward and village office buildings. The government and its agencies are responsible for the provision of these services. Other available services include shops, which sell important items such as soap, soft drinks, toothpaste, cooking oil and the like. Local restaurants and bars are common in the area.

7.2.6 Land access and transactions
The village has a total of 1700 ha of land. The land is used in various ways including farming, settlements and institutional use. However, a large portion of the land is
owned by residents in terms of small farms, which are scattered in different areas within the village. It is unknown yet the amount of land owned by the village itself because there is no land use plan. Village land use plans determine the amount to be owned by each resident and also what should be allocated to the village.

Land access is traditionally for men through customary laws and neglects women’s ownership and control over land. As pointed out before, women’s access to land was only through their husbands. However, the situation changed from 2004 whereby, to some extent, women started to access land in the village through buying and inheriting. The improvement is a result of several seminars through VC meetings. Land transactions in the village are very limited and rarely happen as a large part of the land is occupied by the indigenous villagers.

7.2.7 Tenure formalisation programme
The SPILL programme was implemented in this village. Initially, the programme aimed at surveying the village boundaries and issuing certificates of village land. The exercise was completed and the village has a land certificate. In the Makete district, a total of 222 certificates of customary right of occupancy were issued to various villagers who applied for their farms to be surveyed but none from the Lupalilo village apart from one institution (ELCT Women’s wing). This signifies that there is a low level of understanding and awareness among the villagers (both women and men) with regard to land registration.

However, the VC took deliberate measures in 2010 and 2011 by holding public meetings in raising awareness on access and application for customary right of occupancy to the villagers. Despite this effort by the council; data from the district land office shows that the villagers are lagging behind in applying for customary right of occupancy compared to the Mwakauta and Bulongwa villages.

7.2.8 The Village Land Council and its activities
The VLC was established in 2006 with 6 members, 3 of whom are women. They meet weekly on Thursdays, though this is not always the case. In some instances, they convene meetings twice a week or when need arises, for instance, when a case is brought before them for immediate mediation. The members hold office for more than 6 years, which has not been the case for the current councillors. The prolonged stay in the office tenure was caused by two reasons. One was the few cases reported to the council, and the second was the lack of knowledge and understanding on where cases should be filed since other individuals prefer to file them directly with the Ward Tribunal.
From 2007 to 2012, the number of cases received and resolved was 45, only 6 were referred to Ward Tribunal. Many men file cases with very few women (especially widows) doing so. The cases are between individuals, and between relatives. There are reported cases in the village relating to encroachment in timber plantations (boundaries conflicts) and grabbing of land by non-owners, felling timber and sawing wood. The problems are caused by individuals who are not owners of timber plantations and who encroach and grab by claiming that they are real owners. Farms are not surveyed and boundaries not marked properly. The problem is severe during wood harvesting season.

7.3 The Mwakauta Village
7.3.1 Historical background
The Mwakauta village is one of the traditional villages in the Makete district, established in 1974 with registration number IRA/KJ/344. Due to changes in the local administration setting, the current number for the village is 5MKT. Mwakauta was named after small land parcels (vinyungu) regularly used by the indigenous people to farm during the dry season. Vinyungu are very small land parcels used for gardening in water catchment areas. The village has passed through different leadership since its establishment. The majority of residents living in the village today lived in other areas before 1974. The area was occupied by a white settler who kept livestock. Due to its soil fertility, during the villagisation programme in 1974, residents from scattered homesteads in the surrounding areas of Ng’ele, the Makete, Mbwagule, Liaja and Ikusi hamlets (which were not part of the current village) were relocated to Mwakauta to establish the Ujamaa village.

7.3.2 Geographical location and locality
The village is located about 22 km west of the Makete district headquarters on the road to Mbeya via Bulongwa. It is found in the Magoma division, Iniho ward. The village is bordered by the Ilolo village on the east, on the southeast by the Bulongwa village, the south by the Lumage village while the Nkunga village is on the west side and the Iniho village on the north. The village has two hamlets, Ndivila and Mwakauta and the dominant ethnic group is Wakinga.

7.3.3 Population size and growth
The village has a low population compared to Bulongwa and Lupalillo, a total of 436 residents as per the 2012 population census. Out of these 436 residents, women are 239 including 120 children below 18 years, 39 young girls and 80 women. Males are 197 with youths 47, children 98; and 52 adults. The village also has 112 households: 49 from Mwakauta and 63 from Ndivila hamlets, respectively. Among the households, widow-headed households are 27 and 2 are widowers (Mwakauta Village Office 2013). There is a decline in the population compared to the year 2010 when the MKURABITA
programme was implemented in the village. Statistics show that then, there were about 877 residents; women were 248 and 188 men, while children below 18 years were 441 and a total of 247 households.

Table 7.4: Mwakauta households according to hamlet (December 2012)

<table>
<thead>
<tr>
<th>SN</th>
<th>Hamlet</th>
<th>No. of Households</th>
<th>No. of Male-Headed Households</th>
<th>No. of Female-Headed Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mwakauta</td>
<td>49</td>
<td>34</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>Ndivila</td>
<td>63</td>
<td>51</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>112</strong></td>
<td><strong>85 (76%)</strong></td>
<td><strong>27 (24%)</strong></td>
<td></td>
</tr>
</tbody>
</table>

7.3.4 Economic activities
The Mwakauta village has a total of 1061 ha that are used for various economic activities. The main economic activity is farming with an average of 96 percent of the total population. The major crops grown are maize, which covers about 110 ha, sweet and Irish potatoes with a total of 24.8 ha (6.4 ha and 18.4 ha, respectively). Others are fruit trees (apples and avocados) covering over 720 ha and pine (timber trees). The village has a total of 224 farmers while households engaged in agriculture are 112 (Mwakauta Village Office 2013). There is an average of 3.5 acres per household. Three percent of the residents engage in small businesses whereby they sell consumables and some of them are civil servants from the education sector. According to the 2012/13 data from the Village office, livestock farming is one percent of all economic activities undertaken in the village. Livestock farming includes chicken, cows, goats, sheep and pigs. Due to the insufficiency of land, the majority of residents practice zero grazing.

7.3.5 Social services and infrastructure
There is less of an infrastructure and fewer social services in this village than in the Lupalilo and Bulongwa villages. A rough mud road heads to the village office from the main road and is hardly passable during the rainy season. Services include a church constructed in early 1980s, a secondary school, one primary school, three kiosks, village office and local bars. There is no tap water and no electricity, common problems in rural areas in Tanzania including the Makete district.

7.3.6 Land access and transactions
A large part of land in this village is used for settlements and land parcels as 90 percent of the population occupies land for these purposes. A few residents, estimated to be 5.5 percent, lease the land, while a small amount of public land (also known as village land) is reserved for water catchment areas and for other social services such as the secondary school. Idle land currently under the village management (village community land) is about 20 acres and has been planted with timber trees. Despite
these 20 acres, there is scarcity of land and hence land transactions are limited and rarely occur.

As this is a traditional village, land is accessed to a high degree through inheritance. Other modes are renting and allocation by the village leaders. During the villagisation process, individuals who were relocated to this village most likely were allocated land by the village leaders amounting to one acre for each household for constructing houses, while land for farming activities was not allocated. A large part of the village was then vacant and covered with bushes. It was left to ability and capability to clear brush in order to get more farm land. Consequently, unequal possession of land between clans and families emerged. Some individuals had large tracks of land while others had little. This is still the situation today in the village. Land for farming activities is also insufficient. Therefore, others (relocated villagers) have decided to return to their former homesteads and retain the land belonging to them before the villagisation programme. They use the land only for farming.

7.3.7 Tenure formalisation programme
Mwakauta is among the three villages in the Makete district in which the MKURABITA pilot project will be implemented, the other two being the Malembuli and Iniho villages. The project was initiated in late 2009, and between March and April 2010, participatory rural appraisals at the village level (PRA) were carried out to assess the existing situation including the opportunities, challenges and barriers before the programme is implemented. Thereafter, it was agreed that a land use plan will be implemented.

The land use plan is intended to formalise land by issuing CCROs to farm owners at the end of the process. The process involves stakeholders from different levels such as Mwakauta villagers and their leaders; Iniho ward officers, Magoma division officers and the Makete district officers. The whole process of formalising property rights (on land) involves preparation of a village land use plan as a part of the implementation of VLA 1999 and Land Use Act No. 6 of 2007. The Programme was funded by PBFP and implemented by the Makete District Participatory Land Use Management team (PLUM).

The main purpose of this work is to formalise land ownership for rural villagers. In order to meet the intended goal, the Mwakauta villagers were empowered through participatory techniques in meetings to identify various land uses. Thereafter, they had to reach consensus on some issues, such as separation of areas for different uses and establishment of procedures for sustainable management of land. The latter included formulating village bylaws on land use management and establishing village land use management committee (VLUMC).
The land use plan was completed in December 2012, facilitating the provision of other services such as the establishment of a village land registry; issuing registration and administration of certificates of customary rights of occupancy and land dispute resolution. At present, a total of 811 parcels have been surveyed and about 313 villagers have applied for certificates of customary right of occupancy. The CCROs held in single occupation by women are 19 (6%), in joint occupation (couples) are 237 (76%) and 57 (18%) held by men. To-date, a village land registry is being prepared.

7.3.8 The Village Land Council and its activities
The VLC was officially established in 2009 and has 7 members, of whom, 3 are women, including the chairperson. The members meet twice weekly. The nature of the cases received includes boundary encroachment, unjust land grabbing, timber tree plantation encroachment and illegal logging. More than 25 cases have been filed since the VLC came into authority. A main problem is the lack of evidence by the parties to the dispute. This has proven a setback while also creating complexity in arriving at solutions. For instance, the parties can lack proper witnesses who can provide the required evidence to the council. VLC members also claim to use their experiences in arbitrating cases as there are no training programmes, especially on land laws, despite the high demand. Since the MKURABITA programme was implemented in the village, the number of disputes has been significantly reduced.

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65 Land is divided into parcels. A piece of land constitutes a parcel. It is possible and likely for a household to occupy more than two to five parcels of land.
Women’s access to land in the Makete District

Women comprise the key rural inhabitants in Tanzania, while female heads of households are on the rise by 25% or more of the entire rural families in some regions. The male has a leading arrangement in the social order rules governing nearly 80% of the rural population including succession and inheritance in Tanzania (Lugoe et al. 2005).

This chapter presents the results and analysis of women’s property rights in Tanzania with specific references to the Bulongwa, Lupalilo and Mwakauta villages in the Makete district. The findings on how women’s property rights, including access to land, have been shaped are presented here, as are the likely problems and/or challenges prohibiting women from realising the potential of various rights including the use, sale, lease and control of land under the customary land tenure system. The research findings are based on interviews conducted of women, government officials at the district level, local government leaders (village chairpersons and ward executive officers), land dispute court members and NGO staff. Other findings were gathered through focus group discussions between groups of both women and men from diverse backgrounds.

The chapter further examines how land and property rights are accessed in villages and the entire Makete district. Various factors are identified as influencing the allocation and distribution of land under customary laws, barriers and threat factors for women in realising their rights. Accessibility to land information and an understanding of women’s property rights by both groups is examined as well as determining how these and other factors prohibit women from claiming their rights. The chapter further explores the participation of both women and men in economic activities and decision-making at various levels, taking into consideration legal empowerment, the individualisation of land rights, HIV/AIDS issues and the influence of religion and intermarriages and their impact on women’s property rights. The perceptions of both leaders and women on the practices of customary laws under the current situation are also addressed. In order to describe these mentioned aspects, the discussion is organised into subtopics.

8.1 Access to land and occupation types

Customary land tenure is the major way of asserting different rights to land and other resources in the rural Makete district. Land occupation is based on clan or family land, common land, referred to as village land, under the control of VCs, and personal (own) land through self-acquisition. Three types of land are typical under customary land tenure: Family land, which in the past had been owned by individuals of the same
family lineage who then had rights to it, though currently, individual families within villages retain small plots or homesteads and they farm such areas. Clan land is placed under clan management within a long-established structure of property rights. Self-acquired land is acquired through a family’s or one’s own efforts (Manji 1996). Many women in the Bulongwa, Lupalilo and Mwakauta villages have also accessed use rights, and other rights to land, through one of these forms and others as shown in Figure 8.1.

![Figure 8.1: Typical types of land occupation in the studied villages](image)

The major type of land occupation as seen from Figure 8.1 is family land, accounting for 60 percent of the land held, followed by clan land at 32 percent, common land and individual land based on one’s own efforts in its acquisition accounts for 4 percent each. Common land (grazing land, forests) is a type of land existed within the village authority during the Ujamaa village, whereby village members were free to access the land for various uses, including firewood collection, gardening and pasturing. This type of land is disappearing in many areas except in a few villages. For example, the Mwakauta village still has an average of 20 acres of land reserved for village uses and Bulongwa has a total of 200 acres; both preserved through the planting of pine timber trees.

Inheritance was the overriding method of gaining land in the past as well as in the present in the villages. Additional ways of accessing land, such as allocation by village leaders, leasing and gifts from friends or relatives, can also be seen. The study found that 63 (56 %) of the women interviewed in the Bulongwa, Lupalilo and Mwakauta villages had acquired land through inheritance in the form of either family or clan land. Other means of acquiring land are through allocation by village leaders as for 5 (4 %) of the respondents, although this form of allocation no longer exists. Purchase of land ranked second for about 30 (27 %) respondents, allocation by friends took a third
position with 7 percent of the respondents, while allocation by friends/relatives and leasing of land accounts for 3 percent each from 3 interviewed respondents as indicated in Table 8.1.

**Table 8.1: Female respondents’ means of acquiring land in the studied villages**

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of acquisition</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ways of accessing land</td>
<td>Through allocation by village leaders</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Through purchase</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Through inheritance</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Through allocation by friends</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Through leasing</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Through inheritance and allocation by friends</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>112</strong></td>
</tr>
</tbody>
</table>

Table 8.1 denotes that property rights to land in the villages take several forms depending on the way the land is accessed. From the table 8.1, different types of property rights as existing in the Makete district can be identified, rooted in a variety sources such as custom (usage) and law. As noted in previous chapters, property rights can stem from several forms, such as bequest to an individual or a shared way, from societal involvement where a family/clan or village as community possess or have power over the land and members hold rights to use it, purchase (Agarwal 1994), brush clearing when land is plenty, or leasing (Meinzen-Dick et al. 1997; Hesse and Trench 2000; Toulmin 2008).

Diverse property rights exist in the Bulongwa, Lupalilo and Mwakauta villages. These include leasing, land sale rights, inheritance rights and rights through allocation by village authorities originated within the community and by statute (VLA) as indicated in Tables 8.3 and 8.4, respectively. These different forms of property rights are inherited (inter-family transfers), transferred by way of gift (inter-vivo) or sale (through informal or formal market), leasing on specific terms and time-period, or freely as discussed in previous chapters. Moreover, an individual can be engaged in a number of the aforementioned types at the same time, denoting that he/she possesses dissimilar sorts of rights to a number of parcels of land being used (Odgaard 2002). It is likely and possible to find a person who possesses family/clan land as well as bought or leased land at the same time (see Table 8.1 for the cases of the interviewed women).

Inheritance is among the key approaches by which women achieve rights to land as spouses, daughters or sisters. In contrast, when accessing these rights, women are faced by many constraints as indicated in Tables 8.3 and 8.5 discussed below. Such constraints on women’s access to land also tend to be heightened when land becomes increasingly scarce and men’s landholdings come under pressure, thereby circumventing women’s rights through leasing or purchasing as detailed in Section 8.2.
8.2 Women’s involvement in land transactions

8.2.1 The buying and selling of land

The sale of land has been taking form in the Makete district since the late 1980s. Despite this, land sale practices are not as visible in recent years as previously in many villages when land was plentiful and the population growth was low. Informal land transactions were then carried out on a regular basis. The most important form was leasing or selling among villagers or non-villagers and women rarely participated in these processes. The study in the Bulongwa, Lupalilo and Mwakauta villages reveals that for a long time, not only were men engaged in buying land for various purposes, but women were also engaged. Table 8.1 clearly shows women’s participation in the land market, while Table 8.2 indicates several reasons why women bought land. In fact, women acquired land mainly for farming activities, accounting for 88 percent, which increased the utilization of the land. This is followed by improved decision-making power, accounting for 10 percent, and increased tenure security is the lowest in the ranking with only 5 percent.

The improvement of formal land markets arguably generates a second chance to enhance access to land for women. From the results in Table 8.2, it is encouraging that women have purchased land for various purposes in rural areas. For example, out of 112 female respondents, 99 (88%) responded that if they would have bought land, it would have been for cultivation, 7 (6%) respondents seemed not to bother about buying land for such purposes but 5 respondents missed out on the question and one of them neither responded “yes” or “no” (indicated as Not applicable). On increasing tenure (property rights) security, based on a sample of 112 women, 5 (5%) respondents agreed to acquiring land in order to increase security of tenure, whereas 102 (91%) respondents rejected that reason. Four did not answer the question and 1 respondent remained neutral. On improving decision-making power, 11 (10%) respondents accepted that as a reason, 96 (86%) respondents answered negatively, four did not attempt to answer the question and 1 respondent remained neutral.

Women purchasing land as compensation for disadvantages resulting from unequal land allocation within a family or the absence of land to inherit has been discussed above. Land is mainly accessed in the Makete district through inheritance as the land market is very limited and affected by social relations, which include control over relations, over power, authority and social identity; relations of kinship and friendship (Cotula 2008). Only some women have been capable and they are willing to buy land. However, research data from both Uganda and Ghana suggests that land purchases serve to compensate for limited access to land through kinship, inheritance and intra-community transfers as reported by de Janvry and Sadoulet (2001). Moreover, Cotula and colleagues (2006) as well as Quan (2006) note that land transactions in different forms, such as sales and share tenancies, credits or donations. are instruments for
accessing land for the needy, thereby enhancing land utilization for different groups in society, women being one of them.

Table 8.2: Women’s reasons for land acquisition

<table>
<thead>
<tr>
<th>Item</th>
<th>Responses</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farming purposes</td>
<td>No</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>99</td>
<td>88</td>
</tr>
<tr>
<td></td>
<td>Not applicable</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Missing</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>112</strong></td>
<td><strong>100</strong></td>
</tr>
<tr>
<td>Increase tenure security</td>
<td>No</td>
<td>102</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Not applicable</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Missing</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>112</strong></td>
<td><strong>100</strong></td>
</tr>
<tr>
<td>Improving decision-making</td>
<td>No</td>
<td>96</td>
<td>86</td>
</tr>
<tr>
<td>power</td>
<td>Yes</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Not applicable</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Missing</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>112</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

de Janvry and Sadoulet (2001) observe that in Sub-Saharan Africa, there is an inverse relation between the growing of land markets for individualized property rights and access to land through inheritance. Property/land that has been obtained by parents by the way of formal arrangements cannot be subjected to a customary bequest system. Parents can pass such land on to their children (daughters included) freely if they choose to do so.

Land is customarily owned and mostly occupied by families and a few clans in the Makete district and in other rural parts of Tanzania. This further limits the growth of a land market and the intensification of individual rights. Conversely, informal land transactions are taking place without prior knowledge of village authorities in most circumstances. Thus, whenever land was transacted through sale, no documents were issued. Individuals relied on the testimony of witnesses and neighbours bordering the land to establish evidence. Such practice is a common aspect in the absence of a formal market, particularly in the urban parts of the Makete district. Quan (2006:16) notes that “out of recognized markets, property/land dealings are entrenched in traditional social ways and group associations built on faith and relationship.” Where land is transferred, this takes place without title (certificate of customary right of occupancy or certificate of right of occupancy) to the concerned members although, to date, a paper (not a title deed) has been introduced and issued by the village office as proof of occupation to a buyer when the transaction is registered.

Despite these presented facts, more development was revealed in some villages whereby a few villagers started issuing papers to their daughters as proof of ownership
and evidence to the family as to a piece of land legally allocated by parents against any further insubordination of women’s rights (FGD Lupalilo). This is a step forward in strengthening property rights against discriminatory practices for women as emphasized by several international conventions and agreements such as CEDAW. As a matter of fact, land transactions may ensure the availability of land for those who own little or none at all; enabling the release of land as the off-farm economy develops; and facilitating land use as collateral for credit (Quan 2006). Generally speaking, women and daughters have been affected by the traditional settings on land transactions due to prevailing customs. This arrangement could offset such questionable practices.

The land markets in Tanzania and in the Makete district are not well developed. The process of selling and buying land is viewed negatively as worthless. There is also a tendency to discourage it politically, thereby creating a barrier in the more optimal process of property rights evolution as stated in the previous chapters. As Deininger (2003) observes, the evolution of property rights has been strongly affected by political factors, especially in the way by which such rights are assigned and the institutions involved in their administration. Well-defined and secure land rights are important as motivations for savings and continual support of resource supervision, in the facilitation of low cost transfers of land and credit access as the rural non-farm economy grows, and in allowing the provision of public services at a minimum cost (ibid.). However, this is contrary to the situation in Tanzania, where the property rights of women in particular are not secured. As a result, production is essentially a subsistence economy and the non-farm economy is only concentrated in urban centres for a few individuals. There are also excessive conveyance expenses with land sales (Alden Willy 2008) which poorer women in countless situations cannot afford.

8.2.2 Leasing
The leasing of land has turned out to be an alternative to other land transactions and acquisition methods for both women and men such that it is widespread in the Makete district. For example, in the Mwakauta village, about 5.5 percent of residents access land through leasing. Land leasing is not free of charge, but rather includes a significant fee charged to the leaseholders upon leasing land for farming activities. This method is mainly used by women in the Makete district to acquire either additional land or new land purported to reduce inequality in land occupation, while the amount of leased land is very marginal, in most cases, a quarter to half of an acre.

Although very few women lease land as presented in Table 8.1 above, many respondents in focus group discussions confirmed the leasing of land as a common practice in their villages. The land leasing fee charged ranges from US $ 19 – 32 (30,000 -50,000 Tanzanian shillings) per farming season or year usually paid in a lump sum, depending on land size (usually a quarter to half an acre). Other conditions include
providing voluntary labour to the land owner three or two times a week or furnishing him with 20 litres of liquor as an appreciation for granting the land during a specified period of time. A normal leasing period is a maximum of one year, but payment is made before the farming season commences or during the farming season in cases of voluntary labour. A leaseholder is restricted to cultivate or plant perennial crops such as timber trees or pyrethrum. This shows that more problems are likely to occur when leaseholders, especially women, fail to fulfil such obligations. They could both lose access to land and suffer confiscation of produce by landlords. One woman from the Bulongwa village confirmed this, saying that:

“Many widows are leasing land in this village. It is not an ideal measure to lease land, which is accompanied by rigid conditions as sometimes we are unable to abide by them. As a result, the land lords confiscate our produce or claim the land back before harvest time” (KL-Bulongwa FGD).

Land leasing predominates land sales markets which are less effective in all three villages in Makete. As a result, leasing of land has become one of land transactions and access right in rural areas in Tanzania as well as in many other countries in Africa. In Iringa district, for example, leasing of land is a common phenomenon (Odgaard 2002) whereby an average of 9 percent of women lease plots of land, while only 5 percent possess land and 35 percent work on family owned land (McCabe 2013). This observation was reported before by Edja (2001) who reported that accessing land through leasing arrangement by majority of households in the Benin lowlands, Burundi highlands, Rwanda and Ethiopia (Palace 2009) is a common phenomenon. In a previous study, Kevane and Gray (1999) indicated that leasing land is common in Burkina-Faso. However, lease transactions are frequently carried out in multifaceted social backgrounds of privileges and rite obligations. Generally, they do not entail financial return, and so it is a ‘lend’ and ‘borrow’ practice in that sense. Their ‘lease’ covenants are repeatedly difficult, partial and implied involving non-financial shifts.

8.3 Customary land laws, the villagisation policy and their impact on women’s rights

8.3.1 The practices of customary land laws

Customary laws in the Makete district determine the land allocation to community members at the family and clan levels. Women in all three villages confirmed that customary laws still influence the way land is allocated and distributed in the family. It was found that in the allocation process, the larger shares of land are allocated to sons, while daughters are given smaller portions. For example, if there are two children in the family, a son and a daughter, the distribution is normally on a ratio of 75:25, the daughter receiving one-quarter of an acre.
Allocation also depends on seniority, with a middle child disadvantaged unless a son from a large family. The first-born son gets more than the others. If the last-born child is a daughter, there is a possibility of her losing everything upon parents’ death unless she is registered by her parents in the village register as a right holder in her father’s land. In such cases, she will be given land after the death. On the other hand, a piece of land given to a daughter is not a guarantee, as it may be confiscated at any time if the sons so desire. Women’s customary rights to land are established during their lives by their status as daughters, married spouses and widows (Tsikata 2003). This is contrary to human right principles recognizing land as a basic human right as set out in the Universal Declaration of Human Rights and CEDAW, for both of which Tanzania is a signatory.

Again, it was revealed that a small percentage of married women in the Makete district access land through their birth family prior to marriage. This is the case for Pare and other patrilineal societies. After their marriage, they access land as third parties. When the husband passes away, the woman is faced with three options: remain in her husband’s family, remarry into another family or be inherited by her husband’s brother. If she decides to remarry out of the clan, she will lose all the assets (land or houses) owned together with her husband. Traditionally, widows received nothing and have to rely on their offspring to take care of them. If they go back to their home family land, where in many cases they cannot be an heir except if there were no brothers or male offspring, they tend to rely on their brothers for help. However, this situation is declining (refer to Table 8.4). The study supports the findings of Kessy and colleagues (2008) that 42 percent of widows in the Makete district indicated non-discriminatory practices upon death of their husbands. Nevertheless, this should not be viewed as conclusive; as these results are from a few widows and there is an indication that widows’ are being expelled from their deceased husbands’ properties is common but not rampant.

In Wakinga customs, daughters are allowed to buy land while at home but upon marriage, the land reverts to the family members, and cannot be sold, passed to her children or harvested for products in the land, particularly those from timber. This entails a denial to income producing land, which can have detrimental effects for women. To support this argument, one respondent said:

“Even if you are not married there is no much rights attached to land. Go look for a man to marry and you will inherit from your husband. That is what your relatives will tell you” (PG Lupalilo).

Similarly, a married woman is free to use land given by her parents for any farming activities but she is restricted from passing it on to her heirs or selling it. This has been
a source of conflicts (sisters vs. brothers) and increases the likelihood of more subordination of women’s property rights. A case in point is that women are able to access land through third party (inheritance) arrangements with some conditions. This was/is caused by the male dominance over land. Men’s dominance is connected to traditional positions of being breadwinners, socially and economically respected in the household including outside of it (Sen 1999). The core of customary law in land possession is that inheritance is basically along the male line, with sons considered and brought up as potential husbands and daughters likely to become married and leave the family (Killian 2011). Bequeathing clan or family land to male heirs implies that land then is secured from being shifted to non-family members, which might be the case if a daughter becomes heir to such land.

In many communities, women lose their benefits in the marital land upon separation (Tsikata 2003). In the Makete district, customary laws are greatly not in favour of women in terms of the distribution of matrimonial property upon divorce. Even so, women inherit certain land; their rights to dispose or donate such land have been accompanied by critical problems because the land will be lost. In some cases in the Makete district, women (and their children) are prohibited from residing on their parental land upon divorce. As stressed by Amanor (1999), even if women are capable of acquiring rights to use or possess land, they hardly ever have the power over the distribution of the land, which is often approved by male members and household heads. Thus, women have more user rights than control rights as the theories suggest. The following interview excerpts reveal this:

“Although we are producing on land and contributing to food security in our families, we are facing many constraints in accessing it. Customary laws are still favouring men than women in my family. We are lacking freedom on the land. We are just using the land with uncertainty on it” (XL from FGD Lupalilo).

“Women are still regarded as ‘birds’ that anytime can fly. This means land ownership is associated with marriage. It is always assumed by parents and brothers that women are supposed to be married thus upon marriage they will get land from their husband’s family” (GM from FGD Mwakauta).

“We are still facing hardships in getting land left by our husbands. Customary laws are still strong here in our villages. Women are mostly affected on these laws, which sometimes made us to lease land from other villagers” (A widow from Bulongwa- FGD).
“There are no equal rights between men and women in accessing land. We are getting land through leasing from our parents because no rights to sale or pass it to your heirs but men have all these rights” (QS from Mwakauta-FGD).

These are among a few of the documented stories demonstrating the strong influence of customary laws on the distribution and allocation of property rights.

8.3.2 The villagisation policy
The implementation of the villagisation policy in the Makete district impacted women’s property rights. During that time, the customary tenure was evolving towards individualized property rights and the commercialization of agriculture (Daley 2005) through an increase in pyrethrum and timber cash crops as well as a local market for food crops. Only men were involved in clearing the virgin land for establishing settlements and land parcels, leaving women behind with many house chores. Men automatically became the land owners and women’s property rights continued to weaken even after the villagisation process. All this had an impact on the implementation of the villagisation policy and process as demand for land intensified. This resulted and still plays a part in the development of individualized (Daley 2005) property rights practices confined to families (males as heads of households) and changes in inheritance patterns.

Daley (2005) vividly shows that although daughters in the Wahehe ethnic group can inherit their parents’ land, they do so in smaller shares than their brothers. In the same way, Tsikata (2003) indicates that in Kilimanjaro, which is a patrilineal society, women had use and control rights over land but only in small plots around homesteads. They were given land on their marriage that could be passed to their own daughters. This happened only when land was plentiful and low competition. However, the increasing individualization of land rights (Tsikata 2003), villagisation and land scarcity led to a high accumulation of land in men’s custody. Minor daughters are not capable of taking over land and at the present, women’s access to land is only in the course of matrimony. This corresponds to the principles of the evolution theory of land rights (Whitehead 2003); as land is insufficient, a struggle over land is more likely and thus, customary rights can no longer be secured for women.

8.4 Criteria, entitlements and limiting factors as to women’s access to property rights
8.4.1 Criteria used in ascertaining property rights
Different families vary in the distributing/allocation of land to women family members. Therefore, a few clans/families pursue their land allocation rights through informal requests to elders/fathers. When assessing these requests, diverse reasons are given when parents/elders consider whether permission should be granted. These include
being married, the ability to develop the land through cultivation, having children (for unmarried individuals and widows), acceptance by family elders and the possibility of inheriting from the husband’s family (for widows and married women). A total of 28 (25 %) out of 112 female respondents stated that they had been granted land based on one or more of these criteria, while 84 (75 %) were waiting for a reconsideration from their fathers/husbands or other relatives. This shows how diverse customary laws to land are in the rural patrilineal societies in the Makete district.

8.4.2 Entitlements and limiting factors for women accessing family/clan land and other rights

It is explicitly argued in the scholarship that women/daughters in patrilineal societies are strictly not allowed to inherit/access family/clan land with an exception of a few ethnic groups and families. In order to qualify these assertions, the study then asked whether women/daughters were allowed to inherit family/clan land in their respective families. Out of 112 responses, 72 respondents (64 %) replied that there is a possibility of a daughter/woman inheriting land before marriage, while 40 respondents (36 %) named the denial of rights for daughters to inherit land. This shows varied perceptions depending on the clan/family.

Table 8.3 indicates that in certain situations, women have specific sets of property rights (Haddad 2003). The most enjoyed right for women is access for cultivation purposes. A total of 103 interviewed respondents have this entitlement irrespective of the challenges and constraints they face. Less opportunity was observed with respect to selling and leasing, whereas widows have more rights than married and unmarried women. Generally, married and unmarried women admitted that the selling and leasing of land is controlled by men (husbands, brothers, uncles) with an exception of a few families. Then 99 (88 %) out 112 and 103 (92 %) of the sampled women acknowledged this problem as shown in Table 8.3.

**Table 8.3: Women’s specific bundle of rights under clan/family land**

<table>
<thead>
<tr>
<th>Type of entitlements (bundle of rights)</th>
<th>Cases</th>
<th>Frequency</th>
<th>Percent</th>
<th>Frequency</th>
<th>Percent</th>
<th>Frequency</th>
<th>Percent</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farming</td>
<td>Valid</td>
<td>103</td>
<td>92</td>
<td>112</td>
<td>100</td>
<td>112</td>
<td>100</td>
<td>112</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>7</td>
<td>6</td>
<td>99</td>
<td>88</td>
<td>96</td>
<td>86</td>
<td>103</td>
<td>92</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>112</td>
<td>100</td>
<td>112</td>
<td>100</td>
<td>112</td>
<td>100</td>
<td>112</td>
<td>100</td>
</tr>
</tbody>
</table>
In Table 8.4, 69 respondents pointed out the specific rights enjoyed by widows as against other categories of women, and their different ways of accessing land. It is well-known that women access land through purchase. This is another right enjoyed by women as there are fewer obstacles and conditions faced by women in purchasing land as compared to other rights. Only 4 (4\%) out of 112 female respondents admitted to facing any challenges such as lack of proof of ownership in accessing land through purchase.

**Table 8.4: Ways by which widows access and enjoy bundles of rights in their deceased husbands’ land**

<table>
<thead>
<tr>
<th>SN</th>
<th>Ways and rights</th>
<th>Responses</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Frequency</td>
<td>Percent</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Ways of accessing land</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Through inheritance</td>
<td>52</td>
<td>75%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Through allocation by family members</td>
<td>16</td>
<td>23%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Through purchase</td>
<td>1</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>69</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Specific rights entitlements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Farming</td>
<td>47</td>
<td>68%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Collateral</td>
<td>1</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leasing</td>
<td>12</td>
<td>17%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Selling</td>
<td>5</td>
<td>7%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Residing</td>
<td>4</td>
<td>6%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>69</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

In addition, when asked to indicate different factors limiting women’s (daughters, divorcee, married women) access to property rights, such as land inheritance, the sampled women gave a total of 197 multiple responses as summarised in Table 8.5 based on grades: *High*, *Moderate* and *Low*. Thirty-four percent (38 respondents) pointed out that the highest limiting factors were traditions and customs followed by the presence of cash crops (timber, pyrethrum), which accounted for 24 percent, whereas HIV/AIDS pandemic was a third factor contributing to the problem for 19 percent (21 respondents). Religion and titling programmes (the individualisation of land) were presented as the lowest factors for 36 (32\%) respondents and 29 (26\%) respondents respectively. In addition, 73 (65\%) respondents did not mention any barrier triggering problems with land inheritance. The leasing and selling of family/clan land are other factors. As observed in Table 8.3, the selling and leasing of land by women is often prohibited. These factors are similar to those presented in preceding chapters.
### Table 8.5: Factors limiting access to property rights by women

<table>
<thead>
<tr>
<th>Grade</th>
<th>Religion</th>
<th>Existence of cash crops</th>
<th>Tradition &amp; customs</th>
<th>HIV/AIDS</th>
<th>Titling programme</th>
<th>No. of Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>2(2%)</td>
<td>27(24%)</td>
<td>38(34%)</td>
<td>21(19%)</td>
<td>5(5%)</td>
<td>93</td>
<td>17%</td>
</tr>
<tr>
<td>Moderate</td>
<td>1(1%)</td>
<td>6(5%)</td>
<td>0(0%)</td>
<td>7(6%)</td>
<td>5(4%)</td>
<td>19</td>
<td>3%</td>
</tr>
<tr>
<td>Low</td>
<td>36(32%)</td>
<td>6(5%)</td>
<td>1(1%)</td>
<td>11(10%)</td>
<td>29(26%)</td>
<td>83</td>
<td>15%</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>73(65%)</td>
<td>73(65%)</td>
<td>73(65%)</td>
<td>73(65%)</td>
<td>73(65%)</td>
<td>365</td>
<td>65%</td>
</tr>
</tbody>
</table>

### 8.4.3 Women’s property rights, land scarcity and the spread of HIV/AIDS

The HIV/AIDS pandemic is also one of the factors contributing to women’s property rights becoming insecure in the studied villages and perhaps in the entire Makete district. When female respondents were asked whether there is a correlation between land scarcity and the spread of HIV/AIDS in their villages today, a majority of them replied negatively, 86 percent (96 respondents) said “No,” while 16 respondents (14 percent) noted that there is a relationship between these two aspects, the spread of HIV/AIDS and land scarcity particularly for youths.

The researcher then delved deeper as to the reasons these women thought that there is no relationship. A total of 80 female respondents clarified that despite land shortages; HIV/AIDS is triggered by several reasons including practicing prostitution as an alternative to cultivation and as a source of income. These reasons accounted for 9 percent, while ritual practices such as remarrying the deceased husband’s brother in order to access land was cited by a total of 5 percent (4 respondents), and a decline in traditional morals and values in the community was mentioned by 25 percent (20 respondents). Other factors are poverty associated with unemployment for many youths, mentioned by 15 percent, followed by a reluctance to engage in farming activities, amounting to 24 percent, while alcoholism is the least factor accounting to 2 percent as depicted in Figure 8.2.
Although polygamy was not mentioned during the in-depth interviews, it was clearly whispered in focus group discussions by the women’s groups in all the studied villages. Polygamy practice is a common phenomenon with traditional marriages, which are seen as inferior to church weddings. Thus, the security of the traditionally married wife in terms of land inheritance and contracting HIV disease is in jeopardy. The following assertion proves this, “my spouse wedded in church with another wife. Accordingly, it became hard on my side to take up my husband’s property on condition that we wedded traditionally.” Ritual and polygamous practices are yet to be abolished in the Makete district. The practice of a widow’s inheritance is not unique to Tanzania as women in other African countries face similar problems (TAWLA 2013).

The practice of a “widow inheritance” occurs mostly in polygamous families when the husband dies and his wife (widow) is taken on by one of the male relatives. Since a married woman becomes a member of another family after, the widow inheritance practice customarily compels her, following passing away of her spouse, to remarry one of the spouse’s kin so that they can care for the property/and land while maintain the existing clan relationship (Kessy et al. 2008:29). Traditionally, children and the inherited wife will be cared for by the man who inherited them as he would handle his own family.

Although widow inheritance is believed to be an outdated tradition that should be discarded, it is practised by some residents on a small scale. Unfortunately, a few clan members take it as a chance to obtain the occupation of land/property. As a result, widow inheritance strengthens the stereotype of women as helpless creatures who are economically incapable and should be treated and owned by men as properties (Ezer 2006).
There is clear evidence that the inability to access land and the vulnerability to HIV/AIDS are closely linked to ritual and polygamous practices in the Makete district. This proves that social factors are among the barriers to women’s access to property rights as noted elsewhere in this work.

8.5 Women’s knowledge of property rights

Limited knowledge or understanding of rights by women creates complexity and uncertainty when asserting their property rights to land and other possessions. The scholarship found that many women countrywide have limited knowledge of the legislation and government policies directly affecting them. The situation is critical in the Makete district, as men and leaders lack a basic understanding and knowledge of property rights.

Table 8.6: Respondents’ age and education characteristics vs. marital status cross tabulation

<table>
<thead>
<tr>
<th>Education level of the respondents</th>
<th>Marital Status</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Single</td>
<td>Married</td>
</tr>
<tr>
<td>No education</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Primary school</td>
<td>11</td>
<td>60</td>
</tr>
<tr>
<td>Secondary school</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12</strong></td>
<td><strong>70</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Age of the respondents</th>
<th>Marital Status</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-30</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>31-40</td>
<td>3</td>
<td>27</td>
</tr>
<tr>
<td>41-50</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>51-60</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Above 60</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12</strong></td>
<td><strong>70</strong></td>
</tr>
</tbody>
</table>

Table 8.6 shows women with a primary level of schooling, the majority in all three categories, single, married and widows, about 93 respondents. Some 17 women had not accessed education at all, whereas only 2 had completed secondary education. Married women aged between 31-40 years where the largest age group. Single women aged 20-50 years were only 12. Thus, the women’s education level does not appear to influence their understanding of property rights in their respective villages unless legal knowledge had been imparted to them. The understanding of property/land rights to women is very low as observed from the studied villages. When asked to indicate how they understand the term “land rights” for women, many of the interviewed women were ignorant of the term. More than 70 percent (80 respondents) of the interviewed women replied either “I do not know” or “I know nothing.” A few though, around 30 percent (32 respondents), attempted to answer but rather vaguely as shown in Table 8.7. These statements are presented here without alterations as they were acquired from the field.
Table 8.7: Women’s basic knowledge of land rights

<table>
<thead>
<tr>
<th>Question: What do you understand by the term “land rights”?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Female respondents in the respective villages</strong></td>
</tr>
<tr>
<td><strong>Bulongwa</strong></td>
</tr>
<tr>
<td>1. to get the paper of your farm</td>
</tr>
<tr>
<td>2. a right to access and get land for farming purposes</td>
</tr>
<tr>
<td>3. in a family, a woman has a right to land</td>
</tr>
<tr>
<td>4. women have the right to have land as all human beings are equal. We are also all equal in production activities as we depend each other</td>
</tr>
<tr>
<td>5. to have a certificate on the land in order to have power to make my own decision as a woman</td>
</tr>
<tr>
<td>6. to get paper in your piece of land</td>
</tr>
</tbody>
</table>

When comparing the level of understanding of property (land) rights in the three villages, Lupalilo was well-represented compared to Bulongwa and Mwakauta. From Table 8.7, a total of 19 out of 35 women indicated knowing at least “something” about women’s land rights in the Lupalilo village, as against 6 and 7 respondents from Bulongwa and Mwakauta respectively who attempted to show their knowledge on the term. Surprisingly, Mwakauta had disappointing results by having a low rate of understanding even though the titling programme had been implemented in the village in recent years so that a higher score could have been expected. This indicates that women do not participate in government projects when implemented in rural areas.

The women interviewed in the study were also asked to assess whether they had knowledge as to the existing laws and institutions protecting women under the current
tenure system and to name a few. The results were: 46 respondents attempted to mention laws including the Constitution (1), the Village Land Act (6), district land office (2), ward tribunal (9), village chairman (6), ten cell leaders (10), and the VLC (12). Of these, only 7 answered with the correct laws (Constitution and Village Land Act). This demonstrates how difficult it would be to assert rights when these women have such low levels of understanding of their legal capacities and of the basic laws protecting women. In contrast, women in the studied villages admitted to having heard about “land rights” even though the term itself was not understood altogether with the existing laws. When asked how many times they had heard about land rights, they responded as shown in Figure 8.3.

![Figure 8.3: Frequency on which women heard about land rights](image)

The results in Figure 8.3 explicitly demonstrate the possibility of women having access to information through various channels. The Mwakauta village was leading, having a higher number of women who had heard information about land rights, on the average of 1-3 times, whereas in the least group the average was 4-6 times. In the Lupalilo village, a few indicated having heard above 7 times, none indicated 4-6 times, while 1-3 times scored the highest number with about 21 respondents. Results from the Bulongwa village showed that a large portion had not heard about land rights during their entire life, while 14 respondents claimed to have heard 1-3 times. From these results on the average, women have heard about land rights 1-3 times in their respective areas regardless of their little understanding of the term “land rights.” This indicates that education does not influence the desire for a woman/villager to acquire knowledge as to land rights.
8.6 Women’s access to information and the enforcement of property rights

8.6.1 Access to property rights information

Women in the studied villages had access to property rights information in one way or another, as seen from Figure 8.3. During the interviews, women were able to mention and describe a range of channels through which they acquired land information: workshops, 2 percent (2 respondents) and village meetings, 54 percent (60 respondents). Other ways were seminars, 39 percent (44 respondents) and last was media, such as television, radio and leaflets, which amounted to 5 percent, as reflected in Table 8.8.

Table 8.8: Women’s channels for acquiring land/property rights information

<table>
<thead>
<tr>
<th>Sn</th>
<th>Channel</th>
<th>Responses</th>
<th>percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Workshops</td>
<td>2</td>
<td>2 %</td>
</tr>
<tr>
<td>2</td>
<td>Village meetings</td>
<td>60</td>
<td>54 %</td>
</tr>
<tr>
<td>3</td>
<td>Seminars</td>
<td>44</td>
<td>39 %</td>
</tr>
<tr>
<td>4</td>
<td>Media</td>
<td>6</td>
<td>5 %</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>112</td>
<td>100 %</td>
</tr>
</tbody>
</table>

Different actors were noted as involved in the dissemination of land information. These included officials from the district land office, officers working with NGOs, village leaders, and ministry officials responsible for lands, Mkurabita programme, VLCs, ward tribunals and various media. A total of 123 multiple responses were noted as depicted in Figure 8.4 (number of respondents with corresponding percentage), receiving information through the mentioned actors. Aside from these, the rest confirmed getting information through siblings, other women who attended meetings or seminars and neighbours through informal discussions (Figure 8.4).
When male respondents were asked to indicate how often they received land rights education in their villages, they stated that they had not been involved in seminars or workshops. Men in the Mwakauta village, however, stated an involvement in land rights information when the PBFP programme was implemented. Furthermore, leaders clarified that the lack of legal training is a root cause of problems as no workshops, seminars, or legal clinics have been conducted in the studied villages except for the occasional visit by community development officers from the district and by researchers.

Despite the involvement of many actors on disseminating land information to villagers, the discussions revealed that there was only a smattering of property rights knowledge in the different groups of villagers, including local leaders, women and men. Research data from the interviewed leaders in the three studied villages indicates that women have been engaged in a few seminars conducted in the respective selected groups of widows. Civil and church-based organisations, such as Sumasesu and Tunajali in the Makete district, are active in providing information about HIV/AIDS, and little information regarding property rights for widows in the Bulongwa village. None of these civil organisations reported organising seminars in the Lupalilo village.

At the same, Mwakauta had the PBFP project and plans were on board for Sumasesu to conduct a sensitisation and awareness programme based on HIV/AIDS matters. There is a lack of legal aid civil society centres in the Makete district which could support the government in propagating property rights knowledge. This, in turn, facilitates many villagers relying on local leaders to get property rights information. As a result, property rights information receives less priority and attention in their village meetings. The lack of knowledge of village leaders fuels the problem. A lack of exposure to land information affects the extent to which women can claim their rights in accessing property rights such as sales, leases, use and inheritance. This has an influence and effect on the number of women pursuing various aspects including participation in decision-making at the family or village levels.

These findings are related to those of Carpano (2010 & 2011) who also observed that inadequate information and understanding of women’s land rights among women in Bahi, Chamwino, and Kondoa in the Dodoma region and the Kiteto district in the Manyara region respectively limited them in their participation of village land use planning. In the same way, recent findings by Orton Kiisheweko in the Daily Newspaper (12th January 2014:4) show that land rights education had empowered women in Dodoma and Singida where land ownership has been a rallying cry for women who were regarded as labourers not expected to claim any property rights.66 As soon as

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66 See Yngstrom (2002) and Carpano (2010, 2011) for detailed discussions on this.
women acquire access to land information, they are in a better position to defend their claims to property rights.

8.6.2 Enforcement of property rights at the village levels

Law enforcement in the context of property rights in the form of judgments by courts or customary institutions such as a VLC need the government or other authority to make sure that individuals who have established property rights as granted by statute can exploit and benefit from their land and other resources. The enforcement of property rights entails that where a society or individual rights holders perceive that the authorities or other persons meddle by means of possession, utilization, occupation or enjoyment of their land, the right holders can lodge complaints in well-defined procedures and these complaints will be reasonably handled by a responsible authority (Pritchard et al. 2013).

Women have less access to legal knowledge due to the inefficiencies or unavailability of various legal institutions. Female respondents were asked to evaluate the level of enforcement of property rights at their respective villages within the prevailing conditions. Based on a scale of Very good, Good, Satisfactory, Bad, Very bad, the results were as follows. In the Bulongwa village, the results were similar in all categories with a slight variation in contrast to the other villages. “Very good” and “good” had 8 respondents; “satisfactory” had 9 and “bad” and “very bad” had 15 in total. The results from the Lupalilo village varied, but “satisfactory” was leading with 13 respondents followed by “good” with 7 respondents, while “bad” and “very bad” attained 11 and “very good” had 4 respondents. On the other hand, in the Mwakauta village, “very good” was low with 3 respondents as compared to other villages. “Good” enforcement had 9 respondents, “satisfactory” was high at 14 respondents but “bad” and “very bad” had 11 respondents as depicted in Figure 8.5.

Generally speaking, the common level of women’s property rights enforcement at the village level is good despite the challenges of male dominance in many decision-making bodies as identified in Section 8.8. Although women in classical terms have limited knowledge on property rights, women in the studied villages have been reporting land incidents to the elders and land organizations. Some women have received land rights information.
Figure 8.5: Extent of enforcement of property rights by VC/elders

Based on typical practices, the study also looked at how women perceive the importance of property rights in their villages. With the scale of very important, important and not important, the following responses were recorded from each village: In Bulongwa, the highest score was for “important” with a total of 16 respondents, while 12 respondents said property rights were “very important” and the other 12 respondents responded “not important.” These results were dissimilar from the other villages. In Lupalillo, women who said property rights are “very important” were 5; “important” were 17 and “not important” were 13. In Mwakauta, the ”very important” criterion scored 4 responses, “important” had the highest score with 23 respondents, and “not important” had 10 respondents as indicated in Figure 8.6. Therefore, on the average, women affirmed that property rights are very important. On the other side, women had seen property rights as less important for them due to the prevailing situation based on customary laws. The majority reason revealed was that they had not been empowered enough in terms of legal knowledge in asserting their rights against the male dominance. Women still feel inferior in the matters of land and associated rights when compared to men.
8.7 Women’s participation in economic activities

In subsistence farming in the rural areas of Tanzania, women generate 70 to 80 percent of the domestic food consumption. Women customarily are heavily engaged in different work such as collecting firewood; fetching water; producing food crops of various types; children caring and the like, whereas men are mostly pursuing business transactions including producing cash crops, livestock farming and charcoal making (Carpano 2010 &2011). Farming is the major economic activity as pointed out by 100 percent (112) of the female respondents as well as the men and local leaders.

Women in the Makete district (in Wakinga customs) play a great role in their economy through farming as they are the main producers on land. Much of the crops produced are for subsistence, although a certain amount is sold. The major crops are maize and wheat. Others are beans, sorghum, millet, potatoes and peas and varieties of vegetable with a few fruits like apples. Livestock farming is moderately practised as it involves men to a greater extent. They practice livestock (goats, guinea pigs and pigs) and poultry farming (chicken rearing). It was pointed out by respondents that 40 percent (45 respondents) of them participated on this activity. Other activities are timber and mining that are rarely practiced as specified on Table 8.9. Apart from farming and livestock farming, a few women conduct other small income generating activities such as kiosk selling, food vending, local restaurants, local bars etc.
Table 8.9: Order of importance of the major economic activities

<table>
<thead>
<tr>
<th>Economic Activities</th>
<th>Farming</th>
<th>Livestock farming</th>
<th>Mining activities (sand, stones)</th>
<th>Timber harvesting</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
<td>%</td>
</tr>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Highest</td>
<td>112</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>High</td>
<td>0</td>
<td>0</td>
<td>45</td>
<td>40</td>
</tr>
<tr>
<td>Moderate</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Lowest</td>
<td>0</td>
<td>0</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>Not Considered</td>
<td>0</td>
<td>0</td>
<td>45</td>
<td>40</td>
</tr>
<tr>
<td>Total</td>
<td>112</td>
<td>100</td>
<td>112</td>
<td>100</td>
</tr>
</tbody>
</table>

Likewise, when the working time spent by women in these economic activities was assessed, the results indicated that women in the studied villages spent an average of 75 to 85 percent of their time on cultivation activities as seen in Table 8.10. Women spent between 5-10 hours per day for farming activities with an average of six to five days in a week, while some claimed to spend more than 10 hours. This indicates that women have a heavy workload and are overburdened with the production at farm. Women also carried out many other responsibilities including household chores. Less time therefore is spent by women on other responsibilities including attending functions such as village assembly meetings and seminars. A vivid example from 2012 in the Bulongwa village demonstrates this. The Tanzania Commission for Human Rights organised a seminar for a week, and accordingly, there was a low response rate from women in attending the seminar because it was a farming season (WEO Bulongwa 2012).

As far as the division of labour between the sexes is concerned, men are rarely involved in farming activities and spend very little time on them. Men engage in the timber trade and as causal labourers on timber farms when harvesting, loading and offloading of timber, sawing and related works. When asked to indicate the involvement of men in farming activities, 65 percent (69 female respondents) asserted that their husbands, uncles and brothers spent on average 2 to 4 days, and 18 percent (20 respondents) that men spent 5-6 days a week with a few hours per day as shown in Table 8.10.

This frankly is the situation in many villages in the Makete district as men are not involved in the cultivation of food and cash crops such as wheat and pyrethrum except for the few who are in agricultural groups (such as the Lupalilo pyrethrum group). On the other hand, men did not admit that they are not involved in farming but claimed to spend money on cultivation as an alternative to physical efforts. Men claimed that
much of their time is spent on the timber trade which has high demands and work is available in their areas, though some men are not involved in any of the activity. This is an indication that most of the farming workload is carried by the women.

Table 8.10: Involvement and time spent on farming activities by both women and men*

<table>
<thead>
<tr>
<th>Hours per day</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Up to 5</td>
<td>14</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>6-8</td>
<td>61</td>
<td>55</td>
<td>55</td>
</tr>
<tr>
<td>9-10</td>
<td>32</td>
<td>27</td>
<td>27</td>
</tr>
<tr>
<td>10+</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>112</td>
<td>100.0</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Valid</th>
<th>1-2 days</th>
<th>37</th>
<th>33</th>
<th>35</th>
</tr>
</thead>
<tbody>
<tr>
<td>3- days</td>
<td>32</td>
<td>29</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>5-6 days</td>
<td>20</td>
<td>18</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>More than 6 days</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>16</td>
<td>14</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>106</td>
<td>95</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

| Missing | Total | 6 | 5 |
| Total | 112 | 100 |

*Based on the information provided by women in interviews

**Percentage calculated based on respondents who provided answers only, others who did not answered were termed as missing cases

8.8 Women’s participation in decision-making

Women’s participation in decision-making in all sectors of the economy and at the household level is vital for women’s empowerment. In rural areas, women are of great significance in production, linked with the rise in female-headed households by 25 percent. Women in the Makete district constitute 53 percent of the population, while the number of female-headed households is increasing in many of the villages. Female-headed households account for 50 percent (168 of 337) in Bulongwa; Lupalilo has 33 percent (111 of 340); while Mwakauta has 24 percent (27 of 112)(see previous chapter). In patrilineal societies, men are the property-owners and family leaders, having the top role in decisions concerning land utilisation, sale or lease. Thus, women’s contributions in decisions and work, along with their affairs with men, are regarded as minor or insignificant (Yngstrom 2002:24). Decisions by women are followed only to the point they are accepted as family leaders (Yngstrom 2002 from...
Place et al. 1994). These aspects are well seen in the evolution theories of property rights.

8.8.1 Women’s participation in decision-making at the household level

Women have been involved in family decision-making (intra-household) to some extent as seen from the study. The interviewed women were asked about their involvement in decision-making at the family level. A good number of female respondents felt that they were more involved in decision-making at the household level in recent years as shown in Table 8.11.

<table>
<thead>
<tr>
<th>Type of participation</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal family meeting</td>
<td>81</td>
<td>72</td>
</tr>
<tr>
<td>Informal discussion</td>
<td>22</td>
<td>20</td>
</tr>
<tr>
<td>Special call</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Self/independent decision-making</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Never happened</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>112</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

It can be seen from this table that women participated in decision-making through various means, depending on the family but not limited to formal family meetings. These means include prior invitation before convening a meeting and involve clan members or are between husband, wife and children. Informal discussions are normally between husbands and wives, or children, but with no special prior arrangements. A special call is an emergency invitation usually made at the clan level. Self/independent decisions involve unilateral decisions involving either a husband/wife/widow or a single mother.

Of these means, 72 percent (81 interviewed female respondents) asserted having been involved in decision-making through formal family meetings, whereas 20 percent (22 respondents) participated through informal discussions, while self-decision and special call scored 2 percent (2 respondents) each. There were significant responses demonstrating women’s non-participation; that they were neither called nor informed of participation in any decision-making.

Women were highly involved in decision-making, but only during farming season when deciding the types of crops to produce in the farms. Experience proves that this is normally performed jointly by married couples whereas for singles/widows can independently decide but sometimes with assistance from their children. On the other hand, when male respondents were asked whether their wives were involved in decision-making at the family level, they responded that they jointly decided as a
family. The men always involved them while few respondents demonstrated an unusual situation by saying that "sometimes" they involved women and others never involved them. Nevertheless, some of the husbands who claimed to involve their wives in decision-making confirmed that in certain issues, the men made the decisions on their own and thereafter informed their wives.

Similarly, both groups (women and men) interviewed admitted that although it is not so high, the participation rate in decision-making by women at the household level is improving. They all recalled the past experiences of women to be worse as they were not involved in any decision-making; only men as husbands, fathers, uncles and brothers made decisions. This confirms a development towards a greater bargaining power of women if they are able to realize it. As Kevane and Gray (1999) noted, intra-household bargaining power can be seen as an important aspect towards economic autonomy for women, but a degree the difference in negotiating influences the intra-household allocation of valuable assets among couples. Similarly, smaller differences in education levels for younger women could have an impact in bargaining processes. Married women with low levels of education have problems participating in decision-making in matters regarding access to land.

8.8.2 Women’s resource control
Table 8.12 presents the female respondents’ views about the extent of their control over household resources, i.e. produce from land, decisions on consumption, the selling of crops and timber products, and income. These results indicate that cases of no control at all were rare but with a significant impact on women’s rights, particularly for married women, while joint decisions dominated the results for couples, and independent decisions were on an increase for singles and widows.

The study shows a slight increase in those claiming to have a lot of control in deciding the types of crops to produce in all three villages (Bulongwa, Lupalilo and Mwakauta), with less control as to consumption and selling, though sometimes joint decisions with spouses or family members are made. More than 44 % (49 female respondents) stated that they enjoyed joint decisions on income and 69 % (87 respondents) on consumption and the sale of farm products. Independent decisions over control of resources are increasing in all three villages, with a total of 32 % (36 respondents, widows and single women) as a result of the rise in female-headed households.
### Table 8.12: Female respondents’ views on control over resources

<table>
<thead>
<tr>
<th>Type of Control</th>
<th>Responses</th>
<th>Villages</th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Bulongwa</td>
<td>Lupalilo</td>
<td>Mwakauta</td>
</tr>
<tr>
<td>Over produce</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>28</td>
<td>26</td>
<td>82</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>7</td>
<td>11</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>40</td>
<td>35</td>
<td>37</td>
<td>112</td>
</tr>
<tr>
<td>Consumption/selling</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>31</td>
<td>27</td>
<td>87</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>6</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>126</td>
</tr>
<tr>
<td>Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Husband</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>6</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>Jointly</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>18</td>
<td>19</td>
<td>49</td>
</tr>
<tr>
<td>Independently</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>18</td>
<td>11</td>
<td>7</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>40</td>
<td>35</td>
<td>37</td>
<td>112</td>
</tr>
</tbody>
</table>

Table 8.12 further indicates that some women stated a lack of control over both selling and consumption, and even income as these were solely decided by the husband. This was largely verified by married women who strictly lacked control of any resources as shown in Box 8.1 and Table 8.12 (as the “No” responses vividly show). When male respondents were asked to explain these results, most were silent while a few slowly replied “we involve them anyway”. These explanations indicate that overall, married women possess less power over their own resources than men. A gap also exists between women and men in terms of negotiations over the distribution of resources at the household level, as pointed out by Agarwal (1994), when negotiations between couples are carried out in difficulty environments with gendered privileges to utilize land. Women’s land rights are affected by their lack of bargaining power and revealed in gender dissimilarities. Women’s fragile land rights coupled with poor negotiating command place them in a marginalized position at household and community levels.
8.8.3 Participation in decision-making bodies

In relation to village managerial and dispute resolution structures, women’s representation tends to be lower in the VCs than in other bodies. Only 12% (13 of 112 interviewed women) were involved in decision-making bodies, many of whom were older and widows. All the village and ward executive officers, regardless of qualifications, and all VC chairpersons (elected by a political party) were men.

In the dispute resolution mechanisms of the VLCs and ward tribunals, there is at least a fair composition of women members and an exception was noted in the Mwakauta village as the chairperson of the VLC was a woman. Inadequate women’s representation in hamlets was noted as there were few chairpersons and secretaries as compared to the number of hamlets. For example, out of five hamlets in Bulongwa, one is headed by a woman as a chairperson and one secretary, none from the Mwakauta and Lupalilo villages whereas both had 2 and 6 hamlets respectively. Low representation was also revealed in other sectors. For example, out of 30 councillors in

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**Box 8.1: Some typical cases of lack of control over resources**

1. My husband has all the say over income, what to consume and what to produce.
2. He gave me the power to decide on what to produce but I have to report to him later on what I have got from the farm.
3. He always decides himself but *sometimes* invites me.
4. I am not involved in any decision-making on income and produce unless he invites me.
5. He invites me on decision-making regarding selling timber products but not on income after sale.
6. I can decide on what to consume or sale if I had a power to do all the farming activities myself.
7. As a main producer on farm, I partly decide on income but full control on consumption.
8. I need to request permission on what I want to do either on types of crops to produce or selling of the farm’s produce.
9. I have a decision over consumption only while I receive whatever shares he gives me after sale.
10. My husband controls everything.
11. I have a partial control over some produce such as wheat, beans and potatoes.
12. I am a widow; whatever I want to do I should look for permission from my husband’s relatives.
the Makete district, only 27% (8) are women while out of 10,657 village chairpersons across the country, only 2% (249) are women.

With regard to women’s representation in a range of managerial bodies, in most situations male’s representation is higher than women and their decisions are highly influenced by male dominance. For example, female leaders are blamed for having a bias against men in decision-making. These allegations obstruct women from doing their daily duties as leaders. As a result, they are unsuccessful in mediating disputes involving women’s rights before men due to different accusations including corruption. Kane et al. (2005) stresses that when females possess influential positions at VCs and other local governments, their existence in the system is usually worthless as decisions made are under the influence or dominance of males in the system.

8.8.4 Women’s involvement in land conflict resolution at the family/clan levels
Women were also asked about their involvement in addressing disputes related to land at the household level. Of those 112 interviewed women, 64% (72 respondents) confirmed participating while 36% (40 respondents) did not. Based on the scale of very good, good, poor, very poor; women were requested to evaluate the current trend on women’s involvement in decision-making at the rural community level (Soko 2011) and the possibility of changing the level of discrimination through such participation. The results were: “very good” participation was 17% (19), “good” involvement scored 19% (21), and “poor” had reached 16% (18) whereas “very poor” had highest percentage of 48% (54 respondents).

At the same time, the respondents were requested to indicate whether discriminatory practices against women under customary laws will end by increasing women’s involvement in decision-making at all levels. Sixty-four percent responded positively by “agreeing” while 36% of respondents disagreed as they were not sure if at all discrimination will end by involving women in decision-making processes. This is contrary to most of the scholarship on women’s property rights and claims over their rights. The increase in women’s involvement in dispute resolution and other decisions is one of the components of empowerment both economically and politically.

8.9 Land disputes and access to legal institutions by women
8.9.1 Land disputes and their sources
There were notable land disputes at the village levels in Bulongwa, Lupalilo and Mwakauta during the research period. The land disputes were diverse in nature; with the major types mentioned were matrimonial property arrangements upon the death of the husband/head of the household, polygamous practices (conflict between brothers and sisters) as brother’s offspring have stronger ties to land than the sister’s children as seen from Box 8.2.
Other disputes include boundaries and encroachment on timber tree farms, which were common in the studied villages, and land grabbing (not only by relatives but also by outsiders). These conflicts are more pronounced in recent years as compared to 15-20 years ago, as a result of the population flow into the villages and competition over land due to the increased land value. Under this situation, poorer and weaker village women are the major disadvantaged group.

Box 8.2: Example of cases and their rulings

56 years, TN, a widow: Denial of access and inheritance to deceased husband’s land
TN was involved in a dispute relating to her deceased husband's land: After her husband’s death, TN wanted to occupy and access timber trees parcels that they had planted together during her husband’s life time. Her in-laws refused to grant access to the trees. TN reported the case to the clan elders. The elders decided to grant the right of access and ownership to her eldest son instead of her. TN was satisfied by the decision as her son was the new owner rather than the in-laws and all rights vested in him.

47 years, ET: Land grab by clan members
ET claimed to be allocated land by her mother-in-law and established the farm’s demarcations by planting hedge trees. After the death of her husband and in-laws, the male clan members grabbed the land without her presence and information. ET took them to the village land council, but they (clan members) won the case disregarding the evidence she provided to the court. ET was dissatisfied with the decision but felt she could not take further steps fearing that the clan members would harm her.

25 years, NS unmarried woman: Land grab by uncles
This dispute presents the situation where daughters are not entitled to inherit land from their mother’s lineage. A dispute started when her mother passed away. The deceased mother was not married but survived by her children, the eldest being NS. The deceased had built a house in a family inherited land and after her death, the uncles wanted the land back; they chased and barred their nephews from inheriting, entering the house and land all together. Fortunately, the village leaders got involved and as a result, NS, the oldest daughter, was given the rights to access the house and inherit the land previously occupied by her mother. This is one of the rare cases favouring women in the decision.

32 years, AN (sister vs. brothers): Prohibiting women’s access to land
The siblings had land left by their parents but AN’s brothers denied her access to the land on the ground that under Kinga custom, a woman cannot inherit land. AN reported the case to the village land council which ruled in favour of her brothers. She appealed to Ward Tribunal, where they also won on the ground that the customary law of their tribe does not allow women to be given land.

35 years, GT: Land grab by uncles
GT had bequeathed land from her mother. After her mother’s death, her uncle’s claimed back the land as the right owners of their sister’s land. She reported the matter to the hamlet office. The office made an intervention in the incident by calling uncles to appear before the office. On the decision date, the office members ruled in her favour by maintaining that she is a legal owner as her mother was legally occupying the land.
Land grabbing

Land involves a wide range of rights and responsibilities, and is in demand by a wide range of users, institutions and interest groups for different and often conflicting reasons, such as investment, political power (UN HABITAT 2012) and prestige. Poor attention paid to these factors is a good source of land conflict, including grabbing. Land/property grabbing exists not only in the Makete district but also in most regions of Tanzania as noted by LRCT (1995), in which, Bulongwa, Lupalilo and Mwakauta are included. Land grabbing can be between villagers and non-villagers, villagers themselves or between individuals and institutions. Women are mostly affected by the practice and as a result, women’s rights continue to be subordinated in rural parts of the Makete district. The major problem is unequal power between women and men on competing (Cousins 2005) claims over land and other factors of a similar nature as detailed in section 8.9.2.

Certain powerful individuals and institutions also have greater influence and experience in court procedures and the interpretation and use of the law. Thus, they take that advantage in order to grab individuals’ land. Naomi’s case (see Box 8.3) presents a good example of a women’s deprivation of claims over rights as a result of a land grab by powerful and influential individuals. For widows, property (land) grabbing is supported by the fact that the former actually do not belong to the spouse’s kin and their entitlement for inheriting is disputed, while this behaviour spreads in all levels of society (Ezer 2006).

Land conflict at the family level

When female respondents were asked whether they had experienced any conflict related to land in their family or village, 51 % (57) claimed not to have observed any conflict in their families, whereas 49 % (55) pointed that they were aware of land problems surrounding their families. However, when those who claimed to be aware were asked to clarify the sources, they confirmed that inheritance and the use of family land were main sources of the land disputes for women, amounting to 28 % (31) and 20 % (23) respectively. Other causes were marriage with an average of 10 % (11) respondents followed by divorce with 7 % (8) respondents and HIV/AIDS disease had scored 4 % from 4 respondents. Personal interest was a least cause while no cause was shown on using land for grazing purposes as specified in Table 8.13.
Table 8.13: Major sources of land conflicts at the family level

<table>
<thead>
<tr>
<th>Valid</th>
<th>Inheritance</th>
<th>HIV/AIDS disease</th>
<th>Use of family land</th>
<th>Grazing on family land</th>
<th>Marriage</th>
<th>Divorce</th>
<th>Personal interests</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>24(21%)</td>
<td>50(45%)</td>
<td>32(29%)</td>
<td>55(49%)</td>
<td>44(39%)</td>
<td>47(42%)</td>
<td>53(47%)</td>
</tr>
<tr>
<td>Yes</td>
<td>31(28%)</td>
<td>4(4%)</td>
<td>23(20%)</td>
<td>0(0%)</td>
<td>11(10%)</td>
<td>8(7%)</td>
<td>2(2%)</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>57(51%)</td>
<td>57(51%)</td>
<td>57(51%)</td>
<td>57(51%)</td>
<td>57(51%)</td>
<td>57(51%)</td>
<td>57(51%)</td>
</tr>
<tr>
<td>Total</td>
<td>112</td>
<td>112</td>
<td>112</td>
<td>112</td>
<td>112</td>
<td>112</td>
<td>112</td>
</tr>
</tbody>
</table>

The respondents were then asked as to the reporting mechanisms for the purported disputes. Women were asked to indicate measures taken after observing the dispute. Out of 112 interviewed women, only 19% (21) stated that they had taken some steps. Women reported cases related to land to different bodies such as the VLC, hamlet leaders, ward tribunal; elders and parish leaders (refer to Box 8.2). Data obtained from the field showed that out of 21 female respondents, 4 reported their cases to hamlet leaders, 11 to the VLC, 4 reported to clan members while 2, 1 (one) each took their case to parish leader and ward tribunal respectively. The major reasons for this trend could be either unfairness of judgment, distance, inaccessibility to legal services, unknowing rush to the incorrect body or reporting to the body deemed to be appropriate for them.

8.9.2 Access to legal institutions

The Courts Acts 2002 explicitly establishes those legal institutions that are to adjudicate land disputes. Procedures start at the VLC, then to the Ward Tribunal, District Land and Housing Tribunal and to the Court of Appeal. The VLCs and Ward Tribunals are well-established in the Makete district. Courts are found in almost every village and ward. Conversely, residents in the studied villages, especially men, were aware of these land settlement institutions, particularly the VLC. The situation is challenging to the majority of women who miss opportunities to defend their land rights once they are violated, except for the few who stated having knowledge of these legal institutions. Consequently, many women do not access legal redress in these bodies.

Apart from inaccessibility to legal information, there are many other problems noted from the study that are associated with the lack or inability of women accessing legal institutions. The first is that in general, women have inadequate resources and extremely small access to appropriate information as to their rights in the regulation as explained above, and therefore are repeatedly unable of taking steps to declare their entitlements, particularly while such entitlements are endangered by influential
individuals with the complete support of local authorities. Other factors hindering women are such as a lack of knowledge of official lawful procedures due to the difficulty, lengthy and charge of proceedings engaged and insufficient knowledge as to legal clauses. Consequently, women’s subsists in a legal vacuum, putting them in uncertain situations concerning their privileges (Rünger 2006).

Similarly, the geographical distances to land institutions are another factor affecting women accessing legal rights. As noted earlier in chapter six, distance is one of the inefficiencies in the performance of ward tribunals; as applied to individuals who are incapable of instituting at the VLC. Because of the physical distances, villagers fail to file lawsuits with the Ward Tribunal thus they resort to available nearby institution such as hamlet leaders. Dishonesty and unfairness are prevalent in legal institutions. As a result, women do not register their claims.

The fees charged by the VLCs and tribunals have also proven to be a barrier to women as the majority lack funds to finance cases brought before these courts. The fees charged range from $19 to $32 (Tanzania shillings 30,000 to 50,000) and $63 to $313 (Tanzanian shillings 100,000 to 500,000) per lawsuit for the VLCs and Ward Tribunals respectively. This observation is similar to the results of Cotula et al. (2006); CLEP (2008) and Rünger (2006) who stressed that fee and other costs, the extent of corruption, and socio-cultural factors impacted women’s access to justice. In the majority of the litigation, access to justice is seriously constrained by these factors. Women openly claim that:

“Even if they know the procedures and are able and eager to institute the case but the fees charged by the village land council and ward tribunal associated with procedures hampered them from continuing with the case. The fees are very high. They charge according to the distance where the land parcels are located as most claims are from land parcels encroachment, land grabbing and boundary conflicts” (BY Lupalilo).

“Women are not capable in terms of income thus cannot file a case against men whenever there is a dispute and also lack of fear and confidence among themselves due to customary laws attributed to the dilemma” (GK Bulongwa).

A woman, LS from Bulongwa, added that customary laws barred them from filing the case against their parents or brothers: “We have the knowledge on the existence of the land council at our village but we do not lodge complaints there rather remain quiet because it is against our custom to file a case against your family members or relatives.” The situation is worse for married women who are afraid of a marital breakup if they proceed with the case.
In addition, threats accompanied by brutal practices from family members (particularly brothers and uncles) scare women from ascertaining their rights. These and other practices are revealed as women’s subordination as to their claims to land rights. As Cotula et al. (2006) report in Holaria’s case from Bukoba-Tanzania, the woman stood up and claimed her right by appealing to the high court after the lower courts ruled in favour of clan members and the court declared it unconstitutional to bar women from inheriting clan land. This shows that gaining access to fairness might facilitate securing women’s property rights. A similar achievement was found in the Bulongwa village as one woman identified as Naomi (not her original name) tried to pursue the family rights to a higher body seeking legal redress on the family land as explained in Box 8.3.

**Box 8.3 An example of a woman’s fight for rights**

She is an old woman aged 59 years from Bulongwa village identified as Naomi (not her real name). She stands on behalf of the family for the rights on land claimed to be left by their forefathers. It was alleged that between 2010/2011, a private institution management was illegally allocated land by the church, of which a large part of the land belonged to Naomi's family and the transfer was without their consent, leaving them with a very small portion of land for farming activities. Naomi reported the dispute to the VLC and won the case. However, the institution, dissatisfied with the VLC decision appealed to the ward tribunal (WT). The latter decided in favour of the appellant on the ground that the land did not belong to their father because no permanent structure was put in it. She appealed the WT decision to Njombe District and Housing Tribunal for further steps and reconsideration. The tribunal is more than 150km from her village which involves costs in any undertakings. The case was pending by then. This is one good example of women’s struggle for their rights; when they have knowledge and capacity, they act immediately.

8.10 The individualisation of customary land rights

Tanzania has been experiencing many interventions in the land sector through land titling (certification) and registration programmes in recent years. The purpose of the state interventions through rural land certification is to empower individuals. Through the first tract implementations of the land laws (LA and VLA 1999), various programmes have been introduced to formalise property rights among landholders. The major project implemented to date is PBFP (Mkurabita). The programme was found to be a catalyst for the individualisation of customary rights to land in rural areas with the aim of issuing CCROs. The programme was implemented in 2009/10 in the Makete, with the Mwakauta village among the first three villages where the project was launched and completed in 2012.

The land certification and land parcel surveying in the Mwakauta village had convincing results after its completion. In terms of land registration, villagers have shown an
interest in registering their land in diverse forms, such as joint occupation or single (unmarried, widows) and very few in their husband’s name as pointed out in Table 8.14. The certificate obtained from the registration of land ensures that the customary possession of land is made accessible as proof of property rights enjoyed by the landholder and recognition from competing interests of the family members. By December 2012, about 811 parcels (physically separated holdings, of which more than one may belong to the same landholder) in the Mwakauta village were surveyed and 313 residents applied for certificates of customary rights to their small scattered land parcels. Although the programme had not been implemented in other villages, villagers including women have shown interests in registering their land. The latter indicates those women’s property rights are progressing towards the more formal (and statutory but private rights) property rights system.

Table 8.14: Type of registered land occupation in respondents’ studied villages

<table>
<thead>
<tr>
<th>S/N</th>
<th>Village</th>
<th>Joint occupation</th>
<th>Single Women</th>
<th>Single Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bulongwa</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>2</td>
<td>Lupalilo</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>Mwakauta</td>
<td>237</td>
<td>19</td>
<td>57</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>240</td>
<td>22</td>
<td>63</td>
</tr>
</tbody>
</table>

Table 8.14 demonstrates that a total of 325 villagers applied for certificates of customary rights of occupancy from the three villages. Seventy-four percent (240 villagers out of 325) registered their land in joint occupiers, 7% (22) are in the names of women while 19% (63) are in male names as household heads. These results are encouraging as they show changes in the tradition, as female names now appear on certificates rather than just male names. It is a positive change toward greater economic autonomy for women. However, evidence from India shows that a common problem and complaint from women on joint titles is that even if the land titles are jointly held, they remain bound to husband even in the case of marital break ups (Mearns 1999). Despite this barrier, strengthening women’s access to land will help them increase their bargaining power and ability to challenge male dominance within the household and within the village community at large as suggested by many scholars (Agarwal 2003, 1994; Deere and Leone 2001).

The land titling and registration programmes have been praised as useful tools for curbing the escalated land disputes, as boundaries have been demarcated and certificates issued to the landholders. The major problem as to the implementation of the project, particularly in scarce land areas like the Makete district, is the nature of the land parcels, which are subject to collateral. Many land parcels are very small in size, scattered within the particular villages and used to grow seasonal crops such as
wheat, maize and others. Cash crops are rarely found in many villages. For example, in the Mwakauta village, there are no particular cash crops apart from timber trees scattered in small patches and men control these types of parcels. The projects are likely to yield unexpected results for using land as collateral for banks and other financial institutions. A study conducted in the Mbozi, Bariadi and Kisarawe districts shows that most financial institutions are reluctant to accept the customary certificates of rights of occupancy as compared to granted rights of occupancy due to unsustainable land parcels as a result of low security on type of crops and unsound business (Fairley 2013).

Land titling programmes when implemented are also expected to offer security of tenure through increasing land access for women at the village level, though they can also be problematic for women. Research data in Burkina Faso for example, recommends that women’s personal entitlements are considerably at risk once government schemes openly attempt to involve women as team members in land-use programmes (Kevane and Gray 1999:4). Titling offers tenure security and inducements to invest in and transfer land. It is possible that titling raises transactions costs in the distribution of land and generates another source of conflict (Yngstrom 2002; Cotula et al. 2006). This could have an adverse impact on poorer women who no longer would be able to compete in buying land using the title due to the costs involved, cumbersome procedures, time etc. (Cotula et al. 2006). This arrangement would still bar women from accessing and owning land although the property rights are moving from informal toward formal arrangements (granting customary certificates of titles on their names).

8.11 Customary laws and the influence of religion and intermarriages
Since in patrilineal societies land belongs to the families under males as head of households or clans, the decisions as to rights to hold and make use of assets by women often depends on customary laws. These laws vary from clan to clan and family to family. The trend shows that in the past two decades, customary laws were very strong as compared to recent years. Women in the past were seen as having weak character and a low class position. The study found that power relations have changed within families and outside families at large. Noticeable developments are taking place in the way women are treated in some families. Women have been involved in decision-making bodies at the village and family levels (see section 8.8).

Patriarchy is noted to be high in villages, albeit marginally declining. Men are resistant to change in some clans and families, causing customary laws to continue in determining property rights, which are discriminatory in nature. The majority of rural men feel that women should not be granted full rights to land, including the sale and transfer to heirs. Indeed, a significant number of women and men interviewed
including leaders (VEOs and WEOs) in the studied villages admit that for the past 15-20 years, the situation has been changing in the villages due to an increase in knowledge of women’s rights that has helped in shaping individuals’ viewpoints concerning the value of women in their families and community at large.

Religion and intermarriages with different sets of cultural, religious and social-economic backgrounds also contribute, albeit little, to changes in the tradition and customs of villagers in the access to land and women’s land rights in general. Religion and religious institutions act as change agents (by providing advice) in assisting a wide communal transformation associated with women’s capabilities to possess and take over land within the limits of the existing religious and cultural structure (Killian 2011:6; Rev. Mwandila 2012). Intermarriages account for 30% of the total population in the Makete district. It has been noted in the Bulongwa, Lupalilo and Mwakauta villages that there are a few formal employment opportunities. Formal employment is mainly from government and private school teachers, a few nurses and individuals working in orphanages. These individuals are either from another region or district while marrying the Kinga or different tribe other than Kinga.

8.12 Women’s fears and lack of confidence in achieving property rights
The above factors present barriers towards achieving rights to land including access by women in the Makete district. Women lack political voice in village meetings despite being active whenever a special call is made as compared to men. Women’s participation amounts to 60-70 percent if not held during the farming season. Women are always shunned from posing questions, causing discussions to be one-sided. The problem is not only rooted in customs and traditions but is also greatly caused by a lack of confidence and fear among the women themselves. The situation is worse for married women. Being vocal in the meetings can culminate into being expelled from the marital home and might eventually lead to a marital breakup.

This is a kind of “push” tool to prevent women from taking part in various discussions, including those matters relating to property rights and other resources, even when they have knowledge on them. Influence at the village level related to households can also be sabotaged, where women possessing command are perceived as shifting control from men, “wives leading husbands” (Kane et al. 2005:14). In many village assembly meetings, the priority is mainly on political issues while property rights education receives little attention from most councils.

The lack of confidence and fear among women has detrimental effects on women fighting for their rights to land by litigating. Despite the fact that the laws support them, women do not opt for litigation to the VLC or other legal institutions to seek redress from land dispossession, encroachment, grabbing and the like. Consequently,
women remain silent without filing cases in many situations. A lack of funds to litigate also contributes to the extent of the problem.

8.13 The perceptions of women and leaders as to customary laws and property rights

8.13.1 Women's views on the customary mode of accessing land

When the respondents were asked their opinions on the customary mode of accessing land with respect to women based on the scale of “very good”, “good”, “satisfactory”, “bad” and “very bad”, their response were as follows: 21% (23) and 14% (16) responded in favour of customary mode as “very good” and “good” respectively. Meanwhile, 24% (27) responded satisfactory and 31% (34) “bad” and for 10% (11) it was a “very bad” way of getting land. One percent did not answer the question. When asked as to the current trend in women’s access to land in general, 33% (37) were of the opinion that the situation has improved, whereas 38% (43) respondents indicated an unimproved situation and 29% (32) did not indicate a trend.

![Figure 8.8: Women's views on the mode of assessing land under customary laws](image-url)

8.13.2 Women’s views on customary laws and discriminatory practices

In a bid to find further explanations for the treatment of women’s property rights under the customary land tenure system, a sample of 112 women were asked to state whether they agreed or disagreed that customary laws discriminate them from accessing land and other rights.
Table 8.15: Women’s views on customary laws and discrimination

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Frequency</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>53</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>Somehow</td>
<td>17</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Disagree</td>
<td>20</td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Not answered</td>
<td>22</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>112</td>
<td></td>
<td>100</td>
</tr>
</tbody>
</table>

Forty-seven percent (53) of the women agreed that customary laws are discriminatory, 18 % (20) disagreed, and 15 % (17) said that they are somehow discriminatory while 20 % (22) absolutely disputed the statement as shown in Table 8.15 and Figure 8.7. The scale used was; agree, disagree, somehow and not answered.

8.13.3 Local leaders’ perceptions of women’s property rights
The study included the perceptions of local leaders as to of women’s property rights. Village chairpersons, ward and village executive officers, VLCs and ward tribunal chairpersons on different occasions were asked to name problems faced by women in fighting (threatening factors) for property rights under customary land tenure arrangements. The leaders’ responses were more or less the same as those identified
by the women in the studied villages and those barriers presented in preceding chapters. They can be summarised as follows:
- rigid customs and traditions (high patriarchal practices)
- lack of confidence and fear among women
- low representation of women in VCs
- men’s resistance to behavioural changes
- male dominance in power relations, land control and decision-making
- high illiteracy among villagers, both women and men
- marital status – fears among women of marital breakups
- lack of sufficient income
- land grabbing by relatives and other villagers or non-villagers
- lack of women’s groups and associations and
- lack of regular seminars on property rights – laws, bylaws, legal clinics etc.

8.14 The presence of NGOs and the struggle for women’s property rights

The great efforts made for women’s property rights in the Makete district are hampered by a lack of NGOs and community-based organisations (CBOs). The Makete district, as a focal point of HIV/AIDS in the region and countrywide, was presumed to have had many NGOs working in various fields. On the contrary, the study found that there are only two such organisations and a church-based facility through the Tuwalee Pamoja Project dealing with individuals affected by HIV/AIDS (widows and orphans) in the Makete district. The two organisations are MASUPHA (the Makete Support People with HIV/AIDS) with a small coverage in the district and SUMASESU (Support the Makete through Self-Support) with wider coverage in their activities. These community organisations are located in the Iwawa ward (the Makete town) and Tandala, a small trading centre. The two organisations move around the villages to sensitize people about the disease in collaboration with government hospitals and their donors. They also sensitize villagers to several other aspects including food security, and environmental conservation, healthy (HIV/AIDS) and entrepreneurship.

These NGOs do not offer legal aid services on property rights since is not part of their strategic plan or in the donors’ interests. SUMASESU has at least shown an interest in delivering property inheritance rights education for widows to a lesser degree outside their strategic plan. The Makete district residents generally lack many important services offered by civil society organisations, especially legal education on property rights due to their absence. Country-wide, there are many civil society organisations with diverse forms working in different fields in almost every region and district in Tanzania. A study conducted in 2010 as to the existence of paralegal centres recognised 49 centres working in Tanzania with a total of 1,770 skilled legal workers (Behrman et al. 2013) but a lot of these are concentrated in urban areas. None of these operate in the Makete district except for the church-based institutions with their specific focus.
Conclusions and recommendations

A woman’s power to possess, bequeath and manage land and property is absolutely vital to her ability to access resources and participate in the economy (World Bank & TrustLaw-connect 2013).

This chapter presents the conclusions of this study, providing recommendations based on the reflections of the most critical issues discussed in this research. Legal and policy implications are also raised. This study also calls for more research within the field of women’s property rights and improving the institutional frameworks through monitoring the effects of the implementation of Village Land Act of 1999 and other laws.

9.1 The contributions made by this study
This study has made contributions on two main fronts, namely from academic and policy perspectives. From the academic viewpoint, this study underscores an increasing concern over the body of evidence as to women’s property rights under customary property rights systems in patrilineal societies in rural areas in Tanzania with the findings drawn from the Makete district. The study focuses on the way women access and use different types of land for various activities, their contributions in decision making at the family/clan and village levels, claims to litigation and property rights enforcement. This research consequently provides a further understanding of how women access land through customary laws with varying bundles of property rights in diverse forms.

From a policy perspective, this study aims at investigating the existing legal system based on specific provisions protecting women’s property rights, the enforcement mechanisms existing at various levels, and the changes brought about by land reform through the execution of the laws, specifically the Land Acts of 1999, as well as alternative strategies for increasing women’s access to land and other attached rights. These research findings contribute to the knowledge and provide feedback to policy makers, land administrators and community members as to the repercussion of women losing land in their geographical areas as consequences of poorly structured laws. The applicability of customary laws and norms in distributing and allocating land is also explained.
9.2 Conclusions
This study explores women’s access to land in the Bulongwa, Lupalilo and Mwakauta villages in the Makete district in Tanzania. The study aims at identifying the ways women access land and rights to land, including participation in decision-making at the family level, and the enforcement of customary laws as to the allocation of land to family members under customary land tenure in patrilineal societies. The allocation of land through customary laws in patrilineal societies is biased against women. However, the trend has been changing in customary laws over the past years, albeit minutely, particularly concerning inheritance, the involvement of women in decision-making and control of resources. Needless to say, further and more transformations are needed. Women’s property rights are moving from traditional arrangements to formal (statutory) rights as various formalisations and registration programmes are in place. Evidence from the study shows women have an interest and the ability to have their land formalised and registered in their names but are handicapped by the existing patriarchy.

The land laws explicitly recognise the rights of women in accessing property rights with well-established land institutions at all levels in the country. Irrespective of the laws, intermarriage and religion play an insignificant role in changing the customary laws among the Wakinga ethnic group. Nevertheless, with transformations in education and developments within the next two decades, it is anticipated that changes will be possible. From the empirical findings, the relationship between women’s access to land and HIV/AIDS status among communities can be detected though it is mentioned to be one of the factors accelerating the problem of women’s land scarcity in rural areas. Given that, the research focus was not on investigating HIV/AIDS status, but it arose during the enquiry. This can be another avenue for further research.

Other aspects addressed in the research are examined under the following subheadings: These conclusions are not a complete rendition of the entire contents of the study. They rather aim to single out the most significant aspects. The study yielded the expected results. The choice of the Makete district gave rise to the results as highlighted below.

9.2.1 The dominance of customary laws and access to property rights
Customary practices are changing and adapting to the new economic and social situations in the country. Some gradual changes are noted in different families and clans in adapting customary laws with regard to land allocation between women and men. Nonetheless, land remains primarily in men’s power and dominance in many patrilineal societies in Tanzania. There is a persistent use of customary laws when accessing various property rights in the countryside and the laws vary across the regions, districts and down to the lowest level (villages, clans/families or specific ethnic
group). This trend indicates that land allocation at the family level usually is that customary rules prevail as sons/men are getting larger shares compared to daughters/women. Other criteria such as married, unmarried, widow and seniority (eldest and youngest) are also used. There are many restrictions on use of land as a bundle of rights for women compared to men.

9.2.2 Impact of gender differences in accessing property rights
Gender differences in resource distribution and management still persist in many communities in Tanzania. Gender differences in property rights as to land impede sustainable management and investment in land such as commercial timber tree plantations, while uncontrolled transfers in the forms of gifts or inheritances can improve productivity of timber and empower women economically. Likewise, equality in intra-household land distribution is crucial for women to have equity in accessing land through their forefathers, husbands or sons; their possession depends on their relationships with these men. Similarly, land occupation gives women greater bargaining power and a strong fall-back position within the family and outside the community if well-accessed.

9.2.3 Participation in decision-making
Female-headed households are increasing in Tanzania. Given the high number of female-headed households in the countryside and in metropolitan settlements, it is presumed that women are directly or indirectly involved in decision-making at various levels. Generally, the reality is the opposite as a limited number of women are involved in decision-making processes in the different institutions both at the household and any higher institutional levels (village, ward or district council) despite being regarded as one of these institutions being the tools for economic and political empowerment. Overall, married females have less power over resources than males in many clans and families. Married women do not take part in dispute resolutions related to land allocation as compared to single or unmarried women; they rather are involved on use of land accompanied by conditions. Women’s representation in decision-making bodies is improving but at a slower pace as compared to men.

9.2.4 Threatening factors when accessing property rights
Customary laws regarding land and women are not as weak as many believe. Equity considerations in accessing property rights were mostly deserted among rural communities in Tanzania. In many circumstances, there are some inequitable challenges persisting in land occupation accompanied by threatening factors at the family and clan or village levels. These factors as highlighted are poverty, defence of interests or refusals by in-laws (with respect to married women and widows), the superiority of men (inheritance favours men), traditional beliefs and customs, and land grabbing from women. Other factors are prohibitions as to dispositions (sales, leases,
and bequests), the unavailability of land in parental homes, lack of education, boundary encroachment and bureaucracy and corruption. The threatening factors impede women from freely accessing land and other rights.

9.2.5 The effects of the dual property rights regime
The property rights to use and management over land are major factors necessary as a means of living (sources of income, employment, occupation and services) and the protection of many residents in the countryside. There has constantly been a disparity between women and men in attaining such property rights. This situation is exacerbated by the presence of a dual property rights regime, the result of the co-existence of dissimilar structures (traditional, formal and religious law) in the management of such rights. Tanzania has a pluralistic property rights regime and legal institutions that frequently are ingrained in diverse bases of authority, including long-established rules, domestic but also legally-recognised structures of the state, global laws, declarations, orders and religious permissible instructions.

The current property rights regime is a combination of both customary and statutory laws, and in some cases, religious law (such as Islamic) applies. The country has a nightmarish property rights structure. Two laws are operational in land rights (LA and VLA 1999). These laws do not operate in a traditional manner as traditional tenure no longer exists in Tanzania. Customary tenure, which is inferior to granted rights, was codified and customary rights are recognised in the Village Land Act 1999 while titles are issued in customary rural land. These systems overlap, and in some incidences, work in conflict with each other. Thus, coordinating these systems to guarantee parity for all segments of the population is a challenge to the current legal system in Tanzania.

Tanzania’s property rights regime meanwhile has been hampered by the lack of any sufficiently rigorous analytical framework and enforcement. Property rights, conceptualized as a bundle of rights, a very useful tool, have rarely been used consistently. Indeed, the complex interactions between local practice, customary law, statutory law, and poor and/or lack of enforcement methods, raise the probability of uncertainty in policy and practice, which might intimidate active realisation of women’s property rights.

Experience shows that it has been difficult from both technical and political perspectives to enforce property rights. Courts have tended to rule in favour of the granted right of occupancy whenever the two systems are in conflict. However, the requirements of equity and justice are that the laws should be harmonised and free from any uncertainty, and should be gender neutral to provide equal access to all citizens (women and men). Independent property rights that enable women to decide
on the use of land and keep any proceeds from such uses are difficult for women to assert in Tanzania. This despite women’s important role in agriculture, and regardless of the guarantees and protection of women’s rights to land access, control and other rights in the Constitution and other legislation such as the Land Act and Village Land Act of 1999.

9.2.6 Land and property inheritance problems under customary tenure

Tanzanian women under customary tenure arrangements experience difficulties in accessing land. The problems are deeply embedded in the succession of land by men. This bias is rooted in both custom and culture. Women tend to be disadvantaged through the process of allocating use rights to family or clan land and sometimes general land. The family and clan leaders, vested with the power of administering land generally, apply the custom that if a woman marries, any land allocated to her by her parents would be used only for farming activities.

On top of that, a woman is not allowed to be given rights on land with timber trees. Daughters have been allowed to inherit land if not wedded, and with some stringent conditions imposed by fathers, brothers or uncles. In some instances, the given land can be taken or grabbed by relatives without prior notice and redistributed to other male family members. To add salt to the wound, the women’s self-acquired land prior to marriage can be confiscated by her relatives upon marriage.

The Makete district and other patrilineal traditional systems in the country obstruct women from possession of land. This right to land issue is characterised by a high level of gender inequality. More often than not, the main argument against women possessing land is the attitudes that have been instilled, that land should be granted to men because they are the leaders of households and are also perceived to be in charge of the provisions of their families. This disregards the fact that in the Makete district and many other rural areas of Tanzania, women are now largely responsible for income generation from farm activities. Rural women comprise the majority of the population in Tanzania, but their rights of access to land and other resources are well-constrained by men’s power over resources. These and other aspects, such as polygamy, ritual practices and HIV/AIDS-related-problems, put women in a lower class position as weaker, inferior and non-vocal individuals.

9.2.7 Impact of education on women’s property rights

The relatively weak position of women in the country has been severely affected by the colonial policies on education. During colonialism, boys and men were highly favoured in receiving educational opportunities. Lack of such opportunities, coupled with a political system established on educational identifications, contributed a large extent to reproducing gender inequalities. Women thus played only marginal roles in
decision-making processes at family and clan levels, having low representation in VCs and other institutions.

The low level of women’s involvement in executive institutions (where rights and other aspects are recognized) shows that in general, women in Tanzania are far from realising their importance in participating in decision-making bodies. Consequently, they have less influence on various decisions, laws and policies affecting them and their economy directly, particularly property rights issues. Moreover, a lack of confidence and the fear among women, a lack of willingness and commitments by male-headed households and village leaders as to transforming gender patterns and power that have excluded women from various investments and other opportunities as brought by changes in the country economy, accelerate the magnitude of the problem.

9.2.8 Inadequate land information and legal services

Despite the fact that women’s access to property rights has shown improvement in the past two decades in the district and other areas in the country, there are still barriers for women. An adequate provision of land information and legal services are among these. To-date, women have had less access to information than men given the literacy levels in the country. Information on women’s rights to land, government policies and laws affecting women, does not reach a sufficient number of women. The lack of access to legal services (clinic, seminars and training) is listed among the problems facing women in rural and urban areas. A lack of legal capacity contributes to the low-level position of women when fighting for their property rights and other resources. A response to this problem centres on legal empowerment to consolidate the degree by which individuals can be secured in their efforts to benefit from and get access to land.

Legal capacity is affected by unwritten laws, failures of government institutions, deficiencies in legal knowledge and inadequate community-based legal organisations. Many legal aid organisations are based in urban centres and many are found in larger cities such as Dar es Salaam, Arusha, Mbeya, Mwanza and Dodoma. The community outreach of these legal services is then geographically very limited. Few community organisations work in remote areas. For example, there were only two NGOs focusing on HIV/AIDS sensitisation programmes in the Makete district, a situation which further impedes women’s access to land-related information and legal services.

9.2.9 Discriminatory and conflicting of laws

Many laws have been identified as discriminatory to women concerning equity in accessing land and property, and they are at times even inconsistent with each other. The provisions in the laws are inconsistent with the equity provisions in the Constitution and the Land Acts of 1999, and the Judicature and Application of Law Act 1961. These inconsistent laws include the Marriage Act of 1971 and the Local
Customary (Declaration) Order No. 436 of 1963. Some provisions and rules are very discriminatory to married women, widows and daughters, particularly as to inheriting property.

Although the government recognises these inequities, they are still commonly practiced in the country, limiting women from fully enjoying their rights while preventing them from inheriting and owning land. Indeed, other laws also prohibit such discrimination including the Judicature and Application of Law Act 1961 in Section 11(4) and 20(2) VLA, both of which are firmly against discriminatory practices in accessing land and related occupation for women. These legal provisions protect women against discrimination occurring due to the norms and customs impeding their lawful access to ownership, occupation or use of land.

9.2.10 Privatising access to customary land

Customary land rights in Tanzania have been codified through the Village Land Act of 1999, by which in every respect they have the same status as granted rights of occupancy. Neither customary land rights nor statutory land rights assume a superior position over the other. However, customary rights are surprisingly inferior as against the granted ones. There is increasing evidence that access rights defined by customary rules are becoming more private (individualised property rights) and restrictive than before, confined to clan or family hands as the economy becomes more commercialised, land scarcer and dependence on subsistence agriculture decreasing.

In the absence of a clear and transparent land administration in Tanzania, it is difficult for most individuals, particularly poor and uneducated women, to understand the evolving rules of access to land and the available protections of existing customary land rights.

9.2.11 The effects of international treaties

Land occupation, possession, access and use and control are human rights as provided by the Universal Declaration of Human Rights 1948 and other international instruments such as CEDAW, ICCPR, ACHR and Maputo Protocol, and rights women should be able to access at any time. In other words, property rights are human rights to which women and men should have equal access. A detailed discussion of the commitment of Tanzania to these international laws and conventions is found in chapter 5. Tanzania is actually among the countries in Africa which have been spearheaded signing these instruments and others. Despite the fact that Tanzania has been very responsive in ratifying these treaties and conventions, domestic incorporation remains a major challenge, even though it is widely accepted that ratification without domestic incorporation is not sufficient for the interests of citizens and the country in general. By virtue of being a signatory to several human rights
treaties and protocols, the government has an obvious responsibility to respect, defend and execute rights of all her citizens. The implementation of women’s property rights has been disappointing. The failure of the country to act and enforce laws and policies to guarantee that women have privileges to inherit, access, own and control land, housing and other property infringes the agreement on Women’s Rights Protocol (see Articles 2, 6, 7 and 21). Such failure also breaches the ACHR articles (3, 18(h) and 19 on equality and non-discrimination provisions) and the CEDAW recommendations (see articles 2 and 16(h) on bias practices and spouse’s entitlements to access property).

9.3 Reflections and general recommendations

9.3.1 Literacy and awareness campaigns

Formal education is vital for the prospects and empowerment of rural women. Advances in women’s schooling improve their bargaining power, and the consequences of educating women are more deeply felt in society than the returns of educating men (Morrison et al. 2007). Education is a significant feature in elevating rural women; it can reduce ignorance as to backwards and outdated customs/traditions, increasing women’s decision-making power within households. Such will also strengthen women’s aptitude, through assertions and information, to declare their rights (FAO, IFAD & ILO 2010), including the right to access land and other rights at the family level.

Despite formal education being of a primary concern for the government, awareness education is imperative and much needed for all societal groups. Awareness education is vital in valuing the significance women have with respect to access to land. Awareness raising programmes can be one of the measures to enlighten communities, women inclusive, on land laws and policies and their rights at the local; district, ward, village and hamlet levels. Such programmes should be conducted using radio airtime to air legal literacy programmes in Radio Kitulo and Sumasesu, usage of localised special legal clinics, regular seminars and workshops to village authorities, VLC meetings, engagements with ward tribunal members and councillors. Further, the central government should take the following actions:

- Incorporate property rights education in primary and secondary school curricula, stressing the importance of women’s property rights to guarantee that all citizens are aware of their rights to land.
- Strengthen VLCs/ward tribunals to have gender balanced representation.
- Provide guidelines to Local Government Authorities to enact land-related by-laws that will address issues related to gender biasness in access to land.

9.3.2 Women’s limited access to income generating crops

Timber is the major cash crop for the Makete economy as noted in previous chapters; others are wheat and Irish potatoes, albeit in small quantities with pyrethrum slightly
reviving. Cash crops there, such as timber trees, are controlled by men. Women are not given the chance to inherit, lease or sell tree plantations. In some instances, where single women acquire land with timber trees through their own efforts, male family members claim rights to possess the particular land parcel.

In Ghana, for example, trees are planted by the family or community and women are given rights to the resources in form of a prize to reinforce their private property rights (Quisumbing et al. 1999). This is in stark contrast to the Makete communities (family and clans), where tree plantations have been used as a tool for deepening discrimination against women. A similar situation can be seen in other patrilineal societies, in coffee growing areas such as the Kilimanjaro region, where women are only allowed to own banana land parcels, for instance, but restricted as to to coffee farms though they work on them. To address such shortcomings, it is recommended that:

- Women should not only be given the right to access land for farming but also given the right to lease or sell land planted with timber trees. This will increase their bargaining power through accruing income from the sale of timber products and wood. Moreover, it will improve the welfare of women and the family as a whole while lessening their dependence on men, a subsequent economic empowerment.

9.3.3 Rituals and polygamy in relation to property rights

Rites such as widow inheritance and polygamy are among the customs and traditions practiced in Tanzania, and their persistence has fatal consequences for women. These practices are linked to more spread of HIV/AIDS in the countryside. Although the data shows a decrease in the rate of the HIV/AIDS infection in the country, the Makete district still has a high rate.

Polygamy is a hidden contributing factor to the spread of HIV/AIDS in the Makete district and in other parts of Tanzania. There are many informal and polygamous marriages in the Makete villages and elsewhere which result in women’s vulnerability. For example, there are about 120 widow-headed households in comparison to 168 female-headed households in the Bulongwa village in the Makete district. This has an eventual impact on women’s property rights.

Likewise, polygamy fuels land disputes among family members and adds to an escalated friction as family members struggle over inadequate financial resources. Polygamy is a common phenomenon in the Makete district, where men can have 2-3 wives with many mistresses and children. Families comprising many wives and children are prone and exposed to social conflict as to the use and distribution of land resources. Girls are forced to marry to relieve the family from the huge burden of land distribution. This malpractice contributes to women’s subordination, as forced marriage may result in the rise of HIV infection. Women who have married traditionally
are in the detrimental position of losing access to land and other resources when their husbands pass away. Both the laws governing land access and marriage make it difficult for women to appeal for their property rights under polygamous practices.

It is therefore recommended that,

- The widow legacy should absolutely be eradicated through literacy and awareness campaigns by both governmental and non-governmental organisations in order to curb risky health and mental behaviour and problems.
- The international community should pressure the government to enforce the ratified treaties on the property rights of women in polygamy (CEDAW and UNHRC).

9.3.4 Land demand and the population increase

Land is not collectively owned in Tanzania and the State is the sole legitimate owner of property rights. Land is not a common property resource but a state resource. However, within the prevailing conditions, some arrangement can be made for the societies to have common property resources and rights within particular villages. Common property resources of various types were available prior to the 1970s, a period with a low population and abundant land, with scattered forest parcels and grazing land, which were organised and managed by the VCs. The rapid population growth between the 1970s and 1990s led to more demand for settlements, livestock farming and agriculture land. Disappearance of common property resources (tragedy of the common) due to the mentioned factors has resulted in uncontrolled use of resources.

Women suffer most from the consequences of the tragedy of commons, as small forest areas that acted as sources of energy in villages have vanished. The Madehani forest reserve in the Bulongwa ward and Kitulo game reserve are among the few remaining forest areas. Most are collecting firewood and graze their livestock in scattered small land parcels; applying zero grazing. There are consequently, frequent conflicts between villages on resource use, with several cases of village boundary disputes, encroachment and land grabbing within the district. Resource (land) use conflicts have been seen in the study to have negative impacts on women as they work against women’s rights to access land and other resources. Conflict within the family/clan land is further intensified due to a shortage of arable land; men are favoured while women are side-lined in land distribution. For these reasons, the following suggestions are given:

- Reforestation campaigns should be the major solution to curbing the proliferation of resource depletion, particularly forests; village by-laws should be enacted to ensure the value of protecting common property resources;
- Land use planning should be introduced to villages in order to minimise land conflicts due to boundary disputes, encroachments and land grabbing; and
- Legal enforcement of property rights should be enhanced at the village level.
9.3.5 Women’s low participation and representation

In order to promote participatory land governance and social equity, the government has instituted a deliberate policy whereby land administration functions and the management of land-based resources are devolved to individuals and organisations close to local communities (village and district councils). This is intended to empower women to administer land and other resources as their own property.

The population of women is higher proportionally in the Makete district with the ratio of women to men at 12:10. Women’s contributions to economy are substantial compared to men. Nonetheless, political, social and economic decisions that have an effect on women and their families are made without their involvement. Since national independence, women’s participation has been marginal, thus, it is difficult for them to influence decisions as to issues affecting women directly, including access to property rights. Therefore;

- More efforts and strategies by governmental and non-governmental organisations should be aimed towards women’s civic participation in decision-making bodies as a way of empowering them, starting at the village level.
- Self-confidence for women should be imparted through legal education; by using the laws. This will be instrumental in lessening this gap in the rural parts of the Makete district and in the country as a whole.

9.3.6 Societal attitude and behavioural change

Community outlooks on habits and behaviour are challenging for women in the Makete district in order to achieve free access to entitlements. Men are hesitant to allow changes due to customs and traditions. The predominance of this phenomenon is due to the male dominance in most decision-making bodies, the situation prevails due to cultural practices and educational backgrounds in the villages.

While much progress has been made in education through various programmes since independence in 1961, progress has not been achieved in most situations. There is a low level of women’s participation in government offices, attributable to a low level of education, lack of confidence and fear in women, as well as poor support and trust from men. Many women in the decision-making bodies are also either widows or elders above 50 years old.

The results of this research therefore lead to the following recommendations for an effective transformation in community mindsets and conduct to include:

- In lower level schools, there should be topics in curricula to deal with community behaviour and change processes to mitigate the problem beginning at childhood.
- Use of theatres and dramas with representations of women and men (adults and youths), posters, cartoons and leaflets to convey accurate and convincing information on gender equality. An emphasis is also needed on the significance of individual
behavioural change; such as having good relations, equal property rights distribution, creating confidence and trust between individuals, and the impact of archaic rules and norms on societies.

9.3.7 Legal and economic empowerment

Women’s empowerment in legal and economic aspects is significant and becomes more visible when enhanced, which would lead to a reduction of women’s absolute deprivation, inevitably and unconsciously changing the role of men in a particular community. Empowerment through legal capacity is lacking in the Makete district.

Access to legal empowerment is impeded by the limited number of civil society organisations in most villages; this situation gives rise to a negative impact on women’s capacity to claim their various entitlements. There is a limited number of women’s economic groups, such as individuals living with HIV/AIDS (e.g. milking groups in Iwawa ward). Thus, a large proportion of women are left out in society without support, as the main focus of most civil society stakeholders (SUMASESU, MASUPHA, UNICEF and others) is on health issues related to HIV/AIDS and food security and not on economic empowerment.

Women’s groups with commonality are very important when they perform well. A good example can be drawn from the current situation where women organise assets between themselves and sometimes with support from both governmental and non-governmental organisations (Agarwal 2003). The study therefore recommends that there should be sustainable plans, strategies and approaches adopted and implemented by the councils countrywide to speed up women’s empowerment to address the above problems. Accordingly, diverse approaches and strategies can be used to achieve the desired results to women:

- The most important strategy is to promote the formation of localised legal community organisations (CBOs) in villages and more women’s economic groups;
- The government should encourage and financially support the formation of collective schemes with gender-balanced membership to reduce power imbalances among communities in Tanzania;
- The existing community credit schemes, such as SILC, VICOBA, should be reinforced and extended in every village as they play a significant role toward group networking; and
- Women farmer’s group formations, such as the Lupalilo pyrethrum group, are to be encouraged and strengthened; such groups are instrumental in the creation of women’s economic base throughout the country.

9.3.8 The role of local organisations in strengthening women’s property rights: CBOs and NGOs

Local organisations (NGOs or CBOs) at the grassroots levels, such as street/subward/ward/village, district and other higher levels, have a key function in dealing with women’s problems in particular areas. Such organisations have detailed knowledge of
the local situation. They then might be able to assist women to access diverse rights through legal services as a result of training, talks, education awareness, seminars, and workshops in collaboration with the government. The task performed by local organisations as support, observing public policy and structuring societies’ capacities to defending women’s access to land (Paradza 2011) is crucial. These local organizations actually act as checks and balances, guaranteeing the dissemination of correct information as to authorities and the operation of National Land Policy and Land Acts.

Research data suggest that there are significant disparities in the legal support coverage throughout Tanzania, particularly in rural areas as many legal service providers are concentrated in urban areas. The Makete district lacks such local organisations, but lately their numbers are slowly growing. Two exist in well-established areas though with less of a focus on property rights issues. Similarly, the occurrence of most land disputes countrywide is rooted in a lack of legal capacity to handle voluminous disputes by the government and local land administration institutions. Community-based legal aid services would greatly ease some of these problems in these systems.

Furthermore, the availability of local gender-progressive organisations would be of significance in empowering women in diverse forms. Through social movements, they have supported women in gaining access to land and other aspects in many countries (such as India, Uganda, and Kenya). They can as well underpin women’s situations in view of intra-family clashes over women’s land assertions through income generating activities and communal aid groups and programmes that might lessen women’s reliance on the man’s family (Agarwal 1994).

In Tanzania for example, the Pastoral Women’s Council (PWC); a local organisation found in Loliondo (Arusha region), presents a good example in the Maasai areas. The PWC enabled women’s empowerment through the creation of women’s action groups; promoted women’s property rights and management skills by improving women’s knowledge and an insight on political affairs, statutes, and women’s privileges along with their tasks in development. This has been done during legal counselling, group work and dialogues by qualified invited visitors, gatherings and by persuading women to speak honestly. DONET (Dodoma Environmental Network) in the Dodoma and Singida regions has through legal training raised the understanding and sensitization on women’s land rights. Women from these regions have been awakened as to their entitlements in terms of land access and ownership.

Thus, it is recommended that,
• Local governments should initiate close co-operations with existing NGOs by persuading them to incorporate property rights issues in their strategic plans that are part of their wide range of activities;
• The council should explore the opportunities provided by other organisations outside the Makete district by engaging them to conduct legal clinics, workshops or seminars on property rights in order to contribute more effectively to problems affecting the land administration and management segments;
• The district should initiate or revive the airtime programmes on local radio stations. This would be a break-through for the council in spreading property rights education and other related matters; and
• Para-legal training and mass campaigns should be given a high push and priority since they are financially cheaper and have wider outreach.

9.3.9 The power of religion and intermarriages in enhancing property rights
Religion and intermarriage are socio-cultural aspects that are common phenomena and much-practiced in Tanzania. Intermarriage is very pronounced in towns and cities more than in rural areas, with the exception of a few individuals, particularly civil servants such as teachers, police and nurses. In addition, intermarriage exists in the Makete district albeit in a small proportion as compared to the total population. Such is a useful tool in slowing down the archaic customary laws on property rights distribution and entitlements. In the beginning, the study anticipated that intermarriage could have substantial impact on land occupation and associated rights, but it turned out that limited formal employment and emigration in the Makete district (recorded since its establishment in 1979) contributes to an insignificant number of intermarried couples. Thus, there is less influence on access to property rights than anticipated.

Religion is an essential feature in the Makete district, as in many communities in Tanzania. Religion is greatly propagated by several religious denominations, such as the Roman Catholic and Evangelical Lutheran Churches. These two denominations have participated considerably in the provision of various services; education, health and charity services inclusively. They have also taken part in matters affecting the communities and participated in support campaigns for susceptible and marginalised groups such as women, individuals living with HIV/AIDS and other risk groups. The church in the Makete district plays a key function in disseminating property rights information (inheritance rights as to genders, land accessibility, equal rights to both genders) to congregations.

These efforts have been instrumental in uplifting the involvement of women in decision-making, not only in church activities, but also in other avenues such as access to assets including land. Despite this, these denominations have been passive in some situations as a result of constitutional limitations that forbid them from openly
participating in such dealings. Though property rights access and sharing is on the increase between groups, the differences are still present. In many villages in the district where customary laws are present, commitment is lacking and village leaders are not cooperating for the causes; thus, the religious organisations have yet to cover the larger community.

Therefore, the study recommends that:

- Village leaders be committed to cooperating with religious denominations in enhancing property rights for the villagers; and
- The central government should combine forces with religious denominations in the war against discriminatory practices against women and the absolute eradication of outdated and biased customary norms and rules.

9.4 Recommendations as to legal and policy implications

Although the legal property rights instruments, such as the 1977 Constitution, the National Land Policy of 1995, and the Land Acts of 1999, explicitly protect women’s property rights, their application on the ground has proven to be the contrary. There is frequent divergence between law and practice. Full enforcement of the law’s provisions is still a dream for many women in the rural areas in Tanzania. In some situations, there are still provisions of other laws that are outdated and in conflict with each other. Weak land institutions and poor governance intensifies the problem.

9.4.1 Outdated laws

Certain laws have been in existence for about 50 years (for example, the Marriage Act, 1971 and the Local Customary Laws Declaration Order of 1963). Notwithstanding, some amendments have been made to these laws, but there are still shortcomings, especially in the ill-treatment of women on joint property registration, distribution of property upon divorce/separation for couples and non-cohabiting couples, death of a spouse, inheritance rights, and the leasing or buying land/property. Some provisions and rules in these laws contradict the legal provisions set out in Article 13(5) of the Constitution; Land Acts provisions, sections 3(2), 108 (i)(h), 113(3) and 161(3)(b) LA, and sections 3(1)(2), 20(2), 23(2)(c), 57(3) and 22(1) LVA; and international conventions such as article 21 of the Maputo Protocol. These provisions/ and rules have been overtaken by events and situations.

The Order, for example, confines rules, customs and usage which have existed for long time without any change to most indigenous patrilineal tribes (e.g., Wakinga, Wahehe, Wangoni, Wapare, Wanyakyusa and others) whereby some rules are biased against women (refer to rules 20, 27, 31, 47, 48 and 49 of the Order). The rules in the Order are archaic and against women’s rights. The status and dignity of women in these rules
is undermined to the highest degree, as greater status in terms of shares in land/property is directed and tied to men as husbands, sons, brothers or clan members. For example, upon the death of a husband, a widow traditionally has to be cared for by the heir as all inheritance will be under the heir, which is absolutely unjust. Society ignores the fact that women as widows and daughters need an independent right to inherit a share of their deceased husbands or fathers’ property so that they can be able to care for their lives and their children. This has been the case in the Makete villages where women have been marginalised as to inheriting their deceased husband’s property/land and sometimes forced to remarry the husband’s kin in order to retain the possession and occupation of the resources including land.

Meanwhile, the Marriage Act 1971 remains the legal instrument governing formal marriages in Tanzania, providing the rights and duties in marriages. For example, the Act provides for joint property registration, in contrast, properties are recorded customarily (through one spouse’s name, usually the husband) as an outcome of powerful cultural prohibitions against women possessing property individually or even jointly with their husbands. This works to deprive women of their entitlements. Many women in the rural parts of the Makete district are either traditionally married or are in polygamous marriages. Moreover, the rights of married women to obtain possession and sell land/houses through their efforts in the marriage are well-articulated in the Marriage Act. Yet, its adoption is a setback and worse for poor rural women due to inadequate incomes for acquiring property in their own name. A similar state of affairs is found in the Makete district where very few women have attempted to acquire land by their own means.

Women are also treated unequally in the distribution of property rights upon divorce in rural areas, as the majority of them have traditional marriages that are difficult to be proved in court. Because of a lack of knowledge, and the fact that women are customarily not aggressive, customary norms often prevail over any distribution of assets upon separation. By and large, clan members ignore the contributions of women in the acquisition of assets (see the case, Bi Hawa Mohamed v Ally Seif (1983) T.L.R). Nevertheless, the Marriage Act 1971 gives women inheritance rights; but it also allows customary law to supersede the decisions in cases of allocation or distribution because practically, customary practices supersede the Act. This is unwarranted as women in the rural areas bear the consequences of the adoption of customary laws to the distribution of assets, and it is against the provisions in JALA and Land Acts.

The persistent use of these laws to determine the various rights of women violates their rights, and is against not only constitutional provisions but also international conventions. Consequently, based on the situation found in the Makete district, these laws appear to be archaic as most of the land-related controversies for women are
omitted. Therefore, in order to eliminate these contradictions in the laws, the study recommends that:

- Additional legal reforms as to outdated laws are called for to ensure that women obtain control over land and other assets in clan or family settings during marriage: and that women retain rights following separation, divorce or death of their husbands; the rights of women/daughters (in polygamy) families, widows, etc.; and
- The government should guarantee that all statutes and customary laws on succession and inheritance in Tanzania are harmonised to the Constitution and to the International Human Rights rules and treaties, to which Tanzania is a participant.

9.4.2 Weak and inadequate enforcement of the laws

Government officials (land administrators) and other authorities are responsible for enforcing the land laws (i.e. to make the laws work in practice). In Tanzania, there are well-established law enforcement mechanisms/bodies on property rights as discussed in the previous chapters. For example, VLCs and Ward Tribunals are well-established in the Makete district.

In many instances, these law enforcement institutions lack the competence and skills necessary when adjudicating the lawsuits brought before them. Sometimes they are biased in decision-making as men are favoured over women. By so doing, women are discouraged from applying for relief in councils or tribunals whenever their rights are infringed or compromised. Moreover, the fees charged by these legal institutions are not affordable for the majority women who are then hence barred from accessing their rights. The Courts Acts 2002 is very silent on the fees associated with dispute mediation. There are no guidelines so far established in the Act as to fee ceilings whenever litigation is lodged.

The enforcement of land transactions is also very weakly associated with bureaucratic procedures. Cheating is prevalent in the mortgaging and selling of the land by both parties (land administrators and sellers). Spouses in rural areas in most cases are not involved in the entire process. Ignorance of the laws and procedures, customs and traditions among women culminates to the magnitude of the problem. Hence, the following suggestions are made:

- More education and awareness campaigns on legal capacity are needed at all levels starting with decision-makers such as councillors, VC leaders and villagers about the international and national laws and policies related to property rights issues;
- Law manuals should be prepared in a simple language and circulated to the villagers; and
- Village legal workers should be trained, who can act as agents of change as it becomes imperative to inform villagers about their legal rights and responsibilities and in order to assist in resolving emerging conflicts. This can be feasible if and only if the district councils are willing to collaborate with human rights legal aid centres such as TAWLA,
LHRC, WLAC and others on training these village legal workers, using success stories from other districts such as the Simanjiro and Kiteto in Maasai areas.

9.4.3 Mainstreaming land administration institutions
District councils are faced with countless problems in the land sector including inadequate resources, such as having few land administrators (land officers, land surveyors, town planners, and lawyers), little technical know-how, and financial constraints in efforts to support land administration activities. Councils found in remote areas such as in the Makete district have few personnel, there amounting to three: a surveyor, a town planner and a land officer working in the land administration department, and where the area coverage is immense. Consequently, these institutions more or less fail to carry out some of their duties such as the provision of property rights information through legal property rights, sensitisation and awareness education programmes.

Property rights information is a basic right that is supposed to be offered by the land institutions as stipulated in the LA of 1999. Conversely, in many situations, the study found that land information is not provided by these institutions; they are either too few as compared to the district/municipal administrative coverage, not available in some remote areas and not given weight in the councils’ budget due to financial constraints and priority aspects. This is against the Constitutional provision and section 3(1)(n) of the LA due to the fact that the right to information is a constitutional right that should be abided. Therefore, the land governance structure should be revised:

- The government should establish land offices at the ward level in a similar way to what has been done in land dispute resolution mechanisms so as to strengthen land administration institutions in terms of governance, enforcement and accountability. The office should have at least two land technicians (land officers) who should be in charge of the land administration issues at ward level.

9.5 Areas for further studies
The discussion on access to property rights is not exhausted in this study. Further research is needed. Access to land is an essential tool that can be used by women and other groups in society to guarantee their survival by providing household foodstuff provisions and earnings created out of investing in land. The provision of property rights to women is fundamental for decreasing the gender disparities between women and men as caused by traditions and customs. Indeed, well-enforced property rights will ensure uniformity in handling property rights, distribution and opportunities offered by land to women.

The joint occupation of matrimonial properties is promoted by the government in its property rights campaigns but neglecting by other alternatives. Currently, however, there is a lack of statistical data showing how much land is under the possession of
women or jointly possessed. Experience shows that this type of data might only be feasible when a titling project is implemented in a particular village/district and not otherwise. Therefore, accessing land through matrimonial arrangements should not limit women from getting land/or a certain form of property rights. More strategies and alternative approaches in increasing the ability to acquire land and turn it into a useful investment should be contemplated by the government. Thus, more research is called for in this area to establish the relationship between access to land and land possession among women in rural Tanzania. This is important as women are involved in land transactions, though few of them are purchasing land separately or jointly in different areas of the country to compensate for the imbalances.

Likewise, research evaluating the advantages and disadvantages of customary land tenure systems for women is necessary, looking at factors influencing women’s access to customary land tenure in the implementation of the Land Acts of 1999. The worth of land and demands for access to land resources are areas of interest where the study of property rights is concerned. The consequences of value gains and scarcity due to various pressures on women’s property rights in rural areas should also be studied. This research establishes that granting women rights to land, including occupation, access and control, leads to country development. It also empowers women and contributes to the well-being of households. Women comprise the key rural inhabitants in Tanzania while female-headed households are multiplying. Therefore, future studies should explore the likely impacts brought about by the rise of female-headed households in relation to access to land; and the extent by which these support their existence in the course of investing in land, given the superiority of customary laws in distributing land to clan/family members.
References


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Local legislations

The Administration (Small Estates) Cap.30 and the Law of Persons G.N.279 (1963)
The Constitution of the United Republic of Tanzania, 1977
The Courts (Land Disputes) Act, 2002
The Customary Law and Declaration Order of 1963 R.E 2002
The Interpretation of Laws Act No. 4, 1966
The Judicature and Application of Laws Act 1961 R.E 2002
The Land Act No. 4. 1999
The Local Government (District Authorities) Act, 1982
The Marriage Act, 1971
The National Land Policy, 1995
The Probate and Administration of Estates Act R.E 2002
The Village Land Act No. 5. 1999
The Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975
The Ward Tribunal Act, 1985

International Instruments


## APPENDIX 1: Detailed specific research questions with data collection tools

<table>
<thead>
<tr>
<th>Sn</th>
<th>Specific research question</th>
<th>Data required</th>
<th>Tools used to collect data</th>
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<tr>
<td>1.</td>
<td>How do Makete women understand land tenure (land rights) matters?</td>
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<tr>
<td>1.1</td>
<td>What constitutes land rights? How aware are they?</td>
<td>Knowledge on:</td>
<td>In-depth interview, Documentary review</td>
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<tr>
<td></td>
<td>- types of land tenure (duo legal tenure)</td>
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<td></td>
<td>- types of land rights</td>
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<td>- laws which protects women’s property rights</td>
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<td></td>
<td>- customary laws on land</td>
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<td></td>
<td>- mechanisms in solving land disputes</td>
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<td></td>
<td>- participation in decision-making processes (at family/clan/village levels)</td>
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<td>1.2</td>
<td>How do women access land rights information?</td>
<td>Sources of information</td>
<td>In-depth interview, Key informant interview</td>
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<td></td>
<td>- Attending workshop,</td>
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<td></td>
<td>- radio and TVs</td>
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<td>- seminars, workshops</td>
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<td>- village meetings</td>
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<td>1.3</td>
<td>Which institutions are involved in disseminating the land rights information to women in villages/communities in the Makete district?</td>
<td>Stakeholders involved in disseminating information</td>
<td>In-depth interview, Key informant interview</td>
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<td></td>
<td>- Officials from the district land office and ministry for land</td>
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<td></td>
<td>- NGO’s or CBOs</td>
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<td></td>
<td>- Village leaders</td>
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<td>- Women activist groups</td>
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<td>1.4</td>
<td>How are land tenure reforms and campaigns influencing the women claims on land rights?</td>
<td>Government efforts in ensuring women land rights through</td>
<td>In-depth interview, Key informant interview, Documentary review</td>
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<td></td>
<td>- Village land titling programmes</td>
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<td>- Land use plans programmes</td>
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<td></td>
<td>- Mkurabita programme</td>
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<td></td>
<td>How do customary and statutory land laws influence women’s access to land and what are the trends over time?</td>
<td>Status of women in the laws and mechanism exists to protect women land rights</td>
<td>Documentary review, Revisiting law’s Provisions (Act, Regulations, orders), Key Informant Interview (interview with expert)</td>
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<td>2.1</td>
<td>How provisions of the laws influence access to land by women</td>
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<td>- Constitution</td>
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<td></td>
<td>- Land Acts</td>
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<td></td>
<td>- Marriage Act</td>
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<td></td>
<td>- Customary law declaration order</td>
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</table>
2.2 What are the differences between the laws | Practical application of the laws
- Cases, evidence
- Institutions vested with authority in administration of the land | Documentary review
- Key informant interview

2.3 Why are there differences in land ownership between men and women under customary land tenure system? | - the role of village leaders, elders in ascertaining use rights to community
- Rules applied and procedures in allocation of land
- Mechanisms
- Composition of members
- Gender relations and land ownership under customary tenure | Focus Group Discussion
- Key Informant Interview
- Focus Group Discussion

2.4 How does belief influence on women's access to land? | - the contribution of religion and (religious leaders) | Focus Group Discussion

Influence of intermarriages on bringing changes overtime in women land rights at household level
- Relationship between couples in land ownership
- Decision-making processes on the use of land at clan and family levels
- Power structure and relations | Focus Group Discussion
- Key Informant Interview
- In depth interview

2.4 How do community members get access to land in their area/villages? | - Ways of accessing land
- Methods of land distribution
- Traditions and customs | Documentary evidence, in-depth interview

2.5 How is land distribution done at family and clan levels? | - Procedures
- Involvement of both men and women in decision-making | In-depth interview
- Focus group discussion

2.6 How does customary land tenure change over time with increase in population and changes in economic activities? | - Trends in changes over customary laws (behaviour/altitude toward customary tenure)
- Effects of population on resource distribution and use
- Income generating activities – cash and food crop farming, livestock rearing, timber harvesting | Key informant interview
- Focus group discussion

3. How effective are women strategies in increasing their access to land under the current land tenure systems?

3.1 What are the strategies and how effective are | Legal empowerment
<table>
<thead>
<tr>
<th>3.2</th>
<th>How does presence of NGOs in the Makete district influence women’s bargaining power and decision-making in claiming land rights?</th>
<th>Contribution of NGOs in advocating women land rights issues</th>
<th>Key informant interview</th>
</tr>
</thead>
</table>

### 4. How can women land rights be improved?

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<thead>
<tr>
<th>4.1</th>
<th>What factors influence on women’s access to land?</th>
<th>Reflections from the findings</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2</td>
<td>What measures can be taken to improve women’s access to land?</td>
<td>Policy recommendations</td>
<td></td>
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</tbody>
</table>
APPENDIX 2: In-depth interview guiding questions

INTERVIEW QUESTIONS ON WOMEN’S ACCESS TO LAND UNDER CUSTOMARY TENURE IN THE MAKETE DISTRICT IN THE NJOMBE REGION

Name of interviewer -----------------------------
Date of interview: -------------------------------
Location (Village) -------------------------------
Ward: ------------------------------------------

Background Information on Respondent (female)

Person interviewed: ......................................
Age: ............................................................
Marital status: ..............................................
Education: ...................................................
Religion: .....................................................
Indicate number of dependants or non-dependants: ...........

Instructions: Please circle an appropriate answer while in some questions instructions have been provided

A. General questions:

1.1 Are you an indigenous occupier in this village?

   1. Yes           2. No

1.1.1 If Yes, which clan do you belong to?.....................

1.1.2 If No, when did you start living in this village?

   5. 2001-2012    6. Others ------------------

1.2 Which language do you speak?

   1 Kihehe   2 Kibena   3 Kikinga   4 Kiwanji
   5 Others please specify ............................
1.3 What are your major economic activities? (multiple response possible)  
(Rank them in order 1 = highest, 2 = high, 3 = moderate, 4 = lowest)

1 Farming  
2 Livestock keeping  
3 Mining  
4 Forest keeping  
5. Others. Please specify ..............................................

1.4 What do you produce? (Mention types of produce)

1. ....................................................
2. ....................................................
3. ....................................................
4. ....................................................
5. ....................................................

1.5 For how many hours in a day do you use to work on farm?  
1. up to 5  
2. 6 to 8  
3. 9 to 10  
4. Others please specify..............

1.6 How frequently your husband/father/uncle participate in farm work within a week?  
1. 1-2 times  
2. 3-4 times  
3. 5-6 times  
4. Other times: please specify..............................................

B: Questions on access to land under customary laws and HIV/AIDS status

2.1 Do you own land?  
1. Yes  
2. No

2.1.1 If Yes, what type of land do you own (multiple response possible)

1. Clan land  
2. Family land  
3. Communal land  
4. Others please specify...............  

2.1.2 How big is your land?  
1. Less than 1 acre  
2. 1-5 acres  
3. 6-10 acres  
4. More than 10 acres

2.1.3 How did you access the land?  
1. Through allocation by the village leaders (council)  
2. Through purchase  
3. Through inheritance  
4. Allocation by friends or relatives  
5. Other methods. Please explain ..................................................
2.1.4. Did you experience problems when accessed land through purchase? 1. Yes 2. No

2.1.5. If Yes, in what ways such problems emanated?
   1. ........................................................................................
   2. ........................................................................................
   3. ........................................................................................
   4. ........................................................................................

2.2. What are reasons that made you decide to acquire land?
   1. To desire to have land for farming activities
   2. To gain tenure security over land
   3. To improve the decision-making power among women
   4. Any other reason, please explain .................................

2.3 Are there any criteria to follow if a woman wants to access clan or family land? 1. Yes 2. No

2.3.1 If Yes, what are the criteria?
   1. ........................................................................................
   2. ........................................................................................
   3. ........................................................................................
   4. ........................................................................................
   5. ........................................................................................

2.3.2. If you are possessing family/clan land, what rights are you entitled (enjoyed) as a woman/daughter
   1. Selling it
   2. Using it for farming activities only
   3. Grazing purpose
   4. Mortgaging (put as a collateral)
   5. Other rights (please explain) ..............................................

2.3.3 Did you experience any difficulties in accessing family/clan land? 1. Yes 2. No

2.3.4. If Yes, in what ways did you experience such difficulties?
   1. ........................................................................................
   2. ........................................................................................
   3. ........................................................................................
   4. ........................................................................................

2.4. Is a daughter allowed to inherit land in your clan/family? 1. Yes 2. No
2.4.1 If **No**, what do you think could be the barriers for women (daughters, divorcee, married) from inheriting clan/family land?

(Rank them in order 1= high barrier, 2=moderate barrier, 3=low barrier)

1 2 3

- Religion
- Existence of cash crops (commercialisation of agriculture)
- Tradition and custom
- HIV/AIDS pandemic
- Titling programmes
- Other. Please specify

2.5. For widows - how do they access their deceased husband’s land? Please explain

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2.6 What rights widows enjoy from their deceased husband’s land? Please write down

1. .................................................................................................................................
2. .................................................................................................................................
3. .................................................................................................................................
4. .................................................................................................................................
5. .................................................................................................................................

2.7 Is there any relationship between HIV/AIDS and access to land in your society/clan?

1. Yes 2. No

2.7.1. Is increase in HIV/AIDS infection in your area caused by women’s lack of land?

1. Yes 2. No

2.7.2 If **Yes**, give reasons

1. .................................................................................................................................
2. .................................................................................................................................
3. .................................................................................................................................
4. .................................................................................................................................
5. .................................................................................................................................

2.7.2 If **No**, please explain why

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2.8 Customary laws on land discriminate women from accessing land and associated rights. Do you


2.9 In your own views, how do you assess the customary mode of accessing land to women?

1. Very good
2. Good
3. Satisfactory
4. Bad
5. Very bad

2.10 What is the current trend in women’s access to land in your village/community?

1. Improved
2. Unimproved
3. Not at all

2.11 List threatening factors to women' access to land under customary tenure?

1. ..........................................................
2. ..........................................................
3. ..........................................................
4. ..........................................................
5. ..........................................................

C. Questions on knowledge of laws on land rights (use rights and inheritance)

3.1 What do you understand by women’s land rights?

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3.2 Do you know any law, which protects women’s land rights? (Please put a tick) 1. Yes  2. No

3.2.1 If Yes what are they?

1. ..........................................................
2. ..........................................................
3. ..........................................................
4. ..........................................................

3.3 For how many times have you heard about women’s land rights in your village?

1. 1-3 times
2. 4-6 time
3. 7 and above
4. Not at all
5. Others please specify..........................................................
3.3.1 How did you know about the land rights? (1= selected, 2= not selected)

1. through workshop
2. by attending a meeting
3. through conference
4. through seminars
5. through newspapers, radio, TV
6. Other means (mention)…………………………………

3.3.2 Which institutions disseminated the land rights information to your village/community?

1. Officials from the district land office
2. Officers working with NGO’s
3. Village leaders
4. Officials from Ministry of Lands
5. Others (please specify)………………………………………………

3.4 How are land rights being enforced by the village council and elders?

1. Very good
2. Good
3. Satisfactory
4. Bad
5. Very bad

3.5 In your own opinions, how do you examine the importance of women’s land rights to your community?

1. Very important
2. Important
3. Not important
4. Other. Explain …………………………………………………..

D. Questions on participation in decision-making

4.1. How do you participate in decision-making at your family?

1. through formal family meeting
2. through informal discussion
3. through special call
4. Others: please specify………………………………………………

4.2. Are you involved in any decision-making over produce on land? 1. Yes 2. No

4.3. How decision is done regarding type of products/crops to produce over the land

1. As family (sit and discuss)
2. Your husband/father/uncle decides
3. Yourself as wife and mother
4. Others: please specify………………………………………………
4.4. Do you have any control over produce from the farm? Please explain

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4.5. How do you decide on wealth accrued from sale of your produce?

1. the family decide on your behalf
2. your husband decides himself
3. jointly decide
4. Others: please specify........................................................................................................................................

4.6. Are you a member in any decision-making organ at a village/ward? (If No skip Q. 4.7-4.8)

1. Yes 2. No

4.7. How do you participate in decision-making body at village level?

1. ..............................................................................................................................................................
2. ..............................................................................................................................................................
3. ..............................................................................................................................................................
4. Others: please specify................................................................................................................................

4.8. Is your contribution accepted by other members?

1. Yes 2. No

4.8.1 If No, what were the reactions by members?

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4.8.2 If Yes, what was the most interesting part?

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E. Questions on land disputes and mechanisms in dealing with cases

5.1 Did you experience any land conflict related to land allocation to women in your clan/family?

1. Yes 2. No

5.1.1 If Yes what are the major sources of conflict? (Multiple responses allowed)

1. inheritance
2. HIV/AIDS diseases
3. The use of family land for farming activities
4. Grazing on family land
5 Marriages  
6 Divorce  
7 Other sources please specify-----------------------------

5.2. Did you make any steps to report your conflict?  
1. Yes  
2. No  

5.2.1. If Yes, which organ did you report the matter?.................................................................

5.2.2. If Yes, what was the decision of the organ?  
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5.2.3. What was the composition of the members of the organ? ..............................................,  
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5.2.3. If No, what further steps that you took?  
1. Taking conflict to the higher organ?  
2. Keep silent  
3. Others specify.................................................................................................................................................

5.3. Did you get satisfied with the decision from the organ?  
1. Highly satisfied  
2. Moderately satisfied  
3. Poorly satisfied  
4. Not at all

5.4 Are women involved in decision-making process in any conflict regards family/clan land?  
1. Yes  
2. No

5.5 How do you view women’s involvement in decision-making process in your village?  
1. Very good  
2. Good  
3. Poor  
4. Very poor  
5. Explain..................................................................................................................................................

5.6 Do you think involvement of women in decision-making will end the discrimination in land access in your community/clan?  
1. Yes  
2. No