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Land Rights and Land Conflicts in Africa:
The Tanzania case

Country policy study

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Preface

This report composes part of a policy study on Land Rights and Land Conflicts in Africa carried out for the Danish Ministry of Foreign Affairs and coordinated by the Danish Institute for International Studies, Copenhagen. The results of the study are presented in three reports: '*A review of Issues and Experiences'; 'The Benin Case'* and this report presenting the results of the Tanzania case study. The opinions expressed in the report are those of the author and do not necessarily correspond with those of the Danish Ministry of Foreign Affairs.

Contents

List of Abbreviations and Acronyms

Danida	Danish Development Assistance
DIIS	Danish Institute for International Studies
GDP	Gross Domestic Product
GNP	Gross National Product
GOT	Government of Tanzania
IIED	International Institute for Environment & Development
IRA	Institute for Resource Assessment
IWGIA	International Work Group for Indigenous Affairs
NAI	Nordic Africa Institute
NGO	Non Governmental Organisation
NSGRP	National Strategy for Growth and Reduction of Poverty
NVRS	National Village Resettlement Scheme
PO-RALG	President's Office – Regional Administration and Local Government
SACCOS	Savings and Credit Co-operative Societies
SPILL	Strategic Plan for the Implementation of the Land Acts
TNA	Tanganyika/Tanzania National Archives
TOR	Terms of Reference
URT	United Republic of Tanzania
WBWP	World Bank Working Paper

I. Introduction

1.1 Background

The vital importance of land issues to social and economic development in Africa is unquestionable. The fact that land is becoming an increasingly scarce resource in many parts of the continent, and also a more and more conflict ridden resource, has implied that issues related to land rights and land conflicts now range high on the policy agendas both in African countries and among international donors. The many ongoing land reform processes in a number of African countries are, however, clearly illustrating the complexity of - and the many problems involved in - dealing with land issues in Africa. Current debates about experiences with land policy reforms in Africa demonstrate the importance of reflecting on the type of policy instruments used so far and possible alternatives in the future.

It is on this background that Danida has asked DIIS to coordinate a study on land rights and land conflicts in Africa. The overall aim is to synthesize and analyze available documentation on land reform and land conflict, and their impact on agricultural/rural development and poverty reduction in Africa.

The study is composed by a general overview of the land rights and conflict situation, and two case studies (Benin and Tanzania). The results of the general overview are presented in 'Land Rights and Land Conflicts in Africa: A review of issues and experiences' by Christian Lund, Institute for Development Studies, Roskilde University, Rie Odgaard Danish Institute for International Studies and Espen Sjaastad, Noragric, Agricultural University of Norway. The results of the Benin case study are presented in 'Benin Case study Report' by Pierre-Yves Le Meur, Groupe de Researche et Technologie, Paris, France. The results of the Tanzania case study, carried out by Rie Odgaard, are presented below.

The TOR of the policy study are attached as Annex 1.

1.2 Approach and method

In connection with this case study 3 weeks were spent in Tanzania in February/March 2006 with the purpose of collecting information in different parts of the country on land issues from actors who are engaged in the debate about land and the implementation of the ongoing reforms and recent laws. Thus discussions and structured interviews were held with government representatives, NGOs, donor representatives, researchers, as well as representatives for farmers' and pastoralist' organisations. Short visits were also paid to a number of rural communities, mainly in South Western Tanzania. Some of the interviews were conducted together with Dr. Faustin Maganga from Institute of Resource Assessment (IRA), University of Dar es Salaam.

The report is also based on the study of literature, recent reports, web sites and information from the press. However, it draws very heavily on my previous studies in Tanzania and longstanding research experiences from the country.

1.3 The context

Tanzania (formerly Tanganyika) was part of a British mandate until it became independent in 1961. Tanganyika was a German Protectorate from the late 1800s and until after the First World War.

The British ruled Tanganyika through the indirect rule system with local chiefs playing an important role also in relation to land issues. After Independence the chiefdoms were abolished, but local traditional authorities still play a significant role in land matters in practice, albeit more indirectly, and especially in relation to the interpretation of local customary rules and norms.

Independence was a result of a non-violent struggle engaging a large part of the population under the leadership of Julius Nyerere, who later became Tanzania's president. In 1964 Tanganyika and Zanzibar entered into a union, the United Republic of Tanzania. With the Arusha Declaration in 1967 Tanzania committed itself to a policy based on 'African Socialism' with the so-called *ujamaa* policy as one of the major policies guiding rural development, and a policy having a crucial impact on land issues (see below).

Tanzania's political system was based on a one-party system until the early 1990s, when a multi-party system was introduced. The first parliamentary elections with the participation of several political parties took place in 1995. After the retirement of President Nyerere in the mid 1980s there was a gradual shift in Tanzanian economic policies towards more liberalisation and privatisation, to a large extent brought about by external pressure. The general background to this was a severe economic crisis, the consequences of which started to appear in the mid and late 1970s (Svendsen 1986). A number of factors contributed significantly to the crisis, namely centralisation of political and administrative powers; the ujamaa policy; abolition of the cooperatives in 1976 and their replacement with parastatal crop authorities; agricultural price policy; and lack of investments in agricultural development (Boesen et al 1986). However, a number of external shocks like rise in oil prices, decline in world market prices for Tanzania's export commodities, the Uganda War, heavy cuts in foreign aid to Tanzania etc. also had serious economic implications for the country. (Svendsen 1986).

In response to internal and external pressures Tanzania embarked on a number of economic and political reform programmes in the last part of the 1980s. While economic growth in most of Tanzania's productive sectors since the early 1990s and until today has been more or less the order of the day[1], Tanzania is still one of the poorest countries in the world, and the benefits derived from the growth have been very unevenly distributed. Restructuring of the public sector with heavy reductions in public expenditure and introduction of cost-sharing and user fees for education and health services during the late 1980s and the 1990s has had a very negative impact on the most vulnerable groups in the Tanzanian society, notably women and children (Shao et al 1992, URT 2005b). This situation is aggravated by the AIDS pandemic. One of the biggest challenges confronting Tanzania today therefore is the reduction of poverty, and a more equal distribution of wealth (including land and other natural resources) amongst her population.

II. Land and people in Tanzania

2.1 Land area

The total surface area covered by Tanzania is 94.3 million hectares. Of this 23 percent, or 22 million hectares, are composed by National Parks, Game Reserves and Forest Reserves. The total land area under cultivation is estimated to be between 5 and 10 percent. App. 93.4 percent of this is

[1] Since the mid 1990s economic growth rate has been higher than that of population (URT 2005)

used for small scale farming, while the remaining 6.6 percent are under large scale farming, either as state farms or private estates. The remaining 65-70 percent of the surface area are composed by forests, woodlands, arable, but uncultivated, land, and pastures (URT 1995, www.tanzania.go.tz/lands). It should be mentioned that various sources[2] have slightly different figures, so the percentages mentioned above should be taken as guiding estimates only.

But whatever variations in the information, it leaves the impression that Tanzania is a land abundant nation. It has been estimated that about 75 percent of the total land area in Tanzania is uninhabited. However, this includes the National Parks, Game and Forest Reserves (23%of the total land area), mountains, lakes and rivers (URT 1995). Like many other African countries Tanzania is constantly under pressure both from internal and international environmental organisations, conservationists, hunters associations etc.[3] to increase areas under conservation and to increase restrictions in areas already conserved. This is directly and indirectly reflected in recent policies and legislation like for example the Forest Policy of 1998, the Community Based Forest Management Guidelines of 2001, the Forest Act of 2002, the Environmental Management Act 2004, the Wildlife Policy of 1998, the Draft National Livestock Policy of 2005, the Strategic Plan for the Implementation of the Land Acts (SPILL, URT 2005d). Establisment of Game Reserves and conservation are frequent sources of conflicts in many parts of Tanzania. (For further discussions about impact of conservation on land rights and land conflicts see chapter V).

There are large parts of the uninhabited areas, which are very difficult to manage due to tsetse flies or unreliable rainfall.

In areas with high potential for agricultural production pressure on land was reported as early as in the 1920s, notably parts of the South Western Highlands and in areas around Mount Killimanjaro and Mount Meru in the North.[4] During colonial times large parts in these areas were taken up by private as well as publicly owned estates, and after Independence also by state farms. In areas with expanding cities and peri-urban areas land competition and land conflicts have been everyday phenomenon for decades. Land alienation or outright land-grabbing, especially in peri-urban areas and areas with agricultural potential, has been widespread throughout the 1980s and 1990s (Shivji 1999, Brehoni et al 2001). Land grabbing is still widespread, and dubious transactions of large tracts of land are not uncommon either (Odgaard 2005, Ojalammi 2006).

Increasing land scarcity and conflicts of interest between different land users in these and other areas have implied that huge numbers of people have migrated in search of arable land and pastures elsewhere. Areas that are marginal in terms of fertility and situated in semi-arid parts of the country with erratic rainfall are now increasingly being used for cultivation. The effects of this are aggravated by the fact that the majority of people cultivating in these areas cannot afford to use any inputs to maintain/improve soil fertility (Nielsen et al 2005, Odgaard et al 2005). Other implications of the spread of cultivation into marginal areas, is that access to grazing areas is consequently diminishing (Odgaard, 2005, Mattee and Shem 2006). An increasing number of land conflicts are now occurring between different interest groups and between various types of land use. (Odgaard 2005, Ojalammi 2006, Maganga et al in print). Examples of various types of conflicts are presented in chapter 4.

[2] For example Tanzania National website and URT 1995, URT 2005

[3] See for example Neuman 2000, Ojalammi 2006. The trend is also reflected in Fox 2004, IRINnews 14-07-06 available at www.irinnews.org

[4] Gulliver 1958, Gulliver 1961, Hall 1945 for example.

2.2 Population and livelihoods

The total population in Tanzania mainland is 34.569.232[5] and has grown from 12.313.469 persons in 1967 when the first census after Independence was carried out. (www.tanzania.go.tz/census). In spite of the heavy increase in population Tanzania is still relatively sparsely populated. However, there are huge variations between and even within districts/regions, and densities varies in the rural areas from 1-15 persons per square kilometre in sparsely populated areas to more than 200 in the most densely populated areas, and up to 2000 in urban areas (www.tanzania.go.tz/census/mapII).

As mentioned, 87 percent of the Tanzanian population live in rural areas. There are more than 120 different ethnic groups in Tanzania and equally many different languages. The majority of these groups are of Bantu origin, while a small percentage belongs to the group of Nilo-Hamites, the most well-known of which are the Maasai, who are mainly pastoral. There are huge differences in the way these different ethnic groups are socially organised and in the customary rules and norms they observe. Tanzania has been blessed with a general peaceful co-existence between the many different ethnic groups, although some of them have dominated the economic and political scene more than others. Under President Nyerere national identity and unity was emphasised very much while ethnic differences were downplayed. In relation to the way land rights are regulated in practice today both the issue of citizenship and ethnic belonging are important factors. (for further elaboration see section 3.4).

To the extent that there have been cleavages between different groups of the population the origin of such cleavages have been of a historic and/or religious nature rather than ethnic. In recent history, especially in connection with political campaigns and multi-party elections there have been tensions especially in Zanzibar, but also a few cases on Mainland.

The majority of Tanzania's population (eg. 82%) derive their main livelihood from agriculture (including the livestock sector) (NSGRP 2005a p. 6). About 10 % - or 2.2 million people practice pastoralist or agro-pastoralist production (National Census 2003), under various forms of transhumance. The major part of the farmers in Tanzania are small holders cultivating an average of between 0.9 and 3.0 ha each (www.tanzania.go.tz/agriculture). Various developments in Tanzania have implied a high level of mobility and migration in many parts of the country, both rural-rural and rural-urban migration. Migration involves agriculturalists as well as pastoralists.

There is an increasing tendency that rural people diversify their economic activities and it is estimated that 40% of all rural household income originates from farm and off-farm employment (NSGRP, 2005a, p.9).

Agriculture is though still the most important economic sector in Tanzania and accounts for app. 45% of GDP and about 60% of export earnings during the past three years (NSGRP p. 6). The livestock sector provides about 30 % of the agricultural GNP (www.tanzania.go.tz/livestock). The annual growth rates for agriculture during the past three years has been 4,8 percent compared to an annual growth of 3,1 percent for the years 1998-2000 (NSGRP 2005a, p. 6). In spite of the important contribution of agriculture to annual growth in Tanzania poverty is most outspoken in the

[5] The figure includes the population of Zanzibar. However, in this study we are mainly concerned with Tanzania Mainland, as the situation in terms of land rights and land conflicts is very different in Zanzibar where Islamic Law is much more important for the regulation of land rights than on mainland. Although Islamic Law is a source of law used also on Tanzania Mainland to some extent, especially in court cases, it has not been possible to go into detail with this due to the limitations of this study.

rural areas where 87% of the poor live. Poverty is highest among households who depend on agriculture for their livelihood (NSGRP 2005a, p. 4). Among the poor the women, elderly and disabled people and groups of youth are found to be most vulnerable (NSGRP p. 15). Especially female-headed households, composing 20% of all households in Tanzania, are generally very vulnerable (Poverty and Human Development Report, URT 2005b). However, vulnerability is also very outspoken among poor pastoralists in Tanzania (Oxfam 2004, Markakis 2004).

The TOR for this study stresses the importance of looking at the relation between poverty/vulnerability on the one hand, and rights to land and land conflicts on the other. As the majority of the poor live in rural areas, where also the majority of the population as a whole is found, this study mainly focuses on rural areas.

However, rural-urban relations are very important to keep in mind in Tanzania. Firstly, there is a very rapid population increase in the cities, higher than the cities can absorb and indicating heavy rural-urban migration. Secondly, the fast growth of cities implies expansion of urban areas into rural areas and rural urban boundaries are becoming more fluid. Thirdly, there are very strong relations between the rural and urban areas as many urban-based people depend on supplies of agricultural produce from rural based relatives for their livelihoods, while many rural people depend on urban-based relatives for financial support. Forth, urban dwellers are also engaged in 'urban' agriculture (www.tanzania.go.tz/agric) – a phenomenon, which unavoidably implies more pressure on land in urban and peri-urban areas. Fifth, investment in land as an object of speculation as well as outright land grabbing, also for speculation purposes, engaging especially urban based business men, politicians and government employees has become a very prominent phenomenon. (Shivji 1999, Odgaard 2003, Brehoni et al 2001). Apart from tying the rural areas closer to the commercial activities of the cities such activities have a direct bearing on the land rights and land conflict situation and thus on livelihood conditions of many rural people.

III. Land Rights and regulation of land rights in Tanzania

3.1 Introduction

Very little land in Tanzania is presently under formal registration. More than 93% of the rural population are smallholders and according to a rough estimate app. 78% of those hold unregistered customary land rights (Poverty and Human Development Report, URT 2005b, p. 84). Moreover only very few pastoralists have as yet acquired registration certificate for the land they are using.

In order to understand how land rights are articulated at present in people's everyday practices the only way is to look at the empirical reality. As shown below, previous and present land policies and land legislation only indirectly influence the articulation of land rights in practice.

3.2 The analysis of land rights

"What do we mean when we say I "own property", or I own land" and assert "this is mine"? Property is a social relation. It is about rights and duties. It defines what an individual, a community, or a state can and cannot do with a certain commodity, and what needs to be respected by others … If "landownership" is a social relation it immediately follows that making policy recommendations about landownership is not a technical matter. Land policy and land

reform are about social relations, and therefore are invariably about "politics". …… To define what property exactly means in a particular context, one needs to ask the "who, what, where, when, and how" questions about it. ….. The Answers to these questions are derived from customs, norms, legal traditions and principles, laws, negotiations, and revolutions. The answers, and the social relations, or "politics" they represent, always differ from place to place and from time to time…" (WBWP 71, 2005, p. 3-4)

The basic conceptual points in the above quotation from a recent World Bank Working Paper, are as true for Tanzania as for any other country with legal pluralism. Land rights and land regulation in everyday practices in Tanzania are embedded in social relations and are results of dynamic negotiation processes, the nature of which has changed over time depending on who, what, where, when and how.

Legal pluralism is: '… the condition in which the population observes more than one body of law.'(Woodman (1997). The bodies of law related to land rights observed in Tanzania are unwritten customary laws[6] on the one hand, and on the other hand the 'modern' laws and policies, namely state laws written down in law books, and government policies as they appear in written instructions, the press etc. Legal pluralism implies that when these bodies of law are legally applied in for example resolving cases of land disputes, the normative orders (e.g. local rules, norms and codes of conduct) observed by people in the empirical context where the dispute has occurred have to be taken into consideration and used as sources of law. This implies that the everyday practices adopted by people, and which undergo changes depending on general changes in the society, have to be understood at any given time: 'The merit of the legal pluralism approach is …that it forces us to concentrate on the empirical reality behind the slogans about 'the rule of law'. (Benda-Beckmann 2001:iii)

3.3 Land rights and present practices in South Western Tanzania: Mechanism of inclusion and exclusion

The following draws on previous field research in various parts of Iringa and Mbeya regions in South Western Tanzania[7]. The situation differs from one part to the other, related among other things to historical development, natural conditions, cultural differences related to ethnic origin etc. However, the following mechanisms in regulation of local land rights are generally found in various combinations in many areas of Tanzania. It should be mentioned that Iringa and Mbeya regions represent a large range of the natural conditions found in different parts of Tanzania e.g. from arid and semi arid conditions with low/medium land fertility to very fertile areas with high rainfall.

The land tenure forms identified below are practices followed by local people and generally seen by them as *legitimate.* Although the rights are customary in nature, they should as mentioned be understood in the light of the past policies and previous legislation[8]. One of the important

[6] In Tanzania with 120 different ethnic groups customary laws are influenced by many meanings and also refer to customary law 'in courts' – that is customary law as it is being interpreted in courts based on actual court cases. It is important to distinguish between customary rules and norms as practiced by people in their everyday lives and customary law in courts. While the former is unwritten and changing depending on general changes in the society, the latter is derived from interpretations of written court case material.

[7] More detailed versions of the following have appeared in a number of my previous publications. See especially Odgaard 2003.

[8] Prevailing costumes of the day (see p. 6). The dynamic changing nature of such customs in different contexts has given rise to new concepts like for example 'local law' discussed in for example Hellum 2000. It is defined as a mixed product and a hybrid form of law that has evolved in colonial and post-colonial countries in Africa.

implications of previous developments is the huge numbers of people who have migrated either to cities or to other rural areas. Migration is also a widespread phenomenon in Iringa and Mbeya regions and the population therefore ethnically very mixed with different land use patterns: cultivation, pastoralism or agro-pastoralism.

General factors influencing the type of land rights people in Tanzania are able to exercise are: Relations to an ethnic group, to family/clan, marriage relations, community membership, friendship, patron-client relations, relations to authorities at various levels of the society etc. Other and crosscutting factors also influence land rights of an individual or a group of individuals: Gender (and here question of whether a community is organised according to patrilineal or matrilineal principles); age; the question of being considered indigenous or immigrant in a specific area; access to power. Rights are also articulated differently depending on whether land is used for cultivation, pastures, forests etc.

In the following a distinction is made between land endowments and entitlements. Land endowments refer to the rights and resources that people have, for example land, labour, skills and so on. Entitlements on the other hand refer to legitimate effective command over such resources and the benefits, which can be derived from them (Leach et al. 1999).[9]

In practice an individual or a group of individuals may have customary land endowments in Tanzania in two different ways: 1) As a member of a specific ethnic group and/or family; 2) as a citizen of Tanzania in accordance with policies issued during the socialist era granting each individual resident of a village - irrespective of sex - a right to be allocated a piece of land[10]. It seems that there were no legislative provisions for this previously[11], but with the new land acts the rights of both men and women to apply for and be allocated land by the village authorities are clearly specified.[12]

The type of endowments differs for different groups and individuals not only according to age, status and gender but also depending on whether a person belongs to *wawenyeji* (Swahili word for 'indigenous'[13]) or wa*geni* (guests/immigrants) **–** 'first-comers' or 'late-comers'**.**

For example, Hehe and Sangu men and women, who are the *wawenyeji* in the field work areas respectively, have two types of land endowments in principle in their home areas: Indigenous rights and rights in accordance with land policies developed especially during the socialist era. The *wageni,* to whom immigrants like the Maasai, Barabeig, Sukuma etc. belong, have, however, in principle land endowments in their home area, but endowments in the immigration area only in accordance with the existing policies granting any citizen of Tanzania above the age of 18 the right to be assigned land if accepted as a member of a village community.

See also le Roy 1985. Cleaver 2003 talk about 'institutional bricolage'.

[9] An interesting discussion of entitlement is found in Manji 2000.

[10] Fimbo 1992.

[11] Rwebangira 1996 and Sundet 1997 for example.

[12] See URT 1999a, URT 1999b, and Wily 2003.

[13] The word 'indigenous' here refers to the group of people considering Iringa to be their home area, and should not be confused with the term 'indigenous peoples'. In Swahili such groups of people are referred to as '*watu wa asili*'. The term indigenous peoples is by many seen as very controversial in Tanzania and in Africa in general. For discussions related to this see IWGIA 1998, IWGIA 2001 and the essays in IWGIA Document No.74 1993 for example.

The extent to which *wawenyeji* and *wageni* respectively (as groups or individuals) are able to derive the potential benefits from their land endowments, that is to have legitimate effective command (entitlements) over such benefits (what can be produced from the land - food crops, cash from sales etc.), depends on a number of factors, of which access to power and bargaining power is very important.

The following different tenure forms were identified in all parts of the field area:

Indigenous customary rights:
Rights held by people who are *wawenyeji* in an area – e.g. members of the indigenous ethnic group. Rights differ in accordance with age, status and gender. Indigenous customary claims to seemingly unoccupied land have increased as a result of increased competition for land in many areas. Indigenous customary rights are locally considered to be as secure as private title deeds. [14] Usually customary rights are associated with obligations to use the land.

Due to changes in the society the indigenous customary land rights of women in the areas have become undermined, and are increasingly being disputed, especially by women's brothers. (See section 5.2) However, many of these women are increasingly successful in claiming customary rights, notably because their land claims are often supported by their fathers. The findings from the area, and from other areas in Tanzania does, therefore, challenge an often held position that women's land rights are more suppressed under customary practices than under formal law (Odgaard and Bentzon, in print). [15]

Customary rights held by wageni:
Such rights are mainly held by immigrants, who have lived in the area for some time. Procedures followed to acquire rights have differed depending on point in time for arrival. Before and during colonialism immigrants approached local chiefs and headmen and were shown an area where to build a house and to cultivate/graze their animals. In very sparsely populated areas people often just settled down. Later, during the socialist era in Tanzania village government authorities were given a more prominent role in allocating land rights to newcomers. But in many cases the local 'indigenous' authorities were/and still are quite influential in land matters. The rights *wageni* were/are granted are customary in nature in the sense that they are normally unwritten[16] and tied to various obligations related to use and management. They can be granted to individual families or groups of households and be held individually or communally. While using the land some of the *wageni* are involved in negotiation processes through which they try to increase their tenure security, and many succeed in that. (Odgaard 2003) Such examples illustrate that identities are not necessarily fixed. A migrant may gradually acquire the status of *wenyeje*.

[14] For an in-depth discussion of the security in tenure of so-called traditional rights versus other types of rights, e.g. individual private rights, see also for example Migot-Adholla *et.al.(*1991*)*; Havnevik (1995*)*; Sjaastad and Bromley (1997*)*.

[15] There are detailed analyses of the way indigenous Hehe customary rights historically have been allocated in practice in the area in accordance with age, gender and status, and how such practices have been changing over time in, for example, Brown and Hutt (1935*)*; Mumford (1934*)*;TNA Secretariat Files No's: 7794 and 7794/3 (1925*)*; Accession No 157, file No.6/42 (1938*)* and Odgaard (1999*)*.

[16] This has been the case until recently when some form of written documentation is often sought obtained. See Odgaard 2003.

For most of the pastoral immigrants, however, the situation is difficult. Areas used by them are mainly open access areas also used by other livestock keepers, and in both areas pastures have been ever diminishing concurrently with expansion of cultivation.

Allocated rights through village authorities:
Access to land through allocation by the village authorities is very common in many rural areas of Tanzania. Such rights are held both by 'indigenous' villagers and immigrants – by individuals and households – men and some women. The allocated rights are customary in the sense that they are not formally registered and that rules for use etc. are in accordance with local norms and customs, and village by-laws. They are considered as secure as other customary rights as long as they are locally recognised, and seen as legitimate by the villagers in general. Married women are generally not allocated land without the consent of their husbands (*Odgaard 1999)*. Some single and divorced women have though been allocated land by the authorities, but generally claim that it has been a very difficult process.

The involvement of local authorities in allocating land is not a new phenomenon[17], but the form under which it takes place at present is very much influenced by policies introduced during the socialist era in Tanzania.[18] As has appeared, the village authorities are still assigned a very crucial role in land allocation under the Village Land Act (URT 1999b). Traditional leaders of the various ethnic groups play important roles as interpreters of indigenous 'customs' and in conflict resolution.

The fact that also *wawenyeje* are allocated land by the authorities in their home area is related to various developments in the area. First of all the villagisation policies, which affected parts of the area and implied that large numbers of *wawenyeje* were resettled in other parts of their home area than they used to occupy. Since the new agricultural policies in the mid 1980s allowed people to move back to areas they originally occupied, many people have been able to reclaim rights to land they previously cultivated – and keep the allocated rights at the same time. Claims to previously occupied land are continuously being made.

People who want to get access to more land, either because they want to ensure enough land for their children to inherit, or because new economic opportunities have arisen, also approach village authorities for allocations. The tomato boom in Iringa is an example of new economic opportunities and people who happen to have all their land outside areas, well suited for tomato growing, try to get rights to land in such areas, either through allocation or borrowing and renting arrangements (see below). A similar example is rice cultivation in Mbeya. (Odgaard 1987 and 1997)
In principle people are allocated land free of charge, but usually some 'facilitation' costs are involved.

Borrowed or rented land rights:
This phenomenon is very widespread in the area. Almost all social groups are involved in such arrangements. The major distinction between the conditions associated with borrowed and rented land rights is the nature of relationship between the landowner and the borrower/renter, and the form of 'payment', because borrowing is not 'free of charge' and without conditions. For renting arrangements the following forms of payment were identified: sharecropping, rent in cash, rent in kind or in labour (can include use of renter's own equipment for ploughing a piece of land for the

[17] Hehe headmen in the precolonial and colonial periods in Tanzania had the authority to distribute land both to members of the Hehe and to people coming from other groups.
[18] See below and URT (1983*)*; Fimbo (1992*)*; James and Fimbo (1973*)*; URT (1994*)*.

land owner for example). Except for rent in cash, varying degrees of the other 'payment' forms were found also in relation to the 'borrowing' arrangements, but again depending on the type of relationship between the two parties. Both borrowed and rented rights are often also associated with the delivery of various types of services to the landowner.

Renting and borrowing arrangements are usually accompanied by some restrictions related to use of land: agreements, for example, are always short term (usually only one year or growing season); it is not permitted to plant perennial crops like trees etc., or to make investments of any kind which may lead to later claims of property rights for the tenant etc.

Renting and borrowing of land is a strategy used especially by landless people, but also by people who already have some land, *wawenyeji* and immigrants alike. New economic opportunities provide important incentives for the last mentioned category of people to borrow or rent land outside or inside their 'home' villages. Rented and borrowed rights are also customary in nature (verbal agreements) because they rest on locally accepted norms for such arrangements. However, local norms are increasingly being influenced by commercial interests and increased competition for land in many areas. Conditions are constantly being hardened and rents are increasing, which of course hit hardest on those not well positioned to negotiate favourable terms, namely the poorest and the women.

Land rights obtained through commercial transaction.
An increasing number of especially urban people try to 'buy' land for investment purposes. Some of these rights have been formally sanctioned by an officially approved title deed, but in many cases there is only informal written evidence, signed by representatives for the official or traditional village authorities and witnesses. This is becoming a common first step to formalisation. Landed property has, in the past, and is increasingly changing hands across family and clan divisions, and a land market has existed for a long time.[19] However, under the influence of increasing commercial interests in land the land market is now changing in nature.

Open Access:
To some areas, defined as public village lands, there is 'open access'. Villagers use public village lands for various purposes like grazing, firewood and fruit collection etc. Everybody, who is a recognised member of a certain village does in principle have such rights, and exercises them to varying degrees in practice. However, rights to village public lands, (a lot of such land has been allocated to the villagers), is a frequent object of struggle, and there are many cases of village boundary disputes in the area, and disputes about whether *wageni* have the same rights as *wawenyeji*. Some of the *wawenyeji* have started claiming customary rights to various pieces of land in such areas.

Registered granted rights of Occupancy
Such rights are generally mainly held by large-scale farmers of non-Tanzania origin, such as for example European settlers, Baluch rice farmers in Mbeya, and Greek tobacco growers in Iringa.

Even though the different forms of tenure have been described separately, it should be mentioned that in practice it may be very difficult to distinguish sharply between them. There is a lot of overlap, changes occur all the time, and new mixed forms arise. Moreover, one and the same farmer

[19] See for example Iliffe 1979.

is often involved in several of the above mentioned forms at the same time – implying that he or she has different types of rights to the various pieces of land being used.

As shown there are mechanisms of both inclusion and exclusion of people from enjoying the same type of land rights. It is however not the legal nature of the various types of rights which define the degree of security. Social and political status and access to economic resources – and generally the question of access to power and bargaining power - as well as being first/early-comer or latecomer, are in fact more important. The nature of the existing inequalities in the de facto land-holding structure in the areas, both in terms of gender inequalities and social inequality in general, reflects that some individuals and groups of individuals have been able to exercise more bargaining power and power in their struggle to get access to land than others (Odgaard 2003 and 2005).

In general locally recognised customary land rights are locally considered secure whether registered or not, except for the short term renting and borrowing arrangements and the rights of the commons. What pose threats to the secure customary rights are as we shall see a number of government policies, manipulations of conflicting laws, development interventions and lack of good governance at all levels of the society.

According to local informants there is no direct relationship between productive investments and formal registration of land rights. The type of constraints mentioned in relation to investments were lack of access to markets, transport problems, lack of access to farm inputs and know-how, poor rural infrastructure etc. Moreover, access to labour power during peak seasons and increasing tensions between farmers and pastoralists (fields being invaded and destroyed by livestock etc.), and last but not least increasing pressure on arable land and pastures, were also seen as factors impacting on productivity.

The way the context for land negotiation processes in the area has changed has, however implied that it has become more and more difficult to make land claims and be granted land rights, especially for the poorest groups, and other vulnerable groups like pastoralists[20], young people and poor women.

There is a need therefore to find suitable policy instruments, which can be used to minimize exclusion of the most vulnerable.

The various land tenure forms identified above are generally found in all areas of Tanzania. However, it is again important to stress that the nature of the customary differs from one place to another. Issues like for example migration, conservation and scarcity, as well as the prevalence of renting and borrowing arrangements, are not equally relevant in all areas. Processes of individualisation and formalisation of land rights are taking place in many areas but are most outspoken in the very fertile rural areas and in urban and peri-urban areas.

[20] See for example Odgaard 1987 and 1994, Odgaard & Maganga 1994.

IV. Recent laws, policies and interventions affecting the land rights and conflict situation

4.1 Introduction

The 'institutional bricolage' situation described above with all the different forms of land tenure, almost all of them customary in nature and without any written documentation, may seem as a big mess in which some kind of order needs to be established. More streamlining and tidying up is in fact what the Tanzanian government is committed to do. This is reflected in the philosophy guiding the ongoing institutional reform process related to land issues in the country. In these efforts Tanzania is strongly backed up by the international donor community and has throughout the process also received heavy financial support. Whether the end justifies the means is the main question behind the discussion in the following section, which looks at some of the most important policies and formal legislation in relation to the regulation of land rights in Tanzania.

4.2 The 1999 Land Acts

The present legal framework and procedures for the regulation of land rights in Tanzania is laid out in the two new Land Acts e.g. The Land Act and the Village Land Act of 1999 (URT 1999a+b), which became operational in May 2001. The policy behind these acts is the National Land Policy of 1995 (URT 1995).

Prior to the new land policy and the 1999 Land Acts formal land legislation in Tanzania was mainly composed by the Land Ordinance passed by the British in 1923 (Shivji 1994). The Land Ordinance has been supplemented by a number of amendments and laws both during and after Independence. According to the Land Ordinance all lands were declared as 'public lands' under the control of the Governor for the benefit of the inhabitants (Shivji 1994, p. 12) The Land Ordinance distinguished between two different types of rights: Granted rights of occupancy, issued and registered by the Governor or his authorized subordinates, and in practice almost exclusively issued to non-natives. Deemed rights of occupancy on the other hand were rights held under customary law. Customary landowners were defined as 'natives or a native community lawfully using or occupying land in accordance with native law and custom'. (Odgaard and Maganga 1994). Such rights were not registered.

The broad definition of customary rights and rights holders, combined with the fact that there were no specific formal legal provisions for the protection of customary rights in the law, has made it easy for national authorities both during colonialism and after Independence, to use the land law to alienate land held under native law and custom (Shivji 1994). This de facto insecurity of customary rights was not inherent in the customary system, but was a result of a deliberate policy refusing to entrench customary rights in law and thereby leaving them at the mercy of the expediency of governmental administration (Shivji 1994, p. 16). Paradoxically land use of lands held under custom was in fact enforced through law in the sense that there were numerous by-laws regulating cultivation, minimum acreage, conservation measures etc. – a situation which has largely continued also after Independence (Shivji 1994 p 19).

While this has enabled people who leave visible signs of use on their land to increase their security in tenure, it has implied that land used as pastures or for hunting and gathering purposes has easily been alienated. In the new land legislation customary land rights are better protected although there are still some problems for certain groups, as will appear.

Today all land in Tanzania is still legally public land and vested in the president for and on behalf of all Tanzanian citizens (Wily 2003, Mattee and Shem 2006). Due to the fact that the President serves as a legal trustee for others, he cannot act like an ordinary landowner, and the actions he can take are formally limited to those that are in the public interest – that is something that helps the nation (Wily 2003 p. 20). It is pointed out in the new Land Acts that various private investments in land may be in the interest of the nation and that any kind of land can be alienated for that purpose. Although procedures for taking land away from the villagers are laid out in the Village Land Act with for example rules of compensation, this quite extensive authority of the state over village land is by some observers seen as a continuation of a top-down and centralist approach which will have a negative impact on local level influence on land matters (e.g. Shivji 1999, Sundet 2005). Others[21] have raised concerns that this important role of the state in alienation of land for private investment purposes may imply a further undermining of pastoral and hunter gatherer land rights, which, as mentioned, are already not well defined in the formal legislation (see also Mattee and Shem 2006).

Land is now divided into three categories: General Land, Reserve Land, and Village Land, and land management and administration is decentralised. The President in his capacity as the head of the executive, delegates his powers to the ministry officials to administer and manage land in all the three categories, and the central office in the administration of land is the Commissioner for Lands (Shivji 1999). General Land is governed by the Land Act and directly under the Commissioner, Reserve Lands under statutory or other bodies set up with the powers over these lands (Forest Reserves are for example governed by the Forest Act of 2002), and village land is governed by the Village Land Act and under the administration of the village council (Shivji 1999). The village council acts as an agent of the Commissioner in administering land (Shivji 1999). Village Councils operate as trustees on behalf of village members who together formally compose the Village Assembly. Thus the principle is that the Village Council administers the land through the authority of the Village Assembly – the highest authority at the village level. (Wily 2003, Shivji 1999, Odgaard and Bentzon (in print), Sundet 2005).

The village councils have to administer land in accordance with customary law, which according to the law means any rule that is established by usage and accepted as having the force of law by the community – the prevailing custom of the day in a given area (Wily 2003) – unless such customs are discriminating against certain individuals (see below). What the prevailing customs 'of the day' may mean in actual practices in different contexts, considering the dynamic and changing nature of such customs, has been dealt with above.

The Village Land Act further divides village land into the following types: 1) communal and public use land, 2) individual or family or group land over which landownership titles may be issued, 3) Reserved land - land reserved for future communal or individual use (Wily 2003). The Act requires that communal village land is identified first. Communal land include:

- "Any land that is already set aside for community or public use or has in practice been used as common land
- Any land which is entirely free of occupation or use or any individual rights, and –
- Any other land that the Village Assembly agrees should be earmarked as their common property for one use or another (forest, school area, future place for churches, mosques to

[21] These concerns were expressed by representatives for all the organisations, which were interviewed during the field stay in Tanzania.

be built, shopping centre, roads, protected river banks, grazing areas etc)". (Wily, 2003 p. 28).

The law advices Villages to prepare land management plans in which various types of uses for each tract of land within the village area are identified. The preparation of such plans have often given rise to disputes in many villages due to conflicting interests between different social groups in the village. Conflicting issues are often related to setting aside areas for grazing and for conservation. This issue is further dealt with in chapter V.

The 1999 Land Acts distinguish between two types of registered land rights e.g. granted right of occupancy and customary right of occupancy. In general the former type is allocated in urban areas whereas the latter in rural areas. These forms are equally secure although there are a number of differences between them. One such difference is that Customary Right of Occupancy may be owned for an indefinite period while a Granted Right of occupancy may only last for up to 99 years. (Wily 2003)

The plural legal situation existing in Tanzania is thus reflected in the new Land Acts. Customary land rights are recognised by the present Land Acts whether such rights are registered or not. The 1999 Land Acts have replaced the Land Ordinance of 1923, which as mentioned with a number of amendments and additional acts composed the major legal framework for regulation of land rights in Tanzania previously.

One of the additional acts, which have had an important impact on the land right situation in the rural areas today, is the Villages and Ujamaa Villages Act of 1975. This Act provided the justification for the Villagization programme, which was implemented during the period 1973-76[22]. The villagization programme aimed at resettling people in villages with communal or co-operative production, and implied, in the areas where it became effective, that local customary rights formally were extinguished and that the traditional settlement pattern changed radically (Ojalammi 2006).

The disastrous effects on agricultural production of villagization, and other institutional and policy changes during the 1960s and 1970s, hit the Tanzanian economy hard from the late 1970s and onwards (Svendsen 1986, Raikes 1986). This was indirectly recognised in later agricultural policies, notably the Agricultural Policy of Tanzania of 1983 (URT 1983). The importance of secure land rights for the producers is emphasized, and customary rights to land are acknowledged as the main and most widespread form of tenure in Tanzania (URT 1983).

In terms of land rights this and other provisions have implied that the resettled part of the rural population in many areas have returned to their areas of origin and have made claims to previously occupied land. In cases where the villigization process had implied resettlement of other people conflicting claims was the result, and in some areas the number of conflicts was huge. In order to deal with such problems the Regulation of Land Tenure (Established Villages) Act 1992 (No. 22 of 1992), with which all customary land rights in respect of village lands were extinguished, was rushed through Parliament in February 1992 (Mwaikyusa 1993). However, after several court cases the Act was finally deemed unconstitutional, and in the 1999 Land Acts customary rights are as

[22] For a detailed analysis of the ujamaa and villagization policies and experiences, see for example Nyerere (1969); Raikes (1975), Boesen *et.al.* (1977); McHenry (1979); vonFreyhold (1985).

mentioned given full recognition. The 1999 Village Land Act does though contain provisions for the protection of customary rights allocated to people during villagization.

It is important to mention though that not all areas of Tanzania were evenly affected by the villagization policy. Thus for example in the most prosperous coffee and tea growing areas of the Northern and Southern Highlands very few people were resettled. Here villagization mainly meant a redefinition of administrative units (Odgaard 1986, Raikes 1986). Land pressure and the many land conflicts, which have been identified in these areas since the 1920s and 1930s (Gulliver 1958, Gulliver 1961, Hall 1945, Moore 1986, Odgaard 1997), were caused to a large extent by huge land alienations and commercialisation resulting in very skewed land distribution. (Shivji 1994, Mbilinyi 1991, Odgaard 1986 og 1997).

Although customary rights were indirectly recognised in previous land legislation in Tanzania they could not be formally registered or transacted. Today customary rights may be mortgaged and sold. These provisions are included in order to facilitate the promotion of a land market, which is seen as very important, especially by international observers and donor representatives. However, contrary to what has often been thought, landed property has during the times been changing hands across family and clan divisions in various parts of Tanzania, and a land market has existed for a long time.[23]

Previously a land title could only be given to individuals, but today land rights may be registered in the name of individuals, as spouses, a family unit, a group or a whole community. The last mentioned provisions may serve as an extra source of protection of the land rights of married women, children, and communally held land rights (groups or communities).

Recognising that there are certain groups whose rights have previously not been clearly specified and which therefore need special attention the Village Land Act part II contains specific provisions for the land rights of women (URT 1999b). Here one of the general principles of the Land Policy is spelled out as follows: "The right of every woman to acquire, hold, use and deal with land shall to the same extent and subject to the same restriction be treated as the right of any man" (URT 1999b, 26) This gender equality principle is further reflected in provisions in relation to land applications for example (URT 1999b, 107) and in assignment of customary rights by villagers (URT 1999b, 141).[24]

Both the rights of women and other vulnerable groups are further sought safeguarded by the following provision in The Village Land Act, Part IV: VILLAGE LANDS. A: Management and 3Administration , Law applicable to customary right of occupancy : "(2) Any rule of customary law and any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall have regard to the customs, traditions, and practices of the community concerned to the extend that they are in accordance with fundamental principles of the National Land Policy and of any other written law and subject to the foregoing provisions of this subsection, that the rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly of any person or body of persons exercising any authority over village

[23] See for example Iliffe 1979, Maliyamkono & Bagachwa 1990, Bryceson 1993, Moore 1999, Odgaard 1987 and 2002, Ojalammi 2006.

[24] For a clear and brief overview of specific provisions protecting women's land rights in the 1999 Land Acts see Wily 2003, 47-48.

land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land." (URT 1999b, 95-96).

With this passage the Act recognises that there may be customary rules and norms as well as allocation practices which discriminate against women and other vulnerable groups. Socio-economic changes have, as illustrated in chapter V, in fact given rise to many problems, especially for poor women, female-headed households and widows, in their struggle to defend their customary rights to land. The situation is though not left unchallenged by the women, and women are increasingly making customary land claims (Odgaard 1999).

Historically it has been shown in numerous studies how areas previously occupied by pastoralists or used by hunter gatherers have been constantly reduced due to conservation efforts, development interventions, or due to expansion of cultivation activities into grazing areas and forests and woodlands. In Tanzania and in many other African countries the rights of commons have been very insecure.[25] It has also been shown that one of the reasons why it has been possible to alienate land from the pastoralists and hunter gatherers is that their rights were not well provided for in the previous land legislation in Tanzania[26], and that their type of land use put them in a disadvantaged position in relation to defend their rights (Odgaard 2005, Madsen 2000, Mattee and Shem 2006, Odhiambo 2005).

In the New Land Acts there are several provisions for the safeguarding of communally held rights. (For further specifications URT 1999 and Wily 2003). Such rights can be registered and the law also recognises land sharing between pastoralists and agriculturalists. However, many observers point out that reference to the rights of pastoralists are too scanty and in some places there are contradicting provisions in the Village Land Act and the Land Act[27]. Moreover, it has been emphasised that there are provisions in recent policies and legislation based on which whatever rights of the commons provided for in the two Land Acts may be undermined.[28] Especially the following laws and policies are seen to have sections which potentially may be very detrimental to the rights of the commons: Strategic Plan for Implementation of the Land Laws' (SPILL), the Forest Act of 2002, the 1998 Wildlife Policy, Environmental Management Act 2004, the Draft Livestock Policy 2005, Tanzania Private Investment Act 1997, and the newly established Land Bank Scheme. (Mattee and Shem 2006, PINGO 2006 among many others).

One of the main objectives of the land law is in fact to protect the various types of existing rights, even if they are not registered. Thus a villager's land interest is secure today even if she or he does not have a certificate for the land. However, as mentioned land registration is encouraged and a main purpose of the law is to provide a way for the citizens to register their rights and to get certificates of ownership. (Wily 2003)

The procedures required to obtain a certificate of ownership for individuals as well as for groups are described in detail in Wily 2003. Suffice it here to say that it is a cumbersome process – and

[25] See for example Aarhem 1986, Lane and Pretty 1990, Odgaard and Maganga 1994, Cleaver 2003, Lane 1993, Mwaikyusa 1993, Mustafa 1993, Ojalammi 2006, Mattee and Shem 2006, IIED 1999, Woodhouse *et al* 2000, Broch-Due 2000a+b)

[26] Tenga 1992

[27] for further discussion of this see chapter 5 in this report

[28] For example Nelson 2005, Mattee and Shem 2005, Odhiambo 2005, PINGO 2006,

certainly not 'free of charge'. Many observers, including the persons interviewed during the field stay, agree with the conclusion drawn by Shivji (1999, p. 4) that it is '….a top-down process, bureaucratically managed and involving considerable outlay of resources. It is certainly not a process, which can be managed at the village level and, therefore, it is unlikely that the number of ordinary villagers will be able to obtain certificates in the reasonable future.' (p. 4) The cumbersome procedure in relation to registration of land rights as well as practical implications of some of the provisions of the law are also dealt with in detail in Sundet (2005).
The number of steps to be taken, forms to be filled and officers at all levels of the government structure to be involved and possible conflicts to be solved/taken to court, is a scaring scenario indeed, and especially vulnerable groups with very little resources such as poor women, young people and poor pastoralists will not be able to go through such procedures in the short run (See for example Odgaard 2005).

4.3 Other Recent policies and laws with an impact on land rights

The philosophy behind the policies and legislation is much influenced by the international debate on the relation between land tenure security and economic development (also discussed in Lund et al 2006). Through the recognition of customary rights in the Land Acts, even though such rights are not registered, the provisions for women's land rights and provisions for the registration of communal rights, a solid basis for increased tenure security seems to be established. In fact it may be argued that most of the tenure forms practiced in the example described above, with the exception of maybe some of the forms of land renting/borrowing arrangements, are now legally sanctioned. How secure these rights are does not merely depend on formal registration, but on interpretation of these rights in relation to the Land Acts – and on other government policies and legislation related to natural resource management.

The Land Acts still encourage formal registration of customary land rights, however, and the new development intervention 'Program to formalize the Assets of the Poor of Tanzania and strengthen the Rule of Law', locally known as MKURABITA, is an initiative to promote land registration. The programme is inspired by the writings of the Peruvian economist Hernando deSoto, and 'Institute for Liberty and Democracy', founded by deSoto, who is also the director, provides the professional services in the implementation of the programme. The programme is still in an early phase and the experiences as yet not studied. However, several observers in Tanzania have expressed serious concerns about how the programme may affect the vulnerable groups for whom a formalisation process is not within easy reach.

During the interviews in Tanzania a number of informants were questioning the assumptions on which the philosophy builds, namely that once the poor have been able to register their assets they will be able to use them as collateral for loans, and thus to make productive investments. On the question of using land as collateral observers in Tanzania emphasise that several banks in Tanzania have made it clear that they do not have the capacity, nor do they have any commercial interest in providing loans of the size in question. Others express concern that putting monetary value on land and privatisation of rights will result in many distress sales by poor people – and also lead to intra-familial conflicts.

While it is still much too early to arrive at any firm conclusions, the debate itself indicates the utmost importance of making sure that experiences from the programme are carefully and

continuously being analysed. Unfortunately there does not seem to be any independent research activities at the moment following up on the results of this programme.

Other GOT initiatives, which relate to the Land Acts are the Land Bank Scheme supported by the Investment Act of 1997 and the Land Amendment Act of 2004. The Tanzania Investment Act allows non-citizens to own land for the purpose of investment. The Land Amendment Act creates a legislative framework "… allowing for and regulation of sale of bare land" so as to allow mortgaging of property as a means of encouraging domestic and foreign investment." (Independent Review of Land Issues, December 2005). The Tanzania Land Bank Scheme is a scheme under the Tanzania Investment Centre to facilitate the identification of land suitable for investment. Tanzania Investment Centre then converse such land for sale to investors who fulfil criteria set up by the Investment Act of 1997. As shown there are provisions in the Land Acts for this as all land in Tanzania is public land vested in the president, who 'in the interest of the public' may excise not only from general land but also from registered village land. According to Mattee and Shem (2005) 2.5 million hectares of land for prospective investors have already been identified. The procedure used in relation to that was that village governments via regional authorities were told to earmark land for investment purposes in seven days (Mattee and Shem 2005). At a recent workshop held in Dar es Salaam some concern was aired about arbitrary decisions of Village Councils and Assemblies in appropriating villagers' land without consent or compensation. Concerns about compensation also arose regarding land that has been taken or acquired by the government. (Oxfam et al 2005)

A number of pastoral organisations have also expressed fear that pastures may be looked at as 'idle' or 'bare' land, and then be identified for investment purposes. A large part of the land areas used for pastures fall under the category general land, which is under the exclusive control of central government. Pastoralists fear that the government may find it in the interest of the general public that such land is used for investment purposes in stead (for example PINGO's Forum 2006, Olenasha et al 2004).

When looking at the Land Bank scheme, the Land Acts and other recent policies and legislation related to natural resource management together, the concerns raised do seem relevant. Many draw attention to inconsistency within different parts of the laws and policies themselves and contradictions between them.

One example of this (often referred to in the debate) is the 'Strategic Plan for the Implementation of the Land Acts' (SPILL) (URT 2005). The aim of SPILL is to make the new land laws operational, meaning "….that it will take on-board, all that needs to be done by the land administration machinery to frame and safeguard customary and granted land rights for land users so as to, among other things, facilitate the alleviation of poverty, through enhanced incomes accruing from investments in land." (URT 2005, p. v)

It is clearly reflected in SPILL that GOT is committed to modernise the agricultural sector in Tanzania and make land an important commercial asset in relation to that. The traditional practices of farmers and pastoralists have to be changed and they have to learn to practice modern agriculture and/or animal husbandry. The starting point for increased production is seen in SPILL to be increasing acreages (URT 200, p. 16). In order to promote such a situation the plan contain two essential strategies, namely to sedentarize pastoralists and change their production system into a

ranching system, and to introduce a system of minimum acreages for farmers through a resettlement scheme.

The present performance of the pastoral sector is in general looked at very negatively in the plan and a number of points are emphasised as of critical concern:

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

The conclusion to these points in the plan is: "Pastoralists have to be given land and told to settle (meaning nomadic tradition has to stop)." (SPILL, URT 2005d, p. 14)

There are several problems with these viewpoints when looking at them in relation to the spirit of the Land Acts and when looking at facts of the production level of the pastoral sector

The Land Acts recognise existing customary land rights, including those of pastoralists and provides for registration of such rights, even though this as mentioned is not so clearly spelled out.

The livestock sector, occupying only 2.2 million people contributes as mentioned to the agricultural sector GNP with 30% (NSGRP, URT 2005a, p.6).

In the National Strategy for the Reduction of Poverty pastoralism is seen as a sustainable livelihood and the NSRP has a very different approach to the improvement of livelihoods for the rural population, pastoralists as well as farmers (See for example Mattee and Shem 2006, p 9).

With these policies in relation to pastoralism Tanzania is also on collision course with the international policy agenda for human rights of indigenous peoples, to which a number of the ethnic groups practicing pastoralism in Tanzania belong.

The suggestions in SPILL, and the philosophy behind them, as to future development of pastoralism in Tanzania find support, however, in the proposed National Livestock Policy (Mattee and Shem 2006).

Not surprisingly many pastoralists are alarmed by these policies. The representatives for pastoral organisations met during the field stay expressed deep concern and feared for the future. A number of these organisations have been trying actively to influence the policy processes and have provided comments on policy drafts etc., but their views and interests have as has appeared not been taken very much into account

Concerning the second point referred to in SPILL about minimum acreages to be introduced to small holders, the plan emphasises that: "Every district should have some guidelines on minimum acreages for small-holders and anyone using less than the minimum for income generation will be

deemed to be economically landless." (SPILL, URT 2005d, p. 16). While the plan recognises that such a minimum acreage will have to be different in different parts of the country the plan suggests: "A minimum 10 hectares for each peasant and about three times as much for herders ….as a starting point in the first 3-year period of this strategy. It is suggested that anyone with less than the viable acreage for the reduction of poverty be deemed to fall into the economically landless category and therefore a target recipient of this policy." (SPILL, URT 2005d). It is acknowledged that the introduction of the policy will require movements of small farmers out of densely populated areas. The plan suggests that a nationally supported alternative scheme for land delivery to the economically landless, to be known as 'national village resettlement scheme (NVRS') should be created. (SPILL, URT 2005, p. 16-17)

Although the plan has a very large proposed budget for its implementation (more than 300 billion Tanzanian Shillings[29], SPILL, URT 2005d p. 62), it is very unclear in the plan how the strategies proposed above could be pursued, and the practical implications of them. A number of issues immediately arise in relation to the resettlement plan, although this part of the plan to my knowledge has not yet given rise to much public debate in Tanzania. However, the following points seem crucial.

Firstly, quite clearly it does not take into account that the Village Land Act recognises customary land rights irrespective of size of holding – that is small holders actually have a right to the land they possess. For a number of reasons they may not want to give it up even though there may be compensation and another piece of land given to them.

Secondly, the plan does not take into account that rural households, for reasons which do not necessarily have anything to do with size of land holding, have a diversified economy and that the land they posses only compose part of the basis for their livelihood.

Thirdly, the plan does not refer to any evidence that a starting point for the increase in agricultural production is increased acreage. In the debate about agricultural development this view is highly disputed[30]. Interestingly enough the National Strategy for Growth and Reduction of Poverty, while mentioning a number of constraints to further agricultural growth does not mention sizes of acreages held by smallholders as a problem. Instead attention is drawn to factors like poor rural infrastructure hindering effective rural-urban linkages; inadequate agricultural technical support services; limited capital and access to financial services; underdeveloped irrigation potential etc. (NSGRP, URT 2005d, p. 6)

Forth, most smallholder households suffer from the constraint of labour power – and rely on family labour – labour power is in general a major constraint in many of the rural areas not only for small holders, but also for farmers in general during peak seasons. How does the plan foresee that 10 hectares can be cultivated with access to family labour only, taking into consideration that access to sufficient labour power, as illustrated above, is a major constraint in general for all farmers?

Fifth, it is hard to find the democratic and human rights aspects in the rhetoric used in the plan. It would seem more in line with equity and human rights principles to set upper land ceiling levels for people who have accumulated large trunks of land in the densely populated areas, and then redistribute to those deemed to be 'landless' in such areas.

[29] 1 US $ was app. 1100 Tanzanian shillings in March 2006
[30] See for example Lund et al 2006

Sixth, the plan has very little on gender issues in general and no considerations as to how gender relations might be affected of the proposed strategies.

Finally it may be relevant to remind about the very un-encouraging effects of the last 'national village resettlement scheme in Tanzania during the 1970s, the results of which have been well documented (For example Von Freyhold 1979 and Raikes 1986).

There are a number of other policy reforms and new Acts in Tanzania, which also have implications for land rights and land conflicts for all rural dwellers in Tanzania. Examples of this are The Environmental Management Act of 2004, the Forest Act of 2002, the Wildlife Policy of 1998 and the draft Wildlife Act of 2004. The main concerns expressed by some observers in relation to these acts and policies are that they are not harmonised with for example the Land Acts and therefore some of the provisions are contradicting provisions in the Land Acts. Moreover, it is emphasised that at the same time as the policies and Acts send signals of more focus on community participation and devolution of powers to the local community level, they do in fact also open for more central government control with natural resources management. (interviews with representatives of CORDS, PINGOs Forum and OXFAM, and also appearing from Mattee and Shem 2006).

An overall aim of poverty reduction is stressed in the introductions to all the new policies and Acts in Tanzania. However, when taken together it is not surprising that many of the signals reflected in the new reforms, have raised concern and worries in many circles about the effects the policies and laws may have for the poor and vulnerable people in the future.

V. Land Conflicts and conflict management

5.1 Introduction

Conflicts related to land rights issues in Tanzania is not a new phenomenon. However, some of the conflicts have changed in nature and have been growing and become more complex, violent and often involving large numbers of people with different cultural backgrounds. Existing mechanisms to deal with the conflicts have therefore become insufficient. Many of the conflicts escalate, reach the headlines in the press and have an impact on macro-level politics. Inter- and intra family conflicts, neighbour disputes, inter- and intra- village conflicts are also still there, and, it seems, are becoming more and more frequent.

In the following reference is made to a number of different types of conflicts which I have come across in my own studies in Tanzania, with reference also to other studies. I have studied two of the conflicts in-depth and those two conflicts will be discussed more in detail: namely a conflict related to women's land rights and a conflict between farmers and pastoralists. This is done because these two conflicts illustrate many of the issues often involved in land conflicts in Tanzania: Changing nature of customary rules and norms and conflicting perceptions about them; interplay between customary laws and formal policies and legislation; the issue of first comers versus late-comers; gender relations; the issue of identity, culture and citizenship; competition between different land use patterns etc.

Section 5.3 looks at mechanisms of conflict resolution and recent policies and legislation related to that.

5.2 Examples of different land conflicts

Conflicts about land and territories have always occurred in human history in Africa and elsewhere in the world. However, the fact that land is becoming an increasingly scarce resource in many parts of Africa, an object of economic speculation and representing very strong feelings about identity and sense of belonging, has implied that land has become a very frequent source of conflict. Disputes and conflicts occur at all levels: Conflicts between neighbors about field boundaries; between men, women, and generations about their respective land rights; between pastoralists and farmers; between states and indigenous peoples; between companies and local populations about rights to exploit mineral and other resources. The question about rights to land and territories has also been the source of civil wars as well as wars between nations.

Most types of conflicts referred to above occur everywhere in Tanzania. Conflicts between the *younger and elder generation* has been reported in Tanzania as early as in the 1920s and 1930s in the most fertile and densely populated areas where the establishment of state plantations and European settler farms as well as population increase led to increased commercial interest in land and gradually to land shortage.(Gulliver 1958, 1961). Some decades later the same situation arose in other of the prosperous areas (Odgaard 1986). Recent research in Northern Tanzania (Babati) has documented that the generation of fathers are reluctant to provide land for their children (in this area especially sons inherit) because new commercial interests makes it attractive for the fathers to hang on to the land as long as possible. (Odgaard et al 2005).

Development interventions have often spurred *conflicts between villages about their boundaries*. Examples of this are development interventions in relation to forest and woodland conservation. In several villages in South Western and South Eastern Tanzania efforts to establish village forest reserves on village public land have led to inter village conflicts. Demarcation of village boundaries, Forest Reserves and planned Reserves has been one of the first activities undertaken by all the projects. In some of the areas people have not previously been so much concerned about boundaries, but once boundaries are drawn and management plans developed people have to respect that. As not all areas are equally well endowed with the most valuable resources, and as people are becoming aware of the implications of that the identification of boundaries have given rise to many conflicts and to discussions about who and from which village should be allowed to harvest what, where and when.

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There are several conflicts related *to loss of access to grazing areas* due also to a large extent to development interventions related to conservation of forest and woodland areas. It appears that pastoralists are harder hit than other groups in the communities in question. In some villages in South Western Tanzania it has been a conscious strategy on the part of farmers, who claim that the livestock of pastoralists are destroying their fields, to try to get pastoralists out of their areas by imposing charges on grazing rights, or by banning grazing in the planned reserves altogether. It appears from the existing project documentation for example[31] that pastoralists, although recognised members of the project villages have not been involved in the decision-making processes in relation to the establishment of reserved areas and the development of the management

[31] MEMA Review Report 2001, MEMA Beneficiary Assessment 2002

plans. Decisions like reserving village public land for specific purposes have to be confirmed by the village Assembly of which all villagers are members.

Very recent conflicts related to *loss of grazing areas* due to conservation have actually reached the headlines of the Press and become very politicised. One example of this is the recent eviction by force of more than 1000 pastoral families from Ihefu in Mbeya region.(Daily News-Sunday News 13 July, 2006, www.irinnews.org 14 July 2006). In short the background is as follows. Grazing areas have constantly been diminishing in the area due to the expansion of cultivation into land previously used for grazing. This expansion has also implied that corridors leading to pastures and water resources have been blocked in some parts, and pastoralists have increasingly been pushed towards a government reserve in the area. Environmental problems, the causes of which are heavily disputed (SMUWC, Fox 2004), have officially been blamed primarily on pastoralists, but have implied that the government has decided to extend the boundary of already reserved areas and to increase restrictions. All types of uses of the resources or presence in the area are now forbidden. Discussions held in the area during the fieldwork did reveal that there have been tensions for quite a while between farmers and pastoralists and that the resources are depleted. There has for a long time been an ever increasing immigration into the area of farmers and pastoralists from many different parts of Tanzania (Odgaard 1997). Other areas are affected by similar problems. One, example which has also given rise to much debate in Tanzania and has involved authorities and politicians at all levels is the eviction of pastoralists from the Mkomasi Game reserve in North Eastern Tanzania. (See for example Mustafa 1993, Wickama et al 2005)

The interesting thing to note here is that local authorities and central government officials as well as politicians choose solely to put the blame on pastoralists many of whom are born in the area and whose parents settled in the area more than fifty years ago, while there were few farms and fields, if any at all, in the areas where they settled (Odgaard 1994, Odgaard and Maganga 1994). However, looking at the recent government policies in relation to pastoralism like the draft livestock policy and the SPILL discussed above, the GOT of Tanzania seems to be determined that many problems are derived from pastoralism, and that they can be solved by changing the pastoral mode of life.

Conflicts between *farmers and pastoralists* are common, and becoming more and more so in recent years. Long-standing conflicts in Loliondo District between farming communities and Maasai herders are cases in point (see for example Ojalammi 2006, Olenasha et al 2004). As illustrated in the example dealt with at length later, the problems are closely related to pressure on resources and to different land use systems, but are given expressions especially in cultural differences etc. A typical example of this is the sad events in Kilosa, which have attracted much public attention. On the 8th of December, 2000, 30 people were killed at Rudewa-Mbuyuni village in Kilosa district, Morogoro, during clashes between cultivators and livestock keepers. In the mass media this event was primarily blamed on the pastoralists. Regardless of the specific casting of villains and victims, however, all reports about the event portrayed livestock keepers in Morogoro as “Maasai pastoralists.” It was also generally implied that these pastoralists were “outsiders” rather than “indigenous” to Morogoro region (Maganga et al, in print). As appears from various studies from the area the reality is in fact quite different from the impressions given in the public debate about the event.(Maganga et al, in print, Brehony et al 2001). However, we see again here that pastoralists are seen as trouble-shooters and that their way of life and culture is considered as being inferior to settled farming communities.

There are a number of examples especially in South Eastern Tanzania where conservation efforts have implied that *farmers have lost farmland* or have been told to leave farms, which happen to be situated in the areas being planned for conservation on public village land (Maganga and Odgaard 2002). While some farmers on their side want to claim the land, village authorities including the village natural resource committees, established in connection with the development project, argue that the farmers have just settled in the concerned areas without permission. Considering that the majority of villagers in the area in general perceive that they have a right to clear and settle on village public land, which according to customary rules and norms may be defended, the question is now which rules and laws should be applied. (Maganga and Odgaard 2002). Moreover, there is the question about the nature of compensation, if any.

Experiences from Lindi Region show how a whole group of villages have been involved in a long lasting conflict with the Liwale District Council concerning disagreement over the balance between responsibility for managing the Hangai Forest versus rights to benefits gained from the forest. (de Waal, 2001).

Disputes about women's land rights vis-à-vis those of men are not uncommon in present day Tanzania as reflected in the example below. (See also for example Manji 2000, Koda 1998, Maganga and Odgaard 2002). Conflicts differ however, depending on socio-cultural context and on historical developments. The example below is from a patrilineal community in South Western Tanzania and differ from the types of conflicts in communities traditionally organised according to matrilineal principles as analysed in Koda (1998).

Expanded example no I:[32]
The scramble for women's land rights among the Hehe in Iringa Region:
Among the Hehe, who are the indigenous population in Iringa, there are very different accounts of the rights of women and men respectively to property, especially landed property. As will appear below the distinction between land as property and other types of property (e.g. cattle) is historically a fairly recent phenomenon in the communities in question.

When asked about their land rights the majority of the interviewed Hehe women of all ages argued that by custom women have the right to acquire land in their paternal home area, and to inherit such land from their fathers. A large number of men, especially women's brothers, claimed that women (in their own right) have no rights what so ever to land in their natal home area. According to these men women only have use rights to their husband's land. Only in case a woman gets into trouble, (e. g. divorce, or if widowed and chased away by children and/or the deceased husband's family) she may be allowed to borrow a piece of land from her father or a brother. But, according to this group of men, she will not be able to consider such land her property, and her children are not entitled to inherit it.

The version given by the women was, however, confirmed by the majority of the elderly men, e.g. men belonging to the generation of fathers of the interviewed women, and the conflicting views do therefore not reflect a conflict between men on the one side and women on the other, but rather conflicts between two parties, e.g. a specific group of women (daughters) sided by their fathers, and specific groups of men, especially women's brothers.

[32] Extended versions of this and the following example have appeared in Odgaard 2005

As the Hehe are patrilineal and patrilocal the general assumption is that women get access to land only through marriage, and only use rights.[33] However, it appears clearly from historical accounts that Hehe women were entitled to property in their own right and that they inherited such property from their fathers. Brothers usually inherited the largest shares because they had the obligation to take care of the sick, parents during old age etc. But it also appears that whatever property a woman inherited was usually left in her natal home area and taken care of by her brothers when she married and moved to her husband's village. Historical accounts also show that land was actually not looked at as property until in the latter part of the colonial period (Odgaard 1999).

Some of the confusion about women's rights to land seem to be related to historical changes. The historical sources, as well as information from the interviewed elders are in agreement on at least the following points in relation to the pre-colonial situation among the Hehe:

1. Previously land did not have any value as such, because there was plenty of it, and more than enough to satisfy the needs of the people.
2. Land did not constitute individual property, and land users were not attached to any specific pieces of land.
3. The role of livestock keeping was as important, if not more important, for the livelihoods of the Hehe than cultivation.
4. Major cultivation activities were undertaken by women.

But this situation has changed fundamentally except for the fact that women still play a very important role in agricultural production.

There has been a continuous increased emphasis on cultivation starting very early during the colonial era and continued ever since. It was in the interest of the colonial powers to make productive use of the land, and large areas were alienated and given to private companies, used for government purposes, made into conservation areas, forest reserves and national parks, and given to settlers.[34] The policies implemented by post-colonial governments have also emphasised agricultural production, and many African farmers have during the times invested in new crops and improved technologies, and accumulated large holdings.[35] From having been quite mobile with their herds of livestock the Hehe are now more permanently settled cultivators, who over the times have developed more and more intimate cultural attachments to the specific pieces of land they are using[36], and new normative orders have emerged.

The emphasis on agriculture during and after colonialism was caused by, among other things, the need to produce a surplus to pay taxes, school fees etc. In concurrence with the massive increase in population, both natural increase among the Hehe themselves, and heavy immigration,[37] there is now increased competition for land, both for cultivation and pastures, and, therefore, naturally enough increased focus on land rights.

[33] For a discussion about assumptions related to women's land rights in patrilineal communities see Odgaard and Weis Bentzon 2003.
[34] See for example Bagshawe 1929, James 1971, James and Fimbo 1973 and Mbilinyi 1991.
[35] See for example Raikes 1986, Odgaard 1986 and 1997, Bryceson 1993, Spear 1996.
[36] This is dealt with in some detail below, but more in depth in Odgaard 2003.
[37] This appears clearly from the population censuses from 1978 and 1988 (URT 1978 and URT 1988).

These developments combined with increased influence of paternalistic and male dominated ideologies and resulting changes in norms and values have implied that women now, much more often than previously, find themselves in situations where they need to make use of their rights to claim land and property from their own clan: Many are divorced or single mothers, either by choice (Odgaard 1997), or because they do not have contact with the fathers of their children. Many men complained that their sisters are increasingly coming home and trying to get access to land in their natal villages, where, in the opinion of many of the men, women are only entitled to borrow land and not to acquire it as property.

Nowadays, cases where widows, instead of continuing to cultivate land in their husband's village, are chased away and have to go back to their natal village are not uncommon. Manipulation and reinterpretation of customary rules on the basis of male dominated ideologies is confirmed by the way many brothers interpret the rules. While arguing that their sisters do not have land endowments in their natal village, they claim that wives can only be allowed to use husband's land during the course of marriage. In case of divorce or widowhood the women will, according to them, have to return to their own natal family/village.

The obvious contradiction here illustrates that these men in order to protect their own interests, and while still referring to customary rules, try to eliminate the connection between exercising a right and fulfilling obligations embedded in customary rules. It also reflects that, like their sisters and fathers, they re-interpret customary rules in accordance with changing circumstances (e. g. increasing land pressure) with the important difference, however, that fundamental guiding principles of customary rules are not adhered to. So in fact they discriminate against their sisters, and their brothers' wives. This is not only against the principles of customary rules and norms, but also against the New Land Policy and the two new Land Acts. (See above)

However, the men having this position see land as forming part of property, but unlike the other group of men and the women, they distinguish between land as a special type of property, distinct from other types of property, and stress that a father's landed property can only be inherited in the male line. Moreover, instead of being concerned with succession like the fathers, who emphasise the connection between right and obligation, the sons emphasise their exclusive right (in a 'modern' meaning of the word) to inherit property.

It appeared during interviews, that fathers, if alive, actively support their daughters' land claims when brought forward. The tendency of women inheriting land in their natal village is claimed to be increasing. This is no doubt related to changes in fathers' practices in relation to distribution of land between children. Many fathers argued that nowadays they want to divide their land while still alive between all the children, and many had already done so in order to avoid conflicts from arising between them. In this way fathers are like a semi-autonomous social field[38], striving to acquire rule-making capacity and to coerce compliance, but challenged though by their sons who are trying to do the same vis-à-vis their sisters.

The reason why fathers are so keen on the issue is, as they argue, that daughters are generally more caring towards their old parents than sons, many of whom, due to education and/or employment, are living away from their home areas.

[38] This concept is discussed in detail in Falk More 1978

A father's strategy in practice when distributing his wealth reflects his concern of being ensured support during old age. As daughters have proven to be important in relation to that, fathers want to make sure that daughters are ensured a livelihood. Fathers, therefore, indirectly make use of rules of disinheritance for those children, who otherwise would be entitled to the largest shares. Fathers' concern is the question of succession, and if sons are not likely to live up to responsibilities accompanying rights to property, fathers make their strategy accordingly. Such a strategy is necessary in a country with no or extremely limited social security systems to support people who cannot provide for themselves.

Even though there seems to be a tendency that more and more Hehe women are successful in claiming land in their own right it is hard to deny that more sons than daughters manage in practice to get their share of fathers' land in Iringa and in most other places in Tanzania[39]. But changes are taking place and recent studies clearly show that the Hehe women are not the only women in Africa who have rights to claim property including landed property, and who manage to exercise such rights in practice.[40]

Expanded example no. II
Conflicting perceptions about the land rights of Maasai pastoral immigrants in Iringa
This example illustrates both the issue of land rights of 'first-comers' and 'late-comers' (*wawenyeji* versus *wageni)* and competition between two different land use systems: one in which land is used mainly as a common property resource, and another based on cultivation of individualised specific pieces of land. The dispute deals with a general problem in Tanzania and many other African countries[41] namely that cultivation is expanding into areas used as pastures.

The Maasai are mainly pastoral but cultivate maize and few other crops mainly on scattered fields around their homesteads. When they first arrived in the mid 1950's they obtained permission from the local chiefs and headmen to utilize a specific area for grazing and for cultivation. The type of rights they have therefore falls within the category I have described as: Customary rights rooted in non-indigenous customary rules and norms, but also under allocation by local authorities. However, as other livestock keepers are also allowed to graze their livestock in the same areas there is also a de facto open access situation.

Maasai do generally not claim ownership to any specific pieces of land, but use rights to grazing areas and water points. They are engaged in transhumance, and movements are determined by the need for pastures. Land is mainly managed as a common property resource to the extent possible, taking into consideration that other livestock keepers also use pastures and water sources in the areas where the Maasai live. They do not establish permanent fields or plant trees etc. to gain prescriptive rights to any specific pieces of land, because, as they argue, this would undermine the pastoral lifestyle. But it is also a conscious strategy to prevent cultivation in general from expanding into pastures. The Maasai do, however, have a concept for 'homestead' – both a homestead presently used *ng'ang'ai* – mainly a settlement with houses of the extended family and cattlecraal, and a settlement previously used, namely *imming'aang.* Only close relatives are allowed to use such

[39] URT/NAI 1994, the various contributions in CHANGE 1997, Koda 1998, Odgaard 2003, Odgaard and Weis Bentzon 2003.
[40] See for example Rocheleau and Edmonds 1997, Makenzie 1989, Muteshi 1997, Manji 2000.
[41] See for example Aarhem 1986, Lane and Pretty 1990, Odgaard and Maganga 1994, Cleaver 2003, Lane 1993, Mwaikyusa 1993, Mustafa 1993, IIED 1999, Woodhouse *et al* 2000, Broch-Due 2000a+b).

areas, and if people from outside want to use them they need the consent of the previous user according to Maasai rules and norms, because the first user often returns to the same settlement during seasonal movements.

Securing land rights has, however, as discussed above, become more and more important for the Hehe, and other cultivating groups in the area. The special word used to define Hehe customary rights is *lungulu*, which is actually a Swahili word. But for the Hehe it now refers to the land where forefathers used to live and where ancestors are buried, and a lot is done to make graves visible to demonstrate one's right to the place. The Hehe word for land held under Hehe custom is actually '*lilungulu*'.

'*Lilungulu*' means settlement – that is an area with only a few houses – maybe between 1-10 houses and usually inhabited by families bound together by kinship ties (Brown and Hutt 1935). Previously the Hehe lived in scattered settlements. Land was readily available and people moved very frequently because of the livestock and therefore did not associate themselves strongly with a specific territory. According to the interpretations of land rights at the time people had the right to the place where houses were situated, and to cultivate as much land as access to labour and other resources would allow. The Hehe headman was authorised to distribute use rights to people living in their area, and to people from outside – both Hehe and people from other ethnic groups, who asked for it – as long as there was enough land available. The only condition was to keep a proper distance to neighbours.

As a matter of fact *'lilungulu'* for the Hehe previously had more or less the same meaning as *ng'ang'ai and imming'aang* has for the Maasai today – that is when land was plentiful and when the Hehe themselves were mainly livestock keepers. However, the developments described above combined with more permanent settlement among cultivators have eventually led to the present pressure on arable land and pastures. From having previously been the place where one lived at any given time - a settlement with scattered houses and fields belonging to close relatives, *lungulu* has now become the epitome of rights to land sanctioned by Hehe custom – an integral part of Hehe culture.

Changes in Hehe burial customs illustrate that. Before the European occupation, dead bodies were generally not buried, but left in the bush. However, during the German period[42] it was ordered that all corpses had to be buried. Since then the dead have generally been buried in their *lungulu*, and maintenance and cleaning of the graveyards has become an important aspect of Hehe customs related to ancestor worship. A small plantation is made to mark the position of the grave. Only people who are considered rightful heirs to the property of the deceased can be allowed to use land where ancestors are buried. In the eyes of the Hehe, the presence of graves is by itself a justification for legitimate land claims (Odgaard 2003).

Some of the other ethnic groups living in the area have developed similar burial customs. The presence of graves is therefore a strong justification for making land claims, and not immediately disputed. Claiming rights to specific pieces of land with reference to the presence of graves is a very much used – and misused – strategy. (Odgaard 2003)

[42] The German Occupation lasted from 1894 to 1918. During this period Tanzania, by then called Tanganyika, was a German Protectorate.

Customary rights can in principle at least, generally only be retained if it clearly appears that the land is or has recently been used. Most villages have rules specifying the number of years land can be left fallow, and sanctions if rules are not obeyed. In case there are no visible graves or tree plantations on fallowed land it can be alienated by the village authorities and given to other people if the number of years permitted for fallow is exceeded. Even though some powerful people with large holdings may be able to bend rules, the fact that rules exist have implied that people with large holdings are interested in letting other people use part of their land, and at the same time be able to get an extra income from the arrangement. Renting and borrowing arrangements are very widespread in the area.

Due to increasing scarcity of 'empty' land and grazing areas the rights of the Maasai to be in the area are increasingly being contested. Their seasonal movements are now confined to smaller and smaller areas also used by other livestock owners, and with many scattered fields. It is therefore becoming increasingly difficult to keep livestock away from fields with standing crops, implying that a lot of damage is done to the crops and tensions between the groups are increasing.

Some village government members even expressed a clear intension to do whatever they could to have the Maasai removed from the area. One of the strategies used by village authorities has been to allocate more and more land in the grazing zone to cultivators. During a period of 3 years, when I visited the area regularly, it was very clear that fields were increasingly being established in areas previously used as pastures. Cases were identified of village leaders having facilitated that enterprising individuals based in the regional capital city, Iringa, have been able to obtain private property rights to large parts of the pastures (Odgaard 2003).

Why have the Maasai not adopted the same mechanisms as some of the other immigrants, to claim more permanent land rights? When this was discussed the Maasai argued that to establish more permanent fields and to claim permanent rights was fundamentally against their principles for use of pastures. Moreover, if the Maasai started doing that, they said, then the village authorities could make it even more legitimate for other people also to open new fields in the grazing zone and through investments be enabled to get more permanent rights to specific pieces of land. And that, the Maasai argued, would mean the end to the pastoral way of life – and their livelihood.

But why is it so easy to undermine the land rights of the Maasai first in their home areas and later also in areas to which they have migrated and been settled for quite a long time, when other immigrants are able to have *lungulu* rights recognised? Numerous studies illustrate that this is related both to perceptions about what type of land use is seen as a legitimate way to gain undisputable rights to land, and to the fact that the pastoral way of life and pastoralists have been looked at as less 'developed'/more primitive than people who are permanently settled and growing crops.[43]

It is clear both from written sources and from interviews with authorities at all levels in Tanzania that in order for a land claim to be successful there has to be visible signs of use/investments in the form of labour (cleared bush) and/or visible structures, planted trees, standing crops etc. Pastoralists do generally not leave visible investments behind during their seasonal movements. There has therefore been a continuous marginalizing process, which has forced pastoral peoples in many parts of Africa to leave their home areas because their lands have been taken and used for other purposes.

[43] IWGIA 1998 and 2001. Tenga 1992, Tenga and Kakoti 1993, Mwaikyusa 1993, Lane 1993, Aarhem 1986, Talle 1999, Maganga et al, in print, just to mention a few.

The large number of Maasai living as immigrants in Iringa and other parts of the Southern Highlands in Tanzania illustrates this process. Although there are certainly some pastoralists who have managed quite well as migrants, they become generally more vulnerable when they live as *wageni* in areas where many cultivators from overpopulated neighbouring regions are also living as migrants.

As mentioned pastoral land rights are generally not well provided for in legislation, neither previously nor today. The pastoral land use system is by both customary laws, as interpreted by the court system and by non-pastoral groups[44], and by formal legislation[45] looked at as inferior or less 'developed' than cultivation. Even though there are more references to pastoral land rights in the new land acts from 1999[46], and also specific provisions for communal land rights, it is still very unclear how pastoral rights should be defined and how they should be protected.

Summarizing example I and II:
While only representing a minor part of the type of land disputes found in Tanzania and other African countries, the disputes dealt with above do illustrate a number of issues of general relevance for the land question in Tanzania. They reflect the dynamic interplay between different normative orders and the ability of customary rules and norms to adapt to changing circumstances, in some cases, as we have seen, for the good and in other cases for the bad. They also illustrate how some groups manage to manipulate rules from different normative orders depending on access to power and bargaining power. However, there is also a cultural dimension to the dispute between Maasai pastoralists and Hehe cultivators: namely that close ties to specific pieces of land, crop cultivation and permanent settlement are perceived by settled cultivators and a majority of the population at large, to be superior to pastoralism and transhumance.

From the analysis presented here it has appeared that there is not equal access to land rights in Tanzania or equal access to justice in the true sense (Benda-Beckmann 2001: iii). Women and pastoralists have been identified as especially vulnerable in cases with increasing pressure on land. But land is not equally distributed between other social groups in Tanzania either, and the poorest people among cultivators have access to very little or no land of their own. They therefore depend exclusively on people with larger holdings from whom they can borrow or rent. As discussed, borrowing and renting is widespread, and the economic terms on which such arrangements rest can be very tough, ranging from paying rent in kind, money or labour, or having to put yourself and/or members of your family at the landowners' service 24 hours a day (working in their houses, running errands or providing political support). Nothing is free of charge, and a right to use land is no exception.

5.3 Conflict resolution

As illustrated there are numerous conflicts related to land at all levels. Although some of the new policies and laws have the stated objective of reducing land conflicts, it is unlikely that this will happen in the short run. In fact these reforms may actually, as indicated above give rise to even more conflicts. The big challenge is therefore to make sure that there are mechanisms in place to handle conflicts.

[44] Except hunters and gatherers of which there are very few left in Tanzania.
[45] See for example Shivji 1994 and Tenga 1992.
[46] See for example Village Land Act 1999b: 98.

The mainstream approach to conflicts tends to see conflict as undesirable, a breakdown in normal relations and something to be avoided or resolved as quickly as possible, and most projects look for formal institutional arrangements for conflict resolution. This is contrary to the alternative approach adopted by studies such as Cleaver (2001), Maganga (2000) and Maganga and Odgaard (2002). In situations where communities are not homogeneous, and where different interests over natural resources compete, conflicts are inevitable. The important thing is that there are appropriate conflict management systems, and to draw as much as possible on local informal conflict resolution mechanisms, which are often guided by principles of reconciliation and the re-establishment of peace.

When I have discussed the issue of land conflicts with local people (both men and women) during previous research, the majority of them want to have their land conflicts solved as close as possible to the arena where the conflicts occur. This generally mean that people try to solve them with the assistance of family/clan members, village elders who are seen as specifically knowledgeable about boundaries, previous disputes, how such disputes were settled etc. What is considered to be important is that the solution to a certain conflict is reasonably acceptable to all the involved parties, seen as legitimate by all of them, and that peace may be re-established.

There is a general reluctance among local people to involve 'outsiders' – e.g. state representatives etc. in the local conflicts. First of all it involves more costs than to get the service of local traditional or government authorities. It also takes time and money to travel to the nearest court etc. However, the main issue is that there is a general distrust among villagers that people from outside will be able to help them arrive at solutions, which are seen as legitimate by all the parties – and very importantly there is a fear of corruption and partiality when external government officials are involved.

However, it has not been possible to handle some of the serious conflicts discussed above, of which some, as shown, have escalated and become very violent. Such conflicts probably will have to involve authorities at higher levels. It would though appear important to ensure that representatives from the local levels, including such traditional local authorities, who are seen as legitimate by the parties in the conflicts, are involved.

In the latest legislation related to conflict resolution the main emphasis seems though to be put on formal government officials and institutions. In order to expedite resolution of conflicts related to land the GOT has enacted a special Act e.g. the Land Disputes Courts Act of 2002. This legislation somehow reflects the hitherto practices of conflict handling in the sense that a formal land conflict handling institution is created down to the village level. Land disputes are now to be dealt with in different bodies instituted at the Village, District, and State levels. The lowest level is the Village Land Council, made up of 7 members, three of whom have to be women, and approved by the Village Assembly, based on nominations by the Village Council. The villagers may take their land disputes straight to the Ward Tribunal (next level) or the Land Division of the High Court (Wily 2003). The primary function of the Village Land Council and the Ward Tribunals is reconciliatory – that is with the objective of mediating between parties of a conflict and arrive at a mutually agreeable solution. The Ward Tribunal is empowered to determine disputes of land arising out of the Land Act and the Village Land Act (PINGOs Forum 2006). The Village Land Councils operate under the District Council and the registrar of villages of the President's Office-Regional Administration and Local Government (PO-RALG). Ward Tribunals are also under PO-RALG in terms of budgeting.

The next level is the District Land and Housing Tribunal and finally the High Court Land Division. While the High Court Land Division has unlimited jurisdiction in respect of land disputes, there are upper limits for the jurisdiction of the District Land and Housing Tribunal in terms of size of monetary value at stake in a land dispute. (Oxfam et al 2005)

While the institutions thus have been created and have replaced previous ones, there is however still some way to go before they can become fully operational. This became clear from a presentation made by the Commissioner for Lands Mr. A. Msangi at a recent seminar in Dar es Salaam. According to Mr. Msangi the budget estimates for the Village Land Councils still have to be established and the Ward Tribunals are only functional in some areas. The District Land and Housing Tribunals have as yet only been established in 23 districts and are under-funded, and so is the High Court Land Division. Moreover the last mentioned is only located in Dar es Salaam.

Observers from various circles in Tanzania have also identified problems in relation to the new system for land conflict resolution (Sundet 2005). It is pointed out that at the same time as the new system is not yet operational land disputes have in essence been removed from the normal court system. One of the reasons why it has not been possible to make the system fully operational may be that the different bodies belong to different ministries. (PINGOs Forum, 2006). While the Village Land Councils and Ward Tribunals as mentioned are under PO-RALG the District Land and Housing Tribunal is under the Ministry of Lands while the High Court and the Court of Appeal are part of the judiciary (PINGOs Forum 2006).

While there is reason to believe that many land conflicts will also in the future be sought dealt with at the very local level, involving mainly authorities as close to the venue of the conflict as possible, it is important that a formally recognised conflict handling system is in place. Legitimacy in the eyes of the conflicting parties is though crucial, and formal recognition of traditional authorities seems to be very important in relation to that.

VI. Conclusions and proposals

The issues, which have been identified in this report as being of major importance in relation to the land rights and land conflict situation in Tanzania are: 1. Questions related to governance; 2. Contradictions and lack of harmonisation between recent laws and policies in Tanzania; 3. The existing power relations (including existing gender relations); 4. Present development priorities. It is clear therefore that dealing with land matters is in essence political.

Concerning the first issue, e.g. governance, it has been emphasised that local peoples land rights are often abused through for example widespread land grabbing, arbitrary land confiscation and expropriations, considerable corruption at all levels of the land administrative structures etc. Such factors also have a serious impact on the escalating land conflicts in the country as described in chapter V.

There is a widespread mistrust to government officials in general in Tanzania, which is a serious problem. One may in fact argue, that part of the enabling environment, which with heavy donor assistance has been created for formal land administration, private investments, forest and wildlife management etc. may open doors for further corruption and land grabbing, and increase the poverty it was meant to combat.

The political nature of dealing with problems related to land rights and land conflicts compose special challenges in relation to what a donor can do in terms of promoting positive changes, and how it can be done. However, donor policies and development agendas are generally not politically neutral, and the following interventions at the government-to-government dialogue level concerning land issues seem realistic:

- Put pressure on GOT to promote good governance with reference to concrete examples of abuses of peoples land rights and escalating land conflicts in the country
- Support efforts to have an efficient conflict handling system established
- Emphasise that land issues are human rights issues as also indicated in the African Charter for Human Rights (the provision for social and economic rights) – and discuss them as such with recipient countries
- In general a redirection of attention from focussing on further institutional developments in relation to formal land management (except in connection with conflict resolution), and towards efforts related to governance is proposed – e.g. promoting good governance.
- Promote donor coordination with special emphasis on these issues.
- Promote the establishment of consultation forums with the involvement of respective governments and representatives of farmers and pastoralists organisations

This report illustrates that the majority of rural producers hold unregistered land rights in accordance with local customary rules and norms. The Land Acts recognises such rights whether they are registered or not, but encourage formal registration of such rights. It has been shown that it is not within the reach of the poor and the vulnerable to have their customary rights registered, as such a registration process is cumbersome and resource demanding.

While formal registration may be necessary in certain situations (in urban areas (where Denmark is already supporting such efforts), and to safeguard rights of the commons in some areas etc.) it is generally not seen in this report to be necessary or wanted for the majority of rural people, whose

rights are already secure through the provisions in the Land Acts. However, there is a need for special economic and political measures to ensure a better protection of the land rights of the most vulnerable. In relation to this there is a need at the village level to promote a system whereby land-renting agreements may be more systematised in order to protect renters from being subjected to haphazardly renting conditions. In safeguarding, defining and defending customary land rights and in conflict resolution the role of customary institutions is very important. Therefore the legitimacy and role of customary institutions has to be fully recognised.

In relation to this donors can emphasise the

- Need to work with customary institutions as an integral part of the land management system in Tanzania, and as dynamic and changing in nature, and always from the perspective of human rights

Lack of harmonisation and contradictions between recent policies and laws has been identified in this report as problematic, especially in relation to the overall poverty alleviation agenda pursued by Tanzania and the international donor community alike.

Even though, as shown, there are very positive elements in some of the new laws and policies presently being implemented in the country, this report has pointed out that the philosophy behind some of the plans, laws, and policies are at collision course with principles of human rights, international policy declarations in relation to indigenous peoples etc.

In relation to such issues donors could try to influence the policy dialogue in Tanzania in the following ways:

- Facilitate a process through which discussions about the impact on vulnerable groups of for example the SPILL, the Draft Livestock Policy, the Land Amendment Act, etc. are resumed, involving representatives from civil society organisations representing various social groups in the country.
- Through annual consultations urge GOT to rethink policy measures suggested in for example SPILL, the draft National Livestock policy, and other recent policies to deal with land scarcity, land conflicts, and to promote increased productivity in agriculture. Instead of the proposed minimum land sizes suggested for smallholders, donors could for example suggest the establishment of upper land ceilings for large landowners. This can be justified with reference to past experiences with resettlement schemes in Tanzania, and general evidence that there is no direct relationship between size of acreage cultivated and productivity. Land released through such a measure could be redistributed to poor people, especially female-headed households, who, as shown above are in need of more land.
- Provide assistance to actors (a number of local and international NGOs and civil society organisations) trying to influence that the recent laws and policies are harmonised and brought in line with general democratic principles and human rights.

Concerns have also been raised about the possible impact on the land rights of women and other vulnerable groups of the "Program to formalize the Assets of the Poor of Tanzania and strengthen the Rule of Law", inspired of the writings of Hernando deSoto, and currently being implemented with donor support in Tanzania. As the basic assumptions on which this program builds have been questioned by many experts, it is suggested that

- Gained experiences from this program are continuously being studied by independent researchers. This should be done to provide a bulk of knowledge based on which informed decisions about the future of such programs could be taken.

It has been illustrated that many conservation activities have interfered with the land rights of many people, especially pastoralists and hunters and gatherers and given rise to many conflicts. However, large numbers of farmers are also being affected both in terms of lost land rights and in terms of reduced access to many other resources of fundamental importance for their livelihoods. It is suggested therefore that

- A debate about current approaches to conservation, and about the role of conservation in poverty reduction is initiated. Apart from initiating this at the government-to-government level and as a donor coordination issue, support to national as well international NGOs and other local civil society organisations engaged in these issues can be provided.

To provide the necessary informed basis for discussions and initiatives suggested above it is proposed that

- Land specific policy briefs about the land rights and land conflict situation in Tanzania (and other countries as well) are worked out every year prior to annual donor negotiations.
- A study is undertaken identifying relevant NGOs and other civil society organisations engaged in the debate about land issues and who could qualify for further support to enable them to strengthen their capacity and impact.

The issue of power relations has been emphasised as having an important impact on the land rights and land conflict situation in Tanzania. Access to power is crucial for an individual or for groups of individuals to negotiate land rights in the plural legal situation existing in Tanzania. In fact land rights and land conflicts are strongly embedded in power relations. This report has identified that especially women, pastoralists and poor land renters are vulnerable, and not well positioned in relation to negotiate land rights and to defend whatever rights they have, and also vulnerable in connection with conflicts. One of the problems in relation to this, apart from lack of access to material resources, is lack of access to knowledge and information, not only about laws and policies related to land, but also about the way laws and policies are interpreted and implemented in various parts of the country.

In relation to this a number of NGOs are involved in trying to spread information about the new land acts to villagers. While this is very relevant, there is a need for much more effective information campaigns, which can reach a much larger number of people. Moreover, efforts so far has to a large extent focussed on informing about the importance of formalisation of land rights, based on the assumption that through that rights become more secure. In general there has been very little focus on informing people about the fact that the rights they already have are formally recognised by the present Land Acts, that customary rules and norms in general are recognised in the form they have at any given time in any given area, on the condition that they do not discriminate against vulnerable groups etc. (see chapter IV). Information of this nature and examples of how this is articulated in practice, like for example the Hehe women's fight for their land rights, one of the examples provided in chapter V in this report, would be an important type of

information to spread to vulnerable groups, in order to encourage them to pursue their interests and provide them with an informed basis on which they can do it.

There are various ways a donor can be involved in facilitating the building up of an improved knowledge base for poor and vulnerable groups in relation to land rights:

- To make land rights a special policy issue at the national level (Denmark) as well as in international donor circles
- To influence that it is given even higher priority by GOT

In terms of spreading information to the people the role of a donor can be:

- To provide support to relevant local and international NGOs and other civil society organisations and/or local radio stations who could produce and broadcast radio programmes informing people about their land rights and how such rights can be defended
- To provide support for drama groups who through role plays can transmit messages about the land rights of different social groups, land conflicts and ways of solving such conflicts

To identify the relevant organisations and to ensure the necessary capacity building for them to undertake the suggested activities a donor can:

- Facilitate a study to identify relevant organisations
- Provide assistance to organisations for capacity building - if found necessary

To ensure the availability of relevant information material, which can be used in the production of radio programmes, and for building capacity of relevant organisations a donor can:

- Facilitate that studies about the land right and land conflict situation in different parts of Tanzania are continuously produced – taking into account the changing nature of land issues over time – and the fact that they are context specific.

The way present development priorities (point 4 mentioned above) is seen to influence the land rights and land conflict situation in Tanzania is related to the international focus – and recently also the national focus - on the support to what is seen as an enabling institutional environment for productive investments. In connection with this formalisation of land rights have been seen as a precondition for increase in productive investments in agriculture. As shown above the agricultural sector, including the livestock sector, is indeed very important in the Tanzanian economy, and the development in this sector crucial for the poverty alleviation strategy in the country. Much evidence has however generally shown, that formalisation of land rights is not a precondition for productive investments. Local practices in Tanzania also point in that direction. When discussed with local farmers what they see as major constraints for productive investments the issue of land rights is only seldom mentioned, and if mentioned then not as the most important issue. Other issues like for example lack of access to inputs, bad roads and lack of market access, prices on agricultural produce etc., (for more details see chapter see chapter III) are seen as much more important. There seems therefore to be a clear need for a change in priorities towards forms of support, which more directly improve the production conditions for small rural producers, who through that will be better able to secure and defend their land rights. It is suggested therefore that donors change development priorities in general towards

- More direct support to rural producers production activities, e.g. to the agricultural sector (including livestock)

Apart from influencing that an important share of general aid provided is directed towards agricultural development programmes and rural infrastructure programmes, there are various other ways through which a donor can influence more direct support to rural producers. There are for example some promising experiences with local credit and savings organisations (SACCOS), which are being created in many rural areas in Tanzania, and based on which rural small scale producers are enabled to build financial capacity to invest. Efforts could therefore be directed towards supporting rural peoples own initiatives through:

- Support to NGOs and other organisations assisting rural people in establishing small rural credit institutions like for example SACCOS
- Supporting initiatives in capacity building in relation to management of such organisations

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Annex I

Terms of Reference

A study on

Land rights and Land conflicts in Africa

1. Background

Land rights are crucial for economic development in Africa. The majority of Africa's populations depend on access to arable land and/or pastures for their livelihoods. However, African agriculture suffers from many problems (low technological development, low productivity, unequal distribution of resources etc.). Some of the root causes of this situation are related to existing land tenure and land conflicts in many countries. Improved access to and utilization of land and other natural resources, and better conflict handling systems are therefore important for increasing economic growth and reducing poverty.

Land is important for economic development, and it is becoming an increasingly scarce resource in many parts of Africa. It is an object of economic speculation and it represents very strong feelings about identity and sense of belonging. For these and other reasons, land is a frequent source of conflict.

The question of land rights and land conflicts has been on the development agenda for some three decades and remains an unresolved issue among African governments and people, international donor circles and researchers. The number of ongoing land reform processes and changes in land policies and land legislation, which are sweeping across the African continent during these years, reflect this.

World Bank is a key player and has recently summarized research results related to the land issue and published a report: 'Land policies for growth and poverty reduction'[47]. The European Commission has recently finalized the new EU Land Guidelines[48], which are governing how the member states support the area of reforms in developing countries.

The overall aim of the study is to synthesize and analyze available documentation on land reform and land conflict and their impact on agricultural/rural development and poverty reduction in Africa in a state of the art study, to conduct two case studies in order to propose development interventions that can help to improve administration of land rights and conflict handling mechanisms.

2. Objectives

The objective is:

An overview of the land right and conflict situation related to:

a.) The most recent material on the relationships between land rights, land conflict, land reform and agricultural/rural development and poverty reduction.

[47] The report is available on: http://econ.worldbank.org/files/27814_toc.pdf

[48] November 2004

b.) The situation in two different African countries where the specific country situation is addressed highlighting the human rights perspective, an economic (growth and distribution) perspective, a political science perspective and an anthropological perspective.

3. Outputs

- An inception report which outlines the "state of the art" of the matter with ample references to recent studies, policy guidelines etc.
- Country specific reports from the two selected countries of the study.
- Final report covering both "state of the art" and country specific reports to be presented at a workshop in Denmark.

The country specific reports should, based on its analysis of the human rights, the economic, political and anthropological situation as provide practical recommendations to where the entrance points for addressing this problematic. It is important that the report not only operates on a theoretical level outlining the different legal and socio-economic difficulties, but also clearly addresses the obstacles in relation to improving the situation. Further, for the different types of land issues, a quantitative assessment should to be made, to give a picture of how many people are affected and the severity of the problem in relation to their livelihood.

The "EU Guidelines to support land policy design and reform processes in developing countries" should be consulted in the study reporting. Annex 4 of these guidelines provides useful points to assess the situation in the countries selected for case studies and for subsequent recommendations.

For the case studies it is expected that the following aspects be addressed:

- Type of land conflict.
  - Social and political;
  - Consequences (social, productivity, environment).
  - Existing legal and administrative set-up
  - The adherence to the legal and administrative framework and the barriers encountered.
- Possible solutions and consequences of these
  - Legal framework needed;
  - Administration and execution;
  - Logistics including cadastre;
  - Overcoming social and political barriers.

These four elements have to be related to political¸ social and environmental consequences with poverty impact being the overriding focus point.

4. Scope of work

The study be initiated as a desk study to produce a "state of the art" report, followed by a national workshop in Denmark and a country specific study in two countries (probably Tanzania and Benin)

5. Responsible Research Organization

The study will be coordinated by Department for Development Research (DoDR), Institute for International Studies (DIIS), and will involve researchers from inside the institution as well as from outside, including the countries chosen for the case studies. Throughout the study process inspiration will be drawn from consultations between the researchers engaged in the study, representatives from the Ministry of Foreign Affairs and researchers at international institutions.

6. Timing

Activity	Location	Persons	Timing
"State of the art" report	Denmark		1/7 to 15/9
Presentation workshop	Tanzania		1/10
Country specific study and reporting	Two African countries		1/10 to 1/12
Editing and compiling of country specific reports.	Denmark		1/12 to 1/1
Presentation of report	Denmark		15/1

Budget

The total budget should not exceed Danish kr. 600,000 incl. overheads, covering expenses for workshops/seminar, meetings at Danish embassies in case study countries.