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**MEDIATED NORMS AND LEGAL ENCOUNTERS: LOCALIZING WOMEN'S
HUMAN RIGHTS AND FEMINISM IN DAR ES SALAAM, TANZANIA**

By

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ABSTRACT

This dissertation examines how human rights nongovernmental organizations (NGOs) in Dar es Salaam, Tanzania employ international human rights laws to advocate for women's legal rights, particularly land and inheritance rights. Through detailed ethnographic research of a group of human rights NGOs, this work examines how transnational norms such as "international rights" – be they laws and / or discourses – are perceived, translated and redeployed by NGO practitioners. Using literature from legal anthropology, the anthropology of rights and feminist legal theory, this work explores four central questions. How do Tanzanian human rights NGOs and their members conceive and employ women's rights and rights laws? How do their conceptions of feminism influence NGO members' practices concerning women's legal rights? How do laywomen themselves experience the law and attain their rights through these NGOs? Finally, how are cultural normative orders negotiated and expressed with respect to human rights and what potential do international human rights laws hold for Tanzanian women in the venues offered by these NGOs? International human rights are constantly being reconceptualized, renegotiated and differently utilized at all levels of exchange – from international to regional forums, within institutions such as NGOs, and again at the individual and interpersonal level. This research argues that examining the "social life of rights" or how rights are used in everyday practice is central to understanding their

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potential for change. In order to understand the potential for human rights in this context, I examine the structural constraints as well as individual agency that work together to constitute conceptions and the realization of women's rights in Tanzania.

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KEY TO ABBREVIATIONS

AWDF	The African Women's Development Fund
CBO	Community Based Organization
CEDAW	The Convention to Eliminate all forms of Discrimination Against Women (1981)
CESCR	The International Covenant on Economic, Social and Cultural Rights
CIDA	Canadian International Development Agency
DANIDA	Danish Development Agency
DfID	Department for International Development, UK
Fem Act	The Feminist Activist Coalition
UNHR	Universal Declaration of Human Rights (1948)
Hakiardhi	Land Rights Research and Resources Institute
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IWHRC	Georgetown University's International Women's Human Rights Clinic
LHRC	Legal and Human Rights Centre
NALAF	National Land Forum
NGO	Nongovernmental Organization
NGO NALAF	NGO National Land Forum
NORAD	Norwegian Organization for Research and Development

SAREC	Swedish Agency for Research Cooperation for Developing Countries
SIDA	Swedish International Development Cooperation Agency
TGNP	Tanzania Gender Networking Program
TANGO	Tanzania Association of NGOs
TAMWA	Tanzania Media Women's Association
TAWLA	Tanzania Women Lawyers Association
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development
WAT	Women's Advancement Trust
WLAC	Women's Legal Aid Centre

A Note on Currency: During the course of this research, the exchange rate between Tanzanian shillings (denoted throughout the text as T.Sh. or =//) was \$1USD = 1,134 T.Sh. Exchange rates referring to previous years have been noted in the text.

INTRODUCTION

Non-governmental organizations (NGOs) now play an important role as cultural and institutional brokers of human rights discourse and advocacy in the global South. In the context of “development” over the past twenty years, Northern donor agencies and Southern development workers have advocated for a rights-based approach to development (Marks 2000, Eade 2001, Lewis 2000, Keck 1998), urging development practitioners to utilize human rights laws and conventions as guidelines for and markers of development. More than any time in history, actors and organizations outside the governmental sphere have involved themselves in the legal sphere forming organizations devoted to legal change and advocacy, carrying out legal drafting and documentation, providing legal services, and undertaking legal education.¹ While transnational legal rights based on universal principles have been debated on an international level for decades, we are now able to observe some of the emerging trends in how these rights are transferred and translated in and by national and local communities.

This research looked at the interactions between three different yet related social spaces or life-worlds. Broadly, the project was designed to investigate how ideas of human rights, international law, and to a lesser extent feminism affected women’s land and inheritance laws in Tanzania. The primary research question was to examine how human rights and international law were translated and redeployed to the public by NGOs

¹ This trend has resulted in part from the rollback of the state in the South primarily due to debt and economic restructuring, exemplified in structural adjustment programs (SAPs). On a more practical note, the emergence of NGOs speaks to the urgency with which civil society strives to assert their political goals, namely promoting good governance, increasing development, and building a culture of human rights.

in Dar es Salaam. Though this was mainly done by studying interactions *within* the NGOs, I rounded out the research by conducting a study of land relations and concerns that did not for any number of reasons make their way to the NGO forum. This is done in order to situate the NGOs' work within the broader realities of informal land arrangements in Dar es Salaam.

In order to examine these relationships, I approached the overall research in three ways: first, I considered how rights and feminism were used by the NGOs and their members in national and local forums; second, I looked at the types of disputes brought by laywomen utilizing the NGOs and their expectations; and finally I examined how international law and "rights talk" were constituted through lawyer-client interaction and dispute resolution. I used multiple research methods to obtain this information including: semi-structured formal interviews with NGO members and key government officials, semi-structured interviews with women clients attending two different legal aid clinics, surveys of women attending legal aid clinics, surveys among illegal housing residents in an area adjacent to the city-center, observation, participant observation, fieldnote collection and textual analysis.

This study examines NGOs and their members' basis of acceptance or rejection of international rights for Tanzanians. How are women's rights conceptualized in Tanzanian NGOs and how do international laws and transnational discourses on human rights influence those conceptions? In order to explore this question, it is necessary to describe and discuss how NGO members are using rights within their organizations and to trace out their international linkages and connections with other human rights advocates and professionals. This process of examining what Wilson (1997) refers to as

the “social life of rights” is an exploration of how rights discourses are produced, translated and materialized in different contexts and how structure and agency inform these processes.

In order to shed light on these questions, I researched a group of Tanzanian NGOs which focused their programs broadly on gender, law and development and were organized under the umbrella name the Feminist Activist Coalition, or Fem Act. The 15 NGOs comprising the coalition (by 2007 numbering more than forty) formed in the late 1980s to early 1990s with the aim of increasing women’s and children’s welfare in Tanzania by increasing their rights (legal / economic / political) which would in turn improve their well-being and development. The NGOs’ programs and projects are broadly encompassing and varied, but they share the common goal of advancing women’s development through human rights. Some of the NGO goals include: advocating for women’s land and inheritance rights, documentation of women’s rights and involvement in political participation, bettering women’s image and increasing publicity of gender issues in the media, improving girls’ education, establishing programs and resources combating violence against women, improving widows’ rights and improving the lives of women (and men and children) with HIV / AIDS.²

² The broadly encompassing goals of the NGOs not only reflect an international trend to consider “every issue a woman’s issue” but are also inspired by new foci, constantly evolving among their donors. That is, any issue that affects the lives of women, should be looked at using a gendered perspective. Between the 1960s and 1990s, feminists worldwide broadened their scope of analysis from women’s workplace concerns, to housework, to marriage and the rights of the body, and extended their inquiry into sexualities, women in science, politics, education etc. Virtually every aspect of life is now seen as a valid topic for feminist inquiry.

In order to narrow the scope of analysis, I focused on women's land and inheritance rights, considered to be of primary importance to advancing women's position. In developing countries, property rights in land in agricultural communities are directly linked to improved conditions in other spheres of women's lives (Agarwal 1994). The NGOs under the Fem Act Coalition have geared their efforts toward ensuring women's land rights by forming a committee called the Gender Land Task Force.

The Feminist Activist Coalition was formed in 1996 to bring together like minded organizations "to conceptuali[z]e, articulate, analyze and strategize and take collective action on (the state of) unequal gender and power relations, gender inequality and inequity, and the disempowered position of women and other marginalized groups" (Tanzania Gender Networking Program Brochure 2003:1). While Fem Act is involved in a number of coordinated efforts, the coalition has been an instrumental force in ensuring that women are included in ongoing land reform efforts in Tanzania. The land reform debates were most active in 1991 when a commission was appointed by the President to conduct a nationwide study of land matters including local and regional level land laws, procedures and practices. While the Presidential Commission of Inquiry into Land Matters (The Government of the United Republic of Tanzania 1994) was underway, the Fem Act Coalition began to protest against biases in the research; ones they claimed ignored serious gender inequalities under customary and state land laws.

Fem Act's Gender Land Task Force began working with the government to ensure that women's land concerns were of central importance in the Commission's work and the resulting new Land Act of 1999. However, for a number of reasons, the Fem Act Coalition was ineffective in guiding the Commission toward addressing women's

concerns, but they became more significantly involved in the land reform process after the Commission's work had come to an end. Fem Act's own philosophies on women's land rights were not unified and some major debates ensued that resulted in a schism in the coalition, due in particular to the issue of women's inheritance rights under the new law. A thorough review of the debates around women's tenure rights between key governmental and NGO members is presented in more detail in chapter three.

Throughout the 1990s to the present, Fem Act persistently argued for women's land rights in the new law by appealing to international laws that regard land rights as a woman's human right. They employed the Universal Declaration of Human Rights (UNHR), the African Charter on Human Rights, and especially the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to pressure the government to live up to its obligations under these treaties by ensuring women's legal land rights. The utilization of rights laws that this study presents allows us to look more closely at the meaning of international rights and how they are interpreted, negotiated and employed by NGOs. Thus, this dissertation takes up Wilson's challenge to examine the social life of rights by exploring the processes by which rights come to hold national, local and individual meaning and significance in daily life.

To begin this task, chapter one describes the composition of the Fem Act NGOs included in the study. I draw a composite picture of the NGOs' programs and goals, the range of people who work in the organizations, their global networks and some of their statements on human rights. I also describe the methods I used in this study.

Chapter two brings together current debates on the theoretical and methodological study of rights and the relationship between law and process, particularly in the context

of human rights law. The chapter discusses the following: how legal anthropologists study transnational laws in local places, drawing on literature in legal anthropology, the anthropology of human rights, and international development philosophy. As this study is particularly concerned with *women's* rights, I will consider debates emerging from feminist legal theory as a way to understand notions of justice in the law. Feminist legal theorists can offer insights for legal anthropologists as they assume a distinct disciplinary approach to the study of law.

Chapter three offers an in-depth look at contemporary land tenure arrangements in Tanzania and their historical underpinnings. The chapter discusses the tension between those who argue for customary rights, individual rights and market-based approaches to tenurial reform. I go on to consider the role of the NGOs in these debates, examining the constraints and transformative potential of their activities in order to gain an understanding of the extent of the impact that human rights organizations had in this process of law reform.

Chapter four provides two examples that illustrate how the land market in Dar es Salaam functions; one is of a state controlled land project and the other illustrates local interpersonal land arrangements that take place outside the purview of the state. These examples will illuminate the respective roles that the state, the family and the market have on women's land relations in contemporary Dar es Salaam.

While chapters two and three examine national and NGO level involvement in land reform, chapter five investigates how NGO professionals conceptualize and create a human rights discourse. I look at the NGOs' formulation of human rights through individual and inter- NGO dialogues to discover similarities and differences in

organizational and individual conceptualizations of human rights. Particularly, I investigate the causal factors that contribute to a primarily *legal* conception of human rights. As feminist organizations working on women's human rights, I also explore individuals' definitions of feminism and the ways they explain that feminism should / should not be used in their work. The different cross-cultural understandings of feminism and the implications of these understandings are discussed in light of feminist and human rights-based approaches to development.

Chapter five begins by describing the women who utilize the NGO legal aid clinics. I explore clients' explanations of their current situations, how they experience the legal system, and their expectations for resolution. Here, I focus on two groups of clients, one of which attended WLAC's legal aid clinic and the other which attended the clinic at the Tanzania Women's Lawyers Association (TAWLA). Following this, I explore lawyer-client interactions and reconciliation cases in these same legal aid clinics. This chapter is informed by debates on the place and potential of alternative dispute resolution (ADR) as a means to attaining human rights and social justice. I consider whether the "alternative" forms of dispute settlement in the legal aid clinics are a strategic way of realizing human rights for women, or if they reflect a legal ideology that champions harmony over conflict.

While other research has focused on the implications of "feminist development" or "transnational feminist activism" this study investigates how NGO practitioners define feminist activism and development, and how their identification with feminism informs their daily work. In this way, this study contributes to the literature on legal anthropology, the anthropology of rights, feminist studies, NGO development discourse,

and land tenure reform in East Africa. It looks at the processes by which rights are interpreted, reformulated and redeployed in national forums and in interpersonal exchanges, contributing to other research on human rights (Wilson 1997, Merry 2006).

CHAPTER ONE: HUMAN RIGHTS AND THE FEMINIST ACTIVIST COALITION

"[Customary land tenure] is discriminating women, so I think it should go. Will you inherit any land from your father? You know, I love my father so much, and I asked him if he would write a will, saying I want my share now. Because we have a very big house and a lot of land. He left. I came back to Dar. I went back and he said, 'What are you asking me? You know I love you so much, but I don't want to spoil my relationship with you.' So I went again and said, 'Dad, I'm serious. I'm asking.' From our mother, we are ten; seven girls and three boys, so it is very difficult. My elder brother has already been given his share and built another house.

My father says to me, 'What is it you're going to inherit when you're not here!' I said, 'Daddy, I'm just pulling your leg.' You know, our female children do so much but at the end of the day, we get nothing. The young brother inherits the house, but maybe I come home and the sister-in-law does not want me there. I asked if it could be [written] in the will as a family house. Those people grow up in rural areas and they know what the customs are and what they should be so it is hard for them to change...

But you know, things are changing there. My grandmother was not blessed with a son, only two daughters. Both of them are married. So in that case, the clan decided that the grandson from the grandfather would inherit. There was a misunderstanding between the uncles and the grandmother. They decided one of the daughters would inherit. So these things are starting to change.

For me, my interest is in the family house. When I go there I want one of the rooms modified so that when I come, I don't have to share. My father agreed to modify that room. My mother is fine with all of it, for each of us to get a share [of the land]. But with my father, it is more difficult."

Interview with a woman lawyer, Dar es Salaam, August 11, 2004

The above narrative illustrates the complex realities that Tanzanian women face in attempting to secure their rights in land. Women are operating in a context of legal pluralism where a number of competing norms exist that will inform how successful women are in claiming their land rights. Legal pluralism is the coexistence and interaction of multiple legal and non-legal normative orders within a social setting or a domain of social life (Meinzen-Dick and Pradhan 2002, Wilson 1997:11, Merry 1992).

In other words, people may draw on a number of legal and non-legal rules in order to frame their claims, what Benda-Beckmann (1984) calls “forum shopping.” In Tanzania, there exist new land laws that assert women’s right to independently hold land (see Table 2), and there are a growing number of women who are knowledgeable about their legal rights to land. Concurrently, market forces structured and governed at the individual, NGO, and governmental levels are restricting the type of people who will be able to enter the land market. A final layer involves the persistence of cultural and f(am)ilial norms dictating how women are positioned with respect to land. It is through these myriad and intersecting layers that human rights NGOs in Dar es Salaam are working to establish land and property rights for women, as a part of their broader human rights work.

The Feminist Activist Coalition

This chapter will set the stage by contextualizing the Fem Act NGOs generally within the national political landscape and specifically within Tanzania’s land tenure reform in the 1990s and beyond as human rights organizations undertaking law and development efforts. Below, I lay out the contours of the organizations to give a sense of the people who work in them, the networks in which they are enmeshed, and the issues they engage with as human rights organizations.

The Feminist Activist Coalition is working within the context of a relatively new political system, with Tanzania holding its first multiparty elections in 1995. Fem Act is also working with a government that, like many African nations, has bent to international pressures by following a trajectory of structural adjustment policies (SAPs) in the 1980s followed by the rapid expansion of a free market economy in Tanzania. Tanzania’s

industrial base is nearly nonexistent. Its economy relies predominantly on agriculture, textiles, spices, tourism and raw materials. It has been a major recipient of loans from the World Bank and International Monetary Fund (IMF).

In 2000, the IMF and World Bank agreed to support a debt reduction package totaling more than US\$2 billion, more than half of the net present value of debt (IMF Press Release No.00/26, 2000). However, the loans have continued to pour into the country. In the same year, the Bank granted \$212 million in loans supporting economic reforms, a privatization policy, and a strengthened legal system (Agence France-Press 2000). Partially a result of the SAPs of the 1980s, nearly all of Tanzania's key indicators of social well-being and growth have fallen (Human Development Report 2006). At the same time, Tanzania has adopted, ratified and begun the process of integrating all of the major international human rights instruments into their domestic system. The proliferation of a free market economy alongside the expansion of legal rights and rights organizations should be regarded with a keen analytic eye. Leading up to and continuing after the introduction of the 1995 multiparty elections, a proliferation of civil society activities and organizations was underway in Tanzania including a mushrooming of human rights NGOs.

The Feminist Activist Coalition was inaugurated in 1996 in Dar es Salaam, home to the major human rights and development organizations in Tanzania. It has since grown to include CBOs and NGOs in Arusha, Dodoma and Morogoro. The Coalition began as a 15 member organization and is constantly growing. In 2005, it numbered 46 organizations (TGNP 2005 Annual Report:5) dealing with a diverse range of issues – political risk, development, debt cancellation, environment, human rights, education, land

rights, media, medicine, HIV/AIDS, and housing. The eight NGOs I chose to include in this study were selected because they were key Fem Act members involved in the Gender Land Task Force (GLTF), a network that pressured government during the 1990s land tenure reform to make women's interests central to the reform. The GLTF was also vital in advocating for women's land rights in the new land laws that passed in 1999. The organizations comprising the Gender Land Task Force include the following: Hakiardhi (Land Rights Research and Resources Institute), the Legal and Human Rights Centre (LHRC), the Tanzania Gender Networking Program (TGNP), Tanzania Association of NGOs (TANGO), Tanzania Media Women's Association (TAMWA), the Tanzania Women Lawyers Association (TAWLA), Women's Advancement Trust (WAT), and The Women's Legal Aid Centre (WLAC).

Rather than describing here each organization's mission and work they do, I will look at what Fem Act does as a network to lay the basis for future discussions of differences among individual NGO's approaches to women's rights. Born in the wake of the Beijing Fourth World Conference on Women, Fem Act sought to organize the NGOs under its Secretariat, the Tanzania Gender Networking Program (TGNP), to implement the Beijing Platform of Action. While the issues identified by the Coalition are carried out by each organization differently, all approach their work from a gender perspective by using "a social gender analysis framework" (TGNP). Below is the TGNP mission statement for the Fem Act Coalition (see Table 1 below).

The diversity in the NGOs' goals mentioned above is not a coincidence. The Fem Act organizations involved in this study deliberately coordinate their programs so that there is minimal organizational overlap in the projects they choose to undertake. This

strategy helps and hinders the strength of the programs. It proves useful for instance, in that not all organizations are competing for HIV/AIDS funding but it can mean that no organization has enough person power to manage high-impact, large-scale projects.³ The major exception to this rule is in the arena of legal aid. Four organizations provide legal aid schemes: LHRC, TAWLA, WLAC, and Hakiardhi.⁴

Table 1: Fem Act Goals

The Goals of the Feminist Activist Coalition	
In order to promote a gender analysis of society and an understanding of universality of human rights, the Fem Act Coalition developed the following goals:	
• Strengthen coalition activities in the promotion of gender equality in Tanzania • Offer solidarity to gender and human rights organizations while at the same time honoring individual members' activities • Build the capacity of Fem Act members to undertake gender advocacy and education • Identify common gender issues and human rights concerns in Tanzania and bring them to the attention of the public through coordinated, non-violent direct action • Develop a collective agenda for civil society • Support each other and lobby for more organizations and individuals to join Fem Act • (TGNP website at http://www.tgnp.org/Ogdss.htm)	

³ While large-scale projects are undertaken, a complaint among NGO workers is that they did not have the funds to conduct evaluative follow-up studies to analyze the impact and long-term effects of their efforts.

⁴ Hakiardhi does not host a legal aid clinic as the other three organizations do; however, the Institute does provide advice, counseling and some other assistance on land tenure issues to small land users in rural and peri-urban areas. In some cases they have also provided arbitration services for resolving land disputes. During this fieldwork research, Hakiardhi was involved in an alleged government land grabbing case, advising residents of Temeke, a peri-urban area of Dar es Salaam, how to proceed with their grievance against the government. Hakiardhi helped organize the community members, lodge their complaints formally, and advised them on their legal rights and options.

To some extent, all of the NGOs rely on external and foreign funding. Major sources of aid come from Scandinavian organizations such as NORAD, DANIDA, and SAREC as well as other European and American organizations. I found that one of the most pressing concerns NGOs were confronted with was that funding is typically provided for on a per-project / program basis. There was not enough “basket funds” made available to the NGOs⁵, which would have given them limited autonomy to decide which projects they would like to undertake and how. On the other hand, funding provided much needed support for projects that have not, until recently, been funded by international development organizations. As an example, the Women’s Legal Aid Centre’s (WLAC) project on domestic violence was funded by and organized in cooperation with Georgetown University; a project that may have been more difficult to procure funding for from another organization. Below, I illustrate how linkages with other legal and human rights organizations, including donors, inform the agenda and scope of human rights work among the Fem Act NGOs.

Funding not only plays a key role in the development of each organization’s programs, but is central in helping to construct an atmosphere which facilitates efficiency and success of the organization’s efforts. In short, more funding typically results in better organizational capacity. As an example, we can look at the differences between the LHRC and WLAC to get an idea of the setting and conditions under which NGO work is

⁵ The exception is TGNP. The organization operates on a system of basket funding where donor contributions go towards supporting the entire TGNP 3 Year Plan of Action. Additionally, some organizations do contribute to basket funding, such as NORAD. However, many more donors contributing to the NGOs such as USAID do *not* support basket funding, only project based funding. Some have suggested that those donor organizations do so in order that they are able to “take credit” for those projects they fund (Brown et al. 2003).

conducted. All of the NGOs in this study were located in or around Dar es Salaam's city center with the exception of TGNP in Mabibo and WAT in Kinondoni, but not all had adequate facilities. There are striking differences between the Legal and Human Rights Centre (LHRC), located in Kijitonyama and the Women's Legal Aid Centre located at the back of Kariakoo.

Kijitonyama is a developing suburb like enclave of the city where many middle class residents are beginning to build modern two-story expensive homes and where many businesses and higher end restaurants are located. The LHRC is housed in Kijitonyama, in a modern building with plenty of glass windows, a landscaped surrounding and air-conditioned offices technologically equipped with new computers and operating systems. The road to the LHRC, while not paved, is just off of the paved main Ali Hassan Mwinyi road, and itself is located off of a wide, easy to find, well-conditioned gravel road. It is also located near the Tanzania Commission for Science and Technology, a formidable building approximately two hundred yards in front of LHRC, making it easy to find. The area of Kijitonyama has electrical outages like any other part of the city, but they are far less frequent and last for short periods compared with other areas of the city.

By contrast, the Women's Legal Aid Centre (WLAC) is located at the westernmost side of Kariakoo, one of the oldest settled parts of the city, its road structures often changing from one year to the next. WLAC is located on Lindi Street, lined with vendors and *daladalas*, the local form of transportation, which spew out diesel fumes and produce considerable human and mechanical noise. When it rains, the street floods. WLAC is equipped with computers, but not enough for all of its employees, and

in 2004 used a Windows 95 operating system. The computers or floppy disks often crash, electricity is unreliable (as well as internet connections) and the office spaces are small, meaning when the electricity and air conditioning do go out, working conditions can be stifling. There is only one main office from where all lawyers and other workers must make their calls, the only private phones being in the office of the Executive Director and one other lawyer's office.

NGOs with limiting funding face serious problems if anything goes wrong with the daily functioning of the building. During this research project, WLAC was burgled, many of their computers were stolen along with a photocopier, the printers, and everything of value. The following excerpt from my field notes, illustrates what a major setback something like this can cause for an organization:

All of Mariamu's files are gone⁶ – she's working on things manually [hand writing]. The computers are not on a network and people don't save things to disks half the time. Akila came the night of the burglary. The police weren't doing anything. Akila explained: "They asked for money. Of course, they do this very politely saying, '[w]e want to help you but you see our problem. We have no vehicles, no money to go here and there etc.' Then what may happen is you pay them 50,000-// and go to do follow up and they tell you they've been moved from that department and the case is now with so and so who is also going to ask for money. They're asking for bribes from lawyers! Half of the time, they're in on it with the thieves." (field notes, August 24, 2004)

Similar to many other organizations, WLAC did not have insurance on their computers or other equipment. Further, the organization was reluctant to ask for funding from their donors for new computers, as they feared they would ultimately bear the responsibility for the lack of insurance and the lack of building security. In this case, court files, recent revisions of annual reports, funding proposals and other important

⁶ All names are pseudonyms.

documents were lost. These *daily* struggles of electricity and location take considerable time away from workers' productivity. While funding problems are certainly not new to NGOs in the global South, they must be kept in mind when assessing the potentials for NGOs making human rights a reality for their constituents.

NGOs rely on donor funding; therefore the amount can hinder NGO operational capacity in these physically apparent ways. However, the *structure* of donor funding impacts the effectiveness of NGO work in other ways, such as the basket funding scenario outlined above. Some NGO members also reported that they were overwhelmed by the number of projects that they were responsible for along with the multiple accounting procedures for those projects, which are a hindrance to their work. Some of the same organizations reported to that NGOs can spend upwards of 75 percent of their time on fundraising duties (Brown et al. 2003).

Finally, most international donor organizations do not fund "solidarity work" or network formation. These activities are undertaken outside of donor-funded projects, and are monetarily unremunerated. Solidarity work is essential for institutional capacity and longevity and for social movement formation. That this work takes second stage to project funded work will undermine a solid ideological cohesiveness among the Fem Act NGOs. The lack of basket funding, time spent on soliciting funds and in turn reporting / accounting to donors, and the lack of money for network formation and solidarity work play a significant role in the social impact potential of human rights NGOs.

Fem Act Actors and Their Linkages – Global Networks Informing Local Realities

Examining how human rights laws and discourses⁷ are used in different domains requires delineating how these NGOs are in part constituted through their networks with other human rights organizations including funding agencies, as well as other human rights education and training initiatives. Both individual and institutional linkages exist between the NGOs and non-Tanzanian human rights actors and organizations. These linkages work to inform and shape how Tanzanian NGOs and development professionals formulate their ideas about human rights. This is not to suggest that Fem Act conceptions of and projects on human rights are solely externally or structurally influenced. As I suggest in chapter five, Tanzanian development professionals' individual and collective subjectivities also influence how and why such people undertake rights work.

However, it is now commonly accepted within development studies that Northern international donors play a significant role in shaping Southern development projects (Rist 2002, Ferguson 1994, Baaz 2005). Therefore, I will sketch some of the linkages between Fem Act NGOs and international human rights organizations to illustrate the broad networks within which Fem Act operates and the avenues through which it is informed.

There are many linkages between Fem Act NGOs and international organizations / institutions that work to shape their rights work. They involve numerous donor

⁷ While human rights laws embody a certain discourse, I make the distinction between transnational flows of human rights laws and human rights discourse. Human rights discourse can be invoked when speaking about people's rights in general and assumed terms, without referring to specific laws, though it can include these as well. Human rights *as* discourse can include legal terms, be used as a moralizing discourse, or on a subjective individual level, can imply what 'ought' to be.

organizations, university and personal affiliations, African human rights and development networks, and researchers. While donor institutions have pre-established guidelines concerning what they will and will not fund, they can work to shape the scope of their recipient's work. On the other hand, university and human rights network affiliations, both at home and abroad, will have more influence in shaping the theoretical and conceptual foundations of rights work with which NGO members engage. Finally, on a pragmatic level, NGO practitioners must be mindful of and work with the local cultural realities that will structure how rights laws and frameworks will be accepted by NGO constituents. In fact, local normative orders including how gender and religion are practiced are often the most influential in determining how rights will be framed within the context of legal disputes. Merry (2006) notes that rights must be 'vernacularized' in order to be successful at the local level.

There exist many long-standing linkages between Fem Act NGOs and other organizations and between individual NGO professionals and international institutions, networks and other individuals. At an individual and educational level, a number of individuals currently or formerly involved in Fem Act were part of an ongoing exchange with the University of Oslo's Institute for Women's Law, where they undertook studies in human / women's rights law.⁸ Other Fem Act members have undertaken Masters degree programs in human rights at Georgetown University, the University of Edinburgh, and various South African universities.

At a regional level, Fem Act NGOs are involved in Pan-African and other international human rights, law and development networks such as Women in Law and

⁸ Personal communication Anne Hellum.

Development in Africa (WiLDAF) and are members of and have hosted international Social Watch Forums. Significantly, Fem Act organizations have been part of the Southern Africa Human Rights NGO Network (SAHRINGON), a network of NGOs that “seeks to strengthen advocacy and human rights monitoring by working with its members and other human rights activists worldwide to provide a platform for discussion and advocacy on challenges facing human rights and development in Africa” (SAHRINGON website).

At an international level, Fem Act NGOs have been able to maintain their donor relationships with a number of agencies throughout the past 15 years. Some of those include NORAD, DANIDA, the Finnish Embassy and government, USAID, the Ford Foundation, UNIFEM, and the Swedish International Development Cooperation Agency (SIDA). While each of these organizations work to shape the NGOs’ overall projects according to their own goals, I detail donor-client collaboration and discussions between WLAC and NORAD in chapter five in order to examine more fully how institutional goals and expectations work to shape the time allotted to legal projects and human rights work.

The Individuals Comprising the Organizations – Fem Act’s Lawyers and Development Professionals

The NGO professionals included in this study were people in positions ranging from executive directors to project managers, advocates, lawyers, outreach coordinators, and interns who were involved in legal counseling, education and advocacy. These were individuals I considered core members of the NGOs. They worked collaboratively to define the organization’s mission and goals and were central actors who carried out the

organizations' work. Many had been working at their particular organization for at least five years, and some were founding members. There were a few who had worked in one of the other Fem Act NGOs previously before shifting to their current position. Although I conducted interviews with this wide range of professionals, I focused on the lawyers who were involved in legal counseling in order to understand how their knowledge and ideas were transmitted, how they shaped lawyer-client relationships and the overall experience of their women clients.

In total, I conducted in-depth interviews with 32 NGO personnel, mostly women. They are a diverse range of people coming from very different backgrounds, most of who would be considered solidly middle class by Tanzanian standards. Literally coming from every corner of Tanzania – from Mwanza to Dar es Salaam, Mbeya, Mtwara, Shinyanga and Arusha (this last region comprising the only clear majority) – most NGO professionals were between thirty and forty years old with a small number being over fifty or under thirty. They descend from parents with a range of backgrounds as well. Most of their parents were farmers but others occupied mid-level or professional positions including health officer, hospital administrator, doctor, surveyor, nutritionist, pastor, lawyer, civil servant, banker and secretary.

Almost all NGO professionals who were interviewed had attained a high level of education, many of them completing their law or related degrees at the University of Dar es Salaam. Eleven had gone on to pursue Master's degrees, five of them at prestigious institutions abroad.⁹ By any standard, this was a highly educated group of individuals

⁹ Among these include the University of Oslo, Georgetown University, the University of Zimbabwe, The Southern and Eastern Center for Women's Law (SEARCWL), The

who showed a remarkable enthusiasm for their work even in the face of obstacles, including (at times) weak government collaboration, funding difficulties, and of course the management of their personal lives. As is common in many parts of Africa, as a member of the family becomes financially secure, there is an obligation to assist other family members. I came to know a handful of NGO workers who were assisting their rural family members with expenses as well as some who were financing the education of a niece, nephew, brother or sister. I am sure there existed more of these types of relationships than I had come to discover.

Most of the NGO professionals were Christian, with only a couple of Muslim members. I found that this played little significance in how members advised their clients or their work in the organizations; however there was not much basis for comparison. That said, religion *was* used as a reference on a number of occasions either in my personal communication with NGO members, between NGO members and their clients, or between NGO members themselves. For instance, on a number of occasions phrases such as “god will help you” or “if god is willing” were used when talking to clients.¹⁰ In one case, I overheard a lawyer say to a client in reference to that client’s husband, “god will punish him” for putting her through such hardships. Although religious pronouncements were not commonly made by NGO professionals, religious practice and observance does play a role in nearly all Tanzanians’ lives. NGO professionals’ views about human rights and freedoms *were* shaped according to

Institute of Social Sciences in the Hague, the University of Edinburgh, and the University of Pretoria.

¹⁰ These phrases are used by both Muslims and Christians.

religious beliefs especially in the areas of reproductive rights and sexual orientation (see discussion in chapter five).

Most NGO workers who I spoke with about their activism reported to have become politically active while attending the university, but many expressed having had a strong inclination towards social justice work at an early age. As one NGO member told me,

You do not have to go far in our country to see injustice and discrimination. Most people grow up in the rural areas, so these things are all around us. And here too, in the city, these things still occur, but in different ways. So I see these things and I think I must do something to help, we must do something to make people's lives better (Personal Communication, WLAC member, February 18th 2004).

A few NGO members relayed personal experiences about their families and communities they grew up in, describing instances of domestic violence or unfair inheritance practices. They explained that these were directly tied to the work with which they were now engaged. A few others noted that they were working in these organizations now, but if there was an opportunity in the future to extend their studies or work for an international NGO, they would welcome that chance. Oftentimes, the desire to work for a different or larger organization stems from the relatively low salaries NGO members receive in proportion to the amount of work they do. I present a more detailed discussion of the ways in which NGO professionals conceive of and frame their roles as human rights activists in chapter five.

The Foundation and Use of Rights in the Feminist Activist Coalition

Women's involvement in politics in Tanzania is far from new (Iliffe 1979, Geiger 1997, Tripp 1997); however women's human rights NGOs have arisen in conjunction with

transnational feminist or global women's movements. Many NGO workers expressed that their involvement in and inspiration for human rights NGO work stemmed from the Beijing World Conference on Women, where some of them participated. Hence, the inception of the Fem Act NGOs came during a time that international human rights were beginning to be used as a guideline for international development, as a measure of good governance and as a mark of membership in the international political community. Moreover, Fem Act NGOs were at the forefront of constructing and disseminating rights discourses in their country.



Figure 1: A WLAC lawyer, Safina Hassan conducts a group interview with men in Iramba. I was part of an NGO research team that traveled to the district to conduct fact-finding research on human rights and other development issues.

All of the Fem Act NGOs in this study emphasized a human rights approach to their work by using multiple methods. Sally Merry (2006) details how local human rights organizations must transplant and translate transnational human rights ideas and

programs in ways that resonate with local cultural and institutional conditions. Fem Act NGO members work to do just this by advocating for the integration of human rights into national laws and in local practices. Changing laws to reflect human rights standards is certainly necessary, effective (to varying degrees), and a goal of some of the NGOs. However, Fem Act NGOs recognize the shortcomings of the Tanzanian legal system including corruption, lack of legal machinery such as judges, lawyers and advocates, and a need to disseminate knowledge about changing laws. Therefore, while working to change and implement laws themselves, the NGOs also try to make rights a reality in Tanzanian society by engaging in human rights education, legal research, publication and dissemination of materials, networking and outreach. The four NGOs mentioned earlier also provide legal aid. It is through all of these avenues, that Fem Act NGOs envisage building a culture of human rights in Tanzania. To give an idea of some of their objectives, parts of Fem Act mission statements are abstracted below.

TAMWA: "We are media women who believe and respect human rights, we defend and advocate for women and children's rights through educating, mobilizing and pressuring for cultural, policy and legal changes in the society by effectively using our profession." (TAMWA 2002 Annual Report)

WAT: "To create public awareness on women's rights, especially regarding right to land and shelter.... To create awareness among women on laws which give them the right to own land and property." (WAT publicity brochure)

LHRC: "The primary task of the [LHRC] is to create legal and human rights empowerment amongst the socially, economically, culturally and spiritually disadvantaged and marginalized groups within the Tanzania society through legal and human rights training, provision of legal aid, information generation and dissemination through publications and radio programs, research on legal and human rights issues and networking and alliance building with other institutions which share this mission" (LHRC homepage, 2004)

WLAC: “WLAC’s vision is to realize a just and equitable society that observes and respects women’s and children’s rights.” (WLAC Annual Report 2003)

I observed human rights education taking place through everyday discourse, legal advising, festivals, dissemination of materials, radio and television programs, along with training of citizens, government officials, officers of the law and grassroots leaders as key works to creating a human rights society. Since my focus was on legal rights, I was interested to see how the law was being used and discussed to promote a human rights society. In one brochure published by the Women in Law and Development Africa titled, “*Je, Unazifahamu Adhabu za Makosa kama zilivyobainishwa katika Sheria ya Makosa ya Kujamiiiana ya Mwaka 1998?*”¹¹ the NGO discusses rape laws and punishment, sexual harassment, child abuse, child gender exploitation, gender violence and violence against women and others.

Fem Act NGOs have been using international human rights laws in order to pressure the government to change Tanzania’s national laws that do not conform to international conventions to which they are signatory. They use international laws as a bargaining tool. Collectively, they gave three main reasons for using international rights instruments in this fashion – rights laws broaden the scope of what is considered within the realm of “rights” in Tanzania; they protect the country’s global image; and they are used to pressure the government to abide by international standards when reforming national law.¹²

¹¹ “Do you know the penalty for offenses like those made clear in The Sexual Offences Act of 1998?”

¹² This was repeated in a number of interviews with NGO members.

When asked what the advantages are for Tanzanian NGOs that use international human rights laws to advocate for women's land rights and women's rights in general, many NGO workers responded that the *scope* of international rights instruments helped to broaden the concept of rights in Tanzania. One NGO lawyer responded:

The advantage in using them [human rights instruments] is that it broadens the scope of addressing issues instead of localizing the issues. For example, this has been very important to the issue of FGM, which is rooted in cultural and traditional practices, but if taken in a broader context of CEDAW it gets support from [the larger] communities....So the advantage is that it incorporates many other issues than just those taking place in the local context. (Interview #4)

Sally Engle Merry (2006) has written that some of the interest governments have in becoming part of the international human rights community is that their signatory status serves as a "civilizing" marker. NGO lawyers echoed Merry's proposition, arguing that being recognized as a member of the international rights community is an important strategy. Said one lawyer, "The international conventions are inspiring and of course they show we are not talking about Tanzania but all of the world" (Interview #16). Another supported this idea saying, "Another advantage is that...the government wants to portray that they are good [internationally]. If you do advocate, eventually some governments take action to improve their status because they don't want to ruin the image of their country" (Interview #17).

While NGO members work at the national level to promote legal reform, they recognize the need to transfer and translate international rights laws and concepts to the local level. When human rights laws become common knowledge in even the remotest parts of Tanzania, the government can be more easily pressured to conform national laws to international rights instruments. One lawyer at TAWLA noted, "Saying, 'there is this

law, these are the rules,” people understand that these are international laws and that Tanzania belongs to them, they are aware of this” (Interview #10). Another NGO worker expressed this clearly, stating:

The advantages are...[well] because you know our country. In Tanzania they ratify lots of conventions, but when they come home they sit on the desk and do nothing about it. So we use it as a weapon against them saying ‘this customary law goes against international conventions so you must change it.’ So we use these things like the Copenhagen Declaration and say, ‘we have not changed these things.’ In order to ensure that these things remain consistent, we must change them. This works. For us, we use them [international conventions] and it works. Even those laws from the colonial period, they are very outdated! By using these conventions, we can make them change the laws. (Interview #15)

The Fem Act NGOs use Tanzania’s signatory status to international rights instruments, especially relying on the CEDAW, to pressure the government to reform national laws and policies related to gender (which encompasses more laws than not). During the debates on land reform, NGOs used the CEDAW as well as the UDHR to argue that under international conventions women have rights to property, livelihood, and inheritance. In February 2004, TAWLA published a report detailing the pressing need for legal reform in the areas of family care and maintenance, marital status and property rights, inheritance and succession laws, and domestic violence.¹³

Toward the beginning of the report, TAWLA frames the need for national legislative reform by drawing attention to Tanzania’s signatory status to international human rights laws and conventions. Specifically, they remind the government that the Universal Declaration of Human Rights (1948) was ratified and integrated into the

¹³ *Review of Gender Discriminative Laws in Tanzania*. Prepared by Tanzania Women Lawyers Association.

Tanzanian Constitution, which in turn made provisions for legal equality.¹⁴ Additionally TAWLA points out that Tanzania has ratified the following rights instruments, all of which prohibit discrimination based on sex: the CEDAW, the African Charter on Human and People's Rights, International Covenant on Civil and Political Rights, and the ICESCR. TAWLA uses these binding international instruments to bolster their arguments that local and national laws pertaining to women's rights must be reformed. They go on to provide recommendations for revisions specific to each national law. This is one way in which NGOs use international rights laws as a powerful advocacy tool for women's rights and national and local level legal reform. Through the above examples, it is clear that international rights instruments are used by Fem Act members to broaden the conceptual scope of rights, to show the government rights are good for "image maintenance", and used to pressure the government to make legal changes.

Finally, some stated that you could point to other countries "like Tanzania" who have also adopted rights standards. This coaxing strategy implies a conceptual reasoning, which points to a presumed (and maybe significant) difference between the North and the South. It accentuates those differences by recognizing similarities only between countries of the global South. In a sense, this reasoning says, "We're like them (other global South countries). We global South countries are different from the North. We both have points of contention with the North, but this other developing country has adopted this convention. Therefore, we should be able to concede too." This suggests that NGO workers recognize differences in culture between the North and the South

¹⁴ See *The Constitution of the United Republic of Tanzania 1977*, amended 1998: S.12(1), S.13(1), S.13(2), S.13(4), and S.13(5).

which play a significant role in rights work. I will return to the role of culture in NGO discourses on human rights and feminism in chapter five.

Fem Act's Land Related Efforts and Provisions for Women Under The New Land Act (1999)

In this section, I present an overview of how and why land rights were taken up by the Fem Act Coalition and discuss the most significant changes and provisions for women's rights in the New Land Act (1999). A more in-depth discussion of the central issues that formed the land tenure debates is taken up in chapter three. There, I will discuss the debates among the NGOs and between the NGOs and the state, presenting some of the key areas that informed the positions that the NGOs and the state took on land rights. While the Tanzanian state and the NGOs claim that they work in partnership with each other in order to promote common agendas, the discussion in chapter four will highlight some of the differences between a state envisioned land reform and the one envisioned by NGOs. In fact, the involvement of civil society in state land reform efforts problematizes the distinction between "NGO interests" and "state interests." Many of the NGOs work in collaboration with the state and at times advocate for similar policies. The conceptual divide between the two is not distinct.

While a conjoined and concerted effort among the Fem Act members did not officially start until 1996, many NGOs that existed before then had a focus on land as one of their primary concerns. Advocating for women's rights, the NGOs could not ignore the crucial relationship between land rights and women's status and livelihoods. As stated above, when the Presidential Commission of Inquiry into Land Matters was

formed in 1991, the Fem Act NGOs¹⁵ became involved in order to ensure women's land interests and their legal rights were among the central concerns in the tenure reform. One of the most important and contentious decisions to be made regarding the drafting of the new bill was how to resolve customary tenure and individual titling. On the whole, the NGOs argued against customary tenure systems¹⁶ as they discriminate against women by not allowing them to own, inherit, or dispose of land.¹⁷ NGO members argued that individual rights to land, which are denied to women *as a group*, are at odds with the CEDAW and the UDHR, both of which Tanzania has ratified.

NGO efforts rightly focused on rural tenure systems as 80% of Tanzanians continue to reside in the rural areas. Urban tenure systems received less attention.¹⁸ Scolastica Jullu, the Executive Director of WLAC, explained the organization's involvement in land rights:

¹⁵ Though Fem Act as a group had not taken shape, many of the NGOs that would later comprise it were already in existence.

¹⁶ In Tanzania, customary tenure systems are primarily defined by the Customary Law Declaration order No. 4 (1963) which defines customary practices, laws of succession and inheritance.

¹⁷ Only one of the NGOs in this study was, as an organization, strongly pro customary tenure systems, Hakiardhi. They see customary systems as insurance against state abuses of village land. This is not to say that NGO members did not regard some aspects of customary tenure arrangements as beneficial to women. They can be. In fact, customary tenure has the potential to be used to guard against state and commercial "grabbing" of village lands. Additionally, it provides some measure of security in *access* to land, so at least women may have a plot to farm through their husbands and fathers, even if they do not own land.

¹⁸ Women's Advancement Trust (WAT), now called WAT – Human Settlements Trust, is an exception. It has remained heavily invested and focused on urban women's land issues, primarily habitat and shelter. They work to "promote the advancement of women through education and training in human settlements and other related issues" (WAT statement, 2004). They also offer a credit scheme to women and the economically disadvantaged, helping them acquire plots in and around Dar es Salaam.

We [started] on land rights issues in 1997. Formerly, we received land disputes a long time ago but we really started to take on the issue of land rights when the government decided to draft a new bill. We decided that women's issues must be considered during those processes. So we drafted, drafted, and redrafted. We advised the governments on our opinions and so on. Then, after the two legislations were passed (the Village Land Act and the Land Act), we thought that more needs to be done, because implementation is different than having a law. People need to be educated about that law (Interview, 4th February, 2004).

The New Land Act and the Village Land Act were passed in 1999 after years of national inquiry, drafting and redrafting. A provision the Land Commission most advocated for was that the new law vest rights in the users of land, and substantially reduce the Executive's (President's) privileges in determining the country's land use. This recommendation was disregarded and the new Land Acts still ensure that Tanzania's land is vested in the President. On the one hand, the new Acts rectified an overdue need to clarify administrative procedures on land dealings, while on the other they maintain some of the problematic provisions of the old laws. See Table 2 below, which gives an overview of key aspects of the new land laws. Issa Shivji, a Professor at the Faculty of Law at the University of Dar es Salaam, chaired the Land Commission. He is critical of the new land laws. He states:

...the Acts now entrench in law what was the practice. Which is to say that the administration, management and allocation of land are placed squarely in the Executive arm of the Central Government under a centralized bureaucracy (Shivji 1999: 3).¹⁹

Other authors have noted that there is little distinction between the new Acts and the old one with the exception of clarifying ambiguous statements and "setting down in law areas that have previously only been subject to administrative regulations" (Sundet 2005:3). However, parts of the Land Act (1999) have been lauded by NGO professionals

¹⁹ Paper available at <http://www.oxfam.org.uk/landrights>

and other civil society activists. For one, the Act has been hailed by Tanzanian women's rights activists for establishing provisions that ensure women's equality with men before both statutory and customary law.²⁰ Additionally, the Act curtails some of the rights of foreigners to acquire land,²¹ though it does not prevent foreigners from amassing land at smallholder's expense.

The Village Land Act (VLA) on the other hand, differs in some significant ways from the old one. First and most important for women is that the Village Land Act renders moot any customary practices that discriminate against women.²² Second, the Village Land Act vests all village land in the village, the primary administrative bodies being the Village Assembly and the Village Council. Third, the VLA establishes that if there is to be a transfer of lands from village to general land, the administration of those lands shall not move ahead until all aspects of compensation have been agreed upon.²³ If a consensus cannot be reached, the case is referred to the High Court for a decision. Finally, women's participation in land administration bodies is required.²⁴ However, since the VLA recognizes existing customary land rights and previous titles, it is primarily men whose rights in land are protected since they carry with them the favors history and politics have bestowed.

²⁰ *Land Act, s.3(2)*

²¹ *Land Act, Part V, s.20.*

²² *Village Land Act s.20(2)*

²³ *Village Land Act s.4(8)*

²⁴ *Land Act, Part V, s.17(2).*

Table 2: Significant Changes Reflected in the Land Act (1999)

Identified Problems with the Land Acts (1999)*	Positive Changes for Women, The Land Acts (1999)
All land remains vested in the Executive	Secures women's rights to acquire title and registration of land Land Act, 1999, s.3(2)
Complex legal provisions in administration and adjudication of disputes	Promotes women's representation in decision-making bodies. Land Act, 1999, s.17, ss. 53(2), 53(5) and 60(2).
The transfer of village lands by the president without consultation of the village Village Land Act, 1999, s.4(1), 2(1).	Customary land practices must respect principles of non-discrimination. If any decision regarding land discriminates against a group of people, it is in violation of principles of non-discrimination enshrined in the Bill of Rights Village Land Act, ss.20(2)
The Village Land Act is weak regarding land alienation to outsiders Village Land Act Part B	Family land is protected and recognizes both spouses Land Act,1999, ss.161-164
A village institution with judicial status is needed for dispute resolution	A married women is protected from dispossession of marital property Land Act 1999, s.112(3)
* A number of scholars have identified these (Sundet 2005, Palmer 1999, Shivji 1998 and 1999)	Village Councils cannot negate women's right to own land Village Land Act, 1999, s.30(4)(b)

From the perspective of implementation, the Village Land Act is formidable. It requires the training and education of the thousands of people working in Village Councils on the proper adjudication and appropriation of land. In addition, as Sundet argues (2005) it would require a mass education campaign aimed at informing villagers of their new rights and of the procedures involved in land administration. As the government lacks the resources to meet this task, much of the educational efforts whose ultimate goal is implementation, has been taken up by NGOs such as those in the Fem Act Coalition.

After the passage of the Land Act in 1999, Fem Act NGOs formulated their plan to address implementation of the new laws through education. The coalition was called the Gender and Poverty Program and was composed of WLAC, WAT, LHRC, TAWLA, and EnviroCare. The NGOs conducted training on the land law in Shinyanga, Morogoro Rural and other rural areas. Conducting fact-finding missions in these areas, the coalition compiled a report for the government arguing for women's rights to ownership of land²⁵ and for women's inclusion in land tribunals, which make decisions and resolve local disputes. The NGOs also conducted mass education programs in these areas. In Dar es Salaam, they produced t-shirts, booklets and procedural guidelines in Swahili, in the common vernacular so people could understand them.²⁶ As an effort to make land rights a reality for rural dwellers, education was and is facilitated through the paralegal units created by WLAC.

The Fem Act NGOs that were part of this research are located in Dar es Salaam and, for the most part, are comprised of highly educated staff members who have been urban dwellers for on average a decade or more. They educate their sister branches, the paralegal units in the rural areas on the new land law and other gender sensitive laws. The city-based NGOs also train their paralegal members on how to counsel clients, carry out educational campaigns, conduct reconciliation cases, and the procedures for referring cases that come to their units. WLAC has paralegal units operating in 19 different areas

²⁵ While women's rights to ownership are ensured in the new Acts, in practice, their rights to own are thwarted through customary inheritance practices which privilege boys and men.

²⁶ An example is LHRC's 2004 *Utatuzi wa Migogoro ya Ardhi* (Land Dispute Resolution). Also, "Facilitation Skills for Gender and Poverty Projects: Training Guidelines" (2003, addressing women's rights to land).

in the country.²⁷ Another researcher and I had the opportunity of visiting the Morogoro Paralegal Clinic on the 16th of May, 2004.

As a testimony to the growing importance of paralegal units, between January and May 2004, the Morogoro Paralegal Unit reports that over 300 clients consulted and were advised. The majority of the cases were matrimonial. The paralegal advisor with whom we spoke talked about the problems in the area, specifically concerning land rights. The paralegal officers provide human rights and legal land rights education to both men and women, often through drama. Joyce, the director of the Morogoro Paralegal Unit, explained that land ownership is a problem in her area, and that

“...the society feels that owning land is an issue for men and not for women. This is because when married, women are considered the property of men. In most cases, even in towns, to come and get plots, they only get them in the names of their husbands” (Interview with Morogoro Paralegal Officer, 16 May 2004).

The paralegal units operating in Tanzania can be seen as legal brokers who act as mediators between customary land tenure and the new land laws passed in Dar es Salaam. While they face many obstacles, paralegal officers attempt to make up for gaps in insufficient legal machinery and knowledge about new laws by conducting human rights and land rights campaigns in their areas so the populous gains awareness of how to negotiate land matters in a just way according to the law. While the paralegal units refer some of the cases to courts, they resolve the bulk of them through reconciliation processes since courts are often far away from the clients' domiciles, expensive, and time consuming to access. For those willing to take their cases to court but who cannot afford

²⁷ WLAC's paralegal units are located in: Tanga, Morogoro, Matombo, Kilimanjaro, Arusha, Katesh, Kigoma, Mbeya, Kyela, Mwanza, Shinyanga, Kahama, Dodoma, Mtwara, Iringa, Lindi, Coast, Songea, and Kiteto (WLAC 2003 Annual Report).

representation, the paralegal officers supply them with the information they need to know about how to conduct themselves in court. In 2005, LHRC published a brochure outlining the ways one should present evidence in court.²⁸ Many women who have been willing to represent themselves have in fact won their cases.²⁹

Many people are still not aware of the new land laws and their provisions. When asked if she thought the new law was known widely in Morogoro, Joyce responded, “Not really, but people at WLAC have drawn up booklets which have been prepared and highlight the sections that favor women.” The paralegals then use these booklets to advise women of their rights and to educate local magistrates and village leaders. Relevant and important information concerning women’s legal rights have been made into posters and placed in local magistrates’ offices. Joyce explained that because of these educational campaigns, the magistrates in Morogoro are quite good. Often times they will not apply customary law when deciding a case, as they now know that many customary practices are gender discriminative and they must instead apply the new laws.

While the new Land Act has been passed, ensuring women’s rights to ownership of land, Fem Act NGOs continue working on issues like equal inheritance rights that are essential for women to realize their land rights. Since the passing of the bill, there have been amendments proposed by the government which would weaken women’s decision making power regarding the dispossession of matrimonially held land or property. For instance, a lobbying effort was undertaken in 2004 which called for the requirement of only one spouse’s signature on any sale or mortgage of property. This would reverse the

²⁸ *Ushahidi* (Testimony), published by the Legal and Human Rights Center, 2005.

²⁹ This was relayed to me on a number of occasions by WLAC and TAWLA executive directors and personnel.

present requirement of both spouses' signatures, which the NGOs argue empowers women. If both signatures are required, women must be consulted in the sale or mortgage of their own property.

Implementation of women's rights to land needs serious attention. A pressing concern for the NGOs is that the Ward tribunals³⁰ have yet to be set up, meaning there is no local legal forum to settle land disputes. Since the Ward tribunals are responsible for all local land matters, the high court and some district courts are refusing to hear new land cases since they have not gone through the proper channels. In significant ways, this makes the existence of the Fem Act NGOs, particularly the ones providing legal services, even more crucial during this transition period. In Sally Engle Merry's (2006) most recent work with NGOs, she recognizes that in the area of human rights, "the NGO role is essential and increasing." This dissertation explores those roles as the NGOs attempt to influence the direction of women's legal land rights in Tanzania either through legislative drafting, education campaigns, or dispute settlement.

Methodology

Conducting research on human rights and feminism, I learned the topic itself would quickly label me a human rights advocate (good) and a feminist (ambiguous). What other reason would I be researching these things if I myself were not "advocating" them? I would come to be (sometimes wrongly) ascribed many qualifiers during my research tenure in Tanzania (lawyer, anthropologist, Scandinavian) but "human rights researcher" surely facilitated my research.

³⁰ The provision for the role of Ward Tribunals in dispute resolution, see *Land Act Part XIII, section 167(1)d*.

My position as a feminist researcher was a challenging one both for me and likely those with whom I conducted research. As a feminist, I felt that discussions on feminism and other topics should be open and non-hierarchical and at times found that conviction and practice difficult to maintain. However, with those who identified *as* feminists, they wanted me to discourse *with* them rather than have me simply ask and record their answers. These conversations often turned out to be the most fruitful, for me, but hopefully for the interviewee as well.

These open dialogues were at times uncomfortable; for example, when discussing topics such as sexual orientation and abortion rights. Though I felt that they acted to strengthen rather cause divisions between me and the interviewees, on a couple of occasions the opposite was true. While I do not know what effect these conversations had on NGO members, for me, their honest and frank discussions challenged my ideas about feminism and caused me to seriously rethink gender relations.

While methods and methodology are inherently related, there is a distinction between the two. While debates have arisen over whether a feminist method does in fact exist (Harding 1987), my position as a feminist anthropologist and one who is researching feminism itself calls for a clarification of how this position affected the methods I used. Positionality is always with us – it can pose handicaps, but when reflected upon and considered, invites exploration and a more fruitful analysis. Here, I consider my position as a feminist anthropologist specifically as it relates to method. To begin, what is the purpose of identifying as a feminist anthropologist doing feminist-oriented research? Identifying myself as such discloses the personal interest I have in the subject matter, and gives an indication to how I relate to research participants. It also

raises questions concerning the goals of my research and potential bias. And finally, it raises the conceptual problem of what it *means* to be feminist (Abu-Lughod 1993).

Some feminist researchers in the 1970s rejected quantitative methods of data collection as masculinist in orientation, arguing that they reduced the complexities of lived experience to a set of numbers and unidimensional “facts.” Instead, feminist researchers argued that we should value experiential research over numerical-based data (Harding 1987). Harding further defined feminist research methods as studying women from their perspective, recognizing the researcher as part of the research subject and acknowledging that the beliefs of the researcher shape the research. While most scholars agree there is no feminist method per se, most agree that there is a shared feminist methodology. It is one that privileges perspective and that “is distinctive [from mainstream research] to the extent that it is shaped by feminist theory, politics, and ethics and is grounded in women’s experience” (Ramazanoglu 2002:16). This research project employs feminist methodology by incorporating gender and privileging subjectivity.

Is there a shared, basic premise upon which feminism and feminist research is based? Baumgardner and Richards (2000) argue that “Feminist consciousness – understanding that women can and should be whole human beings not measured in relation to male supremacy – is, was, and always will be the soul of feminism.” Other authors have refined and particularized this definition to say that women should not be subject to “white supremacist capitalist patriarchy” (hooks 1995), arguing that feminism is not only concerned with patriarchal domination generally but also with domination and inequalities based on class, race, ethnicity and nationality (Mohanty 1991, Chamallas 1999, Connelly 2000, Gardner 1996, Smyth 1999 and others).

The definition of feminism, which I have adopted here, includes a recognition of and in turn action to rectify women's unequal social status in all areas of life, and a concern with the political, economic, social and cultural implications of systems of gender for women. I choose this broad definition to allow room for individual / contextual variation. It does not ascribe to any notion of causality, which in turn allows room for others' understandings of feminism. This is important, as other feminists have noted, since in some contexts the role of race / sexuality / religion may intersect with gender in such ways that complicate gender as the principle starting point, a stance that has characterized mainstream white feminism in the U.S. and Europe.

While this research is concerned with more than feminism's role in Tanzanian NGOs, I cannot overlook the fact that a feminist researcher doing work on feminism has certain objectives in mind. It is unrealistic to suppose that writing a feminist ethnographic text will empower the people with who the research was conducted. My goals are more modest. I consider this project to be feminist scholarship within the discipline of anthropology. My hope is that it will have implications for others conducting social research and for NGO practitioners who read it. From the perspective of anthropology, this work is feminist because it contributes directly to feminism as a serious topic of inquiry, but also because feminist thought in part shaped my ways of relating to the people in the study, many of whom also helped shape the direction of my study.

The literature on the subjectivity and reflexivity of the anthropologist is now significant (LeCompte 1987, Holland and Leander 2004, Escobar 1992), so much so that it has been criticized as becoming the dominant text in some anthropological work.

While relations of subject and object and issues of power are omnipresent in all social encounters, especially anthropological encounters, feminist anthropologists have considered methods as crucial for constructing the research process in a more egalitarian way. If we are working to make our research relevant to those we are studying, allowing participants to ask questions of and redirect the topics and / or methods of research is essential.

As an example, in numerous instances I conducted interviews with clients who had come to the clinics with inheritance or matrimonial cases. These cases were fraught with emotion as they involved either the death of a loved one or divorce from a spouse. Interview questions were designed to elicit information not only on the specific case, but also on the women's attitudes and perceptions about other aspects of their lives. I often was confronted with tearful and emotional narratives concerning all of the events leading up to the particular dispute at hand. In those situations, responsibility demanded that I abandon my more abstract questions about rights and politics and instead listen and respond to what the woman was saying.

While my intention was to focus primarily on land and inheritance cases within the clinics, I began to expand my focus to include matrimonial cases, since there were few land cases and matrimonial cases were exponentially on the rise. Marriage disputes or divorce often involve land and inheritance claims. As a consequence, I began to also attend to matrimonial cases. As this research project had different aims, it follows that the study required numerous methods. The research methods are discussed in more detail below. The research data was coded, organized and analyzed with the assistance of Nvivo, a social science software program.

Structure and Agency

Law as a social structure works to define NGO lawyers' practice. Law and legal language works to structure lawyers' arguments and frame debates. However, NGO lawyers find ways of using law to affect change. There is a complex and contingent relationship between structure and agency at play here. NGO lawyers and development practitioners also work within different domains in which law is invoked: at NGO meetings, national debates, in legal aid clinics and in meetings with donors. By looking at what Sahlins (1981:79) calls "the practice of structure and the structure of practice," I look at the relationship between how the law and the legal profession structures NGO lawyers' practice but also how lawyers find spaces in which they redefine the law.

I also examine NGO professionals' feminism within the structure / agency continuum. In listening to women's narratives about their identification with feminism, I learned about the historical processes and discourses that structure their feminism as well as how they work as individuals to construct their own feminist meanings. For example, I will show how NGO lawyers actively work within the dominant paradigm of white western feminism of which they are aware in order to construct their own feminisms based on ideas of gender balance, heterosexual normative orders and the family.

Methods Used to Study NGOs

In order to understand the "social life of rights" (Wilson 1997) in the NGOs, I used interviews, observation, participant observation and textual analysis as my primary research methods. Interviewing key NGO members allowed me insight into individuals'

conceptions of abstract and globalized discourses such as rights and feminism, apart from their organization's formal stance, or 'party line,' on such issues as is often stated in NGO mission statements, brochures, and other formal informational materials. Chapter five investigates the similarities and differences among individual members' conceptions of rights. I do this by looking at the use of rights first, between and among NGOs, second, through individual interviews, and in chapter six by examining lawyer-client interactions.

If we take only the organization's party line to be representative of the sum of individuals' contributions, we lose insight into the processes by which the organizations operate on a daily basis. Individual agents can be at odds with their own organization's party line and at times subvert it, perhaps unknowingly. Interviews provide a nuanced perspective on how organizations and individuals come to advocate for "rights," what this means to them and how individual agency is constantly at work transforming and building the meaning of rights.

Observation and participant observation allowed me insight into the scope and the daily workings of the NGOs. Attending local and regional conferences, seminars and workshops, I came to know the behind-the-scenes workings of the NGOs including how strategies were formulated, what types of reasoning and language were used to determine programs and strategies and the constraints the Fem Act Coalition faced with regards to specific types of projects or programs. On the other hand, observing interpersonal interactions between NGO lawyers and clients reveals the discourses and narrative forms which take place in a legal setting. This included attending to NGO strategies on how to frame issues and noticing where and when rights discourses were being employed. This

allows me to evaluate how lawyers and clients worked to mutually shape the legal experience.

Textual analysis, often used to test a hypothesis (Bernard 2002:476), combines creating and applying a set of codes systematically to a series of texts, and in turn analyzing the texts statistically and qualitatively, accounting for context in the analysis. I used textual analysis as a way of examining what ‘makes it’ into the formal, distributed NGO literature on rights. I carried out content analysis of NGO mission statements and objectives as well as NGO publications that directly implicated rights or feminism. For example, a collection of essays in the publication titled *Activist Voices: Feminist Struggles for an Alternative World* published by the Tanzania Gender Networking Programme (TGNP) directly addresses the feminist movement in Tanzania and the struggle for rights and political empowerment for Tanzanian women. This text allowed me to compare an organization’s ‘party line’ on feminism with information gleaned from other methods, providing a basis for comparative analysis of feminism. Textual analysis was also employed by examining newspapers³¹ in order to see how Fem Act NGOs and their messages involving rights and feminism were portrayed in the popular press.

Methods Used in the Study of Clients

Legal anthropology and other social science studies of law have until recently focused on case law as a measure of the direction in which law is heading. There is much to be said of precedence, especially as concerns women’s status under the law. In the United States, precedence has formed whole bodies of legal theory and practice

³¹ For this analysis, I used the two most widely distributed newspapers in Dar: *The Guardian*, an English news source and *Nipashe*, a Swahili source.

concerning women and minorities in areas such as abortion rights, rights to contraception, and the right to legally fight sexual harassment in the workplace, the rights of women in sport, rights to equal education, and others. In countries such as Tanzania where the number of case precedence is much lower, precedence arguably becomes even more important, and regarding women it can be crucial to further developments in the law and society. Therefore, it is important to examine what types of cases involving women are entering the legal system and what their results are.

An example of a now famous precedent is the 1989 Tanzanian case *Epharahim v. Pastory*, in which a High Court judge invoked Tanzania's Bill of Rights and overturned a lower court decision stating that women unlike men, could not dispose of clan land, even with the consent of the elders. This decision has been subsequently used by other judges in similar cases.³² Recognizing that most women with valid legal complaints do not make it into the court system due to lack of education, access and resources and insufficient legal machinery, I wanted to investigate how women came to enter the legal system and what their experiences and outcomes were in order to attain a fuller perspective of the structural limitations and promises that the legal system holds for them. I utilized surveys and semi-structured interviews to compile information about women clients and their disputes at two legal aid clinics in Dar es Salaam. I carried out a total of 35 surveys with clients who attended the legal aid clinics at the Women's Legal Aid Centre's and The Tanzanian Association of Women Lawyers. From there, I identified 25 women for in-depth interviews concerning their cases. These cases were identified based

³² *Stephen and Charles vs. Tanzania*, High Court of Tanzania Petition no. 82, 2005.

on type and included land, inheritance and matrimonial cases. Informal, follow-up interviews were conducted when I encountered women on their return visits to the clinics.

Another service that the legal clinics offered and promoted was dispute resolution. While derided by some lawyers and anthropologists of the U.S. legal system (Nader 2002), alternative dispute resolution or ADR is often a preferred method among lawyers in Tanzania's women's legal aid clinics. Lawyers recognized that most of the women who they consulted could not afford the time and resources required to invest in a court settlement. It was not unusual for court cases to take up to five or more years to be resolved. Instead, NGO members preferred to call all parties together to attempt to resolve the issue outside of the state court system. I attended five of these ADR cases in order to observe what types of discourses were being used by the lawyers and clients and what results they produced. This aspect of my study was limited however, as I did not know if or how the resolution was implemented. Often, these disputes take a considerable time to be fully settled. The woman may have to return to the clinic or to a court if her husband is not fulfilling his duty to pay child support, or divide the matrimonial properties. This is fertile ground for future research.

Methods for the Study of Disputes Outside Legal Forums

"A central concern of any rule-maker should be the identification of those social processes which operate outside the rules, or which cause people to use rules, or abandon them, bend them, reinterpret them, side-step them, or replace them" (Moore 2000:4). This calls for an investigation of those who operate outside the formal legal system, relying instead on customary norms without making use of the state legal system. These

cases are important to legal anthropology. They reveal the interplay between recognized legal rules and local practices and how the two influence each other.

The decision-making processes involved in these cases are especially important in locations where robust legal machinery is not pervasive. For this part of the study, I conducted surveys and short interviews in an area of Dar es Salaam called Hananasif, known to have long-standing land problems. I surveyed residents who were informal tenants in order to understand how land concerns and disputes were dealt with administratively, without entering the legal system.³³ I conducted 40 surveys among low-income residents of Hananasif asking questions concerning their reasons for settling in there, what their access to resources were, and any problems or disputes they had concerning the land or property on which they had built or resided. Using this data in conjunction with the data gathered from clients in the legal clinics allows me to present a fuller picture of land relations in Dar es Salaam and some of the legal and social constraints that women face.

Conclusion

The above discussion portrays the Fem Act NGOs as using an instrumentalist approach to legal reform – that is using the law as a means to an end. NGO mission statements and interviews with NGO professionals show that one of their overriding goals as organizations is to promote gender equitable policies and legal reform based on legal human rights standards. This instrumentalist approach is guided partially by their

³³ This is changing however, as NGOs and other development groups have begun the process of formalizing these tenants' rights to land and property through titling schemes. See Ik Dahl (forthcoming) "Go Home and Clear the Conflict" – Human Rights Perspectives on Gender and Privatization of Land Rights. Illustrations From Tanzania.

convictions about the best way to achieve a human rights culture and by donor restrictions that constrict NGO work to projects that result in clear, measurable outputs. However, Fem Act NGO professionals take more than an instrumentalist approach to legal change and establishing a culture of human rights. They are active agents of change in meetings, education programs, publications, gender and human rights festivals, and in reconciling disputes at the legal aid clinics.

In the following chapters, I will consider the NGOs' instrumentalist approach to human rights as well as the broader methods through which a culture of rights is created by and through these NGOs. We cannot glean a socially held meaning of rights only by examining the laws a country has adopted. In what follows, I will consider the processes through which NGOs and their professionals create, reinterpret, or reject rights to illuminate the complexities of making women's rights a reality in Tanzania.

CHAPTER TWO: INTERNATIONAL RIGHTS LAWS – THEORETICAL CONCERNS, METHODOLOGICAL APPROACHES

A salient feature in academic writings on international rights laws is the concern over the applicability of normative standards of justice to all peoples. Keeping this in mind, this chapter examines current theoretical and methodological approaches to human rights within anthropology. I draw on the processual approach to the study of law developed by legal anthropologists as well as Wilson's methodological suggestions to study the "social life of rights" to frame current debates over the use of rights and rights laws by Tanzanian NGOs. A processual approach to the study of law allows me to examine legal changes by taking into account the context and interface between the many actors involved in legal change. By using Wilson's social life of rights, I examine the different domains in which legal and development practitioners are using rights as discourse and rights laws.

I begin by laying out some of the central questions within contemporary legal anthropology. I then take up current theoretical and methodological approaches to the study of rights and law as they have evolved within legal anthropology over the past fifty years. I continue by outlining some of the pertinent critiques and uses of rights laws posed by feminist legal theorists and practitioners, as they are of central concern in studying how women's positions are constituted and constitutive of international rights law.

Legal Anthropology in an Era of Globalization – Questions for a Methodology

During the past thirty years, the shifting nature of social relations has been especially pronounced. The increased spread of technology and the movement of peoples has resulted in a compression of the temporal and spatial dimensions of planet-wide human interaction. Some have argued that this has produced a ‘coca-colonisation’ of the globe, which is resulting in cultural homogenization as ‘native’ cultures are swallowed up by Western values. Anthropologists have taken up the issues surrounding globalization and cultural change, and legal anthropologists have been confronted with the challenge of conceiving legal anthropology in new ways.

The globalization of law and the emergence of new legal forms have forced legal anthropologists to question their approach to the study of law, especially transnational law. Today the scope of legal anthropology includes international treaties, the legal underpinnings of transnational commerce, the field of human rights, diasporas and migrants, refugees and prisoners and other situations (Moore 2000, Merry 2006, Benda-Beckmann 2005). These situations have opened new avenues but also posed new obstacles for anthropologists studying law. For instance, where does one go to study “transnational commerce” or “human rights”?

In the 1980s, Comaroff and Roberts (1981) professed doubt about legal anthropology’s claim as a field of inquiry. They argued that the scope was too broad and the field ill defined. I would argue that the changes associated with globalization call for legal anthropologists to *continue* in their efforts to define and redefine the field in order to understand how transnational laws affect people in different locales. Within the past six years alone, keen attention has been extended to international legal flows regarding

the military, most notably in questioning the legal legitimacy of the Iraq war, the criminal activity at Abu Ghraib, and the legal restrictions on U.S. civil liberties under the Patriot Act. These situations highlight the necessity for the continuation of anthropological studies of legal processes. While international law applies to each of these contexts, how it is being (re)negotiated is of import.

As Merry (2006) demonstrates in her work on domestic violence and human rights, international forums and the participants involved in them can themselves become the new “sites” for legal anthropologists. Merry’s approach to examining the creation of international rights laws leads her to conduct her fieldwork in UN organizations where she studies the complex articulations of and interactions between bureaucratic culture, policy making and local cultures that constitute discourses on violence against women. Studies such as this are a necessary component to examining how international laws are further transl(oc)ated in local places.

Considering the production of international legal rights, Merry (2006) posits that the ethnographic study of “global” reforms³⁴ such as these constitute an important challenge for contemporary anthropology. She asks, “How can anthropology, with its historic focus on local places, comprehend these processes in which the local and global are inextricably intertwined?” Answering doubt as to whether the small-scale social unit is an appropriate model for today’s anthropologists, Merry suggests studying “placeless phenomena in a place, to find small interstices in global processes in which critical decisions are made” (Merry 2006:29). Merry’s interstices placed her at UN meetings,

³⁴ Though as her study indicates, these global reforms have very local roots, i.e. the reforms are discussed within particular local settings such as UN meetings.

observing place-based phenomena. While those places may be at the rural village, they also may be located at the UN or at human rights NGOs.

This study investigates a specific location where transnational flows are happening (Merry 2006: 1), but considers how different transnational-local³⁵ discourses operate side by side and potentially influence one another. Merry speaks of a transnational legal culture as one that is rooted in transnational modernity and characterized by adherence to English for problem solving; a distinction between the “marginalized poor” and the privileged transnational elite; an adherence to the rule of law and to normative recommendations to different cultural situations. As this study is based on the localization of transnational legal and feminist flows, I consider the NGO professionals as emerging *transnational subjectivities* – that is, they work to embody and practice various transnational-local discourse in the course of their legal and development work. I consider Maria Baaz’s insight that “discourses are not closed systems but open-ended and related to other discourses” (2005:9) and discuss the relationship between human rights and feminist discourses.

My place-based study is situated within the specific context of Tanzanian legal and human rights NGOs. I investigate NGO professionals’ discourses over land and property laws and how they adopt, contest, interpret and redeploy them. This place-based study led me to examine the relationships between local (NGOs) and global (human rights law) discourses. I studied how NGOs produced discourses within both the national

³⁵ I am using this nomenclature to emphasize that the transnational-local interface is not completely separate; the transnational does not happen “out there” in the global sphere while the local remains bounded and grounded to a particular place.

arena and local level contexts. Examining how local cases³⁶ are adjudicated is an entry point to understand the role and force of transnational law in local contexts by describing to what extent it is used in those settings compared to other normative orders.

In this study, the interstices that Tanzanian human rights NGOs occupy are at the crossroads of cultural flows in rights. NGO workers attend international conferences, are involved in government discussions, are engaged in legal drafting and government monitoring, and interact with local clients. Thus, the NGO workers themselves become both global *and* local actors in developing a culture of rights. In this ethnography, I attempt to parse out when and how NGO professionals call on both local experiences and global law to constitute their human rights practice.

Moore (2002) argues that politics outside of formal legal cases influences laws and people's lives. The U.S. context provides us with clear examples of how politics and personal moral beliefs in fact *do* influence legal processes and resulting laws. In the U.S., this is evidenced in the disputes over John Bolton's appointment to the U.N. and the appointment of two new Supreme Court Justices as well as recent calls to criminalize teaching evolution in school classrooms. Therefore, I situate this study in the broader milieu of political and economic change in Tanzania that has informed the shape of and issues taken up by human rights NGOs.

³⁶ Anthropologists have begun to grapple with our understanding of the "global" and the "local" in contemporary ethnographic research (Merry 2005, Arce and Long 2000). In the example above, local court cases may become part of the global if they proceed to an international court, or they can instantiate global discourses and international decisions within local disputing processes. Examples such as this call on anthropologists to problematize how they situate the communities and individuals they study as they will invariably take on both global and local characteristics.

In conceiving of human rights as a legal system, Merry argues that “local context is ignored in order to establish global principles” (2006:103) while Harri Englund goes further to suggest that human rights activists, as particular subjects, “...become prisoners of a very specific idea of human rights and freedom.” (2006:7). I will argue through examples taken from NGO alternative dispute resolution practices that other, cultural rights orders are at times used instead of transnational law to make a case for women’s rights.

A processual, historical analysis of changing rules gives us the necessary framework in which to identify central (and peripheral) processes that construct the relationship between law and society. This approach to studying law unravels the seemingly dominant assumptions that law embodies. The give-and-take in the power dynamics involved within the structure – agency continuum is illustrated in chapter three, where I discuss the role and potentialities of NGOs in effectuating legal change within broader state structures of legal reform. This dissertation attempts to trace how local discourses on human rights and feminism are constructed in relation to broader transnational discourses on human rights.

The Parameters of Legal Anthropology

Anthropologists have questioned the realm of legal study on both conceptual and methodological grounds. Conceptually, they have asked: What do we include within the category “law” or “legal system” (Moore 1994 and 2000, Nader 2002, Riles 1994, Starr and Collier 1989, Comaroff and Roberts 1981)? Do we include both statutory and customary law? Do we study other normative orders that work in competition with law?

Further, how do we actually *study* law? This methodological question requires examining the differences between studying law through cases and/or looking to broader law-making processes that occur outside the courtroom.

Changing Definitions of Law

As anthropologists reoriented their focus on the relationship between law and society and on methods for studying legal change, their definitions of the law likewise began to shift. In the 1930s, Radcliffe-Brown defined law as: “social control through the systematic application of the (physical) force of politically organized society” (1933:202). Debates centered around not only what constituted “law” but what distinguished law from “custom” if customary rules were administered in roughly the same way as law – by threat of sanction or force.

Rule-centered approaches between the 1950s and 1970s focused predominantly on hard law or case law. Pospisil maintained that law should be seen as principles extracted from legal decisions. Furthermore, those decisions require four attributes to be considered legal: authority, intention of universal application, obligation and sanction (1971:3). Hoebel agreed, asserting that for a social norm to be considered legal, it must be met with force or threat of force upon breach (1954). It follows that in order for something to be considered “law,” within this paradigm and for it to be recognizable by the courts, it must be applied evenly to situations that bear resemblance to one another.

In the late 1980s, Starr and Collier expanded the notion of law stating, “legal orders should not be treated as closed cultural systems that one group can impose on another, but rather as “codes,” discourses, and languages in which people pursue their

varying and often antagonistic interests” (1989:9). While Starr and Collier define law very broadly, I define it more narrowly. In order to delimit legal anthropology to a manageable field of inquiry, firmer boundaries around what we study are needed. I restrict law to places in which a dispute can be adjudicated by application of law whether that be in state or local courts or reconciliation scenarios. However, these legal institutions must be able to enforce the legal decisions they make. This encompasses the realm of customary laws that while in many cases are not written,³⁷ can still be used in a local court. On the other hand, I identify *quasi-legal* places to be those institutions where law is applied but where the institution making legal decisions does not itself have an arm that ensures implementation or punishment for non-compliance. This would include the legal aid clinics and ADR sessions run by the NGOs. As Hautzinger (2007) illustrates in Brazil’s *delegacias*, quasi- or semi-legal settings more often allow non-legal normative orders such as proper gender roles and local customary practices to factor into a case’s testimony and outcome.

Tanzania, like all other societies, is characterized by ‘legal pluralism,’ which Wilson describes as “being subject to overlapping local, national and transnational legal codes. I illustrate later (see chapters four and five) the differential impact of an instrumentalist approach to legal change that relies on hard law versus alternative forms of dispute resolution which allows for mutually constitutive legal orders and non-legal normative orders.

³⁷ In Tanzania, some customary laws are codified in the Customary Declaration Order of 1963, though particularities rely on local customary practices. For example, while there may be a difference in Sukuma and Chagga customary inheritance practices, each group may continue with their own practices and it is considered lawful.

Changing Methods for Studying Law

Within the history of legal anthropology (c. 1900-present), the study of law has shifted from an evolutionary approach, through a rule-centered approach, and finally to a processual approach centered on change over time; an approach I find provides the best methodological and analytic framework for examining transnational law. It is useful to briefly examine each of these approaches as some of them are still at work in contemporary discourses and practice of law, especially in the case of Tanzania. In the first half of the 20th Century (1900-1950s), anthropologists took an “evolutionary” perspective on the law. Within this perspective, theories of law generally positioned Western law as a benchmark against which “underdeveloped” countries were judged and as a standard toward which they should strive. The evolutionary perspective maintained dominance within the field until the mid-20th Century when legal anthropologists significantly altered their theoretical outlook.

In the 1950s and 1960s, debates about the nature of social control and social organization were central in the anthropology of law (Riles 1994:604). A majority of the theories during this period focused on norms, on rules as applied to behavior or governing which tended toward a “harmony” model of social relations (Moore 2000). Anthropologists focused on institutions as places in which power resided and from which it was deployed in order to maintain social order and control – law was one of these institutions. Rule-centered approaches to law were associated predominantly with structural-functionalists who were interested in how institutions maintained order in

society.³⁸ This approach to the study of law is based on assumptions that social change is tied to changes in formal rules and is reflective of what lawyers call an instrumentalist approach to legal change (Tamahana 2005).

For anthropologists engaged in rule-centered international research, the case method became the dominant method in legal anthropology (Nader 2002:24). This involved analyzing cases that came to courts by ‘type,’ litigants, and outcome. Anthropologists soon began to debate the case law approach, arguing that it reflected a number of assumptions and produced biases. For example, it was thought that using case law would be a neutral endeavor, one that allowed “others” to speak for themselves. This shift³⁹ to case law has been problematic in many ways (Conley and O’Barr 1993). First, only the “exceptional” or “deviant” are the focus of the case studies. The case study approach neglects the ways in which law operates on a daily basis in many people’s lives. Nader explains:

Some scholars insist that the case method, with its focus on institutionalized dispute settlement or conflict resolution, is unduly restrictive if one is interested in getting a picture of the full range of socio-legal occurrences or in grasping differential knowledge of the law” (2002:97).

Second, in places such as Africa, where hard law litigation is only a small part of the array of dispute resolution processes; the researcher may get a skewed understanding

³⁸ Structural-functionalism refers to a framework in which local units like kinship, religion, ritual, economic production, exchange, and leadership were considered in “structural” terms – that is, how they “functioned” to shape social relations (Moore 1994).

³⁹ The evolutionary approach to law and the rule-centered approach are both concerned with the relationship between law and society, albeit with different starting points. While the evolutionary approach assumes that with advancements in society will come legal advancements, a rule-centered approach assumes that with advancements in law will come social change.

of law if she focuses only on (hard) case law. For example, only those with the economic resources or with the know-how to seek legal council will typically make it into the court system. Finally, since using case study was the classical approach of Western trained lawyers, it was claimed to be not only ethnocentric in its conceptions but also to rely on a translation or transference of legal codes and languages from “our” system to “others.” Translating terms or codes to different contexts do not always match up and if they do, those terms can mean drastically different things.

While both scholars can be placed within the rule-centered approach to the study of law, between the 1950s-60s, Paul Bohannan and Max Gluckman disagreed about the legitimacy of translating legal codes and rules as a method for studying other cultures. The central question was: could Western legal terms be used to understand and compare non-Western legal systems?⁴⁰ Bohannan believed that an analysis of native legal categories could reveal the natives’ “system” and argued that it was imperative that we use their vocabulary when defining legal realms, rules and systems of justice. Gluckman on the other hand argued that legal categories did not form such a system because social processes invariably produced contradictory understandings, even within groups operating under their own rules or terms. He suggested that there were universally recognized (and sound) legal ideas. This is not only a difficulty between different cultural contexts. In more recent work Englund (2006) shows that within the same sociocultural and sociolinguistic groups processes of translation are at danger of conveying different meanings than intended.

⁴⁰ On the Gluckman-Bohannan debate, see Starr and Collier 1989, Riles 1994, Nader 2002, Conley and O’Barr 1993 and Sack 1992.

For instance, the Swahili term *haki* is formally defined as “warrant, right, prerogative, ownership, justice” but people use it in different ways. While NGO lawyers talk about *haki* and refer to it in the legal sense, they also use it as a moralizing discourse, for what *ought* to be. Ordinary Tanzanians use it in both ways as well, though what they term *haki* may involve meanings contrary to the legal sense of *haki*. A man may speak of his *haki*, or “right” to inherit his property to his sons while he believes that his *haki* is being violated by giving women the right to inherit.

This question of language legitimacy has direct bearing on international human rights law regimes. Both advocates for and skeptics of international law have argued over the assumptions about how the language of the law affects social change. Advocates argue that the language of human rights law creates a level playing field and to some extent allows for cultural variation in the ways human rights are implemented in domestic legal systems. Further, human rights advocates argue that because all member nations have agreed to the same language / terms, it lends more legitimacy to the laws themselves and those who adopt them (WLAC, LHRC interviews). Skeptics point to some of these same linguistic characteristics but are wary of them. They argue that in general the international human rights regime has become the sole discourse for validating abuses (Mutua 2002, Rajagopal 2003, Merry 2006: 231, Englund 2006:23,26)⁴¹.

⁴¹ Englund (2006) argues that not only are there linguistic complexities with translating human rights laws and concepts but illustrates how *la langue* of the law, in Saussure’s terms, predetermines how abuses are framed in a specific way; one which may not accurately capture a harm or grievance in its multifarious dimensions (See especially Englund 2006, chapters 5&6).

These questions speak directly to discussions about the translation of human rights laws in local contexts. For example, while the majority of Tanzanian law is written in English (many laws are translated into Swahili), there are conceptual problems that arise with translating human rights law. Article 14(b) of the CEDAW states that all people should have “adequate health care facilities, including information, counseling and services in family planning.”⁴² While some may take “family planning” to mean one has the right and access to a safe abortion, this conception is not included in the purview of Tanzanian human rights advocates. While Tanzanians may speak of “reproductive rights,” what they mean to include is the right to and availability of medical facilities for childbirth, information about and availability of contraception, and AIDS – but not abortion.

Enormous socio-political changes were taking place in the late 1950s and throughout the 1960s – decolonization in Africa, the Paris student protests, anti-war protests in the U.S., the civil and women’s rights movements. These changes were met with widespread controversy over the fate of indigenous legal systems in new African nations that upon independence were adopting Western laws and methods of adjudication. Further, some theorists viewed law as a site of contestation over larger issues of power and legal rules and argued that law was reflective of the dominant ideology of the ruling class (Moore 1994, Nader 2002). Former assumptions about law’s “power to persuade” were being challenged and this forced anthropologists and legal scholars to investigate those assumptions.

⁴² *CEDAW Article 16.1.e* supports this right.

As a result, legal anthropologists began shifting their focus of inquiry. Between the 1960s and the 1970s, they shifted from a focus on regularity and consistency to a focus on change, on process over time, and on paradox, conflict, inconsistency, contradiction, and multiplicity in social life (Moore 2002:37). This shift in perspective called for a shift in method. These unfolding events and debates led to the third major paradigmatic shift in legal anthropology – a processual approach to the study of law.

A Processual Approach to the Study of Law

In the 1960s, Laura Nader organized two conferences (1965 and 1969) to discuss these changes and their implications for legal anthropology (Starr and Collier 1989). Before this period, American legal anthropologists were concerned with how social control was maintained through institutions. The conferences marked the replacement of a concern for rules with a concern for processes. Anthropologists at the conferences and elsewhere began looking at individuals' / litigants' use of the law for their own strategic ends, rather than on the law's role in maintaining social order. They examined the political and economic interests of those who quarreled, instead of assuming that public disputes reflected a breach of norm by some wrongdoer (Starr and Collier 1989). The focus was now on processes, interests, litigants and power rather than laws, rules, judges and order.

Sally Falk Moore defines process as "... a number of things: repetition of events in certain institutional contexts (political elections, educational processes...) or to describe circumstances that lead to events (processes of industrialization or urbanization)." Specificity and range of a process will vary, however all processual

studies “are characterized by *observations made over time*. All involve movement in fortunes and relationships of individuals” (emphasis mine, 2002:43). A processual approach to law examines how law is and has been created, reiterated, rejected and changed over time. I find this approach most useful to my study as it allows room for the primacy of actors within the legal system such as NGO members, judges, lawyers and plaintiffs themselves.

In many ways, people’s daily lives became the new focus of legal anthropologists in the late 1960s and the 1970s. During this period, anthropologists adopted a broader perspective on “law” and defined what constituted a “processual approach” to the study of law. Beginning in the late 1970s and early 1980s, anthropologists began studying the other processes, those that were “in competition” with the law but that all the same informed behavior. These were non-legal normative orders on which people drew including gender, class, sexuality, and religion. This expands our understanding about legal pluralism. The processual approach to studying the instantiation of international rights law in local places is especially suited to Tanzania where non-legal normative orders continue to play an influential role in processes of dispute settlement and as a basis for acceptance or rejection of international laws.

Starr and Collier state that “legal orders should not be treated as closed cultural systems that one group can impose on another, but rather as “codes,” discourses, and languages in which people pursue their varying and often antagonistic interests” (1989:9). Likewise with non-legal normative orders such as gender, marriage, and religion. For example, the “law” or “code” young Tanzanian girls use to speak to each other operates under different sets of norms than when they address their elders. In other words,

languages are regulated by social positioning and status.⁴³ As these rules are replicated through everyday interactions, what Bourdieu (1977) refers to as “habitus”, they garner more status or force. People in turn feel obliged to follow the norms and thus contribute actively to the reproduction of them. Therefore, normative orders outside of law can become tremendously important to structuring people’s behavior. In chapter six, I examine the ways in which people use non-legal normative orders in disputing contexts in order to create legal subjects who strategize to resolve a dispute in their favor.

Moore’s *Law as Process*, originally written in 1978 is still one of the most influential writings on processual approaches to law. She focuses on the inconsistencies in culture, and argues that studying these spaces will help us understand the organization of rules and responses more so than looking at the rules themselves. Moore remarks, “It is that attention to the ways in which [inconsistencies] are resolved [that] raises basic theoretical issues.” One of these questions concerns “the relationship between ideology and action” (Moore 2002:33). Moore notes that past scholars focused on the congruent relationship between law and society where cultural and ideological materials were treated as blueprints for a new society. The processual approach on the other hand asks: What kinds of analytic frameworks can be used to consider the congruities *and* the discrepancies between ideology and action in social situations? How is the time factor to be dealt with? Her answer is to look at process as well as “inputs” and “outcomes.”

⁴³ Studies show the difference in women’s foul language when speaking with men as compared to women, and men’s reactions to such situations (Graddol and Swann 1989). American men most often respond negatively or assign negative character qualities to women who speak “crudely” but not to men who do. Women have learned this and therefore adjust their speech patterns. This is one example of how gender, a non-legal normative order structures behavior.

Moore argues that processes of legal change may happen in three broad ways: through changing a law itself; a shift occurs from regularity to indeterminacy or vice versa; or through a whole series of possibilities brought about by the cumulative effect of changing individual choice (Moore 2002:48). What methods do we use to study these changes? In the first case, we can use an historical approach to discern when and where cases were changed (cf Chanock 1998). This approach however, calls for more than simply looking at contemporary rules and tracing their changes throughout history. Such an approach is subject to misinterpretation unless it includes an historical analysis of the political and economic contexts in which the rules are invoked, challenged and restated (Moore 2002:19). In order to investigate the latter two scenarios in which legal change occurs, we must move outside the semi-autonomous realm of the law⁴⁴ to study semi-autonomous social units. In this study, I employ these suggestions by looking first at how the new land laws have substantively changed, and go on to examine how legal aid and dispute resolution proceeds under the new laws.

In order to investigate the ways in which laws change outside of courtrooms through social regularization, we must look at processes of legal change that are informed by or in competition with other processes, rather than dichotomizing absolutely between structure (law) and function (social regulation / change). For example, in this study I investigate how donor funding, assumptions about women and the law, economic policies, and non-legal normative orders compete with and inform a human rights based approach to law.

⁴⁴ One may approach the study of any social field – law, medicine, and religion – as a semi-autonomous realm. For instance, law can generate its own rules, customs and symbols internally but “it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded” (Moore 1973:720).

Moore recognizes people's different subject positions and the structures in which they are embedded. At times, these subject positions and other normative orders influence a person's actions more than law itself. A clear example is the case of female genital cutting. While illegal in thirteen African countries and eleven in the Northern hemisphere, parents and relatives continue to subject girl children to the procedure. Relying on notions of womanhood, purity, sexuality and religion, African girls continue to undergo the "operation." Indeed, these non-legal normative orders are so influential that immigrants living in western countries continue to send their girls back to Africa to undergo the procedure (IRIN, 26th June, 2007).

Another way of understanding processes is by taking an historical approach to look at the ways in which people have negotiated rules over time in a specific locality. This approach inquires into the way past decisions and disputes were arrived at and resolved and how those processes changed the legal system. Some anthropologists have shifted the lens from the law makers to the law users (Nader 2002), recognizing *litigants'* agency in the disputing / decision making process and how they can influence the law (Nader 2002, Hirsch 1998, Stiles 2002). Conley and O'Barr suggest studying the legal thinking of litigants at the time they decided to take legal action, as they prosecuted and defended their cases, and as they reflected on their experiences with the law (1993:61).

This study is situated within the processual approach to the study of law, specifically employing Wilson's suggestions for studying rights as they are constructed through use. This methodology is reflective of the "grounded theory approach" to research in which the researcher allows her research data to be the basis for constructing a theory (Glaser and Strauss 1967, Hellum et al.1998). While I investigate the processes

of constructing women's rights before and after the passing of the new Tanzanian land laws, I look to government and other key participants who informed the direction of the debates including NGO professionals, donor agencies, and lawyers. Investigating and analyzing their assumptions, arguments, and (NGO) interactions with clients reveals dominant theories of gender within the NGOs and how these work to construct local theories about human rights.

Combining a Processual Approach with “The Social Life of Rights”

This study utilizes the processual approach to the study of law by focusing on the process of Tanzania's land reform immediately prior to, during and after the passage of the Land Act (1999). I focus on the interests, actors and power dynamics of those involved in the land tenure debates to gain a better understanding of the relationship between structure and change.

I also draw on Wilson's method of and framework for studying the “social life of rights” by revealing how rights discourses and rights laws are used by these same actors. Wilson (1997:13) argues that the social life of rights can only become clear by studying the meaning of rights as they are expressed through use. That is, we must look at the ways in which rights are produced, translated and materialized in a variety of contexts. The struggle to make rights a reality does not happen in abstract philosophical terms but rather in everyday concrete struggles. It is within these every day struggles and disputes that we must look to understand how rights are shaped within particular contexts or domains. For example, in chapters five and six, I examine the use of rights in particular settings; within national lobbying campaigns, between NGO members and within lawyer-client relationships.

Today, transnational discourses on human rights are among the most varied and prevalent. Human rights laws have been adopted to some extent by the majority of the world's countries and implemented into local and national law and daily discourse. Until recently, anthropological studies of human rights have focused on and been shaped by two significant questions – the concept of human ontology and the significance of 'culture' in constructing a normative moral order (Wilson 1997:3). It is important to bear in mind how questions of human nature have historically informed anthropological studies,⁴⁵ as questions and discourses of "universality" continue to be used in rights discourses by the people we study. These discourses continue to be of interest for anthropologists as they illustrate how human rights laws are "invoked, challenged and restated" (Moore 2002).

The role of culture continues to be a pressing concern in studies of human rights. Cultural relativists argue that there can be no one human nature and by extension human rights which exist outside of discourse, history, or context (see Herskovits AAA 1947). In other words, a person's personality and rationality are shaped by her culture. However, in this sense the definition of culture is often founded upon an antiquated notion in which cultures are distinct, whole and unified. Culture is referred to as a static entity, not a process, a noun rather than a verb. Historically, people have always been borrowers of ideas, making it difficult to claim which idea is an indigenous cultural one

⁴⁵ See particularly the American Anthropological Association's 1947 "Statement on Human Rights" and the subsequent discussion by Steward and Barnett (1948). "The 1947 Statement..." *American Anthropologist* 49(4):539-543. Steward and Barnett's comments: *American Anthropologist* 50(2): 351-355. See also the AAA's 1999 Declaration on Anthropology and Human Rights (available online), Turner 1997, Dembour 2001, among many others.

and which is foreign. In this global age, the question of who owns a cultural idea rests on even more unstable grounds than it did fifty years ago.

Nussbaum argues that relativism “has no bite in the modern world, where the ideas of every culture turn up inside every other, through the internet and the media. The ideas of feminism, of democracy...are now “inside” every known society” (2000:49). This was the case in my research site. During a research trip to Iramba, one of the most remote areas of Tanzania, when asked about democracy, human rights and equality, there were always a handful of villagers able to describe basic attributes of these concepts. Moreover, some argued that these were *Tanzanian* values. However, as Merry illustrates in her work on domestic violence, culture is still problematically deployed by NGO individuals at the UN to refer to either ahistorical practices and traditions that must be condemned or as heritage that must be protected. Among Tanzanian NGO legal practitioners, notions of a bounded culture were utilized to argue against dominant conceptions of rights as individualistic, but more prevalently to warn that feminism had to be indigenized to Tanzania in order to be culturally acceptable.

Wilson distinguishes his approach to and the framework for studying rights from past anthropological approaches. Wilson argues that regarding the question of a universal human ontology or a universal essence that precedes that ontology, the question of ‘human nature’ is a metaphysical one, which cannot be answered on phenomenological grounds. Therefore, he suggests, “we should bracket it and proceed with our...investigations” (Wilson 1997:14). While I agree with Wilson’s proposition and method, I differ in my point of departure, or underlying assumptions about human nature. I find there *is* value in attempting to discover (as closely as we may) what those

universals are (see Geertz 1984 on this point). I read Wilson as saying that phenomenological investigations cannot lead to the discovery of essences or a human nature.

I take the position, following Aristotle, Locke and others that there is in fact a human essence or human nature. The term in his writings that we translate as “essence” is the expression *to tie in einai*, or “the what it is to be”. Aristotle clarifies his point to say that there is a definition only of universals and not of individual essences. We could go on to enumerate a list of “the what it is to be human” (which would be lengthy) and do a thought /action experiment. If we were to remove one of these qualities, would the ‘human’ still be intact? If we remove another? And another? At what point do we not recognize this entity as human? It is at that point that we must concede that a certain essential characteristic must have been taken away to make the human no longer “fully” human. It is the extraneous characteristics that lead to cultural variation and expression; i.e. the what it is to be Tanzanian, Chagga, etc. These will be contested grounds, though ones worth pursuing. Heidegger suggests that an easily recognizable ‘essential’ quality is our ability to conceive of our own death, to anticipate it, and therefore to conceive of our own existence whereas no other creature (as far as we know) possesses this ability.

Nussbaum (2000) follows Aristotle. She enumerates a list of human capabilities, which correspond to a conception of human nature and is useful for anthropologists, especially regarding rights work. Therefore, while Wilson does not believe phenomenology can lead us to an essence or human nature, Nussbaum and I believe it can. I suggest that there is value in using phenomenology to discover human nature so

that we can use those findings to better construct standards and laws such as human rights laws. This is at the core of Nussbaum's capabilities project.

Nussbaum and Wilson agree that the language of human rights and past theoretical frameworks and debates about human rights have been obfuscatory. Wilson points to the debates on universalism / cultural relativism and grand theorizing as a particular problem, while Nussbaum argues the language and framing of human rights laws has obscured, or more precisely, acted to direct our understanding of what it means to be a human. Wilson's project is aimed at building theories of human rights on empirical research by looking at how people use rights in the world. I read Wilson as taking a postmodern turn in his assumptions about the relationship between phenomenological study of human rights and the discoverability of human nature.

Wilson states (1997:14),

"The difficulty of securing any eternal foundations for either human ontology or human rights means that we can afford to be agnostic about such cabalistic musings and seek instead to build strong theories of the operation of rights."

He goes on (1997:15),

"[t]he empirical focus on specific social processes...serves as a palliative to the heady heights of Olympian macro-theorizing. Kantian universalism...obscures the untidiness of everyday life by accepting the compromise of categorical certainties."

These theories of human rights based on Wilson's approach will therefore always be contingent and contextual, based on ever-shifting narratives. While building better theories of human rights is imperative, to what end will these fluid, conditional, contextualized theories serve in establishing a better political system based on human rights?

Nussbaum's (2000) project relies on empirical research, but to discover certain truths about people; truths that may be used as the basis for fundamental political principles. Nussbaum argues that the best approach to this project is one that focuses on human capabilities – what people are actually able to do and be – which “in a way is informed by an *intuitive* idea of a life that is worthy of the dignity of the human being” (2000:5, emphasis added). To me, this shows that Nussbaum bases her project on the assumption that there are universal human truths about people that can be discovered through empirical research. However, she does recognize that the expressions of these truths will always be contingent, shifting and contextually informed.

Nussbaum (2000:5) outlines a strong argument for conceiving of an individual *as an end*; that is, conceiving of each individual as an end in and of herself rather than a means to another person's better end. This argument strongly supports a notion of human rights that is based on the individual, rather than on groups. She argues that approaches which consider a group's wellbeing have too often obscured how individuals in that group, such as women, are faring. The dialogues and contestation over using a group versus individual conception of rights within Tanzania's land tenure reform in chapter three will bear light on Nussbaum's propositions.

While my assumptions about the potential to discover human nature through empirical research differ from Wilson's, to do so is by no means the objective of this study. In studying human rights, I agree with Wilson that we must bracket these questions, and proceed with our investigation.

There now exist a host of ethnographic accounts on the subject of rights. Rather than relying on studies that take a deductive approach to discerning whether certain

cultural and social systems are *conducive* to the flourishing of rights, we can now look directly at how rights are being used within legal systems, NGOs, and everyday discourse. In promoting a different method to studying rights, Wilson's move is not "anti-theoretical" in any sense. Instead, he suggests that his emphasis on empiricism is motivated by an analytical premise: "that human rights are not a product of social relations, nor even indicative of them, but immanent in them, internal to their very expression" (Wilson 1997:14). Here, Wilson is making a classic Kantian analytic statement. Wilson considers human rights to be *a priori*. In other words, social relations *imply* human rights, human rights inhabit social relations. But human rights are not necessarily "discoverable" in any abstract universal sense.

According to Wilson, to pursue the social life of rights is to pursue an existential ethnography of rights which will show humans "replete with feelings, engaged in their brute material existence, and enmeshed in the complexities of their social world" (1997:15). This method will trace local narratives of experience to the macro structures and networks of human rights. An ethnography of rights will situate rights within a 'multiplicity of force relations' and according to Wilson will explore not only how "rights are founded or possessed, but how they transform in each complex strategic situation" (1997:18). In this study, the 'multiplicity of force relations' are working to constitute how and when rights enters discourses in the broader arenas of disputing, NGO-donor relationships, and in individual members' conceptualizations and definitions of human rights. Indeed as Moore suggests, the law, including human rights law "is only one of a number of factors that affect the decisions people make, the actions they take and the relationships they have" (2002:78).

Wilson's approach involves examining microscale processes (Moore 2002). This approach illustrates change by describing alterations in individuals' situations. While microscale changes do not necessarily lead to macroscale social and cultural change, they have the potential to do so (see Nader 2002). Going beyond this, I argue that the microscale processes *reflect* some of the broader macroscale, semiautonomous fields that may be in direct competition with the law. These other "fields," or normative orders – gender, religion, and customary practices – will shape microscale processes constitutive of legal encounters such as dispute resolution (see chapter six).

International Rights Language – Translatable Laws?

Language is of central concern when discussing international rights laws. International rights laws and covenants are written in English and usually translated into the vernacular, though how far those translations extend varies. How can we evaluate whether or not "rights" has a shared meaning within and between the contexts in which they are employed? If there is a discrepancy in conceptualization between countries and peoples, as often there is, what is to be done about those differences?

This question over the comparability of western and non-western legal systems remains relevant though anthropologists deal with slightly different concerns about language translation. Since rights laws and concepts are being initiated and used *by* Tanzanians, they can no longer be thought of as being *exclusively* a Western imperial discourse and law.⁴⁶ Who participates in developing rights laws and how they are being

⁴⁶ However, the ways in which rights are translated *within* cultures and within the same sociolinguistic groups may well produce class, gender and other inequalities. For example, Englund (2006) demonstrates that Malawian NGO human rights professionals reify and reestablish class distinctions through civic education campaigns aimed at

translated is different now than it was in 1948. Today, rights laws and documents are being drafted in a more participatory, less imperialistic / colonial manner as the Tanzanian government and local NGOs are involved in these processes. Country representatives are sent as UN delegates to international meetings to negotiate over the wordings of new rights documents. Investigating these processes has revealed discrepancies in people's conceptualizations of rights (see Merry 2005).

While "rights" is now part of the global vernacular, the meaning people give them will invariably be divergent. Approaching a study of rights, we must keep in mind that "meaning does not emerge from culturally bounded and set values, but instead flows through global interconnections" (Wilson 1997:13).⁴⁷ In other words, meaning will not be contained in the word itself as it travels, but given *through its use*. Since we can never know the intended meaning of the speaker's sentence or proposition we are made to employ a "use" theory⁴⁸ in which a linguistic expression's "meaning" is its conventionally assigned role as a game-piece-like token used in one or more existing social practices. Therefore, the most viable way to approach a study of "rights" is to look at how it travels, how it is transformed by individuals and communities in different contexts, and how it is redeployed.

"bringing rights to the people". The education campaigns mark the difference between the "haves" and "have nots". In this case, the "haves" are the educated NGO professionals, the exalted rights bearing subjects.

⁴⁷ As we look at the "transnational flow" of rights, we must keep in mind the place of Africa in these transnational flows. Ferguson rightly warns us that Africa's place-in-the-world with respect to these flows is different from that of other continents (which are better "wired" and more central to processes of globalization) and that instead of looking at flows, we must look for "the point-to-point connectivity and networking of enclaves that confront us when we examine Africa's experience of globalization" (2006:47). In this regard, we can see that rights NGOs in Tanzania provide an excellent opportunity for exploring these point-to-point transfers of rights.

⁴⁸ Inspired by Wittgenstein's later work, especially *The Philosophical Investigations*.

To do this, Hellum et al. (1998:25) suggest “Legal concepts and theories need to be critically analyzed through the medium of women’s and men’s lived experiences” by using a “grounded theory approach.” Therefore, the researcher must have knowledge of the context in which she is working and of the practices and procedures of the people he is studying. In Dar es Salaam’s NGOs, I began to learn that “rights” embodied a variety of different meanings depending on the user, the topic under discussion, the participants, and the setting (see chapter 4). For a brief example, at the Africa Regional Social Watch Conference in September 2004, rights as discourse was contextualized within a broader relationship of inequality between the global North and South. North-South *relations* were the dominant frame of rights-talk, with “economic rights” specifically referring to inequality between North and South as well as South-South class inequalities.

On the other hand, rights laws were discussed and framed in the legal aid clinics and NGOs in a much narrower scope, often invoking the government’s responsibility to “provide” rights to its citizenry through legal reform or other measures. NGO professionals spoke of rights laws largely in instrumentalist terms without discussing what rights *meant*. Where women’s rights were discussed, they were talked about within the framework of a national-local relationship and a local-local relationship but not within the context of international-national-local relationship. Again, this shows that rights are discussed and deployed in terms of *concrete struggles* (Wilson 1997) and within specific *systems or relationships* in which arguments “have their life” (Wittgenstein 1953). I will use this a grounded theory approach in chapter five where I examine how “rights” are employed in different forums and where I describe how NGO professionals’ relationships to feminism is experientially derived.

Returning to the questions raised by Gluckman and Bohannan, it seems one should take Gluckman's position regarding the study of rights and rights laws. Rights-as-discourse is in global circulation, which attests to their salience and acceptance (by degree) of those who adopt them and employ them in their own countries and communities. At the same time, we must look at how rights, or in KiSwahili *haki*, is being used in the local context(s) and vernacular in order to be able to say something of import about the comparative nature of the Swahili "*haki*" and the English "rights." To investigate these questions calls for an examination of how people use rights. What gets included within the realm of rights and what is left out can only be discerned through empirical research.

Rights as (Gendered) Laws – (Feminist) Legal Theorists' Critiques

Aside from the relativist critiques of rights that revolve around culture, other scholars have identified further difficulties with rights laws. I will discuss these issues briefly, in order to see how they illuminate the Tanzanian case. The literature on the rights-based approach identifies the following problems with respect to rights laws: their rigidity; indeterminacy; excessive individualism; rights and responsibilities. Regarding rigidity, critics have charged that rights have an absolutist character and do not admit compromise. A land rights NGO professional in Tanzania argued that because of their abstract and legal character, rights often seem rigid and non-negotiable. He states:

There are local realities which sometimes have to be compromised, and not only things like women's rights. There are questions of compromising our own sovereignty. We have to fit into that box without questioning what the international human rights conventions say or where they came from. No, there's not a big disadvantage although to some point, not everything that comes with them should be taken for granted, and there should be some compromising (Interview #4).

Since rights take the form of general propositions, it is sometimes difficult to use them to decide concrete cases. This is due to both national judicial procedures that must be followed⁴⁹ but also because of the loose, interpretive language of international rights laws. For this reason, they have been criticized as being indeterminate and unhelpful. Further, since rights are general propositions, they are broadly defined and do not give us guidelines on how to deal with specific situations. For instance, while there may exist a right to property, this does not tell us whether that right includes beach access or allows us to dump toxins in our own backyard. While we have a right to equal protection under the law does that mean affirmative action programs are acceptable, mandatory or prohibited? What of the right to free speech / free expression? How do we go about dealing with libel, obscenity, pornography?

Many Tanzanian lawyers, recognizing the indeterminacy in rights law, repeatedly pressed their opinion that there was a need to “domesticate” international rights law, or what Merry (2006) deems the “vernacularization” of rights. International rights laws would be used as a standard or guideline by which to construct national laws, which are easier than international laws to implement in national / local contexts. Rights would therefore be integrated into all local and national laws from employment to inheritance.

Echoing the cultural relativists, some have argued that rights reflect an ‘excessive individualism’ which neglects the “moral and social dimensions of important problems” (Sunstein 1995). This objection posits that rights promote selfish, isolated individualism with people asserting what is theirs rather than participating in communal life. One

⁴⁹ In other situations where plural legal systems exist, there lies a real difficulty in making judicial decisions. See MacKinnon’s remarks (1989:65-69) on *Martinez vs. the Santa Clara Pueblo*, 436 U.S. 49,58 (1978).

Tanzanian NGO worker, Fatima, spoke of the consequences such an individualistic conception of rights can have with regard to marriage. Historically, marriage in Tanzania is a process that involves both the bride's and the groom's families. Fatima remarked "now [girls] can stay in town, get their boyfriends and so on....These laws are giving more opportunity to everyone. Now you can do whatever. They can stand up now and say "I have the right of doing this or doing that." We can see the tensions arising over once formerly social, communal institutions moving toward individual choice.⁵⁰

Maybe more important than the individualistic nature of rights, is that they *rely* on the individual to such an extent, that the social networks necessary for making rights realizable are overlooked. This is clear in the case of abortion in the U.S. where abortion was said to be a woman's 'private right,' but was quickly followed by the Hyde Amendment (1976) and other such measures that removed the social institutions needed to protect and ensure that right. Likewise, while the Fem Act clinics adjudicate rights cases on an individual basis, they cannot create the social networks necessary for insuring a woman's rights when she returns to her village.

There is debate over who is primarily responsible for safeguarding rights (cf Henkin 1989, Hodgson 2002, Lewis and Wallace 2000). Is it the state? The community? The individual? Many rights, especially negative rights (freedom of expression, freedom of religion, freedom to own property, etc.) are considered to be the duty of the state to protect. But who has the duty to provide positive rights like the right to water or the right to development? Is this also the duty of the state, or do individuals and their communities have some responsibility in fulfilling these rights? Some international

⁵⁰ Amy Tsanga has documented similar tensions when the law on marriage was reformed in Zimbabwe (2003:76) and Englund reports similar trends in Malawi (2006:67).

rights instruments do not assign duties and responsibilities to particular parties with respect to each and every right, making their ‘realizability’ nebulous. However, others do. A number of articles in the UDHR as well as the ICESCR identify the nation state as responsible for fulfilling the duty to provide a certain right to its citizens.⁵¹ A lawyer at the Women’s Legal Aid Centre explained the problem associated with responsibility and duty:

...for undeveloped countries, there is a problem to fulfill obligations like providing the rights to health, education and so forth. They [government] say that the lack of funds hinders some of the rights like ESCR and are therefore especially difficult to implement (Interview #17).

Aside from the relativist objections to rights, we see there are other more specific objections regarding responsibility and duties. An issue left out of these critiques thus far is the politics of recognition⁵² in human rights laws. For instance, how are international human rights reflective and protective of women’s and other minorities’ concerns? Feminist legal theorists and legal pluralists have taken up the challenge of making human rights more reflective of women’s experience. Feminist legal theorists in the North have argued that historically rights laws have overlooked women’s concerns as they have taken on a noticeably male or patriarchal form (cf West 1987, MacKinnon 1989, Gilligan 1982). On the other hand, those who argue for a pluralist approach to the law take a more nuanced view (Fineman 2005, Armstrong et al.1993). They recognize women’s multiple identities and suggest allowing customary law (many times gender discriminative) to

⁵¹ See UDHR, Articles 6, 7, 8, 11, and 12. The ICESCR integrates state responsibilities in the majority of its Articles.

⁵² Questions of recognition challenge whether rights laws are reflective of *all people’s* concerns. That is, do they recognize and legislate against the specific harms against women, children and minorities? Another question concerns who is considered a subject of human rights law. For example, are illegal aliens protected by the rights laws of the countries in which they illegally reside? Are non-citizens protected by rights laws?

evolve in a “situation-sensitive manner” (Hellum 1999:421) that recognizes people’s competing and often hierarchical arrangements of rights and values.

Feminist Critiques and Use of Human Rights Law – “Northern” and “Southern” Perspectives

As this study is concerned with *women’s* legal rights, it is necessary to look closely at the terms in order “to allow each word its proper weight” (Heidegger 1968). Thus far, I have examined legal anthropologists’ definition of law, the methods for studying rights and some critiques of rights that will be addressed in this thesis. I now turn to women’s rights. While rights are supposed to be all encompassing, inclusive of all human beings, some have argued that rights laws show bias not only in their assumptions about the ontological foundations of what it means to be human, but in other ways as well.

Both Northern and Southern feminists argue that international rights laws reflect a male perception of what it is to be human and as such have overlooked areas of concern that are particular to women’s lives – the most often cited of these areas are reproduction, motherhood, rape and domestic violence (cf MacKinnon 1987 and 1989, West 1987 and 1988, Cain 1990, Williams 1991 and others). On the other hand, feminists and human rights scholars have pointed to the transformative potential of using international human rights laws in local settings (An-Na’im 2002, Mutua 2002, Schuler 1993 and 1986). Both the constraints of and the potentials offered by human rights laws are discussed below. I will demonstrate later in the study how these critiques and uses manifest themselves in the work of Tanzanian human rights NGOs.

While critiques raised by feminist legal scholars are diverse and exceptionally nuanced, I will only cover some of the strongest critiques and overarching concerns of feminists studying international rights laws. Feminist legal scholars have pointed to three main areas in which international human rights laws and covenants impede the realization of women's rights. Their critiques address the conceptual, procedural and substantive aspects of the laws. I will briefly review these critiques and discuss their significance to legal anthropology and its research methods.

Many feminist legal theorists agree that there exists in most international law a conceptual bias which precludes women from claiming their legal rights. They have identified this as the public/private divide (Binion 1995, James and Palmer 2002, Fellmeth 2000, Chamallas 1999, Williams 1991). They argue that international human rights law relies on a public-private dichotomy, which often ignores serious oppressions that women face as a group which should be considered human rights violations. For instance, it is virtually impossible to use international human rights laws to prosecute cases of domestic violence as a human rights abuse. This has historically been seen as a "domestic matter." Further, states often claim that they will not intervene in private affairs such as these or that they should not.⁵³ However, this argument has little foundation in practice as states frequently intervene in these "private" arenas by setting the legal age for marriage, and defining marriage, divorce, child custody and inheritance laws (Merry 2006).

⁵³ However, Article 10 sections 1, 2, and 3 of The Covenant on Economic, Social and Cultural Rights provide special protections to women and mothers. Within the African Charter, Article 18(1) and 18(3) have been a contested pairing. The CEDAW calls for protections within the domestic sphere

Robin West, in her discussion of masculine and feminist jurisprudence, says that this conceptual misstep occurs because liberal legal theory is about men and not women. She argues that the values women hold, the dangers from which we suffer, and the contradictions that characterize our inner lives are not reflected in legal theory,

...because legal theory (whatever else it's about) is about actual, real life, enacted, legislated, adjudicated law, and women have, from law's inception, lacked the power to make law protect, value, or seriously regard our experience (1988:88).

In other words, law is not *reflective* of women's lives because women (for many reasons) have not been dominant users of law. While West has been criticized for conceiving of women as a unified group holding similar interests, the history of laws regarding rape, abortion, domestic violence, special protections and other laws suggest her argument has merit. All of these laws usually had been regarded as within the realm of the "private," not warranting the concern or protection of laws.⁵⁴

Feminists also critique the procedural aspects of international human rights claiming they do not guarantee women's rights (James and Palmer 2002). This critique claims that these laws were not written from the perspective of women's lives and therefore the language of the laws renders women invisible. West (1987) argues that should a law start from the position of women's lives it would be more reflective and procedurally fair to women's main concerns, which often times involve crimes against

⁵⁴ In the case of the U.S., this is most clearly illustrated in abortion law, which was seen so much as a "private / domestic" affair, that the legal decision gave rise to a policy decision. With the adoption of the Hyde Amendment (1976), the U.S. government decided to ban the use of Medicaid funds for abortions. In the case of southern African countries, including Tanzania, rape and domestic violence laws have only been enacted or revised within the past 20 years to better reflect women's realities and to better protect them. These cases clearly show the public/private division in what the law privileges (the public).

sexuality. Others argue that there exists no procedural bias in international law itself. Fellmeth states, “however, even were it granted that international law did speak from a voice that is unrepresentative of women’s experiences, the conclusion does not necessarily follow that women are treated unequally by that law” (2000:699).

Procedural biases occur in yet another way. There are more avenues open to file complaints dealing with “gender neutral” rights abuses than there are for gender specific ones. While the CEDAW has a complaint mechanism in place, it is very difficult for individuals in small communities to know about it, much less access it. The procedural biases also occur because accessing the legal system costs money, which most women lack⁵⁵ (while this is not a bias inherent in law itself). In addition, most judges, lawyers, or others involved in the process of adjudication are men.⁵⁶

Finally, feminist legal theorists argue that international human rights laws are substantively positioned against women.⁵⁷ For example, human rights laws are gendered and women’s human rights are ignored or limited compared to men’s in that these laws usually do not encompass laws necessary to women’s lives (Fineman and Thomadsen 1991). From this critique comes the oft heard assertion that “women’s rights are human

⁵⁵ In many respects, these critiques do not reflect bias in the laws themselves but in processes involved with assessing the law, such as adjudication, economics, politics, sociocultural gender norms, etc.

⁵⁶ Hirsch provides an excellent example of these procedural biases in Tanzania. She studies education seminars designed to provide instruction to police men and women on the proper use of language in legal contexts, as a means of furthering the goal of affording women their rights under the law (2002). Gaetano (2005) supports this claim by showing that procedural biases occurred at many levels against a rural woman in China who was trying to file a rape case in an urban area.

⁵⁷ Bearing these three critiques in mind, we need to be wary of our critiques undoing possible good for women. As Minow states, “I worry about criticizing rights and legal language just when they have become available to people who have previously lacked access to them. I worry about those who have, telling those who do not, “you do not need it, you do not want it” (Minow 1987, quoted in Hellum 1999:425).

rights” calling attention to the fact that women’s specifically different harms also should be considered as human right abuses. One example is that most international human rights norms have only recently defined rape as a human rights abuse. Fellmeth criticizes women on this point arguing that women themselves are making a mistake in arguing for “women’s rights as human rights.” He suggests that by doing this, women participate in the reification of the distinction between human and women, therefore inadvertently arguing that human rights *do not* apply to women. However, if we look at how Tanzanian women specially designate women’s rights from human rights and ask them why, they explain that men (as in implicit standard) already *have* their rights, therefore we should focus on women’s rights (see chapter five).

The CEDAW as an international rights instrument however, does much to rectify feminist legal theorist critiques of international law. The CEDAW is designed to take into account injustices and harms specific to women and to legislate against them. The CEDAW Optional Protocol also provides a complaint mechanism for both groups and individuals. Additionally, NGOs can submit a complaint on behalf of groups or individuals, a powerful provision as many women are now going to free NGO clinics with their complaints. For these reasons, the CEDAW has been potentially the most powerful human rights law and advocacy tool for Tanzanian human rights NGOs.

Feminists and others have been critical of rights laws conceptually, procedurally and substantively. Rather than looking at the law as a static entity, Wilson, Moore and others urge scholars to investigate the processes involved in creating and defining law and to bear in mind the overarching social, cultural and political contexts in which this occurs. As Moore suggests, we must seek to understand the other forces and norms with

which the legal system is in competition as this will in part determine people's access to it. Drawing on science and technology studies to investigate the "law" might also reveal new insights. Social critiques of science recognize that all knowledge, including the law, is situated and that it cannot be separated from its socio-historical context. The science critique leads one to question the supposed universality and timelessness of international human rights laws in a somewhat different fashion (Latour 1987 and 1982, Manji 2006, Harding 1986, Haraway 1997 and 1989). It challenges us to investigate who over time has controlled rights law and rights discourses, naturalizing them along the way.

Finally, legal anthropologists working in places outside the U.S. have put forth potential alternatives to the relativist-universalism paradigm (Griffiths 1996 and 1997, Hellum 1999, Wilson 1997, Merry 2006). These approaches seek an in-between place that is grounded and that accounts for the ways in which women employ legal pluralism, combining aspects of state and local law as well as other normative orders as they strive to make the law meet their needs. For example, in chapter six I show how NGO lawyers employ not only legal human rights concepts but also notions of "the good and moral husband" that resonate with local practices in order to "win" good settlements for women. While feminist legal theorists and human rights practitioners remind anthropologists of the potential global inequalities in the law, legal anthropologists remind theorists that if feminist, we must start from women's concrete social positions and let *those positions* speak to and inform the law.

A salient example of these debates in Africa is recounted in studies identifying the tension between communal / relational and individualistic conceptions of human rights (Hellum 1999, Rwebangira 1990, Griffiths 2007). It is difficult in complex cases to fit

women's multilayered experiences with a plural legal system into a paradigm that seeks to answer the question "which law is best for women".⁵⁸ Indeed, African women themselves, as I demonstrate in chapter six, refuse to work within the confines of any one law, and instead choose normative orders that will suit their interests.⁵⁹

In rights laws, we must recognize and be attentive to the inequalities and gender biases at all stages at which they are adopted and reified from global meetings, through the national and local levels. Starting from the position of women's lives, how do we reconcile the women's positions we study with the assumptions about women in international rights laws? Which positions count and how do we account for them? While letting women speak through ethnography, what Abu-Lughod (1993) calls "writing against culture," reveals their multiple identities and the complexity of their various (social) positions, merely "giving women voice" is not sufficient. Instead, women's narratives and experiences must be placed into the larger political context in order to make sense of their positions.

Conclusion

International human rights discourses in many sub Saharan African nations are relatively new but spreading quickly. While rights were certainly a focus during the colonial era, African nations focused less on international individual rights as enshrined

⁵⁸ Recent feminist writings have returned to a notion of "an ethics of care" in order to describe women's complex relationships *as individuals* who strongly associate their identities and therefore notions of justice within a broader relational framework. For examples, see Clement 1996 and Fineman 2005.

⁵⁹ See Hirsch 1998 on the rhetorical devices used by women in court complaint and narration.

in UN charters, and more on rights to political participation, freedoms and independence from their colonial rulers. The framing of rights therefore encompassed different meanings. Over the past decade, donor nations have focused many of their development projects on “democratization” (Hirsch 2002), including projects on human rights, which have significantly helped expand the work of human rights advocates and nongovernmental organizations. Human rights within both these periods (pre- and post-independence) are characterized by an ongoing tension concerning the balance of individual and community rights. I discuss these tensions in the context of land debate in the following chapter. Women’s rights as individuals highlight this tension as African rights advocates and lawyers struggle to reconcile this discord.

Human rights NGOs are interstices, specific locales where we can observe how international rights are integrated, translated and redeployed to and by the populous. NGOs like those in this study, allow us to understand how NGO professionals and lawyers define and give meaning to rights through every day use and how those rights are then passed on at the grassroots level through legal advice, education campaigns, and interpersonal discussions where they are further interpreted. Seated firmly in the processual approach to the study of law, a guiding question of this study asks how international rights laws are being incorporated into the national context and instantiated on an individual basis. To do this, I investigate the use of rights discourses from multiple angles in the construction of Tanzania’s new Land Act (1999) and examine how NGO professionals use rights in reconciliation cases. As this study concerns the place of women under the law, in chapter five I discuss Tanzanian’s perspectives on feminism, human rights and the law as a dialogue on global feminist approaches to law.

As the rights literature in anthropology continues to move beyond the universalism / relativist debate, this study contributes to new ways of investigating human rights by examining the meaning and use of rights in a particular context. Using the processual approach, this study investigates the processes by which actors and organizations work to create human rights and the law in different domains.

CHAPTER THREE: RIGHTS AT THE CROSSROADS: NGO ADVOCACY AND GENDER IN TANZANIA'S LAND TENURE REFORM

African women's relationship to land has been extensively researched, documented, and theorized (for examples, see Davidson 1988, Guyer and Peters 1987, Jahan 1995, Manji 2000, Yngstrom 2002). Scholars have conducted research that illustrates women's multifaceted relationships with land; nuanced relationships that at times have been overlooked by development agencies and state officials involved in tenurial reform. Assumptions about women and their relationships to land repeatedly surface in development projects. Scholars have identified major recurring and problematic premises which development professionals continue to use to approach women and land. These assumptions revolve around women's unpaid labor in the household,⁶⁰ mainstreaming women in development processes,⁶¹ and speculations about women as actors in the marketplace.

In Tanzania, women are presented with three main options for acquiring property – through the state, through the market, or through the family. These considerations are taken into account by those involved in land law reform. Various actors and institutions such as state agencies, gender progressive advocates and NGOs theorize women's relationship(s) to land in different ways. As a result, methods proposed for ensuring women's land rights have been divergent, but for the most part they have taken two major forms – securing community and / or customary rights or securing individual rights through titling schemes.

⁶⁰ Manji (2003 pp. 144-145, 147-148) argues that women's unpaid labor has been assumed as a basis for many of the World Bank's efforts at agricultural development and titling. Also, see Yngstrom 2002.

⁶¹ See Jahan 1995.

Debates over customary and individual rights in Africa have a long history and continue within current rights-based approaches to land tenure reform. Attempts at individual titling before, during and after the colonial periods in East Africa have been shown to be a detriment to women's positions. With the demise in the authority of clans and local elders, women's rights under customary tenure systems have become even more precarious (Tripp 2004). Yet some development practitioners and NGO activists continue to see value in customary tenure systems for women. Systems of customary land tenure⁶² in Tanzania have been disrupted and have become increasingly varied, especially throughout the *Ujamaa* and post-independence periods, making it ever more difficult to argue for one version of "customary rights."

However, one characteristic of customary tenure systems is that they consistently disadvantage women through inheritance, the dominant avenue through which a majority of Africans acquire land. Tanzania has over 120 different ethnic groups but the common practice among all groups is that women do not inherit land. Therefore, feminist activists and NGO practitioners in Tanzania and other places in Africa, have argued that customary law in the present-day context has been used to selectively preserve practices such as inheritance that subordinate women (Tripp 2004:2).

Through describing the ways in which women's rights were envisaged during and after Tanzania's land tenure reform, I will investigate some of the underlying theorizations about women held by different groups involved in the land debates. Specifically, I will examine the role of the state, of the Fem Act NGOs, and of a few

⁶² The processes by which land is managed, inherited, adjudicated, and acquired according to "tradition" or "custom". It does not matter whether these traditions are real or imagined, decades old or only years old, only that they can be mobilized and serve to actively regulate land relations.

other key players that shaped discussions of gender during and after the passing of the new land laws. The discussion will illustrate some key differing factors that inform the state's and NGOs' conceptions of women's land relations.

This chapter provides an in-depth look at current land tenure arrangements in Tanzania, focusing on urban land tenure. In order to do this, I present an historical contextualization of Africans' rights to urban land during the British colonial period when a series of urban laws were put into place that would later significantly shape urban land systems and Africans' rights to land. I then discuss notable changes in the post independence era, followed by a discussion of the most recent land reform processes and debates in Tanzania, centering on the processes leading up to the New Land Act of 1999.

Focusing on relationships between NGOs, state efforts and other key players in Tanzania's recent land reform debates, this chapter explores specifically how rights are being conceptualized and used in the context of the debates. How rights are used reveals underlying assumptions about how people will behave and about gender relations. This chapter is guided by the following questions: First, what are the ways in which NGOs use rights to pressure for women's land rights in Tanzania? Second, how do conceptions of rights in the case of land reform deal with the tension between individual and communal rights?

Colonial Development of Dar es Salaam and African's Rights in Land

Much has been written about changes in land tenure in rural Tanzania throughout the British colonial period. Until recently however, scant attention has been paid to African *urban* land rights and ownership under British rule. This trend has continued

throughout the post-independence era to the present (Coldham 1995, Lindstrom 2001, Shivji 1998a, McAuslan 1998, The United Republic of Tanzania 1994, Iliffe 1979).⁶³ African land ownership per se was not of central concern to the colonial authorities until the late 1940s and approaching independence in 1961. Rather, colonial concerns centered on limiting the number of Africans migrating to the cities; once they were there, British policies focused on containing their numbers and turning them into ‘good citizens.’ A discussion of Africans’ rights to land in Dar es Salaam must begin with Africans’ rights as urban citizens and the attitudes and policies that regulated African settlement in the city. Discussing some of the key policies and laws put into place during the British colonial period provides an historical landscape against which contemporary land relations in Dar es Salaam can be better understood.

During their brief period of rule (1886-1912), the Germans left an enduring mark on the city of Dar es Salaam by defining residential “zones” of settlement. They also did much to upset rural land arrangements by taking over, often with the acquiescence of Tanganyikan local officials, large swaths of rural land (Iliffe 1979:88-91). The Germans divided the city of Dar es Salaam into three residential zones for Europeans, Indians and Africans but this segregation was not strictly enforced (Burton 2005). By the time the British took control of the Tanganyikan Territory (held in 1918 by a League of Nations Mandate and officially taking its place in the British Empire as a Protectorate in 1922), the Germans had slowly begun building urban *shambas* (plots/farms) for Africans and

⁶³ Notable exceptions discussing urban land policies are Tripp 1997, Stren 1975, Burton 2005. J.M L. Kironde has written extensively on urban land in Dar es Salaam. However, this literature is much smaller compared to scholarship on rural land. While Burton and Tripp have an urban focus, they look at citizen status and labor more so than land per se, though these are interrelated.

more effective settlement began to be envisaged. The British began a long process of solidifying their rightful place in Dar es Salaam by defining the city as a place for formal workers, laborers, and government officials, and not as a space for those outside of these social locations.

The League of Nations Mandate gave Britain “full powers of legislation and administration” while promoting the well-being of Tanganyikans by banning slavery, forced labor, arms and liquor trades and *abuse of African land rights* (Iliffe 1979:247, emphasis added). Avoiding outright abuses of native land rights, the British designed legislation that served to keep Africans out of the cities. The three Zones devised by their colonial predecessors were replicated and further defined by the British. Township Rules were introduced for Dar es Salaam under the Regulations for Peace and Good Order (1920). Areas covered by the rules included sanitation requirements, building and trading licenses, the establishment of a market, public order offenses, prostitution and mobility in the town (Burton 2005: 48).

From 1924, the British colonial authorities devised the three Zones (Burton 2003:66) in order to effectively implement a policy of segregation, which could not be blatantly executed as it would violate the League of Nations Mandate. While the Zones were segregated along racial lines, this segregation was reflected by the service provisions made available to each Zone including sanitation, the requirements for building materials, and other services. Thus, Zone 1 was the European Zone in which only ‘residential buildings of a European type’ were allowed to be built (Iliffe 1979:385-87, Burton 2005:50). Over the next ten years, this zone was extended northwards, where

up-scale homes were being built along the coast in Sea View and Oyster Bay.⁶⁴ Zone II was comprised of a commercial area in which ‘residential and trading buildings in permanent materials only’ could be erected (Burton 2005:50). This area became home to a majority of the Indian residents in Dar es Salaam. Finally, Zone III consisted of the township, which occupied the space west of Zone II. Native houses could be constructed here in impermanent materials. This is the space now known as Kariakoo. Between Zones II and III there was an ‘open space’ or a buffer zone, constructed to serve as a safeguard against the perceived diseases in the African settlements.⁶⁵

Beginning in the 1920s, Dar es Salaam began to see significant increases in the number of migrants to the city, a situation that continued to vex the colonial administration as well as the post-independence administrations. Today, Africans have the ‘right’ to live in the city so long as they do so by legally occupying land or housing, whereas the British primarily framed African rights in the city not in terms of housing but of employment. Africans not employed in the formal sector were encouraged to leave the city and return to their rural homesteads where they could be more productive in what was envisioned to be their ‘natural’ place. There were a number of reasons Africans continued migrating to the city and a number of justifications colonial authorities conjured for preventing their stay.

⁶⁴ This trend is still evident today. Zone I of Dar es Salaam is known for its ex-pat residences, international donor, humanitarian, and INGO workers, high government officials (the VP’s estate is located there) and other well-to-do Tanzanians.

⁶⁵ This space, now known as Mnazi Moja, is typically used for celebratory and/or governmental functions. Apparently, at independence it was known for its beautiful gardens but today is a parched strip of land, left almost completely untended. The perceived threat of African disease, while most likely exaggerated was not without warrant. Kariakoo, though planned, became increasingly congested without the sanitation services necessary for upkeep. This trend continues today.

The desire for employment was a driving factor for many Africans migrating to the city. In the early years of British rule, many young Africans migrated to Dar es Salaam to either avoid paying tax or in order to make money to pay their tax. The urban population in Dar es Salaam (and many other African urban spaces) has always been characterized by its youthfulness, attracting young people seeking money making opportunities, to escape abuse, or to be free of the hierarchical control characteristic of the rural areas.⁶⁶ Colonial administrators concerned themselves primarily with male labor (more specifically the unemployed) and the ‘detribalized’ African. ‘Detribalized’ Africans were viewed as no longer following the hierarchies that existed in the rural areas and not respecting administrative authority in the urban areas. Thus, they posed a significant problem to the administration. No longer responsive to rural authority and out of effective reach of an unprepared urban colonial authority, rural-to-urban migrants inhabited the town in increasing numbers under conditions of low formal employment. They earned their living in informal employment including small businesses and beer brewing, and sometimes by engaging in petty criminal activity. The colonial administration responded to this situation by enacting laws meant to deter them from continuing to migrate to the city.

⁶⁶ This remains true today. Many young men I came to know in my oft traveled routes in the city informed me that they came to Dar es Salaam because the rural areas were ‘boring’ and people ‘were always watching everything you do’. Other explanations pointed to economic concerns – there was not a chance to make a decent living farming and they would rather try their luck at small business in town. Many of the problems with youth that the present government confronts resonate with those the colonial authorities tried to cope with – continual unemployment, rising crime rates, a growth in informal sector activities, and ‘vagrancy’.

Those with the ‘right’ to remain in Dar es Salaam during the 1920s-1930s were those with formal employment, all others were subject to removal. Attempts to remove the ‘surplus’ population began in the late 1920s by literally bussing Africans back to their rural homesteads. The British implemented legislation aimed at controlling Dar es Salaam’s African inhabitants. The first such effort appeared in the form of the Township Regulations (Township Ordinance 1920). By-laws prohibiting the hawking of goods and public entertainment were also aimed at controlling African movement to the town, though these were highly ineffective.⁶⁷ By 1930, a new penal code further criminalized Africans living in the city without formal employment (Burton 2005).

While laws aimed at regulating African residence in the city proliferated between 1920 and 1930, they had little effect. In fact, Africans continued migrating to the urban center throughout the Depression. The world economic recession in the 1920s and 1930s was characterized in Dar es Salaam by decreased funds for urban development. Building in the early 1930s was at a standstill and it was not until 1936 that the town finally began to emerge again undergoing a new construction boom (Burton 2005:68). Though new formal construction was at a standstill, migration continued throughout the 1930s due to decidedly harsher conditions in the rural areas. Subsequently, town expansion continued without the administration’s authority or planning.

Accelerating urbanization proved to be the most vexing urban problem for colonial authorities during the final decades of their rule. In the twenty years between

⁶⁷ This practice continues today. See, “War on Hawkers to Continue” (*Daily News*, 6/6/1995). The government continues to send conflicting messages to street vendors or “hawkers.” See “Country Reports on Human Rights Practices” <http://www.state.gov/g/drl/rls/hrrpt/2006/78761.htm> and “Government Reaffirms Commitment to Curb Poverty” (*IPP Media*, 12/17/2006).

1940 and 1961, Dar es Salaam's population expanded nearly four times over. Between 1938 and 1944, the city's African population increased by more than 50%. Again, Burton (2005) shows that even though inflation resulted in increasing levels of poverty among waged and unwaged workers, the city remained a site of hope – for employment, for escaping hierarchies of authority in the rural areas, and as a place to avoid or earn money necessary for taxes. Furthermore, Africans were attuned to the fact that there were money making opportunities arising from wartime conditions, with ships passing through the port on a regular basis.

The combined effects of the Depression and continuing migration between the late 1920s and mid-1940s made a lasting impression on the development of African urban housing and settlements. Today, many areas in Dar es Salaam attest to this history. There are hosts of unplanned housing areas displaying variations in housing materials (often unsafe and in unsafe areas), while the government lags in its attempts to remedy the situation by providing necessary social services and infrastructure.⁶⁸ Likewise, the consequences of a racialized and *de facto* segregated urbanscape has had lasting impacts. To more fully reveal the foundations of the contemporary situation, we can look at government infrastructure expenditures in 1939.

While the African population in 1939 constituted approximately 75% of the urban residents, only £4,331⁶⁹ out of a total expenditure of £18,245 was spent in Zone III (the African Zone). In other words, less than 25% of all expenditures went toward a majority

⁶⁸ Not only is the government involved in these efforts, but also IFIs and local NGOs. The World Bank has been involved in sites and services upgrading in Dar es Salaam since the 1970s and local NGOs such as WAT are now involved in programs promoting titling efforts for women and the poor.

⁶⁹ In 1939, £1 was equivalent to today's spending worth of £28.72 (The National Archives: UK Government Records and Information Management).

75% of the city's population. Expenditure on road maintenance was 19% of the total; 24% of the total budget for electricity supplied for street lighting was allocated to Zone III; only 5% for the operation of water supply stations; and 12% of the city's funds for general sanitation. Moreover, the maintenance of the "open space" was taken out of the budget all together (Tanzania National Archives/61/207/Vol III). The daily struggles faced by Dar es Salaam's African residents today attest to this history of neglect as urbanites contend with poor infrastructure including unsafe and impassable roads, lack of stable sources of electricity and irregular availability of water.

Housing

As noted above, the lag in housing development during British rule continued throughout the inter-war period. The administration attempted to ameliorate the situation after World War II, but could not keep up with the rapid migration rates. Terrible housing shortages were apparent and where housing projects were undertaken, they were done haphazardly by erecting houses as quickly as possible to solve the crisis. The necessary infrastructure did not accompany these spates of building (Burton 2005:205). Overcrowding forced the administration to relax its segregation designs⁷⁰ and after World War II it expanded areas for Indian residence, including Upanga, still host to a predominantly Indian population. High-density developments began springing up in all areas, including the former "European" Zone I. With the relaxation of zoning and the lax policies regarding housing materials, by 1958 a government report found that the Dar es

⁷⁰ By 1957, zoning was no longer in force (Burton 2003:77).

Salaam housing shortage had been solved mostly “by the people themselves” (Burton 2005:212).

To assist with the housing problem, the African Urban Housing Loan Scheme was established in the mid 1950s. However, the program typically assisted more wealthy Africans with home construction, leaving out those who most needed the scheme.⁷¹ After a short period, the required deposit was reduced and building specifications relaxed; thereafter, demand grew. The Townships Ordinance, or Cap 104 (Removal of Undesirable Natives/Persons), was still in effect and was used to justify the increasing use of repatriation campaigns in the 1950s, removing “undesirables” from the city back to the rural areas. By the mid-1950s as many as 2,000 people⁷² were being “repatriated” annually (Burton 2005: 250). This is the legacy of urban land and housing development that the newly independent Tanzanian government inherited in 1961. The laws and policies put into place during the British colonial period would be challenging to undo, particularly in light of continually increasing rates of migration.

Toward a Better Future? Stasis and Change in Urban Land Development Policies in Post-Independence Tanzania

As the above discussion illustrates, the rights of urban Africans were conceived of by the colonial authorities not in terms of their rights in security of land tenure or in any

⁷¹ The same situation seems to be occurring under the current 20,000 Plots Scheme, a program designed in part to assist poor urban dwellers to solidify and gain legal title to land holdings, but having the opposite effect in many cases. An in-depth discussion of this case follows below.

⁷² This is low compared with current standards. For instance, forced urban-rural repatriation campaigns in other parts of Africa have far exceeded this number. In Zimbabwe, the UN estimates over 100,000 in 2005 were forcibly removed to the rural areas (Human Rights Watch 2005).

absolute terms of rights, but were contingent upon employment. Employment defined a 'right to stay' for the duration of work. Furthermore, employment was *de facto* considered to be the domain of men. Women were largely left outside the concern of the authorities. Since African labor in cities was conceived as a transient, short-term, impermanent condition, there were virtually no laws and / or planning designs put in place to secure African urban land or housing security. These often insecure land tenure arrangements continued virtually unaltered after independence.

The post-independence government implemented four major land reform policies that would have significant and long lasting effects on rural land security and tenure; however, urban land rights were affected to a lesser extent. The policies of the *Ujamaa* period most significantly altered land tenure arrangements (both between and within communities and between communities and the state) and were characterized by the abolishment of freehold, the enfranchisement of tenants in the West Lake Region⁷³, and a policy of 'land to the tiller' as an extension of the enfranchisement act meant to give rights to rural and urban dwellers who had made substantial improvements on land owned by another party. Finally, villagization policies (1974-76) were characterized by large-scale relocation of cultivators and pastoralists into villages with the idea of increasing agricultural output and centralizing people in order to better provide them with social services.

All of these policies, especially villagization, were geared toward rural dwellers and were undertaken in the name of national development and prosperity. During this

⁷³ This scheme was developed under the Customary Leaseholds (Enfranchisement) Act, 1968 (no.47) and was meant to abolish a feudal arrangement in the West Lake Region, a system commonly referred to in that area as *Nyarubanja*.

period, gender equity in land policy reform was not a goal of the administration. While gender parity was an aim within the education and health care sectors, it was envisioned not solely for the benefit of women as a group, but again for the development of the nation. In many ways, villagization set the stage for how land rights would be approached in the future. The massive dislocations and failures of the project would lead to a post-socialist period that attempted to rectify the injuries of those policies and thus frame the debates of land rights in terms of 'customary' or 'community rights.' After villagization, justice was demanded by whole villages or *groups* of people, therefore a pragmatic strategy to frame grievances and rectify these wrongs was to argue not for individual rights but for community rights.

Continuing high rates of rural-urban migration remained a significant problem after independence, which in turn changed land relations rapidly. Tanzania has one of the highest urbanization rates in Africa.⁷⁴ This has resulted in the encroachment of peri-urban lands previously held under customary tenure (The Presidential Commission 1994:21). The growth of the city, coupled with neoliberal economic policies that have encouraged private investment in land, has led to serious problems including government seizure of land, double allocation of plots, compensation issues, and diminishing customary rights in areas that were previously protected by them. Most of this private investment is carried out in the name of development. In 1972, a policy that decentralized the government administration to regional and district levels was adopted,⁷⁵ exacerbating the

⁷⁴ Reported to be as high as 15% per annum (Tanzania Development Gateway <http://www.tanzaniagateway.org/tpd/sector.asp?searchtext=Health>).

⁷⁵ Decentralization of Government Administration (Interim Provisions) Act of 1972. The decentralization period lasted from 1972-1982 in which there was no local government system in the country. District / urban development councils replaced local government systems. Oyugi (1998) has commented that it is misleading to call this process one of

confusion in urban land boundaries, land rights, administrative and juridical procedures.

At the same time, the former local government machinery was dismantled. This resulted in a period of widespread confusion regarding the procedures and processes to register land as well as uncertainty about where to lodge a formal land complaint.

The expansion of town boundaries at the expense of landholders under customary tenure continues to be a pressing concern for urban residents. In 1994, the Commission of Inquiry into Land Matters received overwhelming evidence of massive displacement of peri-urban and urban dwellers who were bought out or forcibly removed as they were illegally occupying land and / or occupying land in dangerous areas. Concurrently, the ‘squatter’ population⁷⁶ has been increasing at marked rates and is estimated to range between 60 and 70 per cent of the population in Dar es Salaam. This situation raises a number of questions. Where are 60-70% of the population to go if they are being forcefully evicted from their land? Under what conditions can they protect their right to shelter as described in the UN Declaration on Human Rights and / or the 1966 International Covenant on Economic, Social and Cultural Rights? Why do they continue to come to Dar es Salaam knowing that they will be illegally or informally residing on land? Finally, how and by whom are they being denied rights in land? I will come back to these questions in the following chapter as I present a case study of members in a transitional informal settlement just outside Dar es Salaam’s city center.

Setting the Scene: State, Market, Family and Land Relations

“decentralization” since power was centralized at the district level rather than devolved to local government representatives.

⁷⁶ Squatters consist of residents without title or usage rights, who have come to occupy vacant land in the city without proper governmental approval.

Three main factors have worked to structure land relations in post-independence Tanzania – the state, changing market conditions, and the family. Below, I illustrate the most significant characteristics of recent state policy, economic policies and family conditions that have structured debates during and after the passing of the new land laws. These new policies and relationships work as both starting points and competing forces that function to shape how different groups and actors formulate their ideas about land reform.

Changing Roles of the State and the Market

The role of the Tanzanian state, like that in many other African countries, has undergone considerable changes throughout the past twenty years, due not insignificantly to neoliberal economic policies it has adopted. The beginning of neoliberal prescriptions in Tanzania in the form of structural adjustment programs (SAPs) involved *rolling back* the state,⁷⁷ while current neoliberal projects and policies involve *putting the state back in*.⁷⁸ This will have important effects in how national land reform is carried out as states will be given a greater role (with IFI backing) in determining the character of national land relations .

⁷⁷ Characteristics of structural adjustment policies adopted throughout the 1980s included removal of state subsidized social services (health, education), devaluation of currency, privatization of state monopolies.

⁷⁸ There are a number of programs supported by the IFIs that seek to make the state a formidable presence, a “strong state” in postcolonial governance and development schemes. Harrison (2005:1309) points to “public sector reform programmes, capacity-building programmes...the increased use of contracts within the state...[and] the introduction of results-oriented management and output-oriented budgeting.”

While international financial institutions' (IFIs) neoliberal prescriptions of "roll-back" in the 1980s shifted in the 1990s to policies aimed at strengthening the state, development's neoliberal goals have shifted beyond economic concerns, "from social capital to civil society" (Harrison 2005:1306).⁷⁹ While the state was being "put back in" in the early 1990s in Tanzania, the land reform debates were emerging. One of the most pressing questions for all stakeholders and policymakers involved concerned the role of the Tanzanian state in the new land laws.

Arguably, one of the most significant carryovers from the colonial to post-independence period is that radical title in land continues to be vested in the President. In effect, this means that the President is the trustee of all land and the people are 'lessees' or users of that land. This became a point of contestation for both the NGOs and the Commission in the land reform debates. This decree gives the President and the government broad powers over land relations affecting urban and peri-urban dwellers' land rights. There were three ways in which urban land rights were and continue to be rendered insecure by government action: 1) the President declares land a planning area; 2) an area is marked for 'redevelopment'; and 3) minor boundary adjustments are made to an area.⁸⁰ Each situation affects urban dwellers and land holders differently and provides some rights to compensation in each case. They are reviewed briefly below.

⁷⁹ See Harrison's exceptional account of the shifting nature of neoliberal development policies in Africa (2005).

⁸⁰ However, there are other ways besides those listed that customary urban and peri-urban inhabitants lose their land. They may simply be bought out by people with the means to do so and may accept the arrangement under financial duress. They may not be able to meet the building conditions and requirements imposed by town planning rules. They may also be occupying land that has been surveyed for someone else. If they are occupying land without formal title, or without formal village title, a speculator may take the first step to survey a plot at which point the wheels are put in motion for that party to

First, an area of land may be declared a planning area by the Ministry of Lands.⁸¹ This has typically affected Dar es Salaam's residents who live in areas surrounding the town / city center. Often an area is declared a planning area in anticipation of the expansion of an urban area rather than spontaneous penetration of urban structures into surrounding areas. Peri-urban customary land rights become insecure or extinguished upon declaration of a planning area. Only those who have made 'unexhausted improvements' (structures built from permanent materials) on their land are entitled to any sort of compensation.⁸² Once land has been declared a planning area, it is available for allocation, and typically goes to those with the means to buy it. A woman at a TAWLA clinic illustrated the difficulties inhabitants of customary peri-urban areas still face:

My family has lived in Temeke for many years. My father brought us here from Arusha. We have a nice *shamba* [farm] and a house that we have expanded on over the years. Then one day a government official came and began surveying the land. The city was expanding and they were taking our land away, just like that! Can you imagine?! All of that work, and for nothing. (Clinic Interview #17)

When asked if she had a title to the land, this client said that her father bought the land from a Zaramo when he came to Dar es Salaam, did not receive a title for it, but has the receipt for the purchase. Most likely, the first seller of the plot did not hold a formal title either but was also operating under customary arrangement. In the peri-urban areas

attain that plot in the future. Some landholders may also sell their plot to two different buyers (double allocation), first to one person and then shortly after to another, doubling his/her money. As this exchange is most often carried out in the shadow of the state and without formal title to land, it becomes difficult to adjudicate.

⁸¹ This condition is provided for under the *Town and Country Planning Ordinance (1956)* and *Land Act (1999)*, subpart 2, s.57(1)(c).

⁸² This provision was carried over to the *Land Act 1999*, section 37(8).

it is still common practice to purchase a plot in a village by vowing to subscribe to the practices of that village. Therefore, the buyer is protected under village “customary” land arrangements. The woman in effect, had no legal recourse except to ask for compensation, which she had filed for, some six years ago. At the time that I spoke with her, she still had not received compensation, which was why she had come to the clinic.

Second, by claiming an area for ‘redevelopment,’⁸³ the government has the power to acquire land to be used for the ‘benefit of the public’ although this phrase remains ill defined and is clearly subjective. An area can be designated a redevelopment area “...for exclusive government use, or for the provision of sites for industrial or commercial development, social services or housing. It can be for sanitary improvement...for laying out...extending any new city, municipality, township or minor settlement....It can be for the development of any airfield, port, harbor, or for mineral, oil as well as gas sites, or for agricultural development” (Presidential Commission 1994:82). Compensation was a tenet of the redevelopment schemes in the post independence period and remains so today. The government is supposed to provide displaced people with comparable land elsewhere.⁸⁴ However, people who received the new plots during villagization often made complaints to the Commission that they were of poorer quality than their previous ones or that they were not adequately compensated for the crops and improvements made on their former plots.⁸⁵ Finally, minor boundary adjustments can be made to an area,

⁸³ Provided for in Section 35 of the Land Acquisition Act of 1967 (Presidential Commission 1994:72). Also, *Land Act 1999, VI, ss. 2(4)(3)*.

⁸⁴ However, today’s residents operating under a “right to occupancy” are “not entitled to compensation for the loss,” created by the provisions of the *Land Act, IV, ss.2(3)*.

⁸⁵ Temporary buildings of squatters or trespassers are not compensated. The Commission collected a number of complaints of unfair compensation. For instance, villagers were compensated at the market price for a coconut tree, which fell far below the real value of

subjecting residents of one area to new laws and administrative rules that may benefit them or adversely affect their landholding arrangements.

While the relationship between the state and the market economy shifted between the 1980s and 1990s, land and property have remained a central component of development schemes among both international development agencies such as USAID and the Oxfam and the IFIs such as the World Bank and International Monetary Fund. These later two have had notable influence shaping Tanzania's economic policies, especially with regard to land (Manji 2003, Toulmin and Quan 2000). In the 1980s, the Bank's emphasis was on land and titling, with a focus on abolishing customary tenure and replacing it with individual land rights. The Bank's thinking was that if people had formal property rights, they would have incentive to invest and make their land more productive. In the 1990s however, the Bank shifted its thinking slightly, arguing that customary tenure did not necessarily hinder agricultural development⁸⁶ and could be used as a basis for titling efforts (Tripp 2004:1). As a major lending influence in Tanzania, the Bank's overall economic prescriptions and conditions for the country would serve as a guidepost for how the Tanzanian state would envision and implement the new land reform. The state, like the Bank sought to create a partially controlled,⁸⁷ but open market in land as a means to economic development.

the tree if one takes into account the value of the nuts from that tree over a period "X" number of years.

⁸⁶ It is not my purpose to detail all of the Bank's policies and latent assumptions embodied therein during this period. For further reference, see Manji 2003 and Bruce and Migot-Adholla 1994.

⁸⁷ The state has controlled land arrangements on two levels. First, it decides which land will become land for redevelopment schemes. Second, as shown in the 20,000 Plots Scheme below, the government controls the price of land in these newly opened markets.

As demonstrated above, colonial land tenure policies endured well throughout the post-independence era. There is a notable absence of scholarly research on urban women's land rights both during the colonial and post-colonial periods. While women consistently composed over half of the urban population, their needs and concerns have been relatively neglected. The literature recognizes that rural women have different positionalities within rural tenure arrangements and often have less land security than men do. What are *urban* women's situations? Are their needs and positions significantly different than men's? The position of women, both rural and urban, became central to the land reform debates beginning in the mid-1990s, which I discuss below.

The Family

State involvement and economic policies influencing land in both rural and urban areas have produced gendered outcomes (Manji 1998, 2003, 2006, Tsikata 2003, Ngware et. al 1997, Mbilyini 1997). Women's access to the land market through state sponsored and international development initiatives has been increasing over the past two decades; however, women's positions within the family have not been fully taken into account by either state or international agencies. State and donors have not fully grappled with the family as a unit of social and political order and hierarchy, which if ignored, will undermine other efforts at empowering women in the land market.

In Tanzania today, most rural dwellers come to possess land through families; by way of succession and inheritance. Women's positions will vary in this regard according to class position, religion, age, education and particular descent practices of a given area. While urban women's land acquisition may be more affected by shifting market

conditions and the reach of the state, they still confront familial gender norms that will affect their relationship to land. On the other hand, rural women's relationship to land may be more influenced *on a daily basis* by familial relations than affected by the arm of the state or by international initiatives.⁸⁸

Above, I reviewed ways in which urban and peri-urban dwellers operating under customary laws were at risk of their land being taken over by the state. What continues to be a pressing concern for women, as evidenced by the rise in numbers at the legal aid clinics,⁸⁹ is that gender relations within the household work as a first barrier to women being able to utilize their rights in land. In a largely patriarchal culture, many are not included in property titles at marriage and are often disenfranchised at divorce and deaths of their husbands or fathers. Two types of marriages are recognized in Tanzania – monogamous and polygamous. The ceremonies can be religious, civil or traditional (Law of Marriage Act, 1971). All people are encouraged to register their marriages, though not all do. There is a “presumption of marriage” when the couple have lived together as husband and wife for more than two years and “the people around them have recognized their relationship” (LMA 1971). They have all the rights and duties of a married couple. Divorce may only be granted by the court. How the state deals with intra family and intergenerational inequalities in land is key to securing women's land rights.

⁸⁸ I am stressing this point so that I am not misunderstood to be saying that rural women are not frequently affected by state and economic decisions. In fact, during the SAPs of the 1980s, rural women were oftentimes more adversely affected than urban women in a number of ways. Further, with international development policies becoming more “participatory,” the state and IFIs enroll rural participants into development schemes through participatory auditing/surveying practices. That said, urban women, especially those under precarious legal arrangements, will more often come into contact with state officials, police, and international development efforts since many INGOs are concentrated in the urban centers.

⁸⁹ WLAC 2003 Annual Report.

The post-socialist period ushered in neoliberal policies which opened up a land market in the country. Neoliberal policies, which encourage private ownership and foreign investment, only complicated tracing out ‘original rights’ to land. Villagization and neoliberalism are the two most significant sets of policies that caused discontent among urban and rural dwellers regarding their land rights. Rural dwellers saw their land rights erode as mineral extraction intensified. In urban areas, private investment in land for commercial and / or residential buildings, town expansion and government initiatives placed poor urban dwellers in an especially precarious situation. By the late 1980s and early 1990s a growing discontent was emerging from urban centers such as Dar es Salaam over claims of ‘land grabbing’. These were some of the problems that led the government to conduct the Presidential Commission of Inquiry Into Land Matters in 1991 (hereafter “the Commission”). The Commission’s research team conducted interviews with hundreds of government officials and thousands of Tanzanian citizens to identify the most pressing land problems the country faced and to propose recommendations for future action and a new land bill.

The Commission, the Land Act, the NGOs: Tensions in Approaches to Land Reform

The processes leading up to the passage of Tanzania’s new land laws was supposed to be one of the most democratic legal reform efforts the country would witness. The Presidential Commission of Inquiry into Land Matters⁹⁰ was established by the government and led by Professor Issa Shivji, a renowned expert on land law,

⁹⁰ The Commission was a state funded, though independent research group composed of faculty from the University of Dar es Salaam, private consultants, and law students.

democracy and human rights in the country. The Commission was designed in order to carry out a democratic approach to land reform by seeking out the voice of the people on land matters. In the end, several key organizations and individuals brought to the table many similar but a few considerably different ideas and suggestions for the new land laws.

All parties, including the Commission, the author of the Land Act, who was a British legal consultant funded by DfID, and women's / human rights NGOs came to the debates with theoretical starting points as to how people's land tenure arrangements would be treated most fairly and be best protected under new legislation. Below, I present an overview of how gender was or was not incorporated into the debates and the new land law, revealing state and NGO narratives that are suggestive of how each group views gender relations and the best ways to secure women's rights in land.

The Commission

In framing their ideas about and approaches to land reform, the Commission, the NGOs and the Tanzanian state sought the best ways to secure citizen's land rights. Their different approaches reflect assumptions about state-society relations, economic development, power, and presumptions about the individual in society and individual choice. A major difference between the Commission's and the NGOs' suggestions rested on the issue of gender relations, particularly inheritance issues. Because this was the overriding issue of disagreement concerning women's land rights, I will examine the different strands of thinking about inheritance rather than discussing the various other ways the NGOs and the Commission differed regarding the land law.

The Commission took an approach that overlooked the “private” arrangements by which land is acquired – through the family. The Commission (and a few NGOs)⁹¹ argued that the best way to ensure people’s rights was to legalize and protect customary systems of land tenure. The NGOs on the other hand, raised substantial critiques about the effects this would have for women. Fem Act NGOs in large measure proposed vesting legal rights in individuals. While both approaches sought to ensure legal, economic and social rights, how did they end up at odds with one another? There are both ideological and methodological reasons. The ideological divide was characterized by debates over individual versus community rights while the methodological divide involved the *types* of law that would best ensure rights – customary or statutory law. Why were the NGOs’ and the Commission’s conceptualizations of the *gendered* land owner so radically different?

The Commission’s research into land matters was one of the most extensive land studies ever conducted in the country. The Commission conducted interviews in nearly every corner of mainland Tanzania, inquiring into people’s problems with land tenure. The Commission framed the parameters of and methods for their research as being concerned with “the people” and not specific groups of people. This framing resonates with the nationalist sentiment of Nyerere’s presidency and the Tanzanian socialist project. It is also reflective of the historic reality of mass land alienation undertaken by

⁹¹ It becomes difficult to separate the Commission’s work from the NGOs in some regards. For instance, Shivji, head of the Commission, was also a founder of Hakiardhi, the NGO Land Rights Institute. While some of his suggestions as a member of the Commission varied from the NGOs, he later became a champion of NGO advocacy after the Commission’s suggestions were disregarded by the state. However, for analytical purposes, it is useful to separate the Commission’s thinking from that of the NGOs as there were key differences in how each group approached the issue of gender, discussed below.

the state during villagization and more recently under the banner of economic development. However, the categorization “the people” serves to continue to blur historic regional, socio-political, and economic differences and lump “the people” together regardless of ethnic, gendered or religious differences. Conceptualizing the problem as one of “the people” could be useful in terms of its openness as it seeks to gather information regardless of gender, ethnicity, religion, or location in order to let the data speak to the problem rather than vice versa. However, this did not come to fruition. This conceptualization of the project framed the terms of the debate and established its guiding questions. Concerns specific to women (inheritance, their agricultural labor, and division of marital properties including land) were therefore not asked and were not given their proper weight in the resulting report (Manji 1998).

The Commission’s claim that the gravest land disputes and the majority of land alienation occurred between “the people” and “the state” is substantiated by the mass land alienations that occurred after independence in the *Ujamaa* period and by current trends in land alienation. In the urban areas this happens under the guise of redevelopment or road expansion and in the rural areas, through multinational corporations (MNCs) and other national and foreign direct investment and expropriation. As a result, the Commission gave priority to and promoted the notion that customary land rights should be secured rather than focusing on individuals’ rights to land.

Assumptions About Gender Within the Commission’s Inquiry

Professor Issa Shivji, the head of the Commission, was a longtime faculty member at the University of Dar es Salaam’s Faculty of Law, a prolific writer on Tanzanian state society relations and human rights in Africa, and an academic with a

distinctively Marxist ideological bent. Funding for the Commission came out of the public budget. The Shivji Commission's approach to and analysis of Tanzania's land relations can be read as a traditional Marxist analysis. By viewing land tenure problems as existing between "the state" and "the people," the Commission's report predominantly highlighted class divisions which were rooted in the division of property ownership. The Commission's final report, which is packed with evidentiary data and interviews with villagers, supports the idea that divisions between property owning classes and peasants are indeed a problem in the country (The Presidential Commission 1994). However accurate the Commission's study, the approach to the study (i.e. the questions asked) reflects a conceptual starting point that theorizes the division of power as most problematic between "the state" and its citizens.

The results of the study led the Commission to argue for community as opposed to individual rights. It argued that customary tenure systems (if properly democratized) had the potential to protect the group against incursion by the state and should therefore be protected. The idea that membership or inclusion in the community will protect or ensure rights, speaks to the Commission's underlying assumptions about existing power relations at the local-national level. The Commission privileged unequal power relations between the state and the community or, relations that were public and observable. Feminist legal theorists posit that starting from the position of women's lives (which this inquiry did not) will reveal very different dynamics of power (West 1987). Feminists and feminist legal theorists argue that if women's lives are not taken as starting points, the result will be the reification of the public / private divide in law, relegating women's

concerns and the micro-level power arrangements that shape their daily lives to the private sphere (West 1987, MacKinnon 1988, James and Palmer 2002).

In the national land debates, Shivji and other members of the Commission have argued against establishing individual rights through titling. The Commission's objections to individual titling reveals two assumptions that underlie their thinking: the first, about the characteristics of the rational individual in the marketplace; and the second concerning the relationship between law, gender and social change. Drawing on other case examples, the Commission argued that individual rights through titling could potentially lead to further land insecurity for the poor as they would be strained to discipline themselves from disposing of their land in times of financial need. In arguing instead for customary tenure, the Commission assumed that women would be accommodated through their dependent positions as wives of idealized male household heads or as members of the group (Yngstrom 2002). This approach assumes that the poor are actors incapable of making well informed decisions about their economic welfare and therefore they must be paternalistically cared for.

The Commission did recognize however, that women were being disadvantaged in inheritance practices that followed customary laws. This posed a difficult question as customary inheritance practices were clearly in contradiction with the principle of nondiscrimination embedded in the constitution. Therefore, the question was: By which process should the law be reformed that would be most meaningful to users of that law? In other words, how could customary law be changed to reflect contemporary legal provisions of nondiscrimination and human rights?

The Commission proposed a solution to utilize existent customary institutions, but to democratize them (Shivji 1999). The Commission discussed four possible approaches to the problem of succession: hard law, soft law, evolutionary and customary law approaches (Tsikata 2003:160)⁹². In the end, the Commission decided that the evolutionary and customary law approaches would be the most feasible and useful but especially urged an evolutionary approach. This meant that “personal laws would continue to apply, but gender inequalities in other laws...would be addressed in the hopes that [these] changes...would eventually affect succession” (Tsikata 2003:161). Why it was acceptable to change gender inequalities in laws other than succession, was to some, never satisfactorily explained. These recommendations became the basis of heated debates involving the government, academics and NGOs.

Besides the Commission, however, other forces were at work in shaping the new land laws. The Tanzanian government commissioned local and foreign experts, including the World Bank, to consider the Commission’s work and to draft the new land laws. The formation of the National Land Policy was the second event that would further solidify the terms of the debate and continue to relegate gender issues to the sidelines.

The National Land Policy (NLP) and the Resulting Land Act 1999

In 1995, the government organized a workshop in Arusha to discuss the Commission’s suggestions as it was preparing its draft of the National Land Policy

⁹² The hard law approach would call for an outright change in the laws. A soft law approach would continue the application of personal law but subject to principles embodied in statute, such as gender equality principles. The customary law option would keep customary law in place with the hope that the people would come to recognize the need for its reform.

(NLP). The NLP incorporates the position of the Government on the Presidential Commission, the recommendations and observations of the National Workshop on Land Policy held in Arusha in January 1995, and comments and suggestions from the public and mass media (NLP Preface, 1997). The Arusha meetings showed that the government was not prepared to accept significant aspects of the Commission's findings and the resulting NLP retained aspects of land tenure that the Commission explicitly opposed. Most importantly, all land would remain vested in the President and the rights of occupancy⁹³ would be the only recognized rights to land. There were also provisions that land speculation would be controlled and land rights would be based mainly on use and occupation.⁹⁴ That all land remained vested in the President meant in reality that at any time, land may be confiscated by the state, within the reasons outlined above.

Regarding women's land rights, the NLP acknowledged that in many ways women had inferior rights to men,⁹⁵ and therefore recommended that women be enabled to acquire land in their own right through purchase or allocation; however, on the issue of inheritance, the NLP stated that clan land would be governed by custom and tradition so long as "such custom and tradition is not contrary to the Constitution..."⁹⁶ Furthermore, it proposed that "Ownership of land between husband and wife shall not be the subject of legislation."⁹⁷ The swift passing of the NLP and the subsequent hiring of a British land expert Patrick McAuslan, who was funded by the Department for International

⁹³ A person is able to stay on and use the land for a lease period not exceeding 99 years.

⁹⁴ *National Land Policy (1997) 1.xiii.*

⁹⁵ *National Land Policy (1997) 4.2.5.*

⁹⁶ *National Land Policy (1997) 4.2.5.*

⁹⁷ *National Land Policy (1997) 4.2.6*

Development (DfID),⁹⁸ to draft the new legislation based on the NLP recommendations led to an explosion of debates and advocacy around the land tenure reforms. It was at this late stage, in 1997 that the Fem Act NGOs began vigorously pressuring the government to amend provisions made for women.

Unfortunately, the Commission's work was not, for the most part reflected in the NLP. If it had been, the consequences could have been substantial positive gains for ordinary Tanzanians including land vested in local authorities rather than the Executive, and simpler administrative procedures making market-based land exchanges, land dispute resolution, and land registration easier. Instead, the government ignored the bulk of the Commission's recommendations and proceeded to hire Patrick McAuslan to draft the new land laws. According to Odhiambo (2002) and Manji (1998) McAuslan was hired *during the course* of the Commission's research and legislative drafting had begun before the Commission's work was even completed. For the most part, the resulting land laws reflect the suggestions of the NLP and *not* the Commission and take a highly legal centric approach to land relations that err on the side of detail in order to "close the loopholes" in grey areas that could invite local level misinterpretation or misadjudication. Some (Manji 1998, Mbilinyi 1997, Shivji 1998b) have commented that this approach was motivated by a desire to facilitate national and foreign investment in land and reflected pressures coming from the IFIs.

It seems fair to say that the new land laws were shaped not by the recommendations and grounded data of the Commission's work but by state and external forces and funding including the DfID and World Bank, the state's vision of land as a

⁹⁸ DfID also funded the technical legal consultant to Uganda's new 1998 land bill.

development resource, and consultants such as McAuslan. Two significant outcomes have emerged from this; one substantive, the other procedural. Substantively, the law devolves authority to the village level in the overall hierarchy of decision making and adjudication. Procedurally, the new land laws are highly detailed and bureaucratized and rely on significant legal and administrative machinery that simply is not in place in Tanzania, especially at the most local levels.

Neither the Commission nor the resulting NLP seriously considered women's relationships to land as an issue in need of serious attention. It has only two paragraphs relating to women's status, and reaffirms their positions under current customary practices. There was virtually no theorization of women's land relations. This could partially be a response to the frames of the debate set by the Commission or a result of the ways in which the state envisioned women's role in land development, viewing them primarily as members of household workforces. However, where the Commission sought to protect and vest land with local authorities and communities, the state intervened and struck this decision down. The result was that the NLP and later Land Acts continue to vest ultimate authority over land in the hands of the Executive, undermining communal authority.

Under the new laws, women gained some notable, substantive achievements. They now legally have the right to purchase and hold land in their own right, and provisions were made for their political participation in Village Councils, the main land adjudication body. However, the critical issue of inheritance was left out of the equation. How could this be when women's rights NGOs had claimed to be advocating for women's land rights alongside the Commission's work and during the formation of the

NLP? Below, I examine NGO discourses on their involvement in the national land debates, and investigate the claims that they were largely ineffectual in promoting women's legal standing.

The NGOs – Theorizing Gender and Land Rights

It is important to remember that the Commission was set up in 1991 at the same time that the majority of the members of the Fem Act Coalition NGOs came into being. In fact, some of the NGOs state that the reason they *began* their organizations was out of a concern for women's land rights during this crucial period. They claim that they took full advantage of the limited opportunity to be included in and to include women's concerns in the national land debates. How were NGOs positioning themselves as feminist organizations and human rights advocates and approaching the debates? Were they drawing on international human rights standards? How were they defining and approaching land tenure reform as a human rights issue? This section focuses on the NGOs' approach to land rights and their relationship with the Commission and the state leading up to the drafting of the 1999 Land Act.

As Fem Act NGOs became increasingly vocal during the Commissions' research into land matters, government officials and other members of the Commission protested the disparate nature of NGO demands concerning women. The Commission responded to NGO requests for women's inclusion into the research process in three ways. First, the Commission argued that its purpose was to report on the major concerns of "the people," not certain groups of people, i.e. women (Manji 2006). Second, the Commission argued that the majority and gravest of land grievances arose between "the state" and "the

people,” not the state and women and not between men and women (Shivji 1998a).

Finally, the Commission claimed that the NGO demands were unfocused and did not provide concrete plans for remedy.⁹⁹

Historically, state-society relations to land tenure in Tanzania support an argument for group rights; however, the Fem Act NGO community came together to protest the new land laws on a number of counts including privileging group rights over individual ones. This issue proved a key difference between the NGOs’ and the Commission’s thinking in the land tenure reform. The NGOs also drew on and were influenced by external discourses such as international human rights laws, but arrived at different conclusions on how the laws would best protect women’s interests.

Until the laws were passed, the NGOs were peripherally involved in the Commission’s efforts, though they consistently questioned the relative neglect of women in the Commission’s work. It was not until the publication of the National Land Policy that the NGOs became increasingly vocal in the land debates. There were a number of reasons for this. First, as noted above many of the NGOs were being established at the time the Commission commenced its work and still in the process of identifying their goals and activities. Second, the Commission did not invite NGOs into the fold of the research design and process. Finally, the National Land Policy was quickly drawn up and left out not only NGOs but much of the Commission’s input. It was only after the release of the NLP document that the terms being established for the new law were truly open to public scrutiny and debate.

⁹⁹ These arguments were reiterated to me by key members of Hakiardhi, the land rights organization formed by Prof. Issa Shivji who headed the Commission’s investigation and final report.

The NGOs first issued a declaration titled *Azimio la Uhai* (“Declaration of Life” 1997) laying out issues that needed to be addressed in the bill and offering a comprehensive critique of it. They formed a national land forum called *Ulingo wa Kutetea Haki za Ardhi*¹⁰⁰ (henceforth referred to as *Uhai*) and elected a national committee headed by HAKIARDHI to coordinate their efforts. The forum initially supported the major recommendations of the Shivji Commission. However, due to internal disagreements about the coalition priorities (see below), the coalition’s potential was not realized and it collapsed.

A main schism was over radical title and how discriminatory customary laws should be reformed. Subsequently, some of the NGOs split from the forum and formed the Gender Land Task Force¹⁰¹ (1997). These NGOs worked toward analyzing the draft bill and making recommendations. Shivji in turn blamed donor influence for having contributed to the collapse of the committee. Shivji (1999) claims that donors had their own ideological agendas and could not relinquish ownership of the project to the commission, which had its own alternative social vision. He argues that the NGO competition for these donor monies (which were abundant) contributed to the coalition’s collapse.

NGO workers occupy an admittedly difficult position. Their work must reflect donor initiatives and project funding within their organizations, while also promoting locally acceptable discourses on human rights. NGO professionals must reconcile their

¹⁰⁰ The Platform to Defend Land Rights (1997).

¹⁰¹ The NGOs included were: TAWLA, TGNP, TAMWA, WAT, WLAC, the National Organization for Children and Human Relief, and Tanzania Home Genomic Association.

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own social justice ideals with the patriarchal culture in which they work and within the framework of responsibility to their donors.

Fem Act NGO professionals realize that in order to work for a “just and equitable society” they must address not only land rights but every other area that affects women’s lives. Their varied programs no doubt reflect funding that is project specific; however they also embody the commitment to a holistic approach to realizing women’s full capabilities and rights. With this approach in mind, Fem Act members work on issues involving employment, domestic violence, inheritance, political representation, culture, and gender awareness. Therefore, conversations about land rights *necessarily* involve discussions about women’s rights and their freedoms within the broader social milieu. Ironically, it was these divergent aims and issues for which the NGOs were criticized during the reform campaign, with claims that they were “unfocused” in their recommendations.

While the Commission argued that the relationship between the state and the people was primary in discussing tenural problems, the Fem Act NGOs argued that on an individual level and at a daily rate, women are dispossessed one by one through marriage, divorce, and inheritance arrangements. They pointed out that while women as a group suffer the same fate as men when it comes to land grabbing by the state, they in fact suffer a double dispossession – one by the state, and one by their communities and families whose land relations are not based on the foundations of gender equality.

There were two sets of rights the NGOs asked to be included in the new land act. First, they pressed for women’s right to own property on an independent basis. This included independent ownership rights within matrimony and independent claims on

matrimonial and family land / property.¹⁰² This would mean that it would be illegal for any property acquired as marital property (gifts) or jointly as a couple to be sold or used for credit by the husband without the woman's signature. Essentially, NGO professionals were asking that women not be subsumed as "part of the household" but be considered as individuals able to make their own independent decisions regarding land and property.¹⁰³ Second, the NGOs called for women's right to inherit property on terms equal with their male counterparts, asking for equal rights for women *as daughters*. Their first aim was achieved. In the new Land Acts (1999), women have the legal right to own land. However, the right to inherit was not indicated in the law.¹⁰⁴ Inheritance rights open up issues of deeply imbedded gender inequalities in Tanzania and perhaps for this reason proved most contentious in the land tenure reform.¹⁰⁵

After the breakdown of the NGO National Land Commission, the Gender Land Task Force has developed as its guiding philosophy a rights campaign based on principles of nondiscrimination and strategies to make land rights a reality for Tanzanian women. Fem Act professionals referred to principles of non-discrimination in two ways.

¹⁰² "Family" and clan land remains contentious grounds for women who attempt to use that land for their own purposes in the market. Clan land is inalienable by any member of the clan in order to protect the land as a whole, though this practice was put into question by the 1989 *Ephirahim vs. Pastory* judgment.

¹⁰³ This includes all associated freedoms such as devolution, mortgaging and selling.

¹⁰⁴ That the right to inherit was left out of the land law is still contested. The NGOs overwhelmingly agree that it is clearly *not* included as part of the law, whereas some government officials and Hakiardhi have on occasion claimed that while it is not spelled out in the law, it is still protected by the law. The reasoning is that since Tanzanian laws cannot discriminate based on sex, then customs which discriminate on those grounds shall not be legitimized or enacted.

¹⁰⁵ Co-ownership, like inheritance necessarily involves discussions of gender inequality within the household and proved to be a contentious issue in Uganda's land reform process as well. While co-ownership was in principle accepted by Uganda's parliament, provisions for it mysteriously went missing in the final act.

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First, they talked about the right for all individuals to be protected under the law regardless of race, ethnicity, gender, and religion. The second way in which non-discrimination was invoked was in a more positive sense – that every person should be able to access development and the means to be healthy and prosper.

When asked about their work in the land rights campaign in the early to late 1990s, NGO members agreed that land was key to the realization of women's rights in realms of life outside of the economic domain. Rights in land were seen as an essential component in the web of relationships that affect women's capabilities (cf Agarwal 1994). Land was not seen by Fem Act members to be an 'acquisition' in and of itself or an absolute right that existed independent of other rights, but rather as a factor in the wider range of relationships women have with their communities and between communities and the state (see also Moore 2000). A member of the Tanzanian Women's Lawyers Association (TAWLA) explained their involvement in the land rights campaign:

You know, the problem with women's rights in Tanzania is in matrimonial rights. The community doesn't recognize the problem women have and so in a divorce, they just give the children to the woman but they have no land. So we just want to...conscientize the government about laws which are repressive to women. (Interview #10)

A member at WiLDAF echoes her colleague's sentiments that land cannot be dealt with in isolation of other rights. She stated:

We don't work on land issues directly, but we talk about inheritance. We can *support* others with issues concerning land...but we deal with inheritance or violence, not just land. (Interview #15)

These reflections draw on internal realities in Tanzania and therefore guide NGOs in their rights work. The two land rights advocates above suggest that working on the land issue also means working to promote women's equality in their homes and

communities, not only as citizens who are being violated by the state, as the Commission's report predominantly frames land rights issues. The Fem Act NGOs reiterated the sentiment that land serves as a central point for various relations between individuals and individuals and their communities, so that through a focus on land rights, the community by necessity will have to deal with other issues concerning women's rights and social advancement. A lawyer at the Women's Legal Aid Center perceptively explained the multifaceted nature of land rights and how and why WLAC was promoting women's land rights:

Our main goal is to promote gender equality and make sure that women and children are protected through a legal and human rights framework, so the issue of land, like other issues, [is] very critical because we still follow customary laws. Still, the majority of us are led by customary law and it is a very variable law. It also links families from one generation to the next. But who are [those] in decision-making positions? It is the women who are always left behind [in] decision making positions, particularly in land matters. It is not much a problem of use – they all use land, they are the main producers of cash and sustainable crops. The question is how do women produce from the land? For example, in customary law, women can't inherit land....So even in the distribution of the deceased's estate, men inherit. Although there are families who give to the girl, these cases are very rare....Or in a matrimonial case, there is a problem dividing the matrimonial assets. (Interview #17)

NGO lawyers working on the GLTF utilized international laws as well as local realities to frame their case. They especially drew on sections of the CEDAW, especially the Preamble and Articles 1, 2, 13, 14, 15 and 16. In the example above, the lawyer brings forth a number of relationships that involve and surround land issues– customs and customary law, familial history and lines of kinship, political decision-making, and inheritance. Her concerns are framed by local experiential realities. Introducing a localized human rights framework that espouses notions of gender equality could then significantly disrupt these relationships. Changing land relations to reflect international

human rights standards asks Tanzanians to make significant changes in their present sociocultural arrangements.

The Fem Act members of the Gender Land Task Force use rights as an internationally recognized standard in order to pressure the Tanzanian government to comply with HR conventions. Most of these standards have as their foundation, an individual conception of rights. The NGO members have used the global discourse, proliferation and adoption of rights to “shame” their government into compliance and to demonstrate that they are part of the ‘modern, civilized world’ (Merry 2006). However, as members of NGOs are not members of government, they complained that they do not possess the power to make the government hear their voice and take them seriously. While NGO members refer to *legal* rights when dialoging with the government, in the NGO clinics, they often refer to *cultural* rights, embedded in community relations but not necessarily reflected in international conventions (see chapter six).

There have been numerous occasions when the NGOs have prepared recommendations or shadow reports on the government’s compliance with HR instruments such as the CEDAW and Tanzanian government has not responded. When members of the Fem Act NGOs attempted to get a copy of the government’s CEDAW report in 2002 in order to write a shadow report, I was told that their efforts took many months and a level of impressive conniving to obtain the working report. Tanzania has not submitted a CEDAW periodic report since they submitted their second and third periodic reports in 1996. They were due to submit in 1998 and again in 2002, but have yet to do so (CEDAW: Division for the Advancement of Women). Voicing her frustration over the power discrepancy between government and NGOs and commenting

on the new amendments to the Land Act, one lawyer noted, “The Gender Land Task Force actually prepared the paper, but I have doubts that they will even include our opinions.”

While the Commission’s research was ongoing, the Fem Act NGOs consistently appealed to international human rights declarations, especially the CEDAW, as well as the Tanzanian Constitution, which adopts the principle of nondiscrimination based on sex. There was, as one woman put it, “nowhere else to go.” Unable to turn to national or local law¹⁰⁶, which is the most persuasive in the courts, NGOs felt it necessary to use transnational laws and ideas. Further, it was explained that since Tanzania operates within a plural legal system in which several legal orders are recognized by the state, there was an appeal to use laws that were based on one system – the human rights system.

The executive director of WLAC voiced frustrations that many Tanzanians encounter with the plural legal system. When asked about the existence of a plural legal system, she told me, “For me, I don’t like it. I want one system. Why should we have double laws, some for these people and others for those? Even if it is proven that customary laws are not discriminatory, [pause] no, I want one system” (Personal communication, 24th February, 2004). The Fem Act NGOs were and are using human rights to draw Tanzanians into the global community. In order to do that, they argue that certain national and local practices must be abolished. They aim(ed) to do this by grappling with inheritance and customary laws within the human rights framework, drawing on the Tanzanian state’s obligations to fulfill its commitments to the CEDAW.

¹⁰⁶ Local law is not intended to mean a regularized application of customary law. Instead, local law has been used to “...characterize the blend between statutory law and state-court customary law” (Hellum 1999).

NGO efforts were successful on a number of counts in attaining their goals within the new land laws. As noted above, provisions were made for women's ownership in the new land laws¹⁰⁷ and legal procedures that ensure gender parity in national and local level decision making bodies such as national and village land committees.¹⁰⁸ Equality in matrimonial rights regarding property were also included.¹⁰⁹ The NGOs were not successful however in getting inheritance laws changed. Omitting the right to inherit affects women disproportionately since inheritance remains the most common way (rural) women get access to land. While there are regional variations, on the whole under customary inheritance arrangements, women inherit less than men. Inheritance proved not only to be a contentious issue between the NGOs and the state, but also among the NGOs themselves. This was the issue that disrupted and detracted from a unified NGO NALAF. Below, I address the Commission's and others' claims about NGO failures to propose clear recommendations regarding women and discuss the factors that contributed to NGO involvement in the land tenure reform.

While the Fem Act NGOs drew on both external (human rights laws) and internal (women's experiences) sources to frame their demands, the influence of each had varied effects. The benefits of drawing on international human rights laws and discourses in combination with local evidence gathered from their own research enabled the NGOs to formulate and support a concept of rights based on the individual, which in turn allowed them to present a strong argument for women's individual rights including inheritance

¹⁰⁷ *Land Act*, Part II, section 2.

¹⁰⁸ For decision making procedures, see *Land Act*, Part IV, s.17(2).

¹⁰⁹ Regarding nondiscrimination in lending and mortgaging see *Land Act*, Part X, Subpart 4, s.141e, 141d(ii). With specific reference to matrimonial property, see *Land Act*, Part X, subpart 1, s.112(3)a,112(3)b.

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and matrimonial rights. On the other hand, international human rights laws fall short of suggesting narratives or guidelines for implementation into local / national laws.¹¹⁰

Those such as TGNP who split from gender issues such as inheritance (see below) thought the best approach was to work within the framework of the NLP to ensure that radical title was not reinforced in the Executive and to ensure that customary rights were protected. The GLTF on the other hand wanted to ensure a gender sensitive law and pressed to include inheritance reform as part of this law.

Critiques of Gender Progressive Groups in the Land Reform

Civil society organizations, namely women's rights organizations in Tanzania and East Africa, have been critiqued for their involvement in land tenure reform on a number of counts. Manji (1998) suggests that because gender progressive groups came late to the land debates, the terms of debate had already been solidified and excluded gender, further leading to the marginalization of gender in the Commission's work. I examine Manji's critiques of the gender progressive groups for two reasons. First, she has formulated some of the most pressing challenges for NGOs. Second, I take her critiques as launching points into a conversation that will bring to light some of the structural and ideological reasons *why* the NGOs were not as successful as she had hoped. Manji is concerned that the NGOs and other groups "rarely challenged the emphasis placed by international financial institutions, donors, governments and technical legal consultants on law as the solution to the problems of land relations" (2006:99).

¹¹⁰ Though the CEDAW is clear in laying out guidelines, phrases such as "shall take all appropriate measures" or "taking special temporary measures" are open to contextual interpretation.

Manji's specific critiques of the gender progressive groups center on the following: that gender progressive groups had a simplistic, technocratic and legalistic approach to amending the laws while failing to theorize women's position in relation to land (2006:100-104). Manji faults the NGOs, claiming that they were more concerned with advancing women's positions in the employment sector, when for the majority of Tanzanian women land remains a crucial component of women's development and livelihoods.

Many of the NGO professionals did in fact challenge the methods and frames of reference in the Commission's study, which employed on an instrumentalist approach to tenure reform. Further, the NGOs documented their concerns specific to the influence of IFIs in the reform process (Azimio la Uhai 1997:2). Manji does not distinguish between the NGOs' and the Commission's approach to land law reform. The NGOs in the GLTF advocated a hard law approach while the Commission framed an evolutionary approach (see footnote 92) Viewed in this light, one could argue that within the debates, the NGOs took a more radical approach to legal change. I found that NGO professionals in the Fem Act Coalition did theorize women's relationship to land. They argued that land and property formed the foundation of rural and urban women's livelihood as a basis for economic and social empowerment and political participation. This is reflected in a number of NGO documents as well, especially those emerging from TGNP, TAWLA and WAT.

Manji presents a compelling analysis of Tanzania's land reform process by examining it through a critique-of-science approach. Using Latour's (1983) approach of looking at the processes by which science is constrained by a predetermined method and

the “tools” of scientific technique, Manji investigates the ‘law laboratory’ in a similar vein. She examines the role of consultants and institutions that were involved in creating and paying for law in Tanzania and suggests that these actors are confined by their legalistic, technocratic approach to social reform. Including gender progressive organizations within the land law reform, Manji argues that the NGOs simply reified the tools of law reform by concentrating only on technocratic, legalistic approaches to change. One could argue however, that if the NGOs went *outside* of the law to propose truly alternative, non-legal solutions to Tanzania’s land reform, they would likely have lost the significant gains they *did* achieve within the new land law. They may have been left out of the debate altogether.

While Fem Act NGOs were busy pressuring the government to introduce gender equity into the land law, this remained only one aspect of their work. They used key NGO members such as former parliamentarian Tabitha Siwale to work with the government while also working in other ways to make the land debates and the resulting changes in the land laws known to the public. Fem Act and the Gender Land Task Force produced t-shirts, booklets, facilitated discussions with land tribunals, and wrote procedural guidelines in Swahili that local legal practitioners could understand. The guidelines outline in clear, simple Swahili what the new laws provide for, especially drawing attention to women’s legal rights. These extralegal efforts need to be taken into account in when assessing the effectiveness of NGO involvement in the land reform process (see below). While this is not an apology for some of the NGOs’ shortcomings, it is important to bear in mind that the Commission and the authors of the NLP had a

singular task while the NGOs had to juggle responsibilities to their donors, their other ongoing projects and the daily work with their constituents.

Responsibilities to their donors did divide the NGOs' work and time. Odhiambo (2002) argues that while networks such as *Uhai* are necessary for taking on large-scale operational tasks, networks remain difficult to operate and fund (see also chapter five). NGO involvement in networks typically takes second place to their own programmatic processes and responsibilities (Odhiambo 2002:14). Further, there are few donors who will fund networks. As Odhiambo suggests, it is only in recent years that the international development community would even consider becoming involved with land rights. He suggests we take a close look at exactly how and why they are doing so now. Specifically, Odhiambo (2002) draws attention to the coincidence of pressures by Western multinational corporations (MNCs) to liberalize the land markets in East Africa with the new interest the World Bank has in taking on certain aspects of land reform projects.

Above, I have reviewed some of the external forces influencing the NGOs conceptualizations, successes and failures in the reform process. As with any process and / or network, at times there emerge ideological fissures between the actors. This was the case with the role of inheritance in the land tenure debates. Not only were inheritance issues contested by the Commission, but disagreements over inheritance rights led to fissures among the NGOs as well.

Inheritance proved to be an issue of contestation within the Fem Act Coalition. Issues of inheritance can shake the foundations of not only gender relations but the

position of property owning classes in meaningful ways.¹¹¹ In fact, they proved to be heated issues after the NLP passed and during the NGO NALAF. A key Fem Act NGO, TGNP, broke away from the rest of the NGOs and supported Hakiardhi in their efforts to put inheritance issues aside and deal with the more ‘pressing, *class* issues’ of land grabbing and protecting customary tenure called for by Hakiardhi. This was partly done out of practical concerns, however it proved to have a detrimental impact on the inclusion of equal inheritance in the new land laws.

As previously stated, Fem Act NGOs work together to divide labor among different projects so there is not “overlap” between the organizations. Since WLAC and TAWLA were already fully engaged with reviewing inheritance laws, they remained committed to working on inheritance issues. Both organizations argued that inheritance should have remained a pressing priority in the land laws as was evidenced through the increasing number of clients at their clinics. Some WLAC and TAWLA members explained that perhaps it was for this reason that TGNP was not experiencing the rising number of inheritance cases. Moreover, there were suggestions from a handful of NGO members that TGNP was “concerned with the bigger issues,” and more concerned with “popular” public policy reform that would gain more attention.

On different occasions throughout my research there were clear intimations by NGO members that the bigger, better funded NGOs such as TGNP co-opted and benefited from Fem Act “networking” activities that they were not a part of and to which they had not contributed. NGO competition for funding, as Shivji rightly suggested, cannot be overlooked. In a meeting with a NORAD representative to discuss funding,

¹¹¹ The social upheavals wrought by changing inheritance laws are not only specific to current debates in the South. See Darrow 1989.

reporting and evaluation opportunities and constraints, WLAC members voiced frustration over just this matter.

Asked by NORAD if WLAC was a member of Fem Act, a WLAC lawyer responded, “We are a member of Fem Act, but we work on a number of issues that some members identify with while others don’t.”¹¹² We think WLAC has contributed to Fem Act. But it’s more like a program within TGNP.” When the NORAD representative said that she thought TGNP was just the secretariat for Fem Act, WLAC members responded: “the problem is if you submit any report to Fem Act, the report says that the project was done by TGNP.” Another added, “...like on the issue of inheritance. Sometimes we go and do the reportage....TGNP doesn’t want to do that work. We feel that is not...we need acknowledgment. Even on their publications, they write TGNP / Fem Act when we have done the work.” Asked whether WLAC discussed these issues with TGNP, a WLAC member responded that they had but (laughing) asked, “Will they take our recommendations? Because they are very big and we are very small.” Another added, “So WLAC was not acknowledged and people like to feel acknowledged. But we are still a member.”

In a separate conversation months earlier, another NGO member commented to me:

“TGNP has grown too big for the rest of us. The history of our disagreements... go back to our work on the Land Act. Hakiardhi started the split. They argued that inheritance shouldn’t be on the agenda at that time because the bigger issue was that of radical title. They wanted what would be beneficial to the majority of Tanzanians securing their land rights...and thought that inheritance rights weren’t an important aspect of that. TGNP decided to take Hakiardhi’s position basically...because they wanted to be with those people who were very strong and who had a lot of

¹¹² This conversation is based on a WLAC- NORAD meeting that I observed (Fieldnotes 7th September, 2004).

influence. As an organization, they were going to concentrate on radical title and leave all of the “gender business” to the other coalition members to work on” (Personal Communication, 25th April, 2004).

However, a TGNP member argued that the division was also informed by practical concerns. Odiambo (2002) is right to conclude that network formation and activities are not typically supported by donors, leaving each NGO to focus first on projects they have funding for, and second on network activities. Since TALWA and WLAC were already engaged in the reviews of discriminatory inheritance practices, it seemed natural that they be the organizations (among others) that continued with that work (TGNP, personal communication, September 9th, 2004).¹¹³ In this case, constraints on inheritance networking activities partly imposed by obligations to donors had resulted in inheritance rights not being included in the new land laws. Clearly the state had a hand in this, and it is likely, that even with a unified NGO front, equal inheritance rights would have still remained absent from the new land laws.

On Shaky Ground: The Place of Customary Land Rights in Dar es Salaam

The danger in addressing inheritance is that inheritance practices are embedded and supported by a system of customary tenure. Calling inheritance into question was really calling into question the entire system of customary land tenure. The Commission and later *Uhai* strongly recommended protecting customary tenure systems, though they

¹¹³ I have found no indication that donors directly funded NGO efforts in the land reform. Organizations that have provided assistance for such projects in the past are Oxfam GB and the International Institute for Environment and Development (IIED), neither of which was providing funds to Fem Act NGOs during their reform campaigns. Oxfam GB has provided assistance to strengthening NGOs in their work on local level management of land allocation and dispute settlement (Whitehead and Tsikata 2003:86).

recognized the need for those systems to be democratized. The GLTF on the other hand largely argued for the abolition of customary systems and their replacement with individual rights to land. Below, I explore how NGO professionals conceptualize and argue against customary systems. Group rights and indigenous rights have recently featured prominently in indigenous activism and global land rights movements. The NGOs, however, largely worked against a notion of group rights pointing out the tensions of protecting groups at the expense of individuals. However, their theorizing of land relations was not presented in such stark contrast. NGO members were in fact problematizing the usual dichotomous presentation of group versus individual rights.

Rural women are in some ways protected by customary land tenure arrangements. The village and clan land to which they belong is to varying degrees protected by law, and through their families and kinship networks most women usually have some access to land for cultivation. Urban women on the other hand most often lack the community rights in land that their rural compatriots have. Urban kin systems are dispersed at best and when they are not, are becoming less and less cohesive and extensive as people migrate and intermarry.

Recognizing the potential protection that customary land tenure arrangements provide to Tanzanians, the Commission and *Uhai* recommended that they be kept functioning, providing that customary arrangements which discriminate based on sex are no longer legally permitted. They argued that if individual titling was allowed as the NGOs and other human rights advocates pressed for, in times of need people would be vulnerable and would sell their land, leaving them without economic security (Azimio la Uhai 1997:8). This situation begs the question: Where do customary tenure systems fit

into debates on women's rights in general and specifically in urban women's rights?

Further, how do Fem Act NGOs reconcile the protections that customary systems offer people as a group and their aims to work toward a more individualistic and autonomous notion of rights for women?

Customary Protections in Urban Settings

During the Presidential Inquiry into Land Matters, villagers and urban residents routinely spoke in terms of "we" rather than "I" when referring to land rights. An example from the Commission's report comes from a resident in Kahama district where the town is being "swallowed up" by the development of warehouses and town expansion.

I want the Commission to know that we, the inhabitants of Itogang'holo, have suffered a great deal as a result of different government policies and decisions. What we went through during the 'operation' (operation *vijiji*) is beyond description. We buried our children, our houses were burnt, we were hounded out and guarded by armed men like criminals. We can't tell it all. We were moved during the rainy season....The government did not care. Now we are being moved again while the government and the Party remain unmoved... We ask ourselves: What crimes have we committed to undergo all this? (United Republic of Tanzania 1994:79)

This fear is the result of past experiences of village land alienation by the government. As town boundaries expand and as a Tanzanian middle class develops, poor urban and peri-urban residents find their land being encroached upon or outright purchased from under them. The lack of formal development of urban land during the colonial and post-independence periods laid the groundwork for present day urban land insecurity. Fortunately, certain peri-urban settlements were clearly demarcated during villagization and therefore the legal rights to those lands are better protected. However,

villagization affected far fewer urban areas than rural ones. Urban settlements often arose in an ad hoc fashion, sometimes illegally and most often informally.

Protection of customary lands in and around the city is complicated and can give rise to claims of “who was here first,” which would be difficult to determine in a city like Dar es Salaam that has had shifting boundaries and populations for more than seventy years. Moreover, the purchase of land in Dar es Salaam is often conducted on an informal basis, with the land changing hands multiple times. While the NGO lawyers and rights workers advocate for each woman having rights in land, they also respect the rule of law that can negate a person’s “right” to the land they are occupying if they are doing so illegally. Many times, urban residents find they have no means to acquire land other than informally – government machinery is exceedingly slow, expensive, and on occasion, corrupt. I asked a lawyer at WLAC how she came to acquire her plot and house. She had this to say:

My husband and I went to buy from the Zaramos in Kimara. They sold us a piece for 2 million. That was ten years ago. It was very expensive. And there is no title deed, nothing. Now we have to go fight for it. That is very risky to buy it that way. Now it is very expensive because to get the surveyors is nearly 3 million....*Are you worried about your plot?* Yes, very much because the government can just decide they need it for a church. Almost the whole of Kimara is like that. Also, all of the services you must get for yourself (like water etc.). (Interview #22)

Customary and individual titling in Africa has been a contentious topic (cf McAuslan 1978, 1998, Manji 1998, Galaty 1999, Atwood 1990, Bruce and Migot-Adholla 1994) and the forces behind legal reform through titling efforts have primarily come from the state, international donors such as the World Bank, and more recently from NGOs. However, analyzing state, donor, and NGO sponsored titling efforts does not provide a full understanding how the urban land market operates in Dar es Salaam.

Instead, I propose to consider how local and individual level negotiations affect people's security and land rights. Manji's 2001 article aptly titled "Land Rights and Reform in the Shadow of the State"¹¹⁴ suggests that there are other actors besides state legislators who have an important impact on land relations. While Manji focuses on administrative or bureaucratic individuals, other people selling, buying and transforming land "in the shadow of the state" have as great an impact on individual land rights as the state does (see the following chapter "The Family, The State, The Market").

The Land Act recognizes customary tenure arrangements and provides for devolution of authority and management of land to the local level. Wiley (1999) recognizes the potential injustices that could result. For instance, she argues that local land negotiations will depend on "the critical criterion [being] agreement with the neighbors." While the new Acts provide for women's participation in the Village Councils, many remain in the control of a male majority. Further, looking at household level decision-making as discussed above, women can be denied their rights before even arriving at the village council. A WAT worker illustrates what can happen if customary arrangements are left in the hands of local authorities:

Customary arrangements? No, I don't think they should be protected. For example, my father, he left a will and he even inherited me the land but my uncles did not accept it. But there was a will! In Chaggaland, there is a system of inheritance....In our clan, the first and the last boys inherit. So my father has to get his own land. So he said, "I have three kids and this isn't clan land so I'm going to pass it on to them." But others were coming and saying no. Even my grandfather, there are rumors that he bought this land but they say no. People fabricate stories because [otherwise] they know that they will have a chance of losing (Interview #8).

¹¹⁴ Also see Manji 2003 "Remortgaging Women's Lives."

Similar gendered practices exist within urban households. Often, husbands do not include their wives on property titles. Therefore, if the husband dies his family will follow customary norms of inheritance claiming the house as their own.

Fem Act NGO members were equivocal about what to do with customary tenure systems. In total (N=32), 52% said they should be done away with, while 35% argued that they should be protected. Another 13% were unsure of what should be done with customary tenure. When NGO workers *did* defend customary systems, they often spoke in terms of group protection and in reference to the dangers the freehold system would pose for people in rural and peri-urban areas. At the same time, they recognize the problems customary tenure poses for women and advocate changing customary laws in those instances (inheritance being one example). For these individuals, maintaining customary land tenure is not anathema to rights work, but rather a necessary part of it. By encouraging women's rights *within* customary systems of tenure, these NGO professionals suggest that women's rights and customary land tenure are not dichotomous; they do not lie at opposite ends of the spectrum, but can in fact coexist. They are arguing for group rights and protection (from the state) but individual rights / protections for women (from their husbands and fathers) within that system.

Although historically customary tenure has not been an urban issue, it is increasingly becoming a peri-urban concern as the town expands into what may once have been considered 'rural' areas. These areas, now engulfed by the city, face new threats to their customary regimes. This exposes a weakness in customary protections, as individuals and groups find it difficult to oppose state initiated redevelopment projects. Recently, some NGOs in combination with a host of international and bilateral

development agencies have stepped up the implementation of individual rights through the registration and titling of individual plots and houses.¹¹⁵ The convergence of feminist NGOs and diverse international agencies working towards titling does not mean that they all share common premises (cf Tripp 2004, Manji 2003). Debates over the promise and perils of customary and individual titling are ongoing.¹¹⁶

While NGOs strove to create one legal system of land tenure, some nonetheless recognized the difficulties of abolishing customary tenure. Partly, that is a response to historic and contemporary situations in which groups of people are being disempowered by the government, other individuals, developers or multinational corporations. Indeed, recognizing that rights is historically and relationally constructed, complicates a western liberal notions of rights based on the individual and instead suggests there is merit to an extension of rights to groups of people. Wilson (1997) suggests that we must recognize that rights are always concrete struggles over resources rather than abstract notions. There are numerous examples where rights are being argued for on behalf of groups. But how would those webs of rights be formulated? And are certain rights applicable to only certain groups? One official at the Ministry of Lands told me that:

“...customary should remain in the villages but in urban areas where there is a mix of customs and traditions, this causes confusion over tenure. In the urban centers, or areas which are not village lands, written law should apply. But in the rural areas, customary law should still prevail....there should be ways of codifying that law, to collect customs in each rural area so that they are equitable. Have them written so that they are applicable. Because these people may manipulate those laws (Interview #28).

¹¹⁵ Commission on Legal Empowerment of the Poor. Proceedings of the National Consultation Process: Conference on Legal empowerment of the Poor, Vol.1&2. 29th-30th November, 2006. Dar es Salaam, Tanzania.

¹¹⁶ For a selection, see Deininger 2003, Gopal 1999, Lastarria-Cornhiel 1997, Tsikata 2003, Whitehead and Tsikata 2003, Yngstrom 2002.

This thinking reifies the notion of the customary as a static entity while the 'modern' urban is a dynamic environment that does not facilitate stable group systems and by extension group rights. While a seemingly dangerous line of thinking, the underlying question must be dealt with in Tanzania. If group rights are to be given, what form will they take? And how are individual rights to be adjudicated? How can it be insured that group rights are not privileging some groups over others? At which point are certain customs done away with because they infringe on the individual's freedoms? Even if a group's rights are protected, there remain individuals within those groups who are still discriminated against.

NGO workers most often spoke of marital relations as a cultural issue affecting women's position in the household in relation to their husbands. One NGO member said that if women do own land, the majority of them are teachers, government employees, civil service workers or NGO workers; illustrating the class discrepancy among women land owners. She further remarked "maybe the problem is with married women who depend for each and every thing on the man." Land is tied up in notions of proper gender relations in marriage and expectations of proper gender roles may lead to women not asserting their rights (see chapter six). A TAWLA member explains:

...women have equal *potential* with men [original emphasis] but the problem comes when she's married and the land was bought during her married life. Most of the time, land is registered in the name of the husband, even if they paid for the respective plot together. The problem [comes] when he [dies] or when they get divorced. So then the woman gets deprived of these things....and if he dies, she is chased away because she doesn't have a right to be there (Interview #9).

While the constitution and the new land laws ensure women's equal opportunity to purchase and hold land, property conflicts continue to appear

disproportionately at the clinics in the form of inheritance and divorce disputes. It is therefore essential to keep in mind the importance of what happens to land *after* purchase. Although a woman may acquire land through purchase does not prevent her from being dispossessed of that land through divorce or death.

The importance of “proper” gender norms within the household cuts across educational and class lines. While a distinction was typically made between educated urban women and uneducated urban and rural women, there was no guarantee that an educated woman would find herself exempt from gender norms that favored a husband and that resulted in him being the sole owner of land and housing. A woman at WAT explained that “It is not easy to have land here. If it is an individual woman [trying to purchase], people will ask, “Why are you trying to get land by yourself? Where is your husband? What type of woman are you to buy land?” While this NGO professional was herself an educated woman, she recalled wanting to buy land with her husband.

Since this woman was a lawyer, she had prepared a contract. She wrote in the contract that “X” was selling land to “(her and her husband).” Her husband objected and refused to buy that land. In turn she “refused” also, since he had 2/3 of the down payment while she only had 1/3. Later she said, “He built on his own land. That is the attitude of many men. They think that you are downsizing him. Many other people are informing the husband [on the matter]. Even the relatives will say, “What type of wife do you have? She is acting like a man”. She went on to report that her husband ended up buying in a very bad place and “he had to pretend to remain happy until the day he died” (Personal Communication, 10th March, 2004).

NGO members explained that this particular problem was even more prominent in the rural areas where “culture is stronger.” There, a term exists for a woman who stands up for herself and who would, in the case of acquiring individual property, certainly be called *dumejike*. The term roughly means a woman who looks like a woman on the outside, but mentally she resembles a man.¹¹⁷ As it was explained to me, “Sometimes people think you are abnormal. You can see a woman who is doing the best she can do...they don’t congratulate her, they usually try to disappoint her with words. They will praise you if you are humble, if you are submissive and soft [she intones in a soft meek voice]”.

Such gender relations within Tanzanian society, especially within marriage arrangements, work to significantly influence not only women’s access to land but also their ownership of it. While rural women do typically have access to and are protected through customary tenure arrangements,¹¹⁸ urban women are in a situation whereby their social rights in land are not customarily protected. If they do not purchase, they may only have access through one person – their husband. Access in Dar es Salaam is determined increasingly by the market although ownership may be denied by some husbands.¹¹⁹

While the new land laws provided that transactions in matrimonial property should have the written consent of both the husband and wife, in 2003 the Tanzania Bankers Association (TBA) proposed legislation to nullify this clause. The TBA argued that the law’s requirement for joint authority posed an obstacle to the bank’s lending

¹¹⁷ My thanks to Lucy Tesha of Women’s Advancement Trust for calling this term to my attention.

¹¹⁸ This security only applies to girl children or as a spouse in a marriage. Upon the death of a husband, their situation once again becomes less secure.

¹¹⁹ Women are not the only social group who face the problem of urban access to land. Poor men find themselves in similarly difficult situations.

activities. The Ministry of Finance approved of the TBA objections stating that the passing of the amendment would “promote access to credit through collateralization of land in credit transactions.”¹²⁰ This could pose serious threats to women’s control of the matrimonial house and undermines the legal protections hard won by women’s rights advocates.

While purchasing is the major form of land acquisition in Dar es Salaam, women face difficulties in buying, including their economic disadvantage and lack of awareness of the procedures. However, when discussing women’s ownership and rights in land, NGO members most often raise issues surrounding gender relations in marriage. While inheritance is not the primary way to acquire land in the city, it nonetheless remains a significant percentage of the cases brought to the NGOs’ legal aid clinics (with the exception of LHRC). For instance, WLAC reports that between March and August of 2003, out of the clinic’s 380 new cases, 20% were inheritance cases. Moreover, 28% were matrimonial cases.¹²¹ This is important as most matrimonial and inheritance cases will in some way implicate issues of land and property ownership.

What is more striking is that 32% of all new cases during this period were involving child maintenance and affiliation. This would suggest that women in Dar es Salaam are becoming increasingly willing to seek legal redress for *familial* wrongs. In

¹²⁰ Ministry of Finance Website <http://www.mof.go.tz/> (2007). In 2002/2003, the TBA came up with proposals to amend the Land Act on the grounds that the law was supposedly a stumbling block to banks’ lending activities. One of the provisions they wanted removed was that both spouses needed to be consulted and sign off on the mortgage of a matrimonial home, a provision made to protect women from having their houses mortgaged or sold out from under them.

¹²¹ Other cases included civil, criminal, labor, education, insurance, and landlord-tenant disputes. Only 4% of cases were filed as “land disputes.”

total, of the new cases brought during this period, 80% were complaints brought by women against their romantic partners (husbands, boyfriends, fathers of their child).

The Tanzanian state has yet to reform laws governing inheritance within the land laws. By taking an evolutionary based approach to land tenure reform, the state assumes free choice and equal ability to enter the land market, even though following customary law will prevent some people from making that choice. This line of thinking ignores the interpersonal level discrimination that takes place within marriages and families and between the families that the state is well aware exists. NGO professionals are alert to the problems of dispossession that occur at the time of and well *after* purchase. Wives may not feel empowered to ask for their names on titles, and upon divorce or the death of the husband, women are left in insecure situations.

The Commission's research and the NGOs' advocacy during and after the 1990s land tenure debates in Tanzania were both aimed at exposing the weaknesses of the current system to protect people's rights. The Commission and the NGOs both guide their approach to land reform based on experiential narratives of ordinary Tanzanians. However, the NGOs and the Commission were working from different sets of data. The NGOs are largely informed by the clients coming to their clinics and the specifically gender-oriented fact finding missions they conduct in the rural areas. On the other hand, the Commission was guided by questions that framed the gravest land disputes as occurring between the state and its citizenry. Working from these different narratives shaped the Commission's and the NGOs approaches in somewhat divergent directions.

The following chapter illustrates processes of urban land acquisition first through a state-driven land reform project and second through local informal markets. These two

case studies support the argument that familial and interpersonal relationships have largely been overlooked by the state as important factors that inform women's access to, security and ownership of land. The rise in "family" cases within the NGO legal aid clinics are evidence of this. The state's technical, formal market-based approach to land reform marginalizes women and the poor unless it puts into place policies and programs that enable those groups to realistically obtain secure land.

Conclusion

The colonial administration in Tanzania, neglectful of urban land and housing development for Africans, set the parameters for how land relations and land rights would develop in the post-independence era. Colonial officials established racialized boundaries for residential building areas, and consistently allocated few services to the African quarters. The newly independent government had to cope with this inheritance and with steadily increasing migration rates to the city without sufficient infrastructure, employment opportunities, and with laws in place that were at odds with the high numbers of African settlements developing in Dar es Salaam.

Employing a processual and historical approach to studying how land rights are conceptualized by the actors involved, this chapter shows that the state has, beginning in the colonial period neglected women's access to and rights in urban land. Because the state was a powerful actor in land reform during the post-independence era, its actions set the stage for how land rights would be framed in the future. Mass land alienations by the state in both colonial and post-independence Tanzania led the Commission to frame land rights in terms of customary or group rights. I have shown how the parameters of the

debate were set by the methods in which the Commission employed, obscuring women's land concerns and women's realities.

The early 1990s saw the first large-scale efforts to rectify women's inequalities in land tenure. Largely inaugurated by organizations such as the Fem Act Coalition and the Gender Land Task Force, the NGOs have found that a human rights approach to land is the best approach to rectify women's inequalities in land. When approaching land rights through a human rights perspective, Fem Act NGOs continually interpolate discourses on family, gender and marital relations that are based on lived realities for Tanzanian women. While scholars and some on the Commission alike criticized the NGOs approach as disjointed, unfocused and unclear in their demands, Fem Act's approach to women's human rights reflects a holistic orientation to the problem of women's social inequality. NGO professionals discuss women's land rights as a multifaceted right that necessarily involves broader discourses and discussions on gender relations including marital relations, inheritance, domestic violence, and women's place in the economy. This practice of framing land rights within a broader perspective of women's rights reflects their thinking that one right cannot exist at the expense of another.

NGO professionals focus on the family as one of the biggest obstacles to women's rights. These professionals see the family as hindering women's rights on an individual and collective basis, but at the same time NGO members continue to extend the concept of women's rights to *include* the family, namely women's children. In this way, they are responding to lived realities in Tanzanian women's lives but also reifying the notion of women's primary role as caregivers. If women do not ensure the rights of their children, who will? In this way, NGO professionals do not show that they have

begun to radically challenge the relations of care and duty *within* the family, a foundational basis for inequality by which patriarchy builds its force.

As evidenced in the new Land Act, the state remains the most powerful player in shaping contemporary land reform in Tanzania. The Tanzanian state largely ignored the recommendations of both the Commission and the NGOs by retaining the provision that radical title lies in the hands of the Executive and by ignoring the NGOs demands for a changed inheritance law (a result also of the Commission's doing). However, NGOs are slowly garnering the social and political power necessary to effectuate national debates on land tenure as they are increasingly recognized by both the state and international community in law reform and human rights efforts. Some of their recommendations did in fact make it into the land act, though these were the least threatening to the state and to the family.

CHAPTER FOUR: THE FAMILY, THE STATE, THE MARKET: WOMEN'S LAND ACQUISITION IN DAR ES SALAAM

This chapter will compare two cases of land settlement – one, a formal government scheme aimed at creating a market in land and redistributing it to the most needy and the other, a case study of people living in an informal unplanned area of the city. This comparison will illuminate the similarities and differences between state-led legal reform efforts, and the “private” market avenues by which urban women obtain land. From women’s narratives presented at the end of the chapter emerge deep concerns over land rights, ones that involve neither the market nor the state, but the family.

The cases presented below were not directly tied to the cases I investigated at the NGO clinics during the study, however, NGO members suggested that they are making their way into the NGO forums. I present these two scenarios to contextualize how land is acquired in the city and to show a disconnect between informal and formal processes of land acquisition, particularly a disconnect between state-driven land reform programs, the market and the family. If gender relations at the family and community level continue to be overlooked, women’s advancement in land security and ownership will be retarded. First, I present processes of acquiring land in the city highlighting the importance of inheritance reform for city dwellers.

While a case can clearly be made for equal inheritance in Tanzania from a feminist standpoint, how necessary are equal inheritance rights as compared to other rights for urban women? A case involving land acquisition in Dar es Salaam and land complaints in Fem Act’s NGOs addresses this question. Land in Dar es Salaam is disproportionately acquired through purchase, not inheritance. The land market (mostly

informal but also formal) has exploded in the city since the 1980s. In Dar es Salaam as a whole, Hoek-Smit (1991) reports that in 1990 land was acquired in the following manner: 40% through purchase of land, 13% through purchase of land and a house, 24% through government allocation and 20% through inheritance. Further, the 20% acquired through inheritance is concentrated in only one area of the city, Kariakoo. In Kariakoo, inheritance is still the major form of land acquisition. Because it was a planned area during the British period and permanent buildings have since been owned by generations of families. Still, inheritance in Kariakoo as a mode of acquisition is more significant for women (59%) than for men (43%) (Kironde 2000:159).

It appears that inheritance becomes even less significant when moving toward the peri-urban areas. This can be explained by settlement patterns in and around the city. Compared to places like Kariakoo, many of the peri-urban areas have had a more mixed demography and more transient population, which accounts for purchase rather than inheritance being the primary mode for acquiring land. At the same time, state and non-state initiated urban development projects have opened up peri-urban lands to the market.

The following table presents findings from a survey conducted by Kironde in 2001 in a peri-urban area of Dar es Salaam called Bunju.

Table 3: Means of Acquiring Peri-Urban Land, Bunju Village (2001)

Mode of Land Acquisition	% Households
Allocation by village governments	5.3
Inheritance	5.3
Bush clearing	10.5
Purchase	78.9

Source: Kironde (2001)

These studies indicate that land in Dar es Salaam is acquired primarily through purchase. Is there a significant difference in the rates that men purchase land as opposed to women? While there are no solid statistics that break down the gendered ownership of land, Fem Act members spoke to the problems urban women face when trying to acquire land while recognizing that more women in Dar es Salaam today own property than did women twenty years ago. NGO members identified access to resources, employment, collateral and cash, discrimination in inheritance and divorce, and “culture” as major obstacles to women acquiring land. When “culture” was mentioned, people spoke of patriarchal culture, which encompasses a wide array of practices, and other specific discriminatory “cultural” practices that lead to inequalities.

The table above indicates that newly acquired land in 2001 was obtained predominately through purchase; however it does not reveal the parallel changing patterns in inheritance or succession that have continued apace and dispossessed women of land. NGO professionals reported that in 2004 while more women in Dar es Salaam were purchasing land than they did twenty years ago, daughters continue to be disadvantaged in acquisition through inheritance. Changes in inheritance laws will therefore differentially affect rural and urban women, but remain central to both groups as a way to acquire land. The dominant mode of land acquisition in rural areas, the new laws will affect larger segments of rural Tanzanians, though will remain important for those women residing with husbands or family in urban settings as well. The new laws would affect future generations of urban girls as well if their mothers purchased land.

Although purchase is the dominant way for urban women to acquire land, when NGO members spoke about land allocation, they spoke in terms of gender *relations* for

rural women, and individual purchasing power for both rural and urban women. A member of the Legal and Human Rights Center described the problems urban women face in obtaining land and housing:

Culture does not favor women's interests generally. Because of culture, they [women] are treated as inferior. There are a good number of women unemployed so it is difficult to access land. The legal system however, does not discriminate against them. When acquiring land, they are equal with men. It is even in the constitution. If any law discriminates against a woman, it is illegal. But because of culture and opportunities, women aren't assertive and don't take opportunities (Interview #2).

In this example, "culture" is utilized in a static, non-historical manner. Merry (2006) illustrates the ways in which the culture concept is utilized by NGO activists at the UN. She remarks that culture is either conceived of as unchanging, outdated, not modern and therefore "bad" or it is valorized as "heritage" in order to be preserved. The NGO professional above iterates a notion of culture as "outdated" compared to the legal [read "modern"] system that "does not discriminate against [women]." This illustrates a hierarchical relationship between culture and law which places law clearly within the realm of the 'civilized' while culture is relegated to the traditional/inferior past.

Below, I examine two different paths for acquiring land: one, a state led program emphasizing a market that ensures secure land rights and another that illustrates how individuals obtain land through non-contractual, unregistered, interpersonal land exchanges. Both cases, looked at through a gendered lens, illustrate the pressing need to reevaluate land tenure reform by seriously addressing intra-household gender disparities at the law and policy levels. The 20,000 Plots Scheme reflects state conceptualizations of advancing economic development through increasing security while the informal land settlement case reflects the reality that the NGOs recognize – that individual / community

relationships need to be addressed in order to reduce women's land insecurity and ensure their rights.

Two Cases of Land Settlement: The 20,000 Plots Scheme and an Informal Settlement

Land relations in the urban environment are not only affected by governmental policy, but also by individual actors both within and outside of the government. Since there is inadequate administrative machinery to deal with the continuing rate of rural-urban migration, people turn to the private, informal land market, looking to rent or buy parcels of land or housing from people who may not hold title to that land / property.

Most women in the urban sector are self-employed or otherwise engaged in the informal sector; they are in a situation of economic fluctuation and / or instability. The following two sections illustrate the nature of women's rights in land in Dar es Salaam, and their avenues for securing urban land and housing under two different regimes. The data suggest that factors such as social and class positions and interpersonal familial relations influence and contribute to the level of housing / land security urban women have. The first account outlines the 20,000 Plots Scheme, which aimed in part to give priority to women as landowners. The second case is derived from interviews with women living in an unplanned area of the city that is now transitioning into a formal, partially titled settlement.

The 20,000 Plots Scheme

The urban landscape can be broadly divided into two areas – unplanned and planned areas. While the colonial legacy left many of the expanding areas of the city

unplanned, the post-independence administrations and the development community have made efforts to survey and upgrade these areas. In the 1960s and 1970s the World Bank funded sites-and-services projects with the Government of Tanzania following suit between 1985-1995 (Mero 2008). These consisted of infrastructure-based settlement upgrading projects that were implemented in a top-down manner, and as a consequence, led to a lack of ownership and moreover, to lack of maintenance (Precht 2005). Further, there was an identified shortage of funds for compensation during the sites-and-services projects which is evidenced by still existing land disputes in Tegeta between the old owners of land and the incoming owners who were allocated plots (Mero 2008).¹²²

Since the 1990s, participatory or community-based settlement upgrading has been the new Bank paradigm.¹²³ In fact, recently the Bank and local level development practitioners in Dar es Salaam have begun thinking of land titling as a means of poverty reduction. This intersection with the rights based approach has supported women's individual title as a means to promote their livelihoods and overall development (Agarwal 1994).¹²⁴

Recognizing the many difficulties urban residents face in the land and housing sector and the inability of the government to properly service these areas, in 2003 the state embarked on a project that would allow people to purchase land in government

¹²² I am indebted to Mr. Clemence Salmon Mero, Principle Town Planner at the Ministry of Lands, Housing and Human Settlements for sharing with me his recent report and analysis of the 20,000 plots scheme.

¹²³ The Bank has focused on upgrading for the past thirty years (see Buckley and Kalarickal's "Thirty Years of World Bank Shelter Lending: What Have We Learned) but has made their approach more participatory beginning in the early 1990s.

¹²⁴ The FAO, World Bank, DfID and USAID have all recently begun to support these initiatives. On the World Bank's human rights approach see World Bank 2006, Danino 2004, Brodnig 2005.

surveyed areas which would be “fully serviced” and would provide titles to purchasers. The project became known as the 20,000 Plots Scheme. Plots were posted in the newspapers and became available for purchase. Plots were surveyed in all three municipalities. In Kinondoni District, they were surveyed in Bungu, Mbweni Mpiji and Mivumoni. In Ilala District, they were made available in Buyuni and Mwanagati; and in Temeke District, Twongoma, Mtoni Kijichi, Kisota and Gezaule were surveyed for the scheme. A program of cost recovery was put into place and using purchase funds, the areas were to be serviced with simple roads and sewer drainage systems. Some plans included water provision, others did not.

The 20,000 Plots Scheme adopted a highly centralized, technocratic approach to urban land reform. The fundamental assumption behind the scheme was that if the market was flooded with a commodity (land) it would saturate demand and clear the path of corrupt practices that proliferate when commodities are scarce (Mero 2008). The procedures used for selecting, administering and compensating land were sophisticated, making use of aerial photography and geographic information systems (GIS) technology. There were three criteria that factored into an area becoming part of the scheme. First, the Ministry wanted to select areas with minimal existing structures and where people had not constructed in order to carve out the maximum number of plots. Second, plots near main roads were desirable so that infrastructure in those areas would be easily facilitated. Finally, areas with informal settlements were chosen in order to stop the spread of those settlements.

The Ministry devised a system for compensating people who were already on the plots they were taking over for the scheme. Using a combination of aerial photographs,

interviews with ten cell leaders¹²⁵, and visiting the properties themselves to delineate plot / farm borders, they formed a computerized polygon that interlaid all maps they had drawn. They then individually counted the crops that were on each person's plot and calculated their worth according to current market value. The manager of the scheme explained:

“There is a lot of advantage [to] using photos. They are solving a lot of problems. For example, for one who is not honest, he can even exceed the border of his farm, [by] which he will take a portion of the neighbor's. But then the border will be disputed by the neighbor and we knew the first has lied.... Nobody can go pretend he has a plot he doesn't have because we have even individual photos of the farm.” (Interview #28)

However, the Ministry reported that land (not crops) was compensated depending on location. For instance, land in more desirable locations that fetched better market prices was awarded higher compensation. If a structure had been built on the land, that would be compensated separately and the “owner” given the option to buy into the scheme at a reduced rate and stay on his / her plot. However, if a structure existed where a school would be placed, that person / household was supposed to demolish their house at his or her own expense without compensation. Further, there was an announcement at the commencement of the scheme in those areas to be integrated into the project that called for all residents to stop building on their plots and if they continued construction, they would not receive compensation for those developments. It is doubtful that the Ministry was able to precisely monitor such activities in so many areas.

¹²⁵ A “cell system” was introduced in 1965 in Tanzania whereby elected grassroots officials are responsible for ten households in their area. The ten-cell leader acts as a local administrative leader and link to broader political networks. They provide census information to government and act as spokespersons for local government. People often go first to a ten-cell leader to resolve neighborhood/family disputes and if they cannot be resolved by themselves, the ten-cell leader may refer them to another authority or court.

The scheme, promoted with the vision of securing individual property rights, has encountered difficulties and generated critics. Many of the Fem Act NGOs argued that the plots were priced too high and the payment plans too inflexible, resulting in keeping women out of the market. However, it is not only women who encountered obstacles in the scheme. Many peri-urban residents, whose areas were being allocated for the scheme, were in danger of being evicted and relocated. A member of Hakiardhi, the most notable land rights NGO in Dar es Salaam, argued:

In the peri-urban areas, it's different and customarily owned land isn't surveyed. One of the problems they get is that they're often chased out because of the expanding city, without even considering their rights...In places like Kigamboni, Bunju, Buyuni, Temeke. These were the areas where the 20,000 plots were surveyed. The project evicted many people without compensation. And they're just going to move to other peri-urban areas and they will be kicked out of there and so on...These people are low income, mostly women. They will build small houses and that is where they are in danger during floods (Interview #4).

Further, later in 2004, Hakiardhi received a complaint on behalf of a community that was located in one of the scheme's areas. They did not want to move and had not been offered adequate compensation. They insisted that they were on village land though this land had not been registered as such. Hakiardhi was advising the community on how to quickly register their land with the state in hopes that this would block the scheme's efforts.

This case has since led to community members in Buyuni to organize, through Hakiardhi, to register complaints against the government. While the government minister assured me that there were no conflicts between the areas designated for the scheme and any villagers who were been living there, this may be the beginning to more organized efforts at combating the scheme. Under guidance from Hakiardhi, Buyuni residents

framed their complaint in terms of community rights. Complaints charged by Buyuni residents are enumerated in the document, *Ushuhuda wa Uporaji wa Ardhi ya Kijiji cha Buyuni Dhidi ya Serikali Katika Mradi wa Viwanja 20,000 Katika Mkoa wa Dar es Salaam*.¹²⁶

In 2003, when the announcement of the 20,000 plots was made in the newspapers and other venues, a procedure was laid out for people who wanted to acquire land. They had to go to the Ministry, fill out a form, pay 2,000 T.Shillings (\$2) for submission and then the government began selecting people. An interested buyer had to designate on the form whether he or she wanted a high, middle or low density residential area.¹²⁷ The government proclaimed that preference was given to women, however, individuals had to pay up front. Most plots cost upwards of 60,000 T.Sh. (\$60) with a deadline for received payment between one week and six months after the plot was designated. The payment scheme provoked an outcry from the NGOs who argued that most women and the poor could not afford to purchase under such conditions.

In turn, the government changed its policy permitting payment through installments. It required payment of *half* the amount of the plot within a two-month period. After a complete payment, a title deed was issued. The government made it mandatory that the title deed would be given within two months of the purchase. If the buyer was unable to make the payments within the two-month period, the plot was opened up again to a new buyer.

¹²⁶ “Evidence of Government Land Grabbing in Buyuni in the 20,000 Plots Scheme in the District of Dar es Salaam”.

¹²⁷ High-density = 400-600 sq. meters, medium density = 600-1,200 sq. meters, and low density = 1,200-1,500 sq meters.

Interviews with the Ministry of Lands and the NGOs respectively presented different stories regarding people who occupied the 20,000 plots at the start of the scheme. The Ministry insisted that people occupying the land (albeit under informal arrangements in most cases) were ensured compensation and areas where they were to relocate. Indeed, the Ministry spent \$16.9 million US dollars on compensation (Mero 2008). They could, like everyone else, apply to purchase the land they occupied. Members of the NGOs had a different interpretation of the situation, stemming from the cases they had received in their organizations. They reported that people were not being compensated, or if they were, little money was received and they were not given comparable land on which to relocate. One NGO member noted:

...they are paid compensation, some are not paid enough, but most are compensated....The people buying are actually paying compensation to the others, the ones who are on the land. You will find people in the Ministry compensating too. But then you get people saying, "they took my land, my house and the compensation is not enough." ...the situation in the constitution is clear – women can own land, but they cannot due to economic constraints. In Temeke, in Kinondoni, in Ilala, plots are very expensive. Maybe for security purposes, people prefer a government plot. But for women, they can't afford it.

In the case of the Buyuni residents, after being unable to raise the money to purchase the land they occupied, they were told by the government that they would be relocated to Pwani. Residents complained that the land in Pwani was unsuitable to them. However, it was not only the land that was unsuitable to the people, they had a raft of other complaints. This move would essentially destabilize their entire livelihood: they would be leaving behind all of their property as well as their jobs; their livestock may be unable to make the journey; their children would be pulled out of school without immediate remedy; and their farms would be abandoned, leaving residents with no

immediate access to food. Further, the scheme was causing divisions between the village leaders and the villagers. Therefore, while the Ministry of Lands claimed they were giving villagers comparable lands, the Buyuni residents illustrate again the multifaceted relationships to land that the state did not consider in its technical scheme.

As far as prospective buyers were concerned, a staff member at Hakiardhi explained that while women were supposedly given priority in the 20,000 Plots Scheme, he suspected that men would have an easier time than women throughout the process. Further, he stated that there was a considerable problem when it came to married couples. Since historically men were the owners and the heads of households, there is still a tendency for individuals working in bureaucracy to assume this remains the case. In his words, “The law isn’t a problem. Maybe you need to look at other factors.”

When I asked the Ministry of Lands for a list of the people who bought new plots in order to determine the gender breakdown, I was told that no such “list” had been compiled as the scheme was not yet completed although they estimated that 45% of the plots were owned by women.¹²⁸ The scheme’s manager reported that even girl children will have plots in their names as their parents or guardians buy and register them under those children’s names. The NGO member suggested that this percentage could be misleading. He said, “Since I know that the Ministry is giving preference to women, I will go in there and ask for a plot of land for my daughter, another for another daughter, one for my sister, one for my wife. So in the end, I will have many plots, registered in their name, but the question is, who in that situation has control over that land?”

(Interview #3) The recognition that household gender relations play a significant role in

¹²⁸ Relying on completed gender disaggregated data, Mero (2008) reports that 32% of the plots have been bought by women.

de facto ownership and control of land suggests that a highly centralized, technically legal and market-driven approach to land reform in Tanzania will fall short of the mark in securing women's rights in land.

At the time of this research, it was too early to be able to assess the impact of the 20,000 Plots Scheme for women's access to land ownership. Observations during my numerous visits to the Ministry of Land revealed groups of people waiting outside with handfuls of land documents needed review or signature; almost all those in line were men. Thus, a fundamental issue underlying women's access to and ownership of land is inextricably tied to gender relations within the household and society. There were a few individuals coming to the legal aid clinics with disputes over the scheme, and with new evidence presented by the Buyuni villagers' movement, one may expect there to be many more disputes of this kind.

The following case study of a group of informal occupants living in an unplanned area on the outskirts of the city center, presents a different scenario for women to "own," have access to, or rent land but at the risk of being evicted and without many of the services that come with planned, surveyed land.

Squatting and the Private Market in Informal Land

Most low-income urban residents in Dar es Salaam acquire their housing and land through neither government personnel nor other formal arrangements. Most often people reside on land or in properties by way of rental arrangements, personal construction, inheritance or third party sale. In the majority of cases brought to the NGOs that involved land or property, only 3% had a title deed for their land. This finding is similar to other studies conducted on urban land ownership in Dar es Salaam and other parts of

East Africa (Kironde 2001, Precht 2005). Precht reports that only 2.7% of house owners in Hananasif, a large unplanned settlement in Dar es Salaam, have had their plots surveyed and registered to obtain a Certificate of Occupancy from the Commission of Lands (citing UCLAS and ILO 1998:28). Hananasif, an area located about 4km away from the city center, is one of the longest standing unplanned settlements in Dar es Salaam. In 1998, it had an estimated 20,000 residents in 1,777 residential housing units (Precht 2005:6).

In order to compare state envisioned land reform projects with personal level land practices that shape land relations, I conducted short interviews with 40 people in Hananasif in order to gain an understanding of why people came to the area, how they acquired their land, and if they had faced problems concerning rental arrangements and occupancy. Precht reports that over 70% of occupants in Hananasif are renters. I found a high degree of correspondence with Precht's findings (67% or 27 out of 40 respondents were renters). The remaining 33% were owners/landlords and owners/non-landlords. I interviewed 30 women and 10 men. Since there was often more than one tenant or one tenant's family in a household, I asked to speak with the tenant or family member who had been the longest term resident.

Most people in the survey were not aware of or had not been included in the recent titling efforts underway in Hananasif. Since most of the interviewees were renters, this makes sense as only house owners are included in titling efforts.¹²⁹ Living in an unplanned area, residents face real threats of being evicted by the government due to their

¹²⁹ Renter rights have largely been left out of the land rights debates in Tanzania. There are often disputes between renters and tenants, though these are typically settled out of court.

illegal / informal status alone or if the government decides the area should be used for public development. However, I found that while there was some concern over government land appropriation (or land grabbing), residents' main concerns were not those of government land appropriation, but with local level land relations. There exists an abundance of literature on land grabbing by the state in East and Southern Africa, especially in informal settlements (Klopp 2000), while recent literature details class divisions arising out of local level land transactions (Peters 2004). What are the local level concerns about losing land *within* these informal settlements? With this group of participants in my study, I found that women's land concerns lay outside of state appropriation. Rather they focused on discriminatory practices within the family and between renters and landlords.

Economic Motives, Networks and Marriage – Informing Urban Land Rights

Interviewees came from various parts of the country, mostly from along the coast, with five coming from the interior (Moshi, Arusha and Songea) and three having lived in Dar es Salaam most of their lives. Almost all stated that they came to Dar es Salaam in order to advance their economic position by seeking formal employment or engaging in petty trade. Three women came in order to escape domestic violence in their previous home. Seventy-five percent of the respondents came to Dar es Salaam with a spouse or another relative or had a family member living in the city. When asked how she or he came to live in Hananasif, a majority reported that they had known someone living in the area or had heard through word of mouth that the area was good for rental. Miriam, in her early 40s, explained her expectations when moving to the area:

I have five children. I came here from just near Tanga in order to sell a few small things in order to support my children. I need to send them to school and it is very expensive. My husband died five years ago and so I was left with nothing. What am I supposed to do? *Did you have a house with him? What happened to that house?* Yes, that was a very difficult situation....His family came and they took the house. They took the stove, everything. And I was left with my children. I sold some fish and vegetables there in my village but it was not enough. I thought I must do something. I came here and now I have a small stand where I sell fruits and other small things (candies, biscuits and other small supplies). I wanted to leave this place two years ago but eh! It is very difficult. I make enough just to get by (HN Interview #7).

Miriam's story was similar to others in the survey group in that they expected to be making more money than they were where they came from. They did not anticipate the cost of living in Dar es Salaam to be as high as it was¹³⁰ and had plans to some day build their own house, either around Dar es Salaam or back in their rural areas. That Miriam was forced to come to Dar es Salaam after the death of her husband and the subsequent confiscation of her home is a comment on the situation women often find themselves in after the death of or divorce from their husband. When asked why Miriam's husband's family would not help her out in such a time of crisis, especially with five children, who were also their kin, she explained that she had never gotten along with her husband's family, they always seemed to be unkind to her.¹³¹ Miriam's and other NGO clients' stories like hers suggest that women's land rights include a bundle of other

¹³⁰ Rent was anywhere between \$5-\$8.50 dollars per room, per month.

¹³¹ This sentiment regarding in-law relations was overwhelmingly present in interviews I conducted at the legal aid clinics when there were cases of divorce or the death of the husband involved. I initially asked about these relationships, presuming the in-laws would have a vested interest in assisting the wife of their relative's children since descent follows the male line for 80% of Tanzanian families. After receiving the initial responses, I asked other women in the clinics about in-law relations. Most of them reported having similar experiences.

rights, namely their children's rights to a secure livelihood will also be in danger if women's rights are not better secured.

Peters notes "The proliferating tensions and struggles between generations and genders... are intimately tied up with the dynamics of division and exclusion, alliance and inclusion that constitute class formation" (2004:306). It is essential that these generational and gendered divisions be attended to when thinking about land reform and processes of securing land rights. In this study population, while only four of the female respondents complained of having difficulties with their husbands now, 18 cited their previous divorces as having contributed to their present situations. The women were left without any land, housing and in many cases other movable property and most said there was no option of returning to their natal homes. Many women had to virtually start from scratch in an area where they either had no family or only one or two distant relatives who they could turn to for help.

While titling efforts have been underway in Hananasif for approximately five years, political and economic network formation sometimes works as processes of inclusion and exclusion. Titling efforts undertaken by NGOs and international development agencies typically begin by identifying local political leaders in a given area. These leaders serve as a gateway to the community and without close connections to them some groups will be left out of such development efforts. Research demonstrates that competitive struggles over land are intimately related to the role of state agencies, members of elites and a national 'dominant class' (Moore 1991). For those left outside of these networks – non-owners such as renters, or often wives – other networks and

relations serve as the basis for exclusion and inclusion. One such network is marriage and familial relations.

The rising number of matrimonial cases in the NGO clinics and in their rural paralegal counterparts presents difficult questions when divorce is sought by the woman. Knowing they will likely end up with very little in the case of a divorce, why are women increasingly seeking divorce in the clinics? In fact, divorce is not more common today than in the recent past. Divorce rates among the Swahili have remained relatively stable over the past 50 years (Strobel 1979, Landberg 1986, Keefe 2006). Between 1915 and 1950, in Swahili communities in Kenya, one in two first marriages ended in divorce (Strobel 1979: 88) and in the 1960s, Landberg (1977) reports divorce rates in a Tanzanian Muslim fishing village to be near 50%. However, women may now be choosing to seek *legal* council in divorces because they recognize they will have a better chance at receiving a more equitable divorce arrangement than if they settled their divorce through local customary channels. Zanzibar's director of public prosecution, Othman Masoud, has suggested that the rise in divorce cases in Zanzibar is linked to an increasing awareness of individual rights, especially women's rights. This sentiment was repeated by a number of women clients when asked why they had come to the legal aid clinic.

While most of the women in the Hananasif study who were divorced indicated that the dissolution of their marriage caused great economic, social and emotional hardship for them, they were satisfied to be out of those marriages. Those who were not remarried had hopes that they would be sometime in the near future and that this would help their economic situation greatly. The four women who did own their houses purchased them with their husbands; one of those was a female landlord who rented out

rooms of her house. Asked what would happen in the case of a divorce, the three women who were non-landlords reported that they would continue living in the house, try to start renting it, or sell it. Two expressed anxiety over in-laws or other people 'with bad intentions' who might attempt to take the house from them.

Processes of micro-level exclusion are a serious concern for women in Hananasif. Marriage disputes and resulting divorces played a significant role in the women's current economic situation. These same processes of micro-level exclusion also affect women's inclusion in larger, state-led land reform projects that overlook or ignore the local level processes by which women obtain land. While the Land Acts include quotas for gender parity in decision making bodies, it will be important to examine which women occupy those positions and what types of class biases they may present. The new land laws do not provide for equal inheritance rights, the new amendments proposed by the TBA threaten married women's security in land and property, and new titling efforts underway in informal settlements are working within already existing political and economic hierarchies that, if not carefully and critically approached, could advantage the present middle class.

Macro and Micro Level Concerns for Informal Settlement Residents

Analyses of informal settlements in developing countries have often focused on the *legal* standing of the settlements in terms of the regulatory functions of the state (Benton 1994). Development projects and programs, such as titling efforts and sites and service upgrading projects, are based on the foundation that improving the legal standing of property holders in informal settlements will in turn lead to economic development.

Property owners will be able to use their titled land / property as collateral to draw loans and invest in small to medium scale enterprises. However, as the narratives below indicate, identifying legal rules as the most important force in structuring people's positions, motivations and actions within the economic sphere is problematic. As Benton (1994) has argued, oftentimes law is filtered through more powerful normative orders structuring social relations.

Distinguishing between renters and owners, a different set of concerns emerge between these groups. While owners who were predominantly men framed their concerns in terms of their relationship to the state or to the broader economy generally, renters, most of who were women, spoke at length of the micro-level relationships that contributed to their situations and that caused further anxiety about their futures. If titling efforts are going to focus on already existing owners, this process will add a new layer to existing gender differentiation and gender exclusion in land security. If on the other hand, titling projects seek out those who do not currently own land, projects will have to be envisioned creatively to find feasible options for women without surplus cash or fungible assets.

Of the 13 owners interviewed in Hananasif, 9 were men who were also landlords (renting out rooms of their house) and 4 were women, only 1 of who was a landlord. Almost all of the men had been involved in formal employment during some period of their stay in Dar es Salaam coupled with informal economic activities. Eight of these men were married. While none of these landlords had title deeds, they considered the area secure enough to stay on in because they had made "legitimate" purchases through

the owner before them. While they had receipts for their purchase, these were not title deeds.

Within the development literature, past assumptions that urban informal settlements and their residents operate “outside” of or are even ignorant of the law are being challenged (Hansen and Vaa 2004, Benton 1994). My research in Hananasif corroborates these studies where residents of informal settlements are often not only cognizant of but also seek to replicate certain institutional and procedural characteristics of state law, for instance by following parallel yet somewhat “informal”¹³² procedures of registration, receipts, and contractual purchase agreements. Benton (1994:229) argues that the boundaries between the informal and the formal spheres are difficult if not impossible to discern and that “participants themselves operate at times as if the boundary did not exist.” Indeed, this may be one explanation as to why participants in my study did not voice pressing anxieties about the state or other developers making claims on their land and property. They had in a sense, followed the necessary procedures and community members respected these forms of unregistered tenancy.

As most of the men interviewed had been involved in formal employment at some point in the past ten years, the male landlords explained that a combination of earnings from formal employment and their informal businesses were an advantage, providing them funds with which they upgraded their houses and built other rooms to rent. Juma was in his early thirties and the son of a schoolteacher in Lindi Region. Having completed secondary school but unable to afford to continue with his education, he

¹³² This is informal only in the sense that these agreements are not fully recognized by the state, though in recent titling efforts, many of these informal agreements are starting points to the recognition and delineation of property rights.

moved to Dar es Salaam hoping to find employment in order to help support his mother and father at home. Juma began working in an Indian parts shop as a mechanic while his younger brother sold goods at a kiosk in the city center. Through their concerted efforts they were able to buy a one-room house in Hananasif where they both still lived. In 1995 they had saved enough money to build an extra room onto the house and began renting it in 1997 for 2,000 T.Sh. (\$2) a month. The money has provided merely enough to subsist on, even though they now rent it for 6,000 T. Sh. (\$6). Juma wanted to build another room to rent, but didn't have enough money. "The economy is very bad now. Things were better back with Nyerere, but now, life is very hard."

When asked about problems they had with the authorities or anyone else concerning their house or where they lived, landlords voiced the most concern and frustration over not being able to get ahead and make a better life for themselves. Fear of the authorities, though voiced by some, did not seem a pressing concern. Their concerns focused on issues such as the area was becoming too congested, there wasn't enough space to build, and services were virtually non-existent.¹³³ Others complained about the congestion. One elderly man, Said, remembered life before coming to Dar es Salaam with his wife in 1985. This is the fifth area of the city where they have lived.

Life wasn't always like this. We used to have a big farm with many hectares. We had to sell it one piece at a time to pay to live, to pay for medicines for our children and their school fees. Life then was better. We cultivated the land and we had food. Now we have nothing. I feel sorry for my children. They do not have land to cultivate, and look at them now. What will they do? (HN Interview #27)

¹³³ This despite an upgrading project begun by the World Bank in the 1970s, which was resuscitated in 2002.

While the landlords were concerned with congestion and lack of space to build, when asked about land and housing concerns, the majority of the women renters discussed economic issues and the inability to save enough money to purchase. Paying rent did not allow them to buy all of the necessary items for the household, and many had children who had become ill with malaria and other illnesses to which they were not able to properly tend. Three of the women had children who had died from malaria since coming to Dar es Salaam, as they were unable to afford to take them to the hospital. A few of the women reported that their husbands spent money on ‘useless’ things such as alcohol and so they did not have extra money in case of emergencies.

For both men and women, economic opportunities remained a dominant factor influencing their decision to remain in the city and try to improve their lives. Most residents had plans to buy a plot of land on which they could farm and live in the future. For now, they said that their current situation was their best option, mostly because there were more opportunities in the city than in the rural areas. People explained that in the rural areas there is “only farming” and today crops do not command the price they once did. However, women interviewed were not only confronted with structural, macro-level economic obstacles *and* opportunities, but based their decisions to remain in the city on the micro-level or personal experiences of household or familial insecurity.

The three women who came to Dar es Salaam to escape domestic violence and the small number of other women who came on their own without having any relatives in the city appeared to face the most difficult circumstances. With low levels of formal education and without anyone to fall back on in difficult times, they said they suffered from a lot of “pressure”, or anxiety. Gloria, a slight woman in her late twenties or early

thirties arrived in Dar es Salaam from Arusha six years ago after she could bear no more abuse from her husband.

I came here from Arusha. My husband [there] was very cruel. He would beat me often. I had no one there. My family, we live in Singida so I was very far away. His mother, she also was not kind. Life was very difficult for me there. He spent all of his money on *pombe* (a home brewed beer), I could do nothing. One day he came home, very drunk and hit me here in the face, on my head, in my stomach and here on my leg with a stick. I was really hurt. I was bleeding a lot and I thought, Gloria, this man will kill you. If you do not leave, this man will kill you. So I came here and now sell small things, like *vitumbua* (a small fried cake, similar to a donut) and fried fish when I can. Life is difficult. I have many pains. I am often sick. But this is my only choice. What more can I do? (HN Interview #3)

Gloria's case of domestic violence is not unusual. What is unusual is that Gloria had the will to leave against competing odds to come to the city, with only a standard four education to begin her life anew with virtually no social networks.

A factor contributing to the discrepancy in the number of male and female landlords is that at some point the men had access to formal employment which, when combined with their informal economic activities, allowed them to save enough money to expand their houses making them viable to rent. Lack of steady employment and the needs of their children and their family prevented women from making enough money to save or to join a credit savings scheme. When asked if they would rather own their house, all of the respondents who did not presently own answered in the affirmative, but stated that they could not save enough money to make the purchase. None said they would purchase from the government, but rather would purchase from a seller him / herself as it was cheaper and there was "too much corruption" and waiting if you went through the government. Presently, renting seems to be the best solution to the situation in which this small group of residents in Hananasif find themselves.

While all of the women and men in the Hananasif interviews had their own unique stories of how they arrived in the city and the struggles they faced there, they all came with the hopes of escaping an economically (or physically / emotionally) unviable situation in their rural area and with the anticipation of making money in the city. However, a key difference was in how they framed their circumstances. On the whole, men spoke in terms of their place within the larger economy and few voiced their fear of the state expelling them from the land they had. A notable *absence* in men's discourses was micro-level processes that affected their social and economic locations. They did not frame their problems in terms of unequal relations within the family, where these concerns were prominent among the women interviewed.

Conclusion

Through the two case examples I have presented on land tenure arrangements in Dar es Salaam, two different systems of land acquisition emerge in the city; one a centralized, technocratic state led system of land titling and the other a private market in informal land arrangements. On the one hand, the government is attempting to rectify a situation of unplanned settlements. While the 20,000 Plots Scheme was in part aimed at providing land to women, all of the social factors that prevent women from obtaining land were overlooked. Further, it again appears that the state is theorizing land relations in a very narrow way, as a commodity ready to be bought, sold and developed. In the 20,000 plots scheme, all of the ways in which land is tied to livelihoods and through generations was overlooked. The list of complaints lodged by the Buyuni villagers' movement demonstrates this.

On the other hand, the informal market in land in Dar es Salaam is flourishing and women have been taking advantage of it, as their limited resources allow. Most though, remain renters. A common theme emerges from both situations and that is of the role that gendered micro-level exclusionary practices play within these processes. The 20,000 Plots Scheme has its foundations a market-driven approach to land security and a technical approach to the perception and delineation of land relations. Feminist theorists have decried these highly technological approaches to women's complex relationships to land and their environments as flattening people's lived experiences, making them "manageable," one-dimensional, and often inequitable (Liftin 1997). Now that the project is more than three years underway and complaints are beginning to emerge, more research needs to be done on the gendered and class outcomes of the 20,000 Plots Scheme to examine women's success as buyers and experiences as previous occupiers throughout this process.

The informal land market in Dar es Salaam is being integrated into an evolutionary framework of development through titling and registration (Yngstrom 2002). Thus, the government's approach at titling as a way of securing tenure is in agreement with the NGOs' call for individual titling to secure women's land rights. However, urban women are confronted with at least two obstacles when entering the land market – macroeconomic structures and inequalities in the family. We must be alert to Yngstrom's suggestion. She states, "We need to look at the organization of landholding within kinship institutions and their processes of integration into wider markets. Gender is critical to understanding how these processes unfold" (2002:24).

Most women in Hananasif were renting though they expressed a desire to own their own houses; however their economic situations, often stemming from discrimination in the family, prevented them from doing so. Upon further conversation, a significant number of the women told of difficulties in asserting their rights to land and housing in previous marriages. Many of these histories resulted in the women leaving the marriage with no claim to land, housing or movable properties. This suggests that women's legal land rights will remain an abstract right until many gender inequalities within the marital and natal family are addressed.

Moore (2000:4) stated that “[a] central concern of any rule-maker should be the identification of those social processes which operate outside the rules...” and that legal change may happen “...through a whole series of possibilities brought about by the cumulative effect of changing individual choice” (2002:48). The findings in this chapter demonstrate how processes outside of the legal system, such as micro-level (family) and macro-level (economic) processes are key to include in land law reform efforts.

As individuals and communities become aware of their legal rights, such as the Buyuni villagers and the women in the legal aid clinics, they will fight for those rights, working to change the law and protect their land rights. In the following chapters, I examine these relationships. I demonstrate how women are describing their gendered injustices and in turn how NGO professionals are approaching, (re)framing and resolving clients' disputes.

CHAPTER FIVE: CROSSING BORDERS, TRANSGRESSING BOUNDARIES: FEMINIST (RE)FORMULATIONS AND WOMEN'S EVERY DAY LIVES

This chapter examines how the social life of rights and the social life of feminism, two transnational discourses, are shaped through NGO practice and through the meaning individuals assign to these concepts in interviews and NGO group dialogue. In part, I investigate why women's progressive NGOs focused narrowly on technical legal fixes in the land tenure debates and I reveal some of the structural reasons why this is the case. NGO members' conceptions of human rights are structured by their faith and adherence to the rule of law, their obligations to and time spent on ensuring continued donor relationships, their relationship with the state, and finally, their commitment to serve their constituents, mainly women and the poor. NGO members' individual conceptions of human rights also work to shape the social life of rights within the NGOs. Moreover, I suggest that the social life of feminism is constructed according to NGO members' perceptions of women's national needs and priorities. At the same time, NGO professionals are highly cognizant of and actively distinguish their feminism from what they perceive to be "Western" feminism.

I begin the chapter by examining NGO perspectives on rights as a social justice issue by discussing NGO professionals' perspectives on rights more broadly than land rights and in a broader social context than the land reform debates. I examine the importance NGO professionals assign to different types of rights (political, reproductive, human, cultural, legal, etc.), how rights coincide with their perceptions of national need and priority, and how they compare rights between different groups. This is done in order to place NGO ideas about rights and feminism in a broader national context and to show how individuals within the NGOs similarly conceive of rights and women's needs.

Investigating how NGO professionals assign priority to different sets of rights will illuminate where they place women's rights within a national framework; and in doing so will highlight their underlying assumptions about gender roles in the larger national political economy. Chapter six provides more detailed information on how NGO lawyers and development professionals instantiate rights through dispute reconciliation and other lawyer-client interactions.

As feminist movements take up issues of justice for women, I explore the relationship between global expressions and local forms of feminism within the NGOs. In order to do so, I engage with selected questions raised by African and third world feminist scholars. The chapter examines NGO workers' perceptions of feminism, how they do or do not identify as feminists and if and how feminism influences their daily work in the NGOs. As feminist ideals often work as a basis for conceptualizing women's concerns and therefore women's rights, it is useful to examine how these two discourses speak to each other.

Rights as a Social Justice Issue

Wilson's (1997) notion of the "social life" of rights asks us to approach the study of rights in a new way. He asks us to view rights as something pedestrian, experiential and usable rather than abstract and referential. Since rights come to have meaning through their *use*, it is necessary to study how people conceive of and in turn use rights in their daily lives. The approach most often used to study rights is to look at the standard, debate that standard and in turn see how closely "real life situations" measure up. Instead, Wilson suggests looking at how rights are being formulated, reformulated and

used by people in daily discourse. While I do that, I also asked NGO professionals to reflect on their rights consciousness. This was accomplished through various types of questions¹³⁴ in open ended interviews. This “triangulation” of information will illuminate the intended meaning and actual results of rights discourses employed by Dar es Salaam’s NGO professionals.

In studying the social life of rights and the “meaning” that rights embody, one can speak of meaning in two different senses. Meaning can be referred to in a broad sense; that is, the conventional, common or standard sense of an expression or a word, or we can speak of meaning on individual terms; that is a speaker’s meaning, or what a person intends to communicate by a particular utterance, be it an expression, statement or word. While an outsider can never know another’s meaning or another individual’s intent, we can listen to what they say, how they use a particular word or phrase and compare it with how others are using the same word / phrase in order to discern the level of congruence between the two (Moerman 1988). This kind of work is necessary if we are to speak of a “socially shared meaning” of rights in Tanzania; or in this case a socially shared meaning among Fem Act members. Looking at rights discourses helps us understand how people conceptualize rights as they discuss their applications to concrete situations.

In using the “social life of rights” approach in this chapter, I investigated the use of rights in different domains. In every day discourse and in inter-NGO group conversations, members in the Fem Act Coalition tended not to define rights, but instead presumed a shared understanding of rights as *a legally prescribed set of entitlements* when referring to them in conversation. It was use in conversation or the context in

¹³⁴ I used open-ended questions, ranking questions and comparative questions.

which rights was couched that helped give meaning to them. Context informed how people referred to or talked about rights as different dimensions arose when different *types* of rights (inheritance, marriage, etc.) were being discussed and it was the context that drew out, emphasized, or proscribed different dimensions, definitions or boundaries of rights.

In order to understand how rights are being conceptualized and used within the Fem Act NGOs, it is necessary to interweave rights talk with discussions of the most prominent social justice issues in Tanzania since rights cannot be de-contextualized from broader notions of national priority or justice. Rights, as they are defined, will be formulated based on notions of fairness and what is just or unjust. In Rawls' (1971:6) terms, social justice is "the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation." Justice also involves decisions made at the individual level and refers to the "attitudes and dispositions of persons, and persons themselves" (Rawls 1971: 6). I will begin my investigation of the social life of rights in Tanzania by looking at the issues that are defining where and how rights as discourse is used. I will describe what Tanzanian NGO professionals consider to be social justice issues at the national, community, and individual level.

This section begins with a broad canvassing of how social justice and rights are talked about individually, painting a picture of the overall ideological stance of NGO professionals. Following this, I will provide some illustrations from inter-NGO discussions in which rights are discussed with an understood shared meaning between participants. By doing so, I hope to show how a dominant discourse of rights and

feminism is conceptualized and *created* by NGO members and some of the factors that inform how these conceptions are formed.

NGO Individuals' Conceptions of Rights and Social Justice

In attempting to understand the “social meaning of rights” in the context of Tanzanian Fem Act NGOs, I first wanted to attain an understanding of what NGO members thought were the most pressing social problems in the country and in their communities. In this way, I could discover how rights have emerged within the NGOs from Tanzania’s social and political history, and how they are being categorized by individuals within these human rights organizations. In formal open ended interviews, I asked NGO professionals questions about social justice issues that needed to be addressed in Tanzania in order to understand what NGO members thought were the most urgent social issues in their country, and to reveal what conditions and institutions they thought necessary for social justice.

NGO members were asked to rank two sets of lists; one, a list of issues / topics they thought were most in need of attention in Tanzania; the second a list of social and political conditions necessary for the realization of social justice.¹³⁵ The purpose of asking the ranking questions was twofold. First, I wanted to have participants assign priority to the issues to see how closely NGO individuals share perceptions about social justice and injustice in Tanzania. Second, I was interested to discover how NGO members thought they could effectively improve those issues / conditions and what

¹³⁵ While these lists were inductive, I based them on my previous research findings in the country. I shared the lists with a number of colleagues, both Tanzanian and Americans who had worked in Tanzania. Further, the lists were derived from the fields in which the Fem Act Coalition was working.

“institutions”¹³⁶ needed to be in place to do so. In general, people tended to comment on why they were ranking the lists in the order they were, so the ranking served as a catalyst for further discussion.

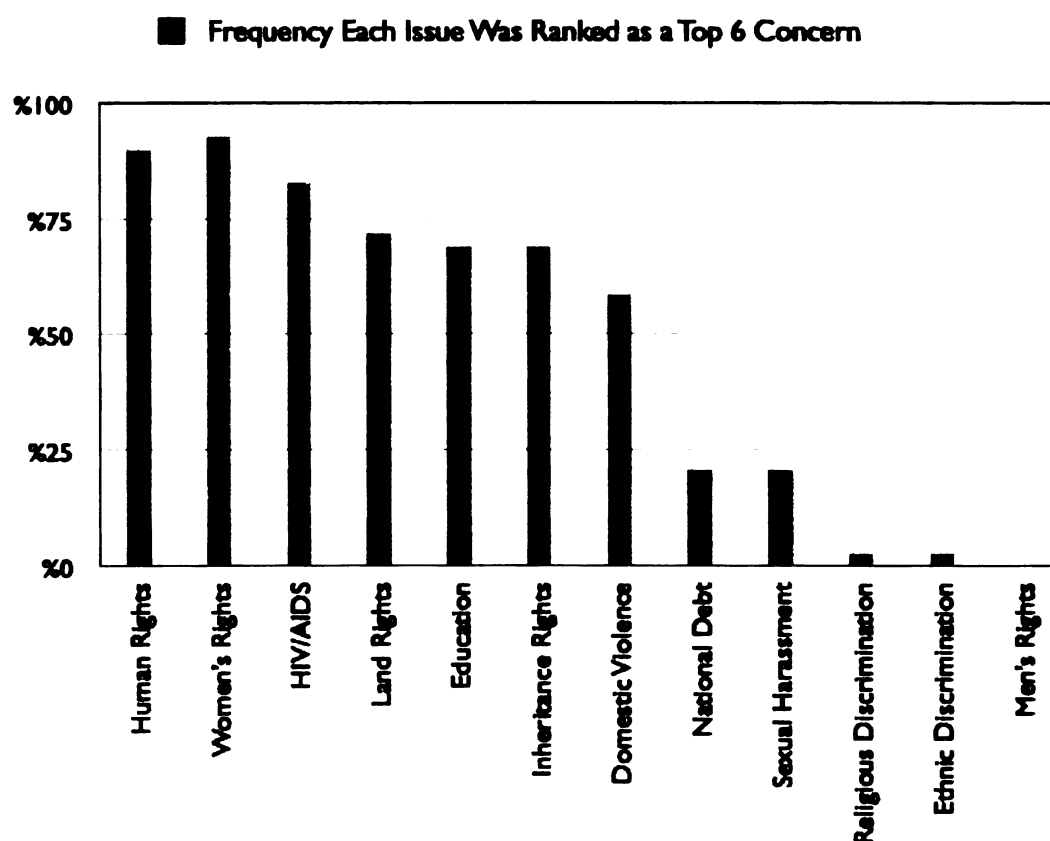
The chart below illustrates the number of times, expressed as a percentage, that Fem Act members ranked any one concern among their top six (out of twelve) issues that need to be addressed in Tanzania. Each “issue” made it to the top six of at least some people’s lists with the exception of men’s rights, which was never selected as a top six priority by NGO members. The six top-ranked concerns reflect the majority of the work the NGOs have been engaged with since their inception, especially human rights, women’s rights, and land and inheritance rights. However, men’s rights are not considered alongside the rest of the rights issues. Is this because when included within *this* list, it does not seem as pressing a need compared with the other “rights” issues? Or are men’s rights in a broader context not seen as important as women’s, land or inheritance rights?

It seems curious that human rights, which should encompass *all* people, would be ranked number two among the top six while men’s rights are not ranked at all among those six. According to this data, women’s and human rights are nearly synonymous while men’s rights appear as something altogether different. NGO members repeatedly remarked that men’s rights were not a national priority, unlike women’s rights. Further, respondents often laughed when they saw men’s rights and proceeded to rank them lowest. Individuals consistently commented that it was because men’s rights were

¹³⁶ Here, I am using “institutions” in a broad sense, meaning social institutions and political conditions.

already ensured¹³⁷ that they were not an issue of priority. A number of respondents remarked that men could get their rights more easily because they had better access to and resources to go to courts, and if they did not, they would be more likely to find their legal rights in local / customary courts. As one lawyer from the Legal and Human Rights Center put it, "...men's rights just aren't an issue; they don't really have to struggle for their rights." Certain rights are ranked above others based loosely on a principle of affirmative action.

Figure 2: NGO Individuals' Ranking of Issues in Need of Attention in Tanzania



¹³⁷ Some NGO members argued that there was nobody threatening men's rights as women's rights are threatened – through cultural practice and discrimination. A few others recognized that men did have to fight for their rights in areas such as formal employment and against state land grabbing.

NGO members explained that Tanzania as a nation needs to address and ensure women's rights as a human right *first* because they have historically been disenfranchised of their rights to a greater extent than men. Five NGO members reminded me that because women were such a force in the independence movement, particularly in enrolling members in the TANU political party that they would be granted full rights at independence, and were disappointed when this did not happen. This was only one of the stated reasons that women's rights should be placed high on the national agenda.

While ranking may seem like a straightforward process, the reasoning involved in making those decisions can be complex, as individuals take into account their own experiences, the national climate, the context of the interview, and how they conceptualize relationships *between* the different items. For instance, on a number of occasions respondents explained that they were ranking sexual harassment or domestic violence or inheritance rights "under" women's rights because, in the words of one participant, "If you have women's rights then all of the rest of these things will be taken care of." Another participant's logic was similar, but he prioritized HIV/AIDS over all other categories explaining

"...if it is not addressed then the whole community will perish and there will be nobody left to even talk about these other issues....But you can't address human rights to ignorant or sick people. If someone is suffering from HIV, they cannot be bothered."

In this instance, the respondent recognizes the health of the individual body as essential for ensuring all other things in life, the health of the society and the ability to ensure one's own rights.

The other notable result of this ranking scheme is the position of "national debt". During a regional Social Watch conference I attended in September 2004, national debt

was explained as a causal relationship between Africa and “the West” that was closely tied to and impeding Tanzania’s and other African countries’ development. However, within this schema, the rights categories overwhelmingly overshadow national debt as a high priority among NGO members. This indicates that national needs and rights are structured according to contextually specific forums leading NGO members to emphasize some priorities in one context and others in a different setting. While some of these NGOs were at the same Social Watch meeting, they nevertheless ranked national debt as a low priority. The regional Social Watch Conference was attended almost exclusively by Africans and I noted that when global inequalities were raised by participants, others followed suit, producing something of a snowball effect. In the end, there seemed a shared understanding that many of African countries’ problems were predominantly the result of these global inequalities. However, within the one-on-one interviews between a feminist white American researcher and African NGO members, national debt ranked low as a priority.

On the other hand, members ranked issues based on experientially derived perceptions and their own situated knowledge. As I stated above, the ranking questions often elicited comments, which support this claim. Looking at each of the issues ranked above 50% (human rights, women’s rights, HIV/AIDS, land rights, education, inheritance rights, and domestic violence), many respondents gave personal examples of how these categories have come to have meaning in their lives. This is illustrated in the vignette at the beginning of the study where a woman tells a personal story about her familial struggles to obtain a share of inheritance from her father. Further, the types of cases and issues that surface in the NGO members’ day-to-day work are reflected in those issues

ranked above 50%. NGO members pointed to the high numbers of human rights cases, inheritance and matrimonial cases, which involve land and property and many times HIV and domestic violence as informing their commitment to these issues. NGO professionals' rankings reflect their development of a human rights consciousness through their lived experiences, their education and networks with others in the human rights field and their daily work in the clinics.

The issues falling below the 50% mark support the analysis that a rights consciousness is experientially derived, with perhaps one exception – sexual harassment. Excluding sexual harassment for the moment, the other concerns that fall below the 50% mark (national debt, religious discrimination, ethnic discrimination, and men's rights) may have been ranked as such due to the (feminist) subjectivities of the people I interviewed. Of the twenty-nine people who responded to this question, only four were men. However, they also did not rank men's rights as a top six concern. Only two people saw religious or ethnic discrimination as a top six concern despite the fact that there have been high profile public cases of religious and ethnic discrimination in Zanzibar¹³⁸ in recent elections. Further examining the background of these respondents revealed that of the two people who ranked religious and ethnic discrimination as a top priority, one was Muslim and the other from Shinyanga Region which is popularly seen as a remote and "backward" part of the country. This data substantiates the suggestion that NGO members' perceptions of national concerns are formulated in part by their experiences as individuals and in part by the audience they are addressing.

¹³⁸ 99% of Zanzibar's population is Muslim and of mixed heritage with strong genealogical, cultural and economic ties to the Middle East.

This has implications for how women within the NGOs will theorize women and their relationships to land. Like many activists, NGO professionals continually negotiate their personal experiences with the social, political and economic constraints of their organizations. Manji (2006) has argued that progressive women's organizations came late to the debates on land law reform and did not adequately theorize women's relationships to land. Projects within the Fem Act Coalition to a large degree reflect NGO-donor initiatives and at the time of the land debates, no donors were funding the NGOs to undertake law policy reform initiatives. The NGOs had to extend themselves and their time in order to formulate the Gender Land Task Force and other networks related to the land debates. Further, members of the Fem Act NGOs generally have access to the land market since they have the financial resources to purchase. Many of them have directly benefited by securing property through purchase in the 20,000 Plots Scheme. Being urban dwellers has no doubt informed NGO professionals' theorization of rural women's land relations.

What then can we say about sexual harassment and its low priority ranking? If these rankings correlate with people's personal experiences, I would have expected sexual harassment to rank higher than it did.¹³⁹ On numerous occasions I discussed sexual harassment with members of WLAC where I was volunteering as well as with other Tanzanian colleagues and friends. People acknowledged that this was a problem but treated it more as something of an annoyance and an issue that could be resolved through education and sensitization. It seems to be "normal" to the extent that it occurs

¹³⁹ I have personally experienced and observed a high rate of the most common form of sexual harassment (men harassing women *because they are women*) in Tanzania and have found it on occasion to be so unbearable that I did not want to leave my place of residence.

with such high frequency and without fear of punishment and perhaps therein lays a possible explanation for its low ranking.¹⁴⁰

Dealing with sexual harassment would mean closely examining the construction of sexualities in the Tanzanian context. One Fem Act organization, TGNP, has recently begun to address sexuality as a policy issue. At present, construction of sexuality is not a priority for NGO members; rather they are concerned more with the construction of gender, and view these two spheres as analytically distinct. This speaks to how NGO members' feminism is constructed based on prioritizing Tanzanian women's needs. The section below further discusses this issue.

While I have illustrated above what NGO members believe are issues of primary importance in Tanzania and offered suggestions for why they are ranked as such, I now turn to the question I posed earlier: What do NGO members feel are the conditions that have to be in place in order that social justice be attained? Participants were asked to rank a list of ten terms, conditions or freedoms according to their level of importance /

¹⁴⁰ There may be other problems with the term itself. First, there is no good translation for the term in Swahili but further, the term sexual harassment arose within a specific context— during the 1960s in the U.S. While the same form of harassment has been publicly recorded as far back as the 1830s among women workers in the New England textile mills, it has primarily had a *legal* history and has most often been prosecuted between employees and employers or between people in contractual arrangements. This may point to a reason why it has not surfaced in the Tanzanian context. There, the combination of an overburdened legal system with few people in formal / contractual relationships (especially between men and women) may contribute to the “lack of language” for the term. Socially, there is not much recourse when such a thing does occur. As a colleague conducting research in a small village near Tanga told me, “...older men tease younger girls about their breasts on the path to get water. What will they do? Go and complain to their mothers about their *neighbors* talking about their *breasts*? They simply wouldn't complain to their parents about these things”. This seems to me an important area where further research is needed as girls are socialized into doing nothing about this type of treatment. However in recent years, reporting documenting the harassment, and bribery and rapes of girls by their teachers in southern Africa has increased.

necessity for social justice. I asked participants to rank each term on a scale of 1-100% according to how important that term, condition or freedom was for attaining social justice. The participants were not ranking the items against each other like in the first question, but instead were ranking each item as a separate condition for social justice. Therefore, one could conceivably rank each and every item as 100% necessary for social justice.¹⁴¹

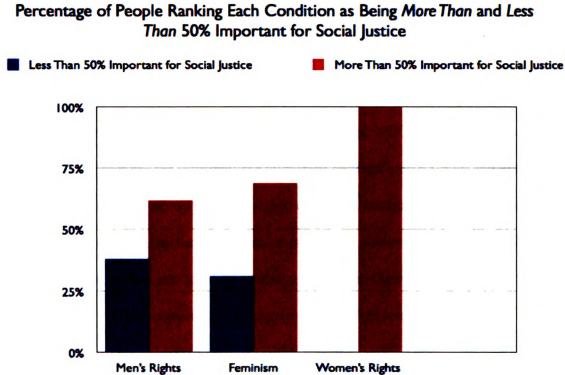
The majority of respondents ranked each category highly. However, there were three terms / conditions that produced a significant discrepancy between the number of people who ranked that category *above* 50% importance for social justice and the number of people who ranked that category *below* 50%. The three categories eliciting significant difference among respondents were: women's rights, men's rights and feminism. Figure 3 below illustrates these findings.

From this figure, we can see that 100% of NGO workers ranked women's rights as being very important for social justice.¹⁴² However, only 62% of the respondents viewed men's rights as being very important for social justice to be attained. Further, 38% of the NGO members said that men's rights were hardly necessary for attaining social justice. Finally, 69% of people said that feminism was very important for attaining social justice while 31% ranked it as being less necessary for attaining social justice. With respect to women's rights this data corresponds very closely with the first ranking question.

¹⁴¹ The full list is as follows: access to health care, love, freedom to organize, understanding, poverty alleviation, freedom of speech, respect, women's rights, feminism, men's rights.

¹⁴² I am assigning "very important" for those issues ranked 50% and above, and those below the 40% marker, "less important" or "unimportant."

Figure 3: Conditions for Social Justice



While NGO members did not view men's rights as being an important issue to address in Tanzania, a majority considered securing men's rights as a necessary condition to ensuring social justice. Still, since the participants could rank all of the categories as 100% if they chose why are men's rights seen differently than women's rights? People's commentary intimated that their role as individual activists within NGOs as working to secure these rights played a role in their ranking. Since on the whole they view men's rights as presently more secure than women's rights, they are not seen as being an issue with which the NGOs should be actively engaged.

Fem Act NGO individuals shared many similarities with one another regarding what they viewed as national priorities and the socio-political institutions that were

needed to improve these areas. While individual perceptions are formulated in part by their subjective experiences, including educational background, identification as human rights activists, and lawyers, the following section will demonstrate how inter-NGO consensus on some of these same issues is constructed, reinforced and debated.

Formulating Consensus – Constructing Rights through Networks

Throughout the course of interviews and dialogues, NGO members referred to other structuring factors that informed not only their conceptions of rights, but also the types of activism they were willing and able to engage in as organizations to ensure women's rights. These structuring factors, as mentioned above were: lawyers' adherence to the rule of law, obligations to donors, relationships with the state, and NGO commitments to their constituents. The examples of each below illustrate the institutional factors that shape inter-NGO rights activities.

Responsibilities to the Profession and to the Rule of Law

NGO members see their legal and extra-legal activism as being circumscribed by the factors listed above. NGO members who are also lawyers spoke of their obligations to the profession and to the rule of law as partially circumscribing their legal activism.¹⁴³

When discussing her activism, a WLAC lawyer commented:

“...but for me now, sometimes I may differ because of the profession. Because sometimes when you're doing activism, [you] forget about the legal aspects. For me, I take the legal position before I....I don't want to forget about the legal position. You may receive a client and feel most sympathetic to the client but if you go to the law, it may not protect her.

¹⁴³ Though I will show in chapter five how even here, lawyers bend the rules of law in order to better serve their causes and clients.

So sometimes people may say “you’re not an activist” but I want to compliment the two – activism and the law.” (Interview # 21)

On another occasion, a lawyer remarked, “Okay look. I am not going to break the law. My first responsibility is to uphold the rule of law” (Personal communication, LHRC lawyer, 11th October, 2004). Likewise, when I had asked NGO lawyers at WLAC, TAWLA, and LHRC what they could do if someone was deprived her land by the state without compensation; they referred to the letter of the law as their guiding principle regarding what action they would take. On six occasions, lawyers argued that if the client was on the land informally or illegally, there was not much they could do. In another rather surprising case, I learned that one NGO lawyer was defending a man in court against a charge of killing his wife. Presuming his innocence or the lawyer’s belief in his innocence, I went to ask her about it. She explained that in fact she knew he was guilty, there was a confession and a history of domestic violence, but that “everybody had a right to a lawyer and to be given a fair trial” (Fieldnotes, October 4th).

Obligations to Donors

While NGO-donor relationships work to mutually, and often unevenly structure the types of rights work NGOs undertake, donors may not realize the number of *other* donor obligations “their” NGO has to respond to. This is the problem Shivji (1998a) and Odhiambo (2003) pointed to as they argued that competition for funding and reporting obligations for NGOs significantly limited their time spent and their weak showing of a united front in the land tenure debates. I personally observed the taxing hours spent writing NGO annual and bi-annual reports as well as project reports and research

findings. NGO practitioners sometimes must gather vast amounts of data for these reports which are often housed in different NGO departments. They must further write the reports in a non-native language, English.

As just one example of the tenuous relationship between NGOs, donor and activist networking, we can look at an NGO-donor meeting that took place between a NORAD representative and five WLAC lawyers in September 2004. This example illustrates multiple problems of donor expectations, their (sometimes) limited knowledge about the NGO's other commitments, and reveals the number of activist related networking responsibilities NGOs have *outside* donor funded projects. After a brief discussion initiated by the lawyers describing the various projects they were currently involved in, the NORAD representative asked, "Is this in your report? Because some of these things are supported by NORAD, like the paralegal units, they need to be in the report."

Having reported that on clinic days, WLAC receives 70-90 clients, NORAD asked what the monitoring and evaluation procedures were for assessing the impact of legal aid. At that time, WLAC was compiling data and including it in their NORAD reports by type and number of case received, number of new and returning cases, and how the cases were resolved. The NORAD representative suggested that the organization would like to come up with a better evaluation system, which would frankly require a significant amount of money and person power.

This representative went on to state that it was very "difficult to know what the NGOs are doing for us" because most NGOs have 10-12 programs so it becomes difficult to get a sense of the overview of the NGO. She then proceeded to ask if other donors

came with projects they would like WLAC to take on and upon hearing that yes, this was the case, the donor representative responded, “Because that must be a problem no? Your portfolio has become so spread and unfocused.” The discussion went on with the lawyers mentioning at least six networks that WLAC was a part of (all unfunded but which they viewed as necessary work) before being asked, “Are you involved in government reform? Maybe you are but we can’t clearly see it.”

While the tone of the dialogue appears here terser than it actually seemed at the time, I sensed a tension between the lawyers and the donor representative. I personally was becoming uncomfortable by the extent to which the donor representative was controlling the conversation which was based on a partial knowledge of how the NGO operated. And so I was relieved when one lawyer responded to the donor’s statement “I think there is a problem of focusing here. There are many projects,” by arguing:

I think for us, we are focused. I think if you work alone...in networks you share experiences, resources and you divide the work. To measure the impact, we have monitoring and networking, we have research and publication and we have legal aid. We can’t do legal aid without conducting research. We can’t do networking without knowing what the international conventions are in place. So I think these things go together. If you do strategic litigation alone, the cases take too long. I think the problem is how to strengthen existing programs.

This is just one example among others that was reiterated by other NGO professionals who voiced concern over the excessive time spent reporting to donors and writing proposals for donor funding (cf Baaz 2005). While the human rights projects that do exist within the NGOs will no doubt inform individual and organizational conceptions of rights, the multiple projects with attached multiple reporting responsibilities take time away from inter-NGO dialogues about the nature of rights. Donors sustain NGO workers

and organizations but leave them without time enough to reflect on their work. Surely if we are to consider the production of meaning through a social life of rights approach, we must take into account this important structuring relationship.

NGO – State Relations

Fem Act NGOs and the Tanzanian government continually emphasize that they work in cooperation with one another,¹⁴⁴ a relationship lauded by donors and noted in news sources. NGOs consistently invite government members as guests of honor or keynote speakers to NGO events. NGO members expressed that maintaining a good relationship with the government was key to their overall success as organizations. They said that they relied on this good relationship because the government had the power to help with the promotion and passage of gender sensitive laws and policies. The Tanzanian government on the other hand, stresses its cooperation with NGOs they serve as a connection to the grassroots and the voices of the people. Further, the state recognizes that NGOs strengthen democracy by acting as checks on government actions and policies.

However, the NGO-state relationship in Tanzania has not been an easy one. NGOs worry that the government will not include their opinions on law and development matters and at the extreme are fearful of government censorship or crackdown. One NGO member commented,

You know, there is a fear on the part of government officials to involve NGOs. They are reluctant to use them and think of [NGOs] as enemies. They don't even know about human rights themselves. Even when we go

¹⁴⁴ Duhu (2005) and Iheme (2005) discuss the sincerity and possibility of this alliance in Tanzania.

to international meetings, we can see how they look at the NGOs. We have a problem which we need to clear. The government should view NGOs as partners and donors should be a part in clearing that up (Fieldnotes, 7th September, 2004).

These underlying worries are based on experience and inform the type of NGO activities carried out and the expression of their human rights activism. In an inter-NGO conference on development in September, 2004, Tanzanian NGO members spoke to the conditions circumscribing activism in their country. In response to a Latin American activist's call for more mass demonstrations and street protests, a senior Tanzanian NGO member and former parliamentarian had this to say:

And what is the reaction of the government? Sometimes, the government in some countries think that is a threat to them, they think maybe you are trying to criticize them. Sometimes it is not easy to mobilize, you end up getting into conflict with the government and you don't move forward (Fieldnotes 24th September, 2004).

Another Fem Act NGO member contributed,

"...they [NGOs] are afraid. Look at what happened to the students at University (referring to a student – led strike over declining subsidies). They were peacefully demonstrating and got shot down. So people are just scared and now with the elections coming up, everyone just wants to be sure they have their space (Fieldnotes, WLAC member, 24th September, 2004).

This comment was quickly followed by the interjection "Look what happened to BAWATA." BAWATA was an NGO that the Tanzanian government attempted to deregister in 1997 because the state viewed it as becoming "too political" after it had criticized the ruling party's policies (Tripp 2000, Nshala 1997). BAWATA was one of the largest NGOs in post-independence Tanzania and was involved in policy advocacy on issues including violence against women, child sexual abuse, inheritance laws, land ownership and girl's access to education. On July 2nd, 1997, the government banned the

organization saying it was too akin to a political organization and not focused on “developmental goals.” Shortly following the ban, the Vice President issued an NGO policy stating “NGOs as legal entities are restricted from engaging in any activity that will be construed to be political in nature,” but are allowed to “engage in debate on development issues.” Tripp (2000) recognizes that human rights organizations, in particular, have suffered from these types of restrictions and have had difficulty in registering.¹⁴⁵

Human rights work and activism are inherently political work because “the decision over abstract humanity always precedes any actual claim or grievance” (Englund 2006:32). The existing tensions between human rights NGOs in Dar es Salaam and the Tanzanian state have worked to constrict the activities of rights NGOs to “politically acceptable” arenas and avenues. While there were other factors at work in the legally-centered approaches Fem Act NGOs adopted to the land tenure reform, state-NGO relations surely had a role in structuring the types of extra-legal “political” human rights activities in which NGOs engaged.

Commitment to Constituents

NGO members state that their first and foremost commitment is to serve their constituents – women, children and the poor. For those NGOs that also serve as legal aid clinics or legal resource centres (WLAC, TAWLA, LHRC, Hakiardhi), they exist to provide a service to their clients. Since this service is a legal one, they are constrained by the procedural boundaries of the law to work out acceptable solutions for their clients.

¹⁴⁵ For detailed discussion on the BAWATA case, see Tripp (2000:203-207) and Juma (1997:3-5).

One effect of this is that they cannot advocate for clients in primary courts and clients cannot use international human rights laws at the primary court level. However, the following chapter will demonstrate the ways in which NGO lawyers work around these procedural obstacles by integrating human rights concepts and laws into their clients' experiences through reconciliation sessions and other lawyer-client interactions.

Inter- NGO Dialogue: Defining (Legal) Rights

In April 2004, a group of NGOs gathered to discuss inheritance rights and laws and their strategies for action. The workshop, sponsored by WLAC and titled “Consultative Workshop for Advocacy on Inheritance Law,” included NGOs along with government and media representatives. The NGOs in attendance included WLAC, WAT, TAWLA, and LHRC.¹⁴⁶ A representative from the Law Reform Commission was present as well as other stakeholders including media representatives from major Tanzanian news sources (*The Guardian*, *Nipashe*, *Mtanzania*, and *Wananchi*). I attended this conference along with others like it to see how inheritance rights were being discussed and theorized within a mixed-NGO forum and how they formulated their strategies for action. I describe this particular event in-depth as I was able, by my position in WLAC, to follow up on the events with colleagues there. Additionally, this particular workshop received significant print news coverage as well as a news article on one of WLAC's lawyers. I use a number of lengthy direct quotes by conference

¹⁴⁶ It is notable that TGNP was not invited to the workshop. When I asked WLAC why this was the case, a member replied, “They are not concerned with inheritance issues.” She went on to say that she feels TGNP has grown too big and think of themselves as “too important for all of the other ‘small’ NGOs” (personal communication, 25th April, 2004).

participants to examine how NGO professionals are discussing rights and law in their own words.

As I mingled with the NGO professionals in the lobby before the start of the workshop, I noticed a young man facing difficulties being admitted to the conference. He was eventually turned away because he was not on the list of invitees. Shortly afterward, I asked the meeting receptionist, a lawyer at WLAC, what the problem was. She responded, “He wasn’t on the list. He was claiming that he was a freelance journalist but sometimes the government sends people to spy on these meetings so they can go back to the government and report what we’re up to.” Another lawyer corroborated this sentiment a few days after the meeting saying,

“He was spying on the NGOs to inform the government. *Why would the government want to know what the NGOs are doing?* Just like the American government would want to know, Natalie. It’s information. They’ll use it for what they want, to either say what the NGOs want to hear during election time, like now, or to know how strong [NGOs] are becoming. Because right now in Tanzania, NGOs have become very strong” (Fieldnotes 19th April, 2004).

A WLAC lawyer was in charge of facilitating the meeting. She was a lawyer in her early 30s, bright, articulate and affable. She put the audience at ease throughout the conference and was democratic in selecting audience members’ questions. I was seated next to a male lawyer from the Office of the Administrative General who works on intestate succession and proceeded to pass out brochures to all participants, explaining to me that it is very important to register births, deaths, houses and marriage in Tanzania. The purpose of the meeting was to work out an inheritance law based on principles of equality before the next general election in 2005.

A representative from WiLDAF was the first to start the meeting, giving a short history of inheritance since 1996, and NGO cooperation with other countries including Kenya, Uganda and Rwanda. The inheritance network's name is *Kikuhami*¹⁴⁷ Since 2001, the group had been actively pressing parliament to change inheritance laws, and domesticate women's and human rights laws, explains the WiLDAF representative. "We have carried out research on children's rights in Mbeya, Iringa and Mwanza and after research on girls' inheritance, we drafted recommendations for the bill to enter into negotiation with the government." The facilitator interjected, a bold voice calling on a TAWLA member "What is our goal now after all of these activities?" She responded, "To pass the inheritance laws." She went on to say that Tanzania does not have a strong tradition of *mswada binafsi* (literally "personal laws" but in this case means to indicate laws founded on individual rights). The lawyer from the Office of the Administrative general interrupted asking, "People have walked around the law for many years. How will we change that?" His question went unanswered.

Another NGO participant slightly reframed this question asking, "What does religious law say? What is the position of each religion on marriage law and inheritance laws because they have a big voice in the community. There are many internal pressures, not just the law." The facilitator took this opportunity to remind the participants that there were three laws regarding inheritance – Islamic law, customary law and the Indian Succession Act of 1865. She went on to explain:

We have not attacked Islamic law because they have the Koran and will continue to use that no matter what. So we should concentrate our efforts on the state and customary law.

¹⁴⁷ The Swahili acronym for *Kikosi Maalumu kinachoshugulikia Masuala ya Mirathi*, Special Coalition on Inheritance Questions.

The WiLDAF representative reported that they conducted a workshop in July with Bishops of the Catholic and Lutheran churches on discrimination, but went on to argue that they needed a forum with all leaders representative of all religious groups. A member of the press spoke, arguing that Islam says men have more rights than women but men also have the rights over their children too. The other WiLDAF representative argued:

“You can’t attack Islamic law because God has the highest say and you can’t go against the religion or religious law. It’s not realistic. We are not able to enter Islam, we’re not able to challenge it.”

At this point, one of the only visibly Muslim women from WLAC adds,

“I was talking to a UNDP representative and he said that activists and advocates have ways to go about this – the soft edge or the hard edge. You are able to win with a soft edge. By doing things like marching *yesterday*, today and tomorrow we will begin to be taken seriously.”

A TAWLA representative added:

We need to be able to read and to understand [Islamic law]. We need to discuss, what does this law mean? Is religious law a threat? We as advocates need to target the impact of inheritance rights on domestic violence, economic violence, psychology, HIV/AIDS.

At this point, a former parliamentarian and veteran NGO member noted:

“There are many different people in Tanzania. There are many different people in this struggle. Many people are giving the same message. The world is changing. Our experiences...we have entered into a different environment. Though we have been creating awareness since 1963...very little has changed. People have only started to know and realize their rights. We need to target two areas – the grassroots and the national level. At the national level, we must work to change the laws. We need to challenge the customary laws of inheritance. The question of inheritance is a question of rights. The 1963 law of inheritance is clearly discriminatory. What does the signing of these international conventions mean? Our aim is to get the customary law of inheritance repealed so that there’s no discrimination. We need to attack the secretary general of CCM [*Chama cha Mapinduzi*]. Why is this [inheritance] so sensitive? It

doesn't have to be so sensitive. It is quite simple. Some people are being prevented from their rights and some people are looking for their rights. [pause] Women. The law says women have the right to own, possess, sell, etc, but with inheritance this spirit has been negated. We need to cooperate together and have one aim together. We will win."

The above discussion is representative of other inter-NGO meetings and personal conversations with NGO lawyers. NGO professionals consistently spoke of rights in terms of legal rights, and based their notion of women's legal rights on the principle of nondiscrimination. When women's rights were argued for during the land tenure debates, and as they continue to be advocated for in the areas of land ownership, inheritance rights and employment rights, NGO members consistently refer to a "standard," either legal or social. When they explain how women's rights should be expressed in society, they frequently argue that they should have "the same rights as men," especially in the areas of land and inheritance.

The other striking aspect of the above conversation is the conceptual distinction between *Islamic* religious law and customary and state law. At other times, NGO professionals argued that customary law and customary practices were easier to change because *customs change* and therefore people possessed the agency to change their own customary practices. On this and other occasions, NGO members also distinguished between the rigidity and "threat" of Islamic *law* versus Christian *practices*. No one ever spoke to me in terms of Christian law. In fact, Fem Act NGOs have been active in working with the Christian clergy on human and women's rights issues.

Days later, I asked my colleagues at WLAC about the discussion on Islam at the conference. The three lawyers present during the conversation recognized that it was an

important question that had not been dealt with and until then,¹⁴⁸ they had left Muslims out of the debate (though one of their co-workers present was a Muslim woman). Asked why, one lawyer reiterated what was said in the conference, “Because that is a religious issue and you can’t go against religion. This is something which has to be changed from within. You can’t just go as an outsider and tell them what to do.” Turning to the Muslim lawyer, I asked her opinion. “That’s just religion and that’s the way it is.” She then went on to describe Islamic inheritance patterns. Objecting, I argued that there must be Muslim women who don’t agree with the Muslim laws of inheritance. Laughing, she said “Of course! There are always those who don’t agree.”

NGO professionals’ theorization of women’s needs is based on their own empirical research carried out with rural and urban women. From this evidence, NGO members construct notions about women’s rights and frame those rights as *legal* rights. It is clear from their research that women suffer disproportionately in terms of land and inheritance rights compared with men and NGO members recognize the various consequences of this – developmentally, psychologically, in terms of health, and access to political participation. However, as a majority of Fem Act NGO professionals are Christians, they have tended not to problematize the relationship between Christianity, customary practices and the law, a complicated relationship with a long history. For example, their Christianity was usually referenced in positive terms, as a moralizing discourse used to back a claim (women should not have abortions), however, I never

¹⁴⁸ By the end of April, NGOs present at the conference had already approached Muslim leaders at BAKATWA, the Muslim Council of Tanzania, in order to see what their position was regarding women’s issues, particularly inheritance and to see how they could be included into the discussions.

heard NGO members discuss how discrimination was carried out in the name of Christianity (the man is the head of the household, homosexuality is evil, etc).

NGO members such as those present at the conference construct inter-group shared understandings of various types of human rights largely by speaking in terms of legal rights. There were no inter-NGO conferences, meetings or workshops that I attended that the meaning of *haki*, the KiSwahili word for rights was debated but rather assumed in the legal sense. In fact, in one report detailing a training workshop held on legal and human rights in Lindi, the brochure states, “The participants were asked to explain the meaning of rights. The correct answer was given to mean entitlement.”¹⁴⁹

The translation of legal terms rarely surfaced in inter-NGO meetings with the exception of a meeting on domestic violence held on July 23rd, 2004. I previously stated that domestic violence has only recently figured into Fem Act donor agendas and Tanzanian law itself. During the conference a member of WLAC interjected asking, “How do we translate domestic violence in Kiswahili? *Ukatili za nyumbani* is “house violence.” Another responded, “It’s *Swakinge*¹⁵⁰” which evoked laughter among the participants before they moved on to another discussion.

Framing rights as legal rights allows NGO members to quickly formulate and move forward with their strategies on any one particular cause / issue. As I have demonstrated above, Fem Act NGO members are stretched thin between donor obligations, their commitment to their clients and constituents, and the multiple and varied projects they are working on. In personal conversations and interviews, NGO

¹⁴⁹ “A report on the training of trainers workshop “legal and human rights” held at Lindi from 31st May to 4th June, 2004.

¹⁵⁰ A combination of Swahili and Kiingereza, the Swahili word for English. The expression *swakinge* is the equivalent to the American term Spanglish.

members did question whether or not legal standards, such as international human rights laws, should in fact be considered the standards for everyone. On the other hand, positioning Tanzanian men's rights and entitlements as the standard was scarcely examined.

At the beginning of this chapter, I suggested that NGO members' perceptions of human rights and social justice issues were in part influenced by their collective subjective experiences. In turn I have shown how NGO professionals reinforce a notion of rights as *legal* rights through inter-NGO dialogue and strategies that focus primarily on legal reform measures. Feminists have called the first example of perception or "knowledge" of any particular issue *situated* knowledge, meaning people may understand the same object in different ways as they stand in different relationship to it (Hartsock 1983, Narayan 1989, Harding 1991, Haraway 1988). In other words, people experience the world through their bodies, which are differently constituted and are differently located in space and time. By virtue of their different social locations, different knowledges, different *ways* of knowing, and different perceptions emerge.

Feminism as a concept, as a movement, and in its adjectival form as a way of defining a position or forming an analysis is fairly new in Tanzania, though its foundations (in the broadest terms being the recognition of gender inequalities and the subsequent movement to end all forms of inequality between the sexes) have a longer history (Aidoo 1985, Basu 1995, Oyewumi 1997, Ogundipe-Leslie 1997, Terborg-Penn 1989). They have only recently taken on the *name* feminist. As I was interviewing members of The Feminist Activist Coalition, I had expected there to be more people who thought feminism was necessary for social justice. Below, I take up the issue of

feminism as a concept and movement for social justice, how NGO members conceived of feminism and their relationship to it. These discourses will partly reveal how NGO professionals view women's place(s) in society and what women need in order to progress.

Feminist Conceptions Among the Feminist Activist Coalition

I have argued that NGO individual and organizational conceptions of rights are structured primarily according to five factors: subjective experience; adherence to the rule of law; obligations to donors; relationships with the state; and commitment to constituents. These are all factors, or contextual considerations that lead to a production of the social life of rights within Fem Act NGOs. Inter-NGO dialogues work to reinforce a dominant ideology of rights in legal terms. In this section, I explore the expression and production of the social life of feminism among NGO members.

It is necessary to explore feminism as a framework for justice alongside other frameworks for justice such as human rights. Too often, scholars studying "women's human rights" have deemed this work feminist, without exploring what feminism might mean to their research participants. Indeed, in Merry's (2006) work on domestic violence, she deems NGO members work as "feminist" work on domestic violence without interrogating whether or not these activists define their work as feminist. This is important, as configurations of feminism may imagine gender relations as distinctly different from and perhaps in contradiction to women's rights enshrined in international law. Feminism and human rights, both frameworks for envisioning justice, work alongside and inform one another.

Through research on NGO members' conceptions of feminism and their identification as feminist activists, I discovered different structuring factors than those that informed their ideas about rights. In this section, I discuss how NGO professionals formulate their feminist identities, goals and activism based on 1) their subjective experiences as girls growing up and as women living in Tanzania; 2) their research as NGO members; and 3) their relationship to and perception of Western notions of feminism.

Anthropological Research and Third World Feminisms

It is now commonly accepted that conducting anthropological fieldwork within any community and on any topic has obstacles and advantages. We must take into account the positionality of the anthropologist in relation to her study participants and community, problems of translation and the political nature of her inquiries and research. Setting out to conduct feminist research and research *on* feminism carries with it a special set of problems (and advantages) be they conceptual, analytical or political. There exist potential problems with the translation of words if working in a non-native language, or the various meanings ascribed to words in different contexts. Different analytical assumptions exist (is gender a primary factor in everyone's feminism?) which will partially inform how the ethnographer analyzes her data. There are also different political climates in which an area of research may at one time be accepted while during others, thought highly suspicious.

Coming from a strong background in American feminist organizing, in which I have mostly engaged with white middle class women, and having entrenched myself in

feminist academic and literary studies, I nonetheless assumed, perhaps naively, that my research on feminism and into feminist work in the Fem Act Coalition would be met with little contestation. I would soon find out that my positionality and the meaning NGO workers attached to my status as a white, American female researcher would in fact open up a series of dialogues about the differences between our understandings of and assumptions about feminism. Some of those dialogues are included this section.

That said, what is involved in conducting research *on feminism*? Since the 1970s, there has been a burgeoning of literature on what it means to *do* feminist anthropological research (Abu-Lughod 1993, Behar 1995) to *write* feminist ethnographies (Abu-Lughod 1993, Bridgman et al. 1999, Visweswaran 1994) and to *be* a feminist anthropologist (Geller and Stockett 2006). Furthermore, individuals have written about ethical dilemmas in feminist fieldwork noting the sometimes “...sense of paralysis felt by feminist and other critical anthropologists who occupy an ambivalent position between acting on our convictions and questioning the ethics of our interventions within the context of fieldwork” (Bridgman et al 1999:9). While these rich, thoughtful and varied inquiries have been an asset to anthropological theory and practice, the question of what is involved in conducting research *on feminism* has been given little attention by feminist anthropologists whose work is feminist in nature but who have not turned to address the concept that we are talking about, identifying with, and identifying our work with.¹⁵¹

¹⁵¹ I am differentiating work by both Northern and Southern scholars who have done research on gender, on women’s roles and on women’s organizing and applying feminist analytical frameworks to that work. I do not mean to suggest that this work not be considered feminist. It should. However, I am remarking on the sparse research conducted *on feminism and feminists*, who they are, how they define themselves, what they do.

This gap in the literature has recently been acknowledged in a conversation among prominent feminist anthropologists at a 2005 panel presentation at the American Anthropological Association's Annual Meeting called "Can There Be a Feminist Ethnography?: Bringing the Past Into the Present." The panel consisted of feminist anthropologists including among others Deborah Gordon and Lila Abu-Lughod. It was well into the discussion period when one of the panel members raised the question "What is it we are all talking about here? What does feminism and feminist work *mean* in the places we do research?" and she pointed to the questions I've just posed.

Throughout the years that anthropologists have conducted "feminist" fieldwork and written feminist ethnographies, we have not fully investigated the term itself and what it means to those doing feminist work. Do we qualify our "feminist development work" and "gender development research" as feminist based on the considerations of our own knowledge production, analytical frameworks, and how our work is situated within the broader literature? Or does it describe how those we research (often in quite different cultures) consider *their own* and *our* work? These questions along with the burgeoning transnational use of the term "feminism" to describe indigenous movements and development practice led me to inquire into a deeper meaning of "feminism" and feminist work among Fem Act NGO members.

Feminism as an analytical framework, a way of seeing, and a movement has undergone various permutations, being re(de)defined especially in the 1980s when black and "third world feminisms" shifted not only the ontological / existential grounding of feminism but challenged the very definition of the word itself (hooks 1984, Lorde 1984, Rich 1986, Mohanty et al 1991, Sen and Grown 1985). Feminist conceptions other than

those constructed by white middle- to upper class Europeans and Americans began to be taken seriously.

African and Third World Feminisms – NGO Members Speak to the Central Debates

Feminism. You know how we feel about that embarrassing Western philosophy? The destroyer of homes. Imported mainly from America to ruin nice African women.

– Ama Ata Aidoo¹⁵²

I don't call myself... I have never called myself a feminist. Because like I said, I am still not clear on the definition. People may ask, what does that mean? I call myself a human rights and gender activist.

– WLAC lawyer

Yes, *of course* I'm a feminist.

– WLAC lawyer

The relationship between feminism and African and other non-Western (white) women is certainly more complex today than when Ata Aidoo made her claim in the 1986 quote above. In fact, it was complex then as well. The word “feminism” in Tanzania has only recently come into use with the rise of urban women in politics and the proliferation of NGOs and women's development organizations. That is not to say that feminism does not have solid foundations in the country if we speak of feminism in terms of recognizing and attempting to rectify injustices and inequalities between the sexes.

Most notably, women were movement leaders in the years prior to independence as they organized and registered TANU¹⁵³ membership (Geiger 1997). It is during the first years of independence that women became overtly politicized *as women*, demanding services such as equal education for girls and better health care services for women. However, women did not use the term “feminism” at that time. When years later,

¹⁵² Cited in Hudson-Weems (2003:153).

¹⁵³ Tanganyika African National Union.

Tanzanians and especially Tanzanian women began to see the dismal effects of structural adjustment programs on women, they began to demand specifically that their concerns *as women* be addressed by the government and development community. It is out of this history that there emerged NGOs such as those in the Feminist Activist Coalition.

Investigating Tanzanian women's relationship to the historically western term and movement reveals complexities, strategies and the reticence that accompanies NGO professionals' association with the term. To dismiss African women's identification as feminists as Ata Aidoo does, not only does an injustice to those women's lived experiences but also cuts off the needed dialogue between Northern and Southern women (and men) who work together on women's development, women's human rights and any other number of gendered political projects. Discussing their identification or dissociation from the term feminism allowed me to better understand how NGO professionals understood themselves and their constituents *as women*. These conversations provide insight into not only how NGO member construct their feminism but indicates their underlying presumptions about Tanzanian women's needs and notions of ideal gender relations. This will inform how Fem Act NGO members theorize women's problems and their visions for solutions.

The Fem Act Coalition was inaugurated in 1996 and has as its stated objectives "the facilitation of the discussion around gender equality and equity; empowerment of women and social transformation at all levels of society" (TGNP brochure). TGNP's call for papers for their 2007 annual Gender Festival was titled, "African Feminist Struggles in the Context of Globalization." Interestingly, in the description on the TGNP website, the word "feminism" is not used again after the Coalition's title. In its place are words

like “gender equity,” “gender advocacy and education,” “gender issues,” and approaching issues from “a gender perspective by using a social gender analysis framework”

(http://www.tgnp.co.tz/background_to_femact.htm). Their call for papers implores submissions from “feminists, gender and human rights activists.” While gender relations are certainly at the core of feminism, what does it mean that TGNP does not use terms like “*feminist perspective*” or “*feminist analysis*”?

Do the descriptions of Fem Act’s goals and their use of “gender” instead of “feminist” say something about what feminism means for these organizations? Research *on feminism* involves queries such as this. Research on feminism includes investigating what the term means for the people using it, how they have come to define it and how feminism informs the work they do and the lives they lead. Further, research *on feminism by* feminist anthropologists will involve asking some difficult questions about our research, our research participants and ourselves. For example: What is the basis for comparative analysis when the term itself is strongly associated with a “Northern” idea to individuals or communities in the South? What is the meaning of feminism for those in the global south who adopt the term without the urging from their Northern counterparts? What is to be done when Southern feminists *include* in their definition of feminism what other feminists perceive to be discrimination, or conceptions that reflect class and ethnic biases?¹⁵⁴

¹⁵⁴ Amrita Basu (1999 and 1995) and others have written about women’s activism within the Hindu nationalist movement in India. While not explicitly termed feminist, the movement has been framed as communalism but it clearly relies on “othering” non-Hindu Indians, leading to racial pronouncements upon Muslim women by Hindu women, and even acts of physical violence.

African(ist) Concerns with “Feminism”

In order to consider Tanzanian feminists’ concerns about, identification with or rejection of “feminism,” it is necessary to situate their understandings of and relationship with feminism within a “transnational” context. A “transnational feminism” has emerged over the past two decades, facilitated largely by the internet, increasing levels of migration, and the opportunity for (some) feminists to participate in transnational conferences (Merry 2006, Mohanty 2002, Shohat 1998). Transnational feminism is conceptually distinct from international feminism in both its constitution and its aims. Where previous international feminist organizations existed such as the Women’s International League for Peace and Freedom, the International Alliance of Women, and the International Council of Women (Tohidi 2005) that were founded on common goals, the current transnational feminist movements rely on information exchange, network creation, and borrowing ideas not only for the purpose of a common cause (suffrage, abolishing slavery etc.) but also to take transnational ideas and use them for local struggles.

Tanzanian development workers and lawyers working in Fem Act NGOs are transnational feminist subjects. Many of them have participated in international, regional and local conferences, read feminist literature, and exchanged strategies for feminist and human rights activism. They may explicitly engage in transborder, transnational feminist organizing through the internet and by attending regional conferences, but they have also created their feminist subjectivities through their engagement with local struggles that are informed by local/national social and political contexts. This section illustrates the

conversations on how African feminisms have been constructed and theorized both in relation to “the West” and to local African cultural normative orders.

Some scholars have argued specifically that African feminism is a special “brand” of feminism that can be distinguished from other forms. Sierra Leonean anthropologist, Filomena Steady, defines African feminism as a humanistic feminism (Bádéjo 1998). She, along with Bádéjo define African feminist ideology as “founded upon the principles of African traditional values that view gender roles as complimentary, parallel, asymmetrical, and autonomously linked in the continuity of human life” (Bádéjo: 92). This conception of feminism recognizes both men’s and women’s responsibilities and contributions to all aspects of social growth and argues that power and femininity are intertwined rather than antithetical.

Other African and Africanist scholars have focused on the distant relationship between “white western feminism” and African women’s existence, highlighting conceptual and epistemological differences among the two (Oyewumi 2000:1093) as well as racist and classist characteristics of “white western feminism” (Hudson-Weems 2003, hooks 1984, 1989, 2000, Dove 2003). Others have been concerned with the role of African and English language literature in the production of “African women” (Nzenza 1997, Ogunyemi 1985 and 1996, Muthoni 1994). And yet still others have addressed the production of “African women” through academic scholarship (Okeke 1996:226-228). This is to say that Africans are thoroughly entrenched in and engaged with “feminist” issues and writings of all sorts.

The three most pertinent concerns coming from African scholarship on feminism that I want to discuss are: naming, African’s relationship to “western feminism,” and

what I term “a contextualized criticism of gender relations.” As will become evident, these three issues are intertwined. These are the issues that most often emerge in conversation with Fem Act NGO members when discussing their relationship to and identification as feminists.

Naming

African concerns over identifying with “feminism” stem from the historical particulars of (largely) white feminist movement in the U.S. and Europe, which they see as reflecting the white middle-class concerns of movement leaders. Since those concerns – identified as marriage, the nuclear family (Oyewumi 2000), employment, the primacy of gender, and later sexual harassment and sexuality¹⁵⁵ - were difficult for African women to identify with, some have devised new terminology to more accurately describe the African feminist movement. Alice Walker (1984), a black American, has theorized “womanism” as a more accurate term to describe black Americans’ and diaspora Africans’ gendered political concerns. Other African authors have also claimed preference for a “womanist” (Kolawole 1997), an “Africana womanism” (Hudson-Weems 2003) and an “African womanism” (Ogunyemi 1985) conception to describe African women’s struggles.

The commonality among African women’s political and social concerns is that they are not only gender concerns. In the majority of African feminist and womanist scholarly literature and activism, African women speak of their multiple roles and

¹⁵⁵ The list does not end here. Euroamerican feminists have gone on to apply feminist analytics to the production of science, medicine, the environment, and technology; issues that sometimes do not resonate with African women’s immediate pragmatic concerns.

identities without privileging gender. At times they do. However, African women are concerned with their place within a national and international economic context that consistently disadvantages them; they are concerned with race and ethnic relations and perhaps most importantly strongly emphasize their identities as mothers. African women feel that because of these significantly different concerns from their white western counterparts, they need to devise a theory that accurately encompasses and portrays these concerns and recognizes the power in naming (Arndt 2000:721). The term “feminist” is already “full of meaning” as it were, and African women feel that they must rename a movement / ideology that they will be able to imbue with their own meaning.

African’s Relationship to Western Feminism

African women’s concerns with naming are closely tied to their perceptions of and relationship with “western feminism.”¹⁵⁶ Scholars of African forms of feminism, be they womanism, humanistic feminism, or African feminism argue that western feminism has not adequately taken into account African women’s experiences (Okeke 1996), their familial social structures (Oyewumi 2000), and their different economic concerns. Further, there are African(ist) scholars who view white western feminism as blatantly racist (Hudson-Weems 2003:154-155). However, the primary concern of African

¹⁵⁶ I will continue to use the phrase “western feminism” because this is commonly how Euroamerican feminist movement is referred to by Africans. Though I use the term, I acknowledge there is a wide range of feminisms in the western world and their theories vary significantly, just as do African feminisms.

scholars is their perception¹⁵⁷ of how western feminists view gender relations, which has really served as the core of western feminist theory and movement.

Because western feminism has for much of its history concerned itself primarily with unequal gender relations and fought to remedy that imbalance (sometimes through radical measures, such as separatism), African scholars and feminist practitioners have been apprehensive to adopt the term feminism. They have viewed western feminists as being hostile to and combative with men and in many ways, leaving them out of feminist movement. This, according to feminists like Bádéjo (1998) is not only a conceptual misstep as in many African societies men and women are viewed to have different yet complimentary roles, but also is a strategic misstep and not conducive to social change, which must be a project of both men *and* women (Ogunyemi 1985). In an interview with Susan Arndt, Ogunyemi notes that for African feminists, naming “feminism” in Africa as a movement toward changing social perceptions and arrangements of gender roles would alienate men from women’s ideas (Arndt 2000:717).

Finally, and perhaps what is becoming a centrally defining feature that works to distance African feminists from their western counterparts, is the disagreement over sexual orientation and expression. African feminists view western feminists to be accepting of and advocating for lesbianism and homosexuality and the majority of African feminists find these views incompatible with their own. Ogunyemi (1996:133)

¹⁵⁷ I deliberately use the word “perception” here as I have found that some African feminists have perhaps not been exposed to western feminist literature that not only does not view gender as primary but also does not aim to characterize men as “the enemy.” This is in fact a misreading of feminism in the U.S. and Europe as well. Marxist feminism, for instance, does investigate the intersection of race, class and gender and postmodern feminism considers gender as “only one among many constituents of identity” (Arndt 2000:711).

argues that her African womanism rejects lesbianism because of the “African...silence or intolerance of lesbianism.” Sexual orientation and lesbianism in particular is not part of the African feminist agenda, though it is becoming so more in South Africa. Therefore, the research on and acceptance of lesbianism by western feminists serves a marker that African women do not identify with.

African Feminism – “A Contextualized Criticism of Gender Relations”

Ogunyemi stresses that an African womanist “will recognize that, along with her consciousness of sexual issues, she must incorporate racial, cultural, national, economic, and political considerations into her philosophy” (1985:64). Based on my research, I view African feminism in this way – as a contextualized criticism of gender relations – as being more malleable than many of its western counterparts. This, to me, is a significant strength in African feminism and one that others can learn from. African feminists take into account the national economic and political climate and (re)adjust their priorities accordingly. It could be argued that much of what has hampered and alienated much of white feminist movement in the U.S. is the persistent effort to place gender as primary, and accord other national interests subservient positions.¹⁵⁸

African women have consistently been asked to put their “gender concerns” aside especially in the interest of national independence struggles and later in the interest of

¹⁵⁸ This was true of mainstream U.S. white feminist activism and scholarship during the second wave, when the needs of women of color fell to the sidelines. Additionally, during the 2008 U.S. presidential election, there were Democrat feminist activists and organizations whose sole purpose was to elect a woman, without critically considering Hilary Clinton’s political (some would say masculinist) views of the aggression in Iraq, and her free market approach to the economy.

national development.¹⁵⁹ Many did put these concerns aside, but there was a flourishing of women's organizations and political demands almost immediately following independence in many countries. As another example, feminist organizations like those in Tanzania have in recent years strongly advocated integrating more programs and projects on HIV /AIDS, not at the expense of women's issues, but because they are *gender* issues and need to be addressed on the national level.

African feminists emphasize contextualizing gender political struggles more broadly within their community's and nation's contexts, as they recognize an integrated approach to changing gender relations must be maintained. Ogunyemi argues,

“...if I do not remember that African men are oppressed just as women are oppressed in the global context, then I am going to deal only with the gender relationship between black women and men. And I do not want to deal only with that, because there is another oppression oppressing both of us. I must always be conscious of that” (Arndt 2000:721)

In the section below, I present Fem Act NGO members' reflections on feminism in their own terms in order to demonstrate how their feminism intersects with their conceptions of human rights to formulate their ideas and practices concerning women's land, marriage and inheritance rights.

¹⁵⁹ This happened in Tanzania as women became more involved in TANU organizing and began voicing their gendered concerns. They were encouraged to save those concerns until independence was won and then after independence, an attempt was made to co-opt their efforts into the ruling party (Geiger 1997, Tripp 2000). Similar trends of excluding women's voices during nationalist struggles and nation building took place in South Africa, Zimbabwe, Angola and Mozambique. There are many other examples outside of Africa. For example, for different reasons women were significantly marginalized in the second Palestinian intifada (Johnson and Kuttub 2001).

Fem Act NGO Members Discuss Feminism

Fem Act NGO members grapple with the three themes above as they formulate their conceptions of feminism. Interestingly, certain organizations such as TGNP have begun to use the word “feminism” more frequently in their literature than they did ten years ago. NGO members’ feminist ideologies will intersect with their legal human rights ideologies in interesting ways, as I further illustrate in chapter six. While I have argued that Fem Act members’ conceptions of human rights are defined largely within legal terms due to factors such as adherence to their profession, NGOs’ feminist concerns have *worked their way into* the law as they argue for women’s inheritance rights, have drafted and passed a sexual violence law, and as they work to instantiate women’s rights through legal settlements (chapter six).

When asked in interviews what the term feminism meant to individual NGO workers, nearly everyone stated that feminism involved protecting or advocating for women’s rights. Where men factored into their definition, respondents framed feminism as “women’s equal rights *with* men”. Most women were defining feminism very broadly, though some were concerned that their definition not be confused with an “extremist” conception of feminism. One woman stated:

That is very different from the word activism. Feminists, to me, they are those who are for the female, for women regardless *whether it is according to the law... or not*. They are there just to make sure women are equal to men, or even more equal. That’s how I perceive it. They are extremist when it comes to women’s issues and don’t care about balancing the issues. That’s why I am for gender, because gender activists seek to balance both sides (Interview # 22, emphasis added).

The lawyer quoted above references feminists as advocating for women regardless of the law, while she goes on to distance herself from the term. This woman’s

conception of feminism as being “extremist” and “[not caring] about balancing the issues” could be one explanation as to why the Fem Act Coalition relies heavily on “gender analysis” and “gender equity” as illustrated on their website instead of using the term “feminist.” It also supports Steady’s definition of African feminism as viewing gender roles as complimentary.

Mariamamu, a Tanzanian woman lawyer, who holds an advanced degree in human rights law from an American university responded:

I’m confused. *Why?* Mariamamu: I don’t know. Being proud of womanhood. Women can just...be comfortable by themselves and not need anybody else. They can satisfy themselves and they are proud of who they are. It depends on which context, it depends on cultural barriers. It will be very different in Europe than in Tanzania. There are very different issues that are raised there than by feminists in Africa. They may be advocating for sexual orientation, but Africans are looking for something else. [These things] are not conflicting, but we must be aware of the differences. Even socio-economic status makes a difference on how we deal with these things.

Mariamamu asserted that the different views on feminism held by Europeans and Africans were not conflicting and that we should still be aware of the differences; however, the ways in which perceptions of feminism shape attitudes, policies and programs *can* result in conflicting actions. For instance, Smyth (1999) asks why Northern NGOs have not acknowledged and prioritized domestic violence as a [feminist] development issue. Other Northern feminists may extend the query to include abortion rights and the rights of sexual minorities. Reproductive rights¹⁶⁰ are certainly on the

¹⁶⁰ I continue to be challenged by my own tendency to fall into common conceptions of how “Western” feminists prioritize certain issues. For instance, when thinking in terms of reproductive rights, I was at first surprised by the notable lack of concern over abortion rights; however Tanzanian NGO professionals are very much concerned with women’s reproductive rights including access to contraception, the availability of prenatal care, mother-child mortality, and HIV/AIDS.

agenda in Africa but domestic violence has only recently been taken on by Tanzanian development organizations *as a development issue*.¹⁶¹ The rights of sexual minorities are overwhelmingly not considered to be part of the feminist agenda. For these reasons, northern and southern “feminists” must be aware of each other’s meanings of feminism.

There is a difference between defining a concept and adopting that concept as a part of one’s identity. While most NGO workers had a clear, and fairly uncontroversial definition of feminism (who could be opposed to women’s rights?), when asked, “Do you consider yourself a feminist?” the meaning of feminism became much more nuanced. While nearly 70% of the respondents identified themselves as feminists, only 2% of them answered yes, without giving a qualifier which circumscribed their originally open definition of feminism.¹⁶² Returning to Mariamu’s response, she defined feminism as “being proud of womanhood, being proud of who [we] are.” This definition supports Bádéjo’s (1998) explanation of African feminisms being centered in the notion of womanhood, an identity in which African women can experience respect, pride and power. Mikell (1997) supports this idea by pointing to the distinctly pro-natal, heterosexual character of African feminism and argues that African women, unlike their Western counterparts, do not subordinate their biological roles to their social ones, but in fact biological roles including motherhood are sources of pride for African women. A

¹⁶¹ The Women’s Legal Aid Centre has recently been able to put forth the issue of domestic violence as a serious development issue. The Centre has worked in collaboration with Georgetown University’s Law Center which provided funding for the project. A few members of the NGO expressed the view that without such funding, this type of program would not have had the resources necessary to initiate and maintain the scale of this project.

¹⁶² Compare this to the question: “Do you consider yourself an activist?” In response to this question, 80% of the participants answered in the affirmative, and among those 57% did so *without* a qualifier.

popular response spoke to African feminisms' identification with the notion of complementarity. One woman described her feminism:

I'm not sure if I'm a feminist because I don't feel like I should talk about women, women, women. Because in order to deal with women, you must deal with men too so that men *know* her rights. Same as for men. Even if men have their rights, you must tell women about these rights (Interview #19).

Men and boys should not have to pay for women's rights. In the future, you may see boys being neglected then! This is my concern.... You must pay attention to both. You know, you say gender – that is men and women. Not just women. You must pay attention to both (Interview # 6).

These responses and other conversations reflect a conception of feminism as being founded on complementary relationships between men and women, not unequal ones¹⁶³ as is often the case in Euro-American feminisms, but a willingness and stated necessity of working alongside men to change the social positions of women.

Furthermore, I read these narratives of Tanzanian feminism as ones of compromise rather than considering a successful feminist movement in terms of absolutist gains *for women*.

Nnaemeka (2003) terms these foundations of compromise “nego-feminism” meaning feminism of negotiation and “no ego” feminism. She states that African feminism “challenges through negotiations and compromise. It knows when, where and how to detonate patriarchal land mines; it also knows when, where, and how to go around patriarchal land mines” (Nnaemeka 2003: 15).

While relying on issues of rights, gender, and complementarity NGO workers were careful to identify themselves as against some of the ideas adopted by Euro-American feminists, especially those they considered ‘extreme’ in their outlook. The

¹⁶³ The women interviewed would not deny that gendered relationships are oftentimes inequitable; however, they contend that you could still have very different gendered roles and modes of behavior while still working toward equitable relationships.

word 'extreme' often arose with people's description of feminism. When questioned about this 'extremist' type of feminism, the following comments were elicited:

To me, I would say [feminism] is an extremist kind of activism based only on women's rights and that's all, it's an extremist type of philosophy (Interview # 24).

The rights of women are many. I respect and follow that, but sometimes we ourselves, we went to the extreme. So I don't like the extremists who say that everything done by men is bad (Interview # 5).

...I'm not one of the extremists. There are some issues, which are really controversial. *Like what?* I don't believe in abortion. That's the point I don't understand from extreme feminists. Because I believe in children's rights... (Interview # 24)

I hear that some feminists don't want to get married, have children, what are they called? Lesbians. I'm not so strong like this. They even want kids with other women. We have biological differences between men and women and these are important. (Interview # 20)

The issue of lesbianism arose in other contexts outside of formal interviews typically after repeated interactions with NGO professionals. Lesbians were not viewed as a part of a much larger feminist movement but were at times identified as the feminist movement in the U.S. Exacerbating this tendency, media coverage on gay and lesbian marriage in California erupted in both national and international news in March of 2004, and my colleagues had a keen interest in discovering my thoughts on the matter. In all conversations where the topic of homosexuality arose, religion was invoked as a means for framing the (im)morality of this phenomenon.¹⁶⁴

In one conversation, an NGO lawyer offered, "people should not be like that. It is not natural." I asked her to explain and further asked what the human rights lawyer / activist side of her had to say:

¹⁶⁴ This framing is not unique to Africa.

[lawyer] Those people can be prayed for. And God will change them. *What if they don't want to be changed?* [lawyer] I understand that not all people believe the same as I do, and there are Muslims and Hindus and Christians and whatever. I know that those people are activists and they are fighting for something and because they are activists I could not say to them, "Don't do that, it's wrong." ...because I think what I think because of my culture, because of the place from which I came. All of these things influenced me. And they [others] are not the same. They were raised in a different place and so think different things. This is how it is in America, people can go without god so they think this or that. (Fieldnotes 9 March, 2004)

This sentiment, that Americans "can go without god", was expressed on a number of occasions in order to explain the greater acceptance of gays and lesbians in our communities. This is significant in that issues of justice are central to feminism and to discussions on human rights. Who is included in the debates and who gets left out is of concern for human rights development work. While lesbianism is not even remotely on the agenda in Tanzania, for the time being it may not affect NGO rights works. While this may be an exceptional example, it is noteworthy that the lawyer relies on culture and religion to frame and judge this issue. It is also of significance that feminism as a transnational concept is influenced by Western thinking and media.¹⁶⁵ This has implications for how Tanzanians and others identify with feminism and define their own feminist thought and practice.

¹⁶⁵ I am speaking of the feminist backlash the media has engaged in since the 1970s, typically giving more air time to anti-feminists or self-proclaimed feminists who advocate an anti-feminist message which Susan Faludi (1991), Rhonda Hammer (2002), Katha Pollitt (2001) and others have commented on. It is interesting to note where feminists *do* receive more airtime; for example, during the California same-sex marriage debate. Feminists working on "less controversial" issues are rarely given center stage *as feminists*.

Looking back at Figure 3, I was curious that *all* of the respondents stated that women's rights was considered more than 50% necessary for attaining social justice but that only 69% viewed feminism as being more than 50% necessary for attaining social justice. This was because feminism has been at the forefront of global movements to ensure women's rights. However, as demonstrated by the participants' responses above, the relationship between "feminism" and Tanzanian women and men is relatively new; it is being defined and redefined particularly in relation to how Tanzanian NGO professionals distinguish their feminism in relation to other feminisms.

Mikell notes "African feminism owes its origins to different dynamics than those that generated Western feminism. It has largely been shaped by African women's resistance to Western hegemony and its legacy within African culture" (1997:4). The above narratives support this claim as respondents argue that "Western" feminism, that highlights abortion rights and the rights of sexual minorities will remain outside the concern of Tanzanian feminists. Mikell rightfully observes that the relationship between Tanzanian and Western feminism often occurs through media artifacts; therefore it will be necessary for Western feminists to engage with combating overly simplistic and one-sided representations of feminist movements in the West.

While NGO workers did not frequently invoke culture to problematize rights within a universal / relative framework, when speaking to the meanings of feminism, culture or "cultural issues" were more often raised and were at times used to frame Tanzanian feminism as distinct from Western forms of feminism. I found no discourse on "extreme" rights within Tanzanian NGOs for instance. In the case of feminism, there

is a tension in constructing local notions of gender justice in relation to international or more specifically “western” norms and discourses.

On the other hand international rights laws seemed less problematic (though not unproblematic) for NGO members to adopt. The meaning of those terms/laws can only come to light by examining how they are used in people’s lives and what they say about them in common discourse. While in this study, rights are often spoken about based on assumed and shared meanings as shown in the inheritance conference, NGO members were reticent to give a broad definition for what feminism meant to them and whether or not they identified with the term and the movement.

The rights movement in Tanzania and the emerging conversations about feminism influenced NGO members’ daily discourse and actions within their organizations. Members told me how they struggled to *balance* human rights and women’s rights activism with their daily work in the NGOs. While international human rights doctrines and discourses guide their work, they can only be used to a certain extent and therefore NGO members who deal with clients have to rely on national laws that do not meet the standards enshrined in international instruments. In principle, human rights should be domesticated into these national laws, however, in reality they often have not. It is within these spaces that I most clearly saw NGO lawyer’s feminist conceptions of gender justice in action.

The work that the NGO members do within the clinics is a highly critical aspect to their overall work. It is within these social spaces that NGO members have the opportunities of imparting their rights knowledge and objectives and their notions of gender justice to clients. In the following chapter, I discuss research findings among

clients at two free NGO legal aid clinics, examining how and why people utilize the clinics, what types of legal problems they bring, and some of their experiences with the lawyers at the NGOs.

Conclusion

For a majority of western feminists, feminism as a theory and movement explicitly challenges male privilege. Will “gender activists” pose the same challenges? Although most NGO members conceptualize feminism in gender complimentary terms and some distinguish themselves from “western feminism,” they have nonetheless persistently interrogated gender inequalities within the family *between* husbands and wives, fathers and daughters. Their feminism and legal human rights activism work together to inform their approach to land and inheritance rights. This blending of feminist and human rights conceptions, both based on notions of balance and principles of nondiscrimination, have led NGO members to question the wholesale dismissal of community rights in customary law. Instead, they carefully construct “a contextualized criticism of gender relations” within the current national developmental and political climate. In short, NGO member have developed both a human rights subject position and a feminist subject position.

The ways in which NGO workers conceptualize national social problems, human rights, and feminism are shaped by the research they do within their organizations and by international laws and global human rights discourses. However, they are also grounded in the particular historical context in which they see Tanzania’s relationship to others, particularly developed nations or what they commonly refer to as “the West”. While NGO lawyers and development workers for the most part agree upon a universal norm of

human rights that should apply to all people, their conceptions of justice and fairness are shaped locally as they express an urgency for remedying the imbalance of power and uneven capability for people to realize their rights.

By studying rights in different domains, such as in the inter-NGO dialogue, in individual interviews with an anthropologist and in the context of reconciliation sessions (chapter six), I demonstrate how rights are used by NGOs and how what they encompass is structured by the law, their own research on women, and particular group dynamics. The subject under discussion also works to frame and elicit the boundaries of rights, that, as Wilson argues (1997) are always constructed in around concrete struggles. For instance in the inter-NGO dialogue on inheritance, we learn that Islamic inheritance practices had not been considered within the realm of human rights constructed by the NGOs. Likewise, in informal conversations I learned that abortion and sexual orientation also were not considered within the domain of human rights for most NGO professionals.

NGO professionals construct their notions of justice and fairness against local realities and subsequently call for remedying injustices based on principles of nondiscrimination. While their feminist activism is tempered by notions of gender complementarity, NGO workers suggest that we “should not get ahead of ourselves” in this business of promoting women’s rights at the expense of men. Finally, the individuals working in the Fem Act Coalition have constructed their notions of feminism with an acute cognizance of their position vis-a-vis “western feminism.” For scholars and activists located in the North, this should be taken as a cue that the unequal geopolitical and economic relationships between Northern and Southern feminists remain a salient

feature to be addressed in order to establish a broader and inclusive transnational feminist movement.

CHAPTER SIX: COERCIVE HARMONY?: ALTERNATIVE DISPUTE RESOLUTION AND LAWYER-CLIENT INTERACTIONS IN THE LEGAL AID CLINICS

This chapter ties together the relationship between NGO members' work in the legal aid clinics with women's experiences in those clinics and more broadly, their experiences with the legal system. Examining lawyer-client interactions, especially processes of marriage and inheritance dispute resolution, I demonstrate how the human rights lawyers use not only legal and human rights discourses and law but also other normative orders to resolve cases. At times, lawyers sidestep the letter of the law to guide a dispute toward what they envision to be a just outcome. Laura Nader has theorized that this type of alternative dispute resolution (ADR) is a link in the processes of coercive harmony; one that reinforces certain dominant legal ideologies (Nader 2002). I argue that dispute resolution within the NGOs has potentially transformative effects as NGO lawyers translate their notions of rights and gendered justice through their legal maneuvers. By doing so, they are actively challenging and changing outcomes for land and property rights for Tanzanian women.

This chapter investigates the clients and work of two free women's legal aid clinics; one at TAWLA, the other at WLAC. I first show who the women coming to the legal aid clinics are, what types of disputes they are bringing and their expectations for legal resolution. I then go on to give some in-depth descriptions of lawyer-client interaction and dispute resolution processes.

The Legal Aid Clinics and Women's Everyday Complaints

WLAC and TAWLA began their legal aid schemes in 1989 recognizing that women were unable to acquire legal resources due to cost. Both of the organizations

offer free legal services to women regardless of colour, race, religion, political or ethnic affiliation. Both have experienced a consistent and significant annual increase in the number of clients they receive (WLAC 2003 Annual Report, personal communication Tumaini Silaa, TAWLA). The increasing numbers are explained by a number of factors. First, more people hear of these organizations as time goes on and through word of mouth. Second, for any number of reasons, women in Dar es Salaam are deciding that taking their cases to court is a good option. Third, customary or religious venues for resolving conflicts are either unavailable to urban women or are unacceptable in their outcome. The combination of the above factors is leading more and more women to utilize the free legal resources provided by WLAC and TAWLA.

I mentioned previously that the greatest number of cases coming to the legal aid clinics in 2004 were matrimonial cases. In order to understand the processes whereby women ended up at the clinics, I conducted surveys among clients at TAWLA and WLAC. I went to each clinic over the course of three months, one week apart anticipating that I would find new clients each week.¹⁶⁶ From there I identified clients whom I would later return to interview at length about their cases. The ages and occupations of the women surveyed are illustrated in the tables below. The level of education attained by the women varied, with half having attained a Standard IV level education or below while others finished a year or two beyond Standard IV.¹⁶⁷ While on the whole, there was no significant difference between the number of Muslim and

¹⁶⁶ Nineteen women were surveyed / interviewed at WLAC and sixteen at TAWLA. The figures provided in some of the following analyses may not add up to the total number of clients interviewed. This is due to some clients not answering a question or some answering only part of the question.

¹⁶⁷ A Standard IV education is the equivalent to a U.S. fourth grade education.

Christian women clients at the NGOs, WLAC tends to receive more Muslim clients while TAWLA had more Christian clients.¹⁶⁸ This is most likely due to the fact that WLAC is located in Kariakoo, a historically predominantly Muslim quarter of town.

Table 4: Demographics of Women Surveyed at TAWLA and WLAC

Age of Women in the Survey	40+	36-40	30-35	Under 30
Number of Women	10	6	9	10

Clients' Occupations

Housewife	14
Small Business	13
Farmer	3
Teacher	1
Accountant	1
Nurse	1
Student	1
Artist	1

On clinic days, one can find an orderly and typically quiet row of women waiting under a sheet of corrugated tin outside of WLAC or in a nondescript concrete hallway outside the TAWLA office in the old Avalon Cinema Building on Zanaki Street. Some arrive an hour or two before official clinic hours in order to ensure they see a lawyer.¹⁶⁹ Many of the women traveled long distances either from the surrounding areas of Dar es Salaam, or from Morogoro, Arusha and other places in the interior. Even the city or peri-urban residents often complained that it was difficult to follow up on their cases each week or even every other week due to the cost of transportation. Some needed assistance for bus fare to return home (at the time, approximately USD \$.30 for one bus ride).

¹⁶⁸ This was the general trend at WLAC, where I made observations while volunteering at the clinic throughout the course of the year. When asked, TAWLA told me they did not have records of clients they received disaggregated by religion.

¹⁶⁹ I never witnessed anyone turning away clients. NGO workers work well into the evening to ensure everyone is seen

On the days that I conducted the surveys, a majority of the women were coming with cases dealing with “family law”. During the colonial period in much of East and southern Africa, the concept of family law became firmly established as a way of ameliorating the pressures on an overburdened legal system. It was designed in order that people would bring their “family” problems (i.e. marriage, divorce, inheritance, affiliation and child maintenance cases) to local or “customary” courts thus allowing the colonial legal system to deal with criminal and other cases seen to be more central to the welfare of the state (Chanock 1998, Rwezaura 1985). Customary law remains a primary venue for airing and reconciling disputes in much of Tanzania though now customary laws are “officially” considered void if they discriminate on any categorical basis. In reality however, the ways these laws are implemented often still discriminates against groups of people.

The increasing number of those willing to seek out lawyers and NGO practitioners to resolve social and legal disputes signifies a shift in the “culture of complaining” in Tanzania. While this is evident most clearly in the case of Dar es Salaam, the number of people seeking legal redress through lawyers, NGOs and paralegal units in the rural areas has also been increasing over the past five to ten years (personal communication Morogoro Paralegal and WLAC statistics 2004). In general, many people think of Americans’ culture of complaint as quick-tempered and sue-happy, evidenced by the number and type of legal complaints.¹⁷⁰ In Tanzania however, taking cases to court or pressing formal statutory legal charges is a relatively new phenomenon,

¹⁷⁰ This is a misnomer (Nader 2002). In reality, Americans are not overly eager to enter the court system; in fact, we most often use the courts as a *last* resort.

and people still approach the courts warily as they are seen as often slow, ineffectual and occasionally corrupt.

The contemporary culture of complaining in Tanzania is bound up with the historical institutions of customary law – a process of dealing with disputes through very *local* institutions where on most occasions, all parties involved know one another. These intimate dispute processes will impact those relationships in the future (Jones-Pauly and Elbern 2002, Stiles 2002, Tanganyika 1958). In customary legal settings, the disputing parties may well have to return to the same village or house together, their relationship affected by the legal encounter. For this reason (and others), as we will see below, the culture of complaining and moreover the culture of *legal* complaining in Tanzania is focused more on reconciliation than on recovery as it is in many Western legal systems. I experienced a changed attitude toward formal legal complaint while living in Tanzania. It involved problems with my landlord and revealed for me the complexity in deciding whether or not to turn to the legal system.

I had rented the top floor of a house from a Tanzanian woman who had been living in Switzerland for the past twelve years. Her mother lived in the lower half of the house along with her housekeeper, whom we each hired to help with cleaning and laundering services. There was also another workman around the house most days and who helped with minor repairs in both of our units. I had been having various disagreements with the mother downstairs since I had moved in. She expected me to pay for things that were not my responsibility according to the lease I signed with her daughter. Lines of communication crossed more than once due to the daughter's living in Europe, her separate conversations with me and her mother and the dealings between me

and her mother. One day, on a return home from a week's absence, I discovered three of the landlord's guests occupying my apartment without my permission or notification. All of my and my partner's things had been moved around, our electricity used and who knew what else.

Due to the other previous incidences and with the mother's display of complete inculpability in this instance, I decided it may be time to seek a lawyer's advice. Fortunately, I worked with dozens of lawyers. The colleagues who I spoke with all agreed that the mother's and daughter's actions were in clear violation of my (sparse) lease agreements and a violation of my rights as a tenant. One of the lawyers at WLAC helped me prepare an initial letter detailing the violations to be presented to the mother. They suggested that I present it to her, and ask her to come to the NGO for reconciliation as this case would never be settled in the short time that I was to remain in Tanzania. In the heat of my anger this was exactly what I planned to do, until I arrived home one afternoon. I found an oddly quiet housekeeper who was not making the normal small talk with me no matter how persistent I was. I had a feeling this was the result of the argument between me and the mother.

As the days wore on with the housekeeper's perduring and distanced attitude toward me, my letter of intent firmly remained in my nightstand. I began to think of all of the other ways an openly legal confrontation would effect my neighborhood relations. The mother and I shared relations not only with the housekeeper but with the local vegetable seller, the women on the path to the church near the house, and all of the other neighbors and local business people we both frequented. And she had much more status than I, having lived in that neighborhood for over ten years. While presenting a legal

document to her would probably have not resulted in devastating consequences for me in the neighborhood, I anticipated enough social discord as to let the incident go and instead to try again to communicate more effectively with both her and her daughter.

My understanding of bringing the law into what I considered a two-party contractual agreement was significantly broadened by knowing that the piece of paper I would have presented to the woman would not only upset her but the dispute would have affected a wide network of relations we shared. How then were the growing numbers of women who were coming to the NGOs becoming apparently more comfortable with bringing their complaints to the legal system? What social space did the legal aid clinics and the NGOs signify for these women? In other words, was it a last resort, or were more and more women deciding that their first and most promising recourse was to seek *legal* redress for their problems?

In part of the survey conducted with women clients at both TAWLA and WLAC, I asked them to choose from a list of options the place they would first go if they had any sort of problem in the family or with another person. They were then asked what would be their second choice and so on down the list to the last place they would choose to go for advice. There were six possible choices for the clients to: 1) go to a friend for advice, 2) see a family member for advice, 3) see a lawyer, 4) see a religious leader, 5) go to an NGO, and 6) see a neighborhood leader. Seventy-five percent of all surveyed said they would first go to a friend or family member to seek advice and 57% choose a friend or family member as their second choice. Nearly all of the women then would *first* seek council /advice from a friend or family member. NGOs on the other hand, ranked as fifth or sixth choices among women; that is, NGOs were overwhelmingly chosen as the *last*

place women would go for advice. Lawyers were fairly evenly dispersed among third to a last choice for these women while religious and neighborhood leaders predominately occupied third or fourth place.

This research shows that many people choose to keep their disputes out of the state legal system and instead try to resolve them via local avenues of reconciliation. Some of these include local customary courts. Thirty-five percent of the women surveyed had previously been to a customary court (*mahakama ya kimila*), many for the same cases they were bringing to the NGOs. In none of the cases were the women satisfied with their experiences at these courts either due to the court's decision, the poor implementation of a good decision (e.g. a husband did not fulfill the court's orders), or because the other party failed to make a court appearance.

Most women coming to TAWLA or WLAC heard of the organization through radio announcements, ITV (a main television station in Tanzania) or had been referred by a friend or acquaintance who had previously been to one of the organizations. When asked why they had come to the NGO instead of going to another place, a common response was "because here I know I will get my rights." Many visit these NGOs because they know that they do not have to pay at the organizations, a significant deterrent to seeing other lawyers. A twenty-seven year old business woman said, "I understand that TAWLA is a legal center which is able to help me, and welcomes [people] without any cost. Furthermore, I have news from my women friends who have gotten their basic rights and the rights of their children by coming to TAWLA." (SI #10 TAWLA, 11 August 2004).

One day, while I was conducting surveys at TAWLA with a group of six Muslim women, one of the elder women began chuckling when she reached the question asking where she would go to seek advice. I asked her what she found so funny and she replied, “You have here religious leaders. Ha! I would never go to them.” All of the other women seemed to be in agreement. Why, I asked. The woman responded:

“We have many problems and they won’t help us. I’m too tired to walk all over the place. Those people at BAKWATA¹⁷¹ are a bunch of *washenzi* (a derogatory term meaning “uncivilized” or “savage”). They want you to pay them. You are hungry and they tell you to go here and there. I’m tired (SI #16 TAWLA, 16 August 2004).

Another woman, aged forty-five, agreed saying that every time she has gone to a religious leader or a customary court, they have taken her husband’s side. She explained why she came to TAWLA:

I came to TAWLA because of problems with my husband. It is too difficult to go to a family member. I would not go to any of these others (pointing to the survey list) because they will discriminate against you. If you will go to the family, they will take the husband’s side. If you go to the neighborhood leader, they will take the husband’s side. No, for problems with your husband you need to see someone else. *What kind of problem do you have?* First we married and then he started seeing another woman and told me he didn’t have any money for this or that, for basic items in the house or bus fare to go and see my family. Then he told me he wanted me to move out of the house but he is giving me no money. We have lived together for twenty-five years and have one child. Can you imagine, twenty-five years and where does he expect me to go? I went to the customary court in Makumbusho many times but they told me to go somewhere else because they are tired of hearing about this problem (SI #15 TAWLA, 16 August 2004).

¹⁷¹ *Baraza Kuu la Waislam wa Tanzania*, or the Tanzania Muslim Council is a national organization originally established in 1968 and seen as an unofficial arm of the ruling CCM. BAKWATA now serves as an NGO.

A third woman in the group, Amani, said that it was not possible to get her rights from the religious leaders or her husband, but when she went home today she would show him the document and then he would listen to her. The document she was speaking about was an initial form from TAWLA indicating that she was going to bring a case against her husband for maintenance charges. Amani and her husband were getting a divorce but they had yet to come to terms on the maintenance he would pay her. In fact, he was already refusing payment before the divorce took place saying that he alone built the house and so did not need to pay her for anything in it. She came to TAWLA to “get her rights”. While the other women urged her to keep the document a secret until they tried to reconcile, she planned to use it as a means of scaring her husband into complying with her wishes.

As the afternoon was drawing to a close, I asked this group of women if they would return to TAWLA the following day in order to talk about women’s rights in their community. They eagerly agreed and so I provided them with the bus fare to do so. The next day, I decided to do a free listing exercise to solicit their ideas of women’s rights. Before doing so, I asked them if any had been to neighborhood, government or NGO meetings or festivals about human rights. While none of them had, they had heard talk about women’s rights on the radio or read about them in the newspapers. Giving each of the women a sheet of paper, I asked them to first list as many kinds of rights they could think of. This question produced some blank stares and then, “What kinds of rights? Women’s rights? What are some different kinds of rights?” I then reframed the question. “List all of the things you think you should be able to have or be able to do in order that you are able to live a good life?” (Nussbaum 2000) For example is the right to vote

necessary to live a good life? What about the right to marry who you want?" This was more understandable to them.

Western researchers have run into obstacles while conducting surveys and individual interviews in societies that are not used to these types of exercises. An individual interview turns into a quasi-focus group as others gather around and contribute their own views on what you are asking. This proved to be the case with this exercise. These women, aged between twenty-seven and forty-six, were not about to write their lists in silence. They began discussing what types of rights they thought necessary and negotiating on others over which they disagreed. When the youngest woman mentioned being able to get an abortion, this produced an outcry from the others.

"That is against the will of God" one woman remarked, and the others vehemently agreed. The young woman further challenged her elders,¹⁷² asking about the case of rape and about what a woman is to do if she cannot afford to have a child. "Of course, many women are being raped and this is a terrible thing. They feel ashamed, but punishing the child is not the answer." Another in the group responded, "Do not kill your child for fear of want."¹⁷³ The oldest woman in the group directed a response at me, "Listen now. This is what is happening when girls get more and more education. They start to think like an *mzungu* (general term applied to whites /Europeans). For us Muslims, killing a child is unacceptable." She then added, "However, we will allow her to write it on the list. We're democratic after all!" The women laughed. When they had finished I

¹⁷² Her challenge surprised me, but did not seem to be an unwarranted reproach to the elders. They did not seem shocked. In fact, they listened to and considered her argument, engaging with it instead of dismissing it out of hand.

¹⁷³ This is a verse from the Koran, "Kill not your children for fear of want; it is We who provide sustenance for them as well as for you; for....killing them is a great sin." (Chapter 17, Verse 31).

asked them to divide the list in order of importance, asking them which rights were “most important”, which were “least important” and which were of “moderate importance.”

The following is the list that they cooperatively produced.

Table 5: Defining Rights and Notions of “The Good”

Most Important			
Human rights			To be able to feed your children
Women’s rights			To be able to get health care
Children’s rights			To marry who you want
More Muslims in government			To be able to make decisions in government
The right to vote			Better courts
Education			Judges who will see from a woman’s position
More job opportunities			
Malaria medicine			
Faster government services			
Maintenance for children (after a divorce)			
Moderately Important			
Inheritance	Ability to get a passport	Contraception	Better roads, electricity, water
Least Important			
To be able to get an abortion* (1)	Lower bus fares		To be able to wear what you want
*The youngest member of the group was the only one to list this. The other women did not consider that it was at all necessary for a “good life”.			

While the women first listed the three broadest “rights” (women’s, human and children’s), they were hard pressed to define what these were exactly when I asked them. It was much easier for them to identify the things they needed as women to lead a “good life”. Many of these conditions coincide with the “rights” that have been laid forth by international and national laws. It could have been that “rights talk” was not a part of their daily language, that “rights” had not been “vernacularized.” (Merry 2005) The women spoke in terms of “being able to...”, reflecting how rights would be

operationalized in their daily lives. The women's phrasing supports Nussbaum's (2000) proposition that a capabilities approach to attaining rights and development may provide more a productive way to ensure and attain "rights" which often seem abstract and "too high up," as one WLAC lawyer noted earlier in this chapter.

Listening to the women's list, I asked them who they thought should be responsible for providing or ensuring these rights. In nearly all cases, they pointed to the government. Those conditions which the women did not perceive to be the government's responsibility are: to marry who you want, better courts, maintenance for children, inheritance, and to be able to wear what you want. The participants agreed that parents and the community should let you marry who you want, that maintenance for children was the husband's responsibility and that judges and lawyers needed to be sensitive to women's lives in cases of divorce. Regarding inheritance, the women placed responsibility with the family members of the deceased. They stated that while the Q'uran is clear on inheritance issues, inheritance is still unfairly divided, with girls and women often getting less. Finally, on "being able to wear what you want," which was listed by the youngest woman in the group Fatima, the women smiled while Zeinub said, "you *can* wear what you want, as long as you don't look like one of those prostitutes in the movies." This evoked a hearty laughter.

As noted above, a majority of the women surveyed and interviewed at the legal aid clinics stated that they would first seek advice from a friend or family member if they had a problem that needed resolution. NGOs, on the other hand, were ranked as a near last choice as a place to seek resolution of their case. Most of the women present on the days I conducted surveys had been referred to the NGOs by friends or family members or

had heard of them through media. They decided to visit the NGO after exhausting other options with unsatisfactory results. In the context of Dar es Salaam's overburdened legal system and recent confusion of the role of local courts¹⁷⁴, more and more women are finding their ways to the NGOs' legal clinics. I wanted next to find out from the clients what they thought of their experiences at the clinics thus far. From the groups of surveyed clients, I chose ten who were on a repeat visit; that is, they were following up on their case with the NGO.

Women's Expectations and Experiences With the Law

For many of the women coming to WLAC and TAWLA, it was their first time visiting an NGO but not their first encounter with other legal forums such as customary or district courts. Most of the clients have a standard VII education or less which compounds the difficulty of navigating through a legal system where many of the documents are written in legal language and oftentimes in English. What were the women's expectations from the legal clinics and what were their experiences with the NGO workers and lawyers? I knew there would be difficulty in interviewing women about their experiences in the clinics themselves since there could be a risk that they would not speak freely if they thought their responses might be relayed back to the NGOs. This issue was most relevant at WLAC where many of the clients had seen me working there on previous visits. I attempted to address this situation by explaining to the clients that answering my questions would in no way affect their case in the clinic.

¹⁷⁴ The Ward Tribunals, which are supposed to adjudicate land disputes, are yet to be implemented, while the district courts have officially ceased taking new land cases. Further, some judges appointed to serve on Ward Tribunals have objected, stating they cannot be doubly appointed to both their current positions and that of Tribunal judge.

Over 85% of the women stated that they expected that by coming to WLAC or TAWLA they would “win” their case. Most thought they had a better chance of “winning” or being successful at the NGOs than they did with the customary courts or if they went to the primary or district courts on their own without any legal advice. “Winning” in the women’s terms not only translated to remuneration in an inheritance or affiliation case, but was described as coming to a successful resolution or reconciliation with their husbands, their in-laws or other parties. One woman in her 40s paused, seemingly a bit skeptical before she told me:

Here, it is not like the place from where you come. Here, women can’t just leave their husbands *kabisa*.¹⁷⁵ Maybe the way you do it in America is better. I don’t know. But here, we want peace in the family (Resident Interview WLAC, 9th August, 2004).

Many women coming to WLAC and TAWLA do in fact win their cases when they have reached the level of the court, strictly speaking in terms of a decision (implementation is another story altogether). Since there is a limit to the staff size at both of the NGOs, every client does not obtain a lawyer for courtroom advocacy. What they do receive is training from the lawyers about legal procedures and how to represent themselves when they do go to court. One of the WLAC employees told me that over 90% that reach the courtroom are won by the women clients themselves because they are prepared. One client reflected on her experiences with the lawyers at WLAC:

I came here in 2003. At that time I was having problems with my husband. He had left but was not helping me pay for the children. I have three children...13, 11 and 5. His family also would not help me. What was I going to do? I went to the neighborhood leader and we went for reconciliation. He said, “You got the matrimonial house. That is enough”. But what was I supposed to do with a house when I cannot put anything in

¹⁷⁵ *Kabisa*: roughly, “just like that” or “exactly”, used to express the absoluteness or finality of a situation.

it? I thought about selling that house in order to send the children to school. My oldest had to leave school because I couldn't afford the fees. He is very smart. Then one day, I heard on the radio about this place [WLAC] where I could come for legal services. I came. I didn't know what to expect. I was scared because I thought my husband would be angry that I was still bothering him.

When I came to WLAC I was happy because there were a lot of women lawyers working here so it was very easy to talk to them. I told them my problem and...they said that it was a woman's right to have her child taken care of. They told me that neighborhood leader made the wrong decision and the law says the father must pay....They wrote the necessary forms and I took them to my husband and asked him to come to WLAC with me to discuss the case. He agreed to come and we talked with the lawyer and they told him and the law says he should pay me for the children. The lawyer told him if he didn't pay, his children would not go to school and if they became sick they would not be able to receive treatment. Then, he said he would agree to pay. They recommended an amount that he should pay each month and we left.

How much money did they ask?

Client: It was a good amount. Maybe 20-30,000 a month. Later, he had spoken to a lawyer who told him that the amount was too much. The lawyer told him he only needed to pay 100 shillings a month. This is the reason I am returning to WLAC.

Why did it take so long? Now, it is one year later. What has he paid until now?

Client: Eh. Nothing. He has paid nothing. Because he said he would pay and I waited. He did not pay. I went to talk to him and he became angry. So I let some time pass. I went to speak to him again and said, "You need to pay. The lawyer said you needed to pay". This made him angry.... My in-laws came to my house later. They said to me, "You have the matrimonial house. That is enough. We won't help you anymore. If you continue to bother us, we will take the house from you". I was worried. But later I thought, no I need to go back to the lawyer and ask for my rights. It is not good what he is doing. I am struggling so hard. Hopefully, they will be able to help me again (Case Study #3 WLAC May 2, 2004).

In a case such as this one where there exists outdated laws, the lawyer at WLAC attempted to use the law to say that the husband *must* pay but then used her own discretion to determine an amount and recommend it to him. Currently in Tanzania the

law which governs the maintenance of children is the Affiliation Ordinance (Cap 278, 1949). It states that the monthly amount paid by the father shall not exceed 100 shillings or in 2004 the equivalent to USD \$.10. Clearly this is outdated and organizations in Fem Act are attempting to get it changed. Unfortunately for this client her husband decided to seek out a lawyer. In other cases I witnessed, the husband has agreed to pay the amount recommended.

That women are able to see women lawyers was mentioned on several occasions as a positive feature and an appeal of the clinics. As one woman stated, "They will understand our problems, they may have children or may have problems themselves with in-laws. For this reason, I think they will be able to help us." Another woman responded to this remark saying, "They are good when our husbands come with us to reach an agreement (referring to reconciliation). It is easier to discuss our problems because they [lawyers] allow us to speak" (Fieldnotes August 13th, 2004). I observed this during a number of reconciliation cases. A husband would interrupt or have a difficult time ending his plea when a lawyer would interject, allowing the woman to speak. In the previous discussion with the group of Muslim women, they noted that being heard, especially in front of a religious leader, was one of the biggest obstacles they faced in that setting.

Women at the clinics did not voice many complaints about their experiences at the legal clinics but did remark on the slow pace of progress. Some seemed to expect that they would "get their rights" in a much more timely fashion. Some clients' cases are not formally settled for months or even years and once a legal decision is made (if they have proceeded to court), implementation of the court's decision may take even longer. A

client who had an inheritance dispute with her in-laws remarked on how difficult it was to continue with the case:

It is difficult to continue coming here. I feel defeated. I have a problem with the administrator of my inheritance. He is withholding my rights. He is squeezing squeezing, making life very difficult for me to better my life. I have been defeated to educate my children. The situation is very bad again, very bad. But every time I come here I get new hope that I will persevere. I know I will get help here. *Baada ya dhiki faraja*. (A popular Swahili proverb meaning “After hardship comes relief / comfort”). (SI #19 WLAC, 19th August, 2004)

The culture of legal complaining in Dar es Salaam is rapidly changing with more women choosing to utilize legal clinics such as those offered by TAWLA and WLAC. However, until the laws are further updated and the courts and local avenues for dispute settlement become more efficient, women and men may continue to settle their disputes outside of the legal system. On the other hand, if those local systems of reconciliation continue to be disadvantageous for women, the numbers of women may continue to rise at the clinics despite the process and time involved. Further, as women are educated about their rights at the clinics, one can hope they will bring that education to their local women’s groups or to other members of their community.

Lawyer-Client Interactions and the Transformative Potential of ADR

The remainder of this chapter explores lawyer-client interactions on an individual basis and in reconciliation cases in two legal aid clinics, WLAC and TAWLA. I have argued that Tanzanian NGO lawyers are working at the interstices of law and society. This chapter explores those spaces in greater depth; particularly in the context of lawyer-client interactions and in cases of dispute settlement. The most common type of dispute settlement practiced among the NGOs is alternative dispute resolution, or ADR. ADR

began as a suggestion and followed as a “legal movement” in the United States in the 1970s. It quickly became internationalized, especially to countries in the global South. However, processes of dispute settlement akin to ADR in many cases were already operating, though they may have taken a different shape. As evidenced by the group of Muslim women in the previous section who were dissatisfied with the option of reconciliation through religious leaders, so is there evidence in other parts of the country that women are increasingly displeased with customary reconciliation processes.

For example, when I conducted research on human rights and the Millennium Development Goals in Iramba with a team of NGO workers, the most common complaint among residents of all ten wards was that there was insufficient legal machinery. In over half of the wards visited there was no court; the other wards had only one court and usually with only one judge. Villagers we spoke to did not have much faith in the legal system. They complained that there were no workers for the courts and that the cases took much too long. To take cases to other dispute resolution bodies was problematic, especially for women. A woman in Shelui spoke of the difficulties in resolving domestic violence:

“Our men have not yet accepted the changes in the world. We go to the *baraza*¹⁷⁶ or to the *balози*.¹⁷⁷ We need our rights. If a woman goes there, men talk and talk, but women have little opportunities. Sometimes women will need to pay bribes to see the *balози*.”

While there may be more options for women in the cities besides community, religious or customary dispute resolution, many of them cannot afford the time or

¹⁷⁶ Village council.

¹⁷⁷ In this case, the district administrator.

money needed to take advantage of them and many have begun to search out alternatives by going to lawyers.

Alternative dispute resolution refers to a number of means used to resolve disputes out of court. It often involves arbitration, mediation and conciliation (Nader 2002). Arbitration involves a simplified version of a trial, where both parties agree on one arbitrator or each choose their own and those arbitrators choose a third to comprise a panel. Mediation, on the other hand, is even less formal and involves a third party, trained in the area of conflict resolution. The mediator brings together the “litigants” to talk out the dispute and hopefully come to terms to which both parties can agree. Essentially, the mediator’s job is to reconcile the parties and keep the litigants out of court.

In Tanzania, there exists a mixture of arbitration and mediation. In the rural areas, people may rely more heavily on arbitration practiced in customary or religious courts. In fact, the new land laws call for a system of arbitration that has disputants first go to the village councils. These councils are not judicial bodies but are only to be used for dispute mediation and recommendations. Further, people are not compelled to use their services. The law stresses that the village councils must be composed of at least three women out of a total of seven members that comprise the council. However, there remain vast gender disparities in these positions. There is evidence that most people do not take advantage of the councils, especially in urban areas. In the cities, people make more use of other local-level dispute forums and increasingly, of legal aid clinics.

In Dar es Salaam NGO professionals in the legal aid clinics do less arbitrating and more mediating. In what follows, I present a contextualization of ADR as a transnational

legal movement followed by an examination of the central role it plays in Dar es Salaam's NGO legal aid schemes. Using an actor-oriented approach¹⁷⁸ to examine these situations, I analyze actors' "moves" as they reveal clues to how legal aid clinics are working in the broader schema of law and society in Dar es Salaam. This approach also illuminates the social life of rights, or how rights materialize in social contexts through practice. I will show how not only rights, but also other normative based discourses are produced and given meaning to in the context of dispute resolution.

ADR: From "Garbage Cases" to Transnational Practice

In Laura Nader's book *The Life of the Law* (2002), the anthropologist traces the history and use of ADR particularly in the U.S. but this is a practice that now has become transnational in scope. Nader's work on the project began as she was receiving and analyzing a number of complaints in Berkeley, California. Through those complaint letters she learned that people felt they were being "shafted" by the legal system. They had no access to legal protection and "sought redress through a variety of "third-party intermediaries," from neighborhood consumer complaint offices...to unions, to consumer action groups..." (2002:42). In the beginning of this chapter I showed that most women coming to the legal aid clinics had first exhausted nearly every other avenue for redress. Since the women had not seriously considered trying a lawyer as a first option due to cost

¹⁷⁸ An actor-oriented approach refers to a method(ology) of looking at individual's actions at particular interfaces, say development, law, or medicine. While these interfaces /interactions are power laden, an actor-oriented approach allows us to understand how people shape processes and outcomes in ways that are creative as well as constrained by the structures and sets of power relations of which they are a part.

and other access-related issues, most went first to their friends or family and when that failed, to a religious leader or lawyer, and if *that* fails, to an NGO legal aid clinic.

Shortly after the Berkeley Project began, Nader was invited to the Pound Conference in 1976, which turned out to be a definitive moment in the conceptualization and use of ADR in the U.S. The conference was meant to discuss “a better way” to solve the problem of access to law. Faced with a burgeoning of new types of cases in the volatile 1960s, judges and courts were beleaguered with social movement complaints; namely cases involving civil rights, environmental rights, consumer rights, women’s rights and native peoples’ rights (Nader 2002:48). At the conference, these cases were referred to as “garbage cases,” described by one Supreme Court Justice as cases with which the court should not have to be involved. The argument was made that courts should be reserved for the “important” cases and there was a need to find a better way of handing these less important disputes. As it turns out, that “the better way” to deal with these cases was ADR.

ADR soon became a transnational phenomenon and law and development practitioners were writing about its use not only *in* local communities in the global South, but within the procedures of international law itself.¹⁷⁹ However, it is not as if ADR was a new phenomenon transplanted to Africa after its emergence in the U.S. in the 1970s. While not called by that name, conciliation and compromise were hallmarks of missionary courts, which evolved into local customary law (c.f. Nader 2002 and Chanock 1998). Later mistaken by anthropologists and others to be a native or indigenous value,

¹⁷⁹ ADR has been used as a method for reconciliation in international river disputes (see Nader 1995) and more recently in trade disputes.

Nader shows in her other work how harmony ideology¹⁸⁰ has been imbricated into the legal culture before and throughout colonial periods in different places. I contribute to Nader's findings by expanding the field of analysis and suggesting that ADR in different cultural and historical contexts may in fact be a forum for women to "find" their rights. ADR is not only a potential avenue towards the realization of women's rights but in the context of the legal aid clinics ADR provides a space to talk through, reinforce and at times challenge gender normative orders. Therein lies a potential for positive change.

Nader, strong in her criticism of ADR, terms it "coercive harmony;" that is, a process forcing people to reconcile their cases out of court as if legal remuneration and redress were not an option (especially for "garbage" cases). In Tanzania, mediation and conciliation are the dominant modes of dispute settlement in the NGOs. Tanzanian NGO professionals explained that a mediated reconciliation was the best option for a number of reasons. First, people typically could not afford to go to court. Second, reconciliation could be carried out in a more expeditious manner, whereas a court proceeding could take months, if not years. Third, with reconciliation there was a likelier chance that that woman *would be fairly remunerated*. Finally, the parties (usually a husband and wife) would be able to come to a *mutually desirable agreement*.

¹⁸⁰ Harmony ideology is a term used to describe the underlying presumptions about Christian missionaries ideal state of human society. Christian missionaries tended to emphasize amiable proceedings in dispute settlement where at times this was contrary to ways that societies had dealt with conflict in the past. In fact, Wilson (2000) documents that in present day South Africa, where harmony is once again being stressed, people may be looking for justice through revenge rather than reconciliation.

The majority of cases received by the women's legal aid centers¹⁸¹ as well as their paralegal units in the rural areas are matrimonial cases, reflective of what in Nader's terms were considered "garbage cases" in the U.S. Grouping the cases into "family" disputes versus "non-family" disputes, I found the highest number of cases appearing in the clinics to be family related disputes. These included matrimonial cases, child maintenance, child custody, affiliation, inheritance and some land disputes. Non-family disputes included civil cases, criminal, labor, insurance, education and also some land disputes. For the year 2003, WLAC reported that out of a total of 3,639 cases attended by the Centre, they were able to represent only 94 clients in various courts of law (WLAC Annual Report 2003). While they did not disaggregate their data to show which *types* of cases were represented or which reconciled, there are many more cases reconciled (or advised or counseled) than sent to court.

Family cases *are* brought to court by both NGOs; however, typically as a last resort. In those cases, WLAC and TAWLA members reported that the women in the dispute typically won. Why then are these women not being referred more often to representation within the court system? Would it not contribute more toward addressing the underlying gender inequalities and injustices if these records were public ones instead of private affairs? Feminist scholars and activists have argued the importance of getting seemingly "private" cases into the public record (Bold et al. 2002), allowing them to serve as precedent in future cases and thus becoming part of the legal history and cultural

¹⁸¹ This includes TAWLA and WLAC but not LHRC. LHRC caters to both genders and at the time of this study had a strong focus on employment rights which they were gearing much of their work towards. Even though LHRC did take on "women's issues" cases, members of WLAC reported that those cases were most often referred by LHRC to WLAC or TAWLA.

memory. Indeed, in Tanzania judges and lawyers recognize the importance of case precedent as has been shown in the famous 1989 case *Epharaim v. Pastory*.¹⁸² Could there be an underlying understanding that these cases are still considered “garbage cases” or is something else at work here?

Nader’s *The Life of the Law* looks at ADR as a process that simultaneously creates and reifies a hegemonic ideology within the law. In the U.S. context, the push for ADR reflected thinking that out-of-court resolutions were associated with peace while judicial processes were associated with contestation/war and that rules of law were “complicated and created uncertainties that stimulated feelings of anxiety. Law was confrontational, whereas ADR gently and sensitively healed human conflicts and produced only winners...” (Nader 2002:140-41). Nader goes on to argue that as is the case in ADR, “When disputes are framed as “communication problems,” disputes about facts and legal rights become disputes about feelings and relationships....Social justice as generally understood (for the good of the whole) then becomes irrelevant” (Nader 2002:145). However, is it possible that ADR could be used as a tool for a rights agenda? In some instances, could it be used to further women’s legal rights?

Other scholars take issue with Nader’s work arguing that her portrayal of ADR as an ideology that has “marched on to become institutionalized and internationalized” in widespread and intact fashion is too simplistic (Milner 2002). Milner criticizes Nader’s call for a “formal law” alternative, pointing out the ways in which formal law, in many

¹⁸² Further, in recent conversations about a test litigation inheritance case at WLAC, the team of lawyers will likely take the case to the Human Rights Committee rather than the African Court on Human and People’s Rights precisely for this reason. The African court does not make its decisions public, something the team of lawyers consider important for the case. See *Nipashe* 18th June, 2004 “*Sheria za mirathi za kimila zibadilishwe.*”

different countries, can fall short of the ADR alternative. In the same discussion, Riles (2002) supports this observation and suggests that a reliance on formal law has not always delivered justice that is owed its users (if good laws are not in place, what good are they?). Riles asks whether distinguishing between “formal” and “informal” law imposes a technocratic epistemology on others (and their situations) who may envision themselves and their choices in different terms.

However, the critics of Nader’s approach do agree on one thing – that the specifics of power and culture in individual contexts strongly influence how the technique is used. Scholars and advocates must not lose sight of the existence of ideological hegemonies at work in these locales. One must bracket them, and return to them after the work has been done. I now turn to lawyer-client interactions and dispute resolution within the context of Tanzanian human rights NGOs to consider these issues.

ADR by Any Other Name: Processes of Dispute Resolution in WLAC and TAWLA

Processes of dispute settlement involve norms and rules on the one hand and interests and power on the other (Otterbein 1977:167). Traditionally, lawyers have given weight to the former while social anthropologists have studied the later. By studying processes of dispute resolution within the context of Tanzanian human rights NGOs, the juncture between the two is revealed – how and which “rules” (broadly speaking) are invoked and who promotes their interests and in what ways. I am interested in how NGO practitioners integrate human rights laws and other normative discourses in dispute settlement, particularly in land and property disputes. I focused on three types of disputes, all of which are inextricably intertwined with women’s access to and ownership

of land / property: land cases themselves, marriage / divorces cases, and inheritance cases. Since land is intimately tied to marriage and inheritance arrangements, it is necessary to look at these types of disputes.

Pursuing certain themes in dispute settlements provides insight into the social dimensions of the case beyond the borders of the manifest dispute (Nader 2002:44). A matrimonial dispute will not only involve the legal processes of adjudication, but also will reveal peoples' positions of power relative to each other, influencing how they position themselves, assert their interests and actively reframe the direction of the case. What is the measure of analysis in these cases? Nader suggests using the "power relationship" or asymmetry between the individuals involved in the case. However, since power is *practiced* rather than being contained, and since it is concentrated in different groups and contexts, how do we evaluate if one has "more" power than another?

Individuals in the reconciliation cases that follow employ three main argumentative tools to frame or guide the dispute resolution: "gender roles," the notion of "" and "legal and ethical responsibility." These tropes are powerful rhetorical devices that guide the case toward an individual's desired outcome. Language plays a critical role in these discursive events as I discuss below. There are other motivators that influenced how parties of a dispute discussed their cases and these changed over time. For instance, the extent of legal rights a person had in a case influenced how aggressively they could pursue the case (would they continue to come back if they had a legally weak case compared to a legally strong one?) How complainants and defendants thought of their cases in terms of justice acted as a further motivator. Were these "big" or "little"

injustices? All of these issues were at play in influencing how a case and reconciliation proceeded.

While there are designated clinic days at TAWLA and WLAC, clients appeared nearly every day of the week and were usually provided a consultation with a lawyer. On Thursdays at WLAC the legal aid clinic was open from 2-6pm. This drew women from all different parts of the city (and farther afield) who sat under a corrugated shelter outside the offices and were delivered sign-in papers. There, they were asked to write their names, describe the nature of complaints, and if this was the first time visiting the organization or if it was a return visit. Some women brought friends or relatives to assist them with reading and filling out the forms since they could not do so themselves. Generally, women were called in one by one to present their papers or their complaints to the lawyers. Some visits lasted as long as an hour, if it was a new case, where others simply needed to be instructed on how to proceed; for instance, taking their papers to be filed in court or some other office.

Meetings were often not in 'confidential' settings since space did not allow for it. In the TAWLA offices, there was one large spacious room where as many as three or four lawyers or interns assisted clients at any given time. At WLAC, there were a number of separate offices though the one I occupied was partitioned and housed three lawyers (one in an adjoining room). They could each be receiving clients at the same time – two in one office (measuring approximately 8 x 8) and one in the other office. When a new client arrived, the manner in which they were received very much depended on the lawyer. For instance, some lawyers immediately made eye contact, smiled and

welcomed the client, promptly asking about their problem while others took a different approach.

I noticed often a client would arrive, apprehensively sit in front of a lawyer after a cursory welcome and then remain sitting, not spoken to for sometimes up to five minutes. This is a common practice in Tanzanian bureaucratic environments, but just the same it sets the parameters of the relationship by saying, "You are here at my mercy. I have a privileged position relative to you since I am the one with the knowledge / information etc. that you need." A more forthright greeting and commencement of the case would suggest otherwise, perhaps, "I am here and happy to help you with the knowledge / skills that I have. I am concerned about your case and am eager to assist you." In this opening encounter, consciously or not, the lawyers and NGO professionals made their first "move" that informed the boundaries of the exchange about to take place.

Language plays an important part in these interactions. I discussed the connection between language and rights in Chapter 2. Language as an analytical tool is most often viewed in two ways. A formalist view sees it as an abstract system; a formal grammatical structure through which information is being conveyed. For formalists, the use of language as a medium to express meaning is of little interest. An instrumentalist understanding of language, in contrast, considers language as it is *used* as a means to an end. Only through its use is it possible to approach an understanding (never a "meaning" per se).¹⁸³ This second view is most useful in looking at language in the context of lawyer-client interactions.

¹⁸³ Wittgenstein (1953) reminds us that, "...the meaning of a word, is its use in the language" (*Philosophical Investigations*).

Scholars studying dispute processes have looked at how language use in the court room can be a powerful control device and perhaps influence outcomes as well (Englund 2006, Hirsch 1998, Mertz 1994). Mertz has noted that “language structure and use in the courtroom may exert a power of its own” (1994:444). Wanitzek goes further to claim that, “Language in the courtroom may be described as an asymmetrical discourse between court officials and parties to a case. One party (the court official) has institutionally constructed control over talk and a good deal of actual power over the other party” (2002:7). Wanitzek argues that language instantiates power, while that is not possible. Language *use* between people with asymmetrical status can influence the direction and shape of a case. This is an important distinction. It is people’s relationship to and use of legal language, which Wanitzek discusses, that can hinder their access to justice in the courtroom.

While “language structure in the courtroom can exert a power of its own” (cf Wanitzek 2002, Hirsch 1998, Obeng and Stoeltje 2002), what of language use outside of formal (i.e. courtroom) legal spaces? How is language used by NGO lawyers and professionals and their respective clients? In what follows, I analyze two different stages of disputes resolution¹⁸⁴ to illustrate how narratives are constructed by each of the parties during different stages of the case.¹⁸⁵ The first stage is an initial meeting between a lawyer and a client which works to sets the stage for how the relationship will proceed.

¹⁸⁴ I agree with Hirsch’s assertion that “As a practical matter, it is extremely difficult to present more than one set of initial narratives in their entirety.” Detailed study of one example can reveal how subjects organize their dispute and illuminates the construction of social life through talk (Hirsch 1998, Moerman 1988)

¹⁸⁵ It was not possible to use the same dispute to illustrate each of the different stages, since there was no one dispute that completed both stages (new client and returning client on a reconciliation visit) while I was at the office.

The second stage (though there could be multiple meetings / exchanges in between) is the reconciliation event where a disputing party typically involving two people comes to the NGO to try to resolve their case.

1. An Initial Encounter – Where an Inheritance Case Begins

The following description illustrates a first encounter in which a lawyer-client relationship is established. On the 30th of September, 2004, a woman most likely in her late thirties walked into the office at WLAC on Thursday, a clinic day. Upon being offered one, she took a seat and waited for the lawyer opposite her to inquire as to why she was there. After a few minutes the lawyer asked what she could help her with. Without a verbal explanation, the client, Joice, quietly handed over the following letter to the lawyer (translated from the Swahili):

Tanzania Tenants Association
Ref. TTA/HQ/188/vol,II/

M/s SUWATA
Lindi St.
Dar es Salaam

Inheritance Claim

Here we bring Bi. Joice Moses who is widow of the deceased Moses Ramadhani, her husband passed away on January 3rd, 2004 in Mbezi Darajani, in the District of Kinondoni.

Before his death, the deceased had his own house in Tegeta Kibaoni which he decided to organize with his wife, that is, it was their house that they organized together and acquired more money to use in their lifetime.

After the husband Ndugu Moses Ramadhani died, the widow until this day has been owed rent for nine months in the sum of 216,000 shillings- the widow has depended on getting it after [coming to] a new agreement on her husband's house which should have started on the 1st of August 2004.

Even though, the relatives of the deceased Moses have blocked the widow from receiving rent money or the ownership of her husband's house during this difficult time in life, for she has a newborn child who she is raising.

We are asking that the widow receive legal assistance. Our organization has reconciled these claims between the widow and the deceased's relatives and it is true that the relatives of the deceased want to exploit the property rights of this widow.

We rely on your cooperation for legal assistance.

Your faithful servant,
Executive Secretary

When the lawyer had finished reading the document, the following dialogue took place:

Excerpt 1

Lawyer: So you have a house in Tegeta?

Joice: Yes.

Lawyer: Both you and your husband owned it?

Joice: Yes.

Lawyer: But you were renting it? To who?

Joice: We rented it to members of his family. Two rooms.

Lawyer: I see.

Joice [almost crying]: I was married to my husband for seven years and he passed away this January. Now the family is trying to chase me out. Two months after my husband passed away the brothers came and wanted to divide everything. They took the car, they took everything.

Lawyer: Are your parents able to help you?

Joice: They won't help me. They said I got married and that was that. I'm not even allowed to return there. Where am I supposed to live with my child?

Lawyer: How old is s/he?

Joice: Only seven months.

Lawyer: And is his family willing to help you?

Joice: No, they refused from the very day. They won't give me one thing.

Lawyer: Really (expressed as half question/ half statement). Before your husband died, how was your relationship with his family? Good?

Joice: No, never. His mother used to make me work from morning to night. I woke up, I would make the chai, I would make all of the food and at the end of the day, I would get nothing to eat. At one point, I ended up chasing my husband's sister all the way to Arusha. I tried to contact her by phone a couple of times but the call was always refused. I was trying to see if she would help me. Finally, I went all the way there (Arusha) but I couldn't find her.

Lawyer: Was the house registered in both names?

Joice: I had signed the paper for marriage so we did have a formal marriage.

Lawyer: But was the house registered in both names?

Joice: What do you mean? I first went to the *baraza la nyumbani* (TZ Tenants Association). There they told me I needed to come to WLAC because you would be able to help me. Also, I have had problems with Tanesco (Tanzania's electricity company). They won't allow me to buy more electricity because it's not my name on the account.

Lawyer: Eh heh. Okay. First, we need to get a letter of administration. Did your husband leave a will?

Joice: No.

Lawyer: Eh heh. So we will write a letter and file for a letter of administration so that you will be able to decide on how to administer the house. Then we can see about getting your property back from the relatives. But first you need the letter. Are the relatives here in Dar?

Joice: Yes.

At this point, the formal inquiry has ended. The lawyer in charge has taken notes and will write a letter requesting the wife to obtain the letter of administration of her husband's estate. As she takes notes, Joice sits patiently and waits, with a worried expression. The lawyer tells her, "Don't worry, we will get the letter for you. You were married for seven years. And you say you have the marriage certificate?" "Yes." "That is good, that is very good, because the family will not be able to contest that you were married to each other. We will get the letter of administration and then we will continue (from there). It is your right to stay in that house. You built that house together! There are laws that say that you have the right to stay in that house."

In this initial interaction there are certain key moves that inform the nature of relationship and the relative social position between the lawyer and client. The first move is bodily and silent. It is achieved when the lawyer makes the client wait for a few minutes before beginning and is answered by the client by way of her gesture – silently handing the official letter to the lawyer written by the Tenants Association. While we cannot know what she is intending, withholding speech within Tanzanian societies is typically associated with deference and respect toward the person with whom you are engaged. The person with less social status, waits to be addressed by the person with higher status. Joice observes this rule, in effect “giving” higher status to the lawyer though they are roughly the same age. It is the lawyer who has higher status since she is in a position of power relative to the client, the lawyer has more education.

In the letter written by the Tanzanian Tenants Association, the author establishes the legal position of the client stating that she and her (deceased) husband had established their house together, making joint investments in it. This is significant since Tanzanian law states marital assets acquired by the spouses during the marriage will be divided equally.¹⁸⁶ However, the author of the letter is referring to the Marriage Act and not the laws of inheritance, which would be applied in this case. Unfortunately, if the widow divorced her husband before he had died, she legally would have been more likely to retain the properties than after his death. The letter’s author, perhaps knowing that s/he is on legally shaky ground, goes on to appeal on moral grounds. He writes, “...during this difficult time in life, for she has a newborn child who she is raising” and further

¹⁸⁶ *Tanzania Law of Marriage Act 1971*, section 114.

emphasizes his point by saying, “it is true that the relatives of the deceased want to exploit the property rights of this widow.”

While maintenance of the child is essentially irrelevant to the case, it is used as a device to gain the sympathies of WLAC and perhaps others who are able to assist this woman. The moral claim continues as the author notes that the widow’s “property rights” are being exploited. In fact, under the laws of succession in Tanzania, which are still governed by the Local Customary Law (Declaration) Order of 1963, a widow has no solid legal right to family property, unless she acquired it herself.¹⁸⁷ Without a written will, the widow has little chance of proving that she and her husband made a joint decision to invest in and own the house and properties together. Likewise, neither do the deceased’s relatives have proof that those were *not* the arrangements. The Tanzanian Tenants Association has framed Joice’s case, knowingly or not, on moral grounds and a notion of justice that sees the woman as rightfully entitled to a fair share of the property.

In the first short meeting between Joice and her lawyer, the lawyer tries to get not only the specifics of the case but the situation of the woman in general. Joice, after being asked a second time about the registration of the house, does not know about this procedure as her response is, “What do you mean?” and continues with her narrative. The lawyer ends the meeting by informing Joice that she has the “right to stay in that house” since they built it together and there are laws which give her that right. Again, the inheritance laws do not give Joice the legal right to the house, unless she attains this letter of administration.

¹⁸⁷ This goes directly against section 114 of the *Marriage Act*.

Much more is revealed through this short narrative than the relationship between the lawyer and client. Joice's case illustrates that issues of land and property are tied to a web of relationships in her life. She relies on this property as her last means of hope and only means of welfare since she is no longer able to return to her natal home, which tells us that she is unable to acquire any property there either. Further, relations with her in-laws have never been pleasant. In fact, according to Joice, they have treated her more like an outsider / servant than a member of the family. Moreover, whatever the situation is with Tanesco, they are not allowing her to purchase electricity since the bill is not in her name.

By the end of my fieldwork research, Joice had returned one more time to WLAC. She had obtained a letter of administration through some expense to her and was beginning the process of trying to retrieve some of the property that was stolen by her husband's family. They were not cooperative. They had still not paid her the rent owed. They had subsequently moved out of the house, but not before threatening her on a number of occasions that they would chase her out of the house as well. According to Joice, the letter of administration helped in that matter, but she still had no income with which to raise her child, aside from what she earned from selling cakes. The next step in the process was for her to open a case against the relatives. One of two things happens after this is accomplished and the papers are served. The case proceeds to the district court or the family members will be invited to the legal aid clinic to settle the case outside of court, in a reconciliation session. It seemed unlikely with the relationship as it was between Joice and her husband's family that they would agree to come for a reconciliation session.

2. Gender Roles and Responsibilities – A Reconciliation of Marriage is Attempted

Other research on gender, language and law in the courtroom illustrates how strict rules of behaviour and procession in the courtroom are important factors that inform the litigants' speech and what types of narration are acceptable in courtroom proceedings. For instance, in their work on Akan juridical discourse Obeng and Stoeltje (2002) detail men's and women's styles of narration in court. Men are more aggressive and direct in their speech patterns while women employ downtoning and other polite forms of speech. Their narration and argumentative styles are accepted by the court differently which can play a significant role in the way a case proceeds and how it is decided.

The atmosphere in reconciliation sessions in the NGO clinics is much different than those in the Akan courts described by Obeng and Stoeltje. There are no particular "rules" per se but it is expected (by the lawyer) that the parties will proceed in a respectful manner and when this does not happen, the lawyer will assert his or her position as mediator to correct, stop or reguide the complainants' narration. The following excerpts (Excerpts 2-6) are based on a matrimonial reconciliation case.¹⁸⁸ The couple had been in once before and reconciled but now they were coming in for another reconciliation session. The husband and wife arrive and are guided into the office by a legal officer at WLAC, who will conduct the reconciliation.

The husband and wife are equally well dressed. The husband is in slacks and a button down long sleeved shirt and the wife wears typical attire for most black Tanzanian

¹⁸⁸ While this reconciliation was not tape recorded, I am relying on my notes of the event. Where quotes are used, they indicate an exact account of what the individual said. Otherwise, some of the conversation is paraphrased. "H" indicates husband, "W" wife, and "L" is the lawyer. The dialogue is translated from the Swahili.

women – a *kanga* wrapped around her waist worn with a blouse and another *kanga* of matching material expertly wrapped around her head. The lawyer takes a seat at her desk and the couple sits side by side hardly more than one foot away from one another, facing the lawyer. I sit in a corner desk a few feet from the lawyer facing all of them. Theirs is a Christian marriage. Everyone greets each other respectfully and the atmosphere is generally relaxed.

Excerpt 2

L: [In a playful manner, sitting down and smiling] “We all want reconciliation in the case of marriage!”

H: “Everything is changing now in Africa. Before the wife would do the washing, cooking, cleaning, now everything is being changed, turned upside down.”

L: “You make a good couple. Many things in life are now changing.”

In these opening remarks, the lawyer makes a claim to everyone’s desires though the parties have not spoken. By stressing that everyone wants reconciliation in marriage, she asserts a claim, morally and otherwise, that what is considered socially desirable is the maintenance of the marriage. Without directly rebutting her (though below his intentions become clear), the husband changes the topic, reframing the issue in more abstract terms and asserting the core problem in this dispute.¹⁸⁹ The problem is changing social conditions, especially changing gender roles (in all of Africa). He says nothing directly about his own marriage thus far but it is alluded to in his generalization – “before the wife would do the washing, cooking, cleaning, now everything is...turned upside

¹⁸⁹ Hirsch notes that this gendered pattern is typical across mediations. She states, “Women tend to refer to real-life events, while men justify their actions and beliefs on the basis of rules” (1998:176). In this case the husband is referring to what he feels are socially agreed upon rules of marriage.

down.” The lawyer then attempts to try to draw the mood back toward one of amicability and stresses that they “make a good couple.” This is not an uncommon practice in therapy settings as well.

In the next excerpt, we see the husband begin to express his grievance with the wife, with issues specific to his marriage. At the same time, he attempts to rely on an assumed culturally shared notion of the essence of gender and proper gender roles and responsibilities. He emphasizes that the problems specific to his marriage are not merely his *own* perceptions of what a “good woman / wife” ought to be but ones that are shared by other Tanzanians.

Excerpt 3

H: “You know it’s easy for people to forgive, it’s easy for women to forgive but for men to forgive it’s very hard, not like for women” but in Swahili society these changes are hard. She goes out and I don’t know what she’s doing...if she’s working, going to the shop, or going here or there.

L: People change, society changes.

H: She can go outside, can go out to do business and return. When she goes out and these things happen and she returns late and then I’m at home and say I’m tired. But you [looking at me]. “Do you think these things are because of external forces or?...”

The husband in this excerpt again attempts to paint himself as a victim of a fast changing society with which he is not ready to move (both of which may well be the case). Again relying on what he perceives are innate gender differences, he pleads that for him, as a man, he can not *forgive* as easily. The use of the word “forgive” in this instance indicates that there has been a wrong committed against him. It places blame and the wrongdoing on the wife. She has not lived up to her wifely responsibilities,

presumably by going out “here or there.”¹⁹⁰ His complaint that he “doesn’t know what she’s doing” indicates that her activities are perhaps not desirable. It is apparent that he is ill at ease with these societal changes as he again asks, this time directing the question at the anthropologist researcher, why is this happening? Are these changes due to some external forces?¹⁹¹

In the next excerpt, the lawyer makes a move invoking the law to guide him away from his moralizing of gender roles toward making the parties aware of the legal (gendered) responsibilities that accompany a marriage.

Excerpt 4

L: You know...what the laws in Tanzania say? “One, that husbands must take care of their wife and children and two, that women and children must be cared for in each and every thing.”

H: I know these things but you know “human rights say that women and men are equal so we should take care of each other – men [should take care of] women and women should take care of men.”

L: Yes, but in history, what have women done for work? What have women been? Housewives! Women have not had the opportunity to make money like men. I don’t want you to go to court. Going to court will really disturb you....According to the law, you have to help her.

H: The court will say that I have to give her this, that, this, that, maybe all. But she has changed in this marriage.

In this instance, the lawyer phrases the status or position of the wife – that she is a person who must be cared for in each and every thing. The laws to which she is most likely referring are in the Marriage Act. However, the Act indicates that in the

¹⁹⁰ The expression *kuenda hapa na huko*, “to go here and there,” is often used by men and women in a derogatory manner if there is suspicion of bad behaviour (on the part of the other sex) and is likely being used here to indicate that the wife is having extramarital sexual relations.

¹⁹¹ This is reflective of widespread use of gendered ways of questioning. See Hirsch (1998:189).

eventuality of a divorce, responsibility be placed on *both* parties to fairly divide their properties or to sell their properties and divide the money.¹⁹² Here, the lawyer relies on a customary / religious / ethical notion of responsibility that the husband needs to provide for the wife. The husband at this point becomes defensive and a bit angry and invokes his understanding of human rights. To him, human rights supports the notion that men and women have a responsibility to each other – men providing financially for the women, and in turn women “caring for” the husband (i.e. by cleaning the house, cooking the food etc.). This speaks directly to the notion of complementarity referred to in chapter six when talking about gender roles and feminism.

The lawyer then points out that the two spheres which men and women have occupied are not the same economically. Men have been allowed to make money and women have not had that opportunity. Here, it seems the reconciliation has broken down. The lawyer is no longer speaking in terms of salvaging the marriage, but keeping it out of court. Still, she stresses that the husband must compensate or “help” the wife as the law says he must do. The husband’s closing statement on this matter is that yes, the court may ask for him to give her everything but he continues to place “blame” on the wife for breaking down the marriage, because it is she who has “changed.”

Until this point in the dialogue, the wife has said nothing. She has remained quietly seated without rebuking her husband’s claims that she is out and about doing this, that and the other or that she is the party responsible for the breakdown of the marriage. However, almost out of nowhere during the discussion of compensation, she interrupts her husband to say, “We built the house together.” *Tuliyopata pamoja*. (lit: “We got it

¹⁹² *Law of Marriage Act* (1971), section 108b.

together”) It appears that all else that has been said does not matter as much as the fact that this house belongs to both of them and she wants to be sure that this is known. There ensues a short inquiry that reveals the husband and wife possess a house in Temeke but they also have started building a frame for another at Tegeta.

After discussing how much has been spent on the house, the husband makes note that his wife owns her own shop and yet still, he has given her money for small things when asked. To this the lawyer responds, “You know things involved here are many. You know you control the money and she depends on you. Many poor women don’t know how to use money well.” She then asks the wife who she would like to live with. “With my husband,” she responds. During the lawyer and the wife’s discussion of the financial assets, the husband interrupts:

Excerpt 5

H: I paid for each and every thing when she went to the hospital until she got well and left, is this right [to the wife]?

W: Yes.

L: Michael, she’s your wife! [slightly laughing]

W: Every time he speaks of our house Michael says, “It’s not our house, I paid for it.”

L: Michael, you both built that house, even if she was doing work in it, she contributed to it. The house is *both of yours*. Natalie, you see if another woman came into my own house and claimed that he is her husband...eh! It is not possible.

[All parties begin to raise their voices and talk at once]

Shortly before this exchange, the lawyer confronts the husband indicating that she *knows* the situation between them and he should know that she is aware of this. While the wife may earn some income from her shop, the lawyer says she knows he controls the money in the house and pleads for his mercy because “many poor women do not know

how to use money well.” Since the reconciliation is failing at this point, the lawyer seems to be assigning the wife victim status with the hopes of eliciting some sympathy from the husband and holding him to his marital duty to provide for her, since he is the primary breadwinner. This part of the exchange ends when the lawyer insinuates to me a deeper problem in the marriage that has not yet surfaced, whereupon all parties begin to argue.

After the reconciliation, I learned from the lawyer that the husband had found himself a mistress (*nyumba ndogo* lit: a “little house”) and this is what was really at the root of the marriage dispute. He wanted out of the marriage and the mistress had recently been coming to the house claiming that Michael was *her* husband, which seemed preposterous since reportedly the entire community knew that he and his wife in this dispute were the real couple. However, since they were married in customary form, with no certificate, ploys such as these are commonly used to dissolve a marriage and additionally to protect the husband’s assets against any claim by his “legal” wife. While this strategy may seem a stretch, its success is often contingent upon the woman’s status in the community and from whom she can garner support. If she has bad relations with her in-laws and a bad reputation in the community, they may back his claim that she was “just a girlfriend” and that they were never really married. The reconciliation ends with the final excerpt.

Excerpt 6

H: “For two years now, we have been fighting. Help us. I want to go to court.”

L: “She loves you. Do you love her?”

H: “I, well...”

L: "Do you love her?"

H: "I love her when she is a good wife."

L: "What do you want?"

H: "I want a divorce. I want her to get her rights and I want mine."

L: "You want to go to break the marriage."

W: "I haven't agreed to the divorce."

L: He will pay 60,000 a year for the house. She has agreed. And 60,000 a month for food and business things. I don't like to dissolve a marriage at all. You have to start paying this month.

H [Taking out his money and giving her a wad]: "You know I don't have money. It is hard to find money."

In the end of the session, the lawyer makes one last attempt to bring the husband and wife together. Speaking for the wife, she tells the husband that the wife loves him and then asks if he loves her. He answers that he loves her "when she is a good wife" which we now know by his earlier confession is one who cares for the house and does the cooking and cleaning, not one who is out doing business or staying out late without informing him of where she is going. The wife, having hardly spoken, says she still has not agreed to the divorce, but the lawyer concludes by telling the husband what he will pay to the wife in alimony after the dissolution of the marriage. The husband pulls his money out in anger on the spot and pays the wife her monthly allowance. The lawyer informs them to come back to the office on the 13th of November to sign the agreement.

In this dispute it is evident who has or feels they have more social power relative to the other parties. The wife remains virtually silent unless she is directly asked a question from the lawyer, reflecting a broader social norm that dictates those in inferior social positions should remain quiet unless spoken to. As Hirsch (1998) has

demonstrated, this is also a strategy women employ to portray themselves as “silently persevering” throughout a difficult situation. However, the silences are expressed in different contexts throughout East Africa and thus are informed by those contexts and come to have different meanings. Silences are gendered expressions in public speaking forums in Tanzania where men most always sit near the front of the space and speak more freely and women stand or sit at the back and rarely speak. Hirsch’s data suggests however, that wives’ silence in disputing contexts is a strategy that depicts the wife as “persevering silently” and can give her an upper hand in the case. The husband in this case, possibly more comfortable with public speaking, feels at liberty not only to interject, but to form abstract presentations of his situation. He questions shifting gender roles in society – a move that attempts to displace the blame from him onto the wife.

The lawyer on the other hand, exerts her power when she feels the husband is out of line with his generalizing and moralizing of gender roles and shifts the discussion to the woman’s legal rights and the husband’s legal (and moral) responsibilities to provide for those rights. She is the one who determines, without input from the couple, what is to be the proper monthly allowance the husband is to pay the wife, effective immediately. Since per capita income in 2004 was \$USD 300,¹⁹³ the payment owed by the husband is considerable at 65,000=// or \$65 a month.¹⁹⁴ NGO professionals had at other times told me that in reconciliation / mediation sessions they are often able to get more money awarded to the woman than the courts might give her. As both parties agreed to the terms

¹⁹³ U.S. State Department website <http://www.state.gov/r/pa/ei/bgn/2843.htm> Dar es Salaam has a considerably higher per capita than the rest of the country.

¹⁹⁴ 60,000 monthly alimony plus the 5,000 monthly allowance for the house, roughly \$65 a month

of reconciliation and would later sign a contract, the agreement could be taken to court if the husband does not follow through with regular payments.

3. The Use of Narrative and Moralizing in a Land Case

On a hot August day, Abiba arrived early for a reconciliation case at TAWLA. She is the daughter of farmers, originally from Bukoba, but came to Dar es Salaam in 1976 and currently resides in Temeke. Forty-eight years old and with a standard 7 education, Abiba is a *mama lishe*¹⁹⁵ who sells chapatti and soda at different places. She and her husband divorced two years ago and she remained in the house while her husband moved in with his new mistress. Recently however, the husband sold the house out from under her to a third party. She has been living in the house for nineteen years and still has some of her children living with her.

As soon as this happened and Abiba was confronted by the “new owner,” she went to the primary court in Temeke where they told her that since it was a matrimonial house, the husband was not able to sell it because he did not have her signature. They instructed her that the two of them together should sell the house and divide the proceeds but Abiba did not want to sell the house because it is her only means of supporting herself and her children, and besides, the husband had already taken all of the movable properties and sold them, keeping the money for himself. In the meantime, the supposed new owner had been harassing her to leave the house, threatening court action against her. Abiba’s dispute was being mediated by the lawyer who invited only Abiba and her

¹⁹⁵ A small scale cook or vender.

husband Pili to come in for the mediation since Pili was the party responsible for selling the house.

The lawyer starts the mediation / reconciliation session by asking Abiba to describe what the problem is. After reiterating the basic facts of the case outlined above, she says the following:¹⁹⁶

Excerpt 7

A: I didn't know where I was supposed to go in this city, or who helps people with these problems. There are no other places. Two of my children are in secondary school. Where am I supposed to get school fees, school uniforms etc? My mother has died, my father has died, where am I supposed to go? My husband hasn't helped with anything. I have organized my budget but I haven't been able to provide. He has no money. He sold everything. He has no job at all, but he has four houses and three cars.

It's true this is a very difficult situation. I work, I work, I work, but I am going to be killed. The family says that here [in Dar es Salaam] I have a new life. I ask, I pray to God. I pray for this world to help me [crying and very angry]. He sold everything and lives with his new wife.

L: Are you still in your house now?

A: Yes. I came here because you are able to help women. I heard this from a friend. She told me to come here to TAWLA. I went to Kisutu and I went to the Magomeni court and they told me to come here. I went to the court, but they told me that the case is finished. He is not supposed to sell the house, but he did. I want to resolve this.

L: What does the other man, the one who bought the house say? Does he know your situation?

A: Yes, he knows. He says nothing, just slams the door on me. If I have problems, what are my rights? I have no way! I know my rights, but what am I supposed to do with them? I have god only. I have no balance, there is so much pressure [clenching her fists and waving them up and down]. The doctor says I have very high blood pressure. I ask him why and he says he doesn't know. I say god will help, he will help. God will help me get rid of these things. I know no other way.

¹⁹⁶ "A" indicates Abiba, "P" the husband Pili and "L" the lawyer.

The lawyer begins the reconciliation by asking Abiba to describe the problem. Abiba has been in before today, so the lawyer knows her case, but she allows Abiba the first chance to narrate her grievance. One way in which ADR processes may be beneficial to women, especially if being run by women's human rights organizations is that they more often allow women the space to fully express their dispute, as noted above. The legal language and rules of a courtroom may prevent women unfamiliar with the rules and uneasy with the legal language from talking (see Hirsch 1998). In this initial encounter it is mainly Abiba narrating her story. In her first narrative we learn more about her problems than would likely be permissible in a courtroom setting.

Through her first narration, Abiba informs us that she does not even know where to go for these types of abuses in the city. Further, she is quick to contextualize her case. It is not only that the case involves the house / property but the outcome will have an effect on her children's welfare and their ability to go to school. She positions herself as a woman who has no family support though she has used all of her mental resources to work and organize her budget. She contrasts her behavior directly with her husband's who "has no job at all but has...houses...and cars." Abiba expresses herself much differently than the wife in the case above. From the commencement of the reconciliation, she is vocally active and gives more detail than is asked for when answering a question posed by the lawyer. It is clear that Abiba is outraged and feels that a great injustice has been committed against her.¹⁹⁷

Abiba speaks directly to one of the major problems in implementing human rights in Tanzania – the lack of a robust and well functioning legal machinery. She says she

¹⁹⁷ Confirmed in personal communication after the reconciliation.

knows her rights but asks, “what am I supposed to do with them?” – a feeling that must be extremely frustrating. She has been to two different courts, both of which have turned her away, acknowledging the husband’s illegal action but surprisingly giving her no legal recourse through which to pursue her complaint. Instead, they have sent her to the legal aid clinic. Her conclusion then is that she has god only, she knows of no other way.

No one has possession of the legal title to the house; it was not registered with the state. The couple did not build the place themselves but instead bought it directly from the owner who was moving to Arusha. They heard about the sale through some friends, made arrangements and purchased the house. They were given a receipt but admit to not having the present contact details of the owner, since it was so long ago. Abiba suspects that Pili is still in possession of the receipt since she asked the “new owner” of the house to produce it and he was unable to. In fact, she had used this as leverage arguing to the man that unless he could produce that receipt, she knew he did not purchase the house.

Excerpt 8

L [to Pili]: Do you have the original receipt to the house?

P: Uh, (chuckles) no.

L: Your wife is suffering here Pili...

P: She is not my wife now.

L: She is suffering and you laugh. This is a heavy matter. According to law, you cannot sell the matrimonial house without both people’s signature.

P: Listen. This was not a matrimonial house. I bought this house myself and all of these things, these problems are ones that she has caused.

A: He is lying.

P: We had a good marriage. This is true. But she would go around with other men and not fulfill her duties at home. I know this is true. Other men have told me these things.

My family has told me these things. The accounting was never right. She needed money for this and that and spent it badly.

L [Interrupting]: What she spent the money on is not the problem. Did you sell the house?

P: I sold it.

The lawyer informs Pili that he is going to have to go speak directly to the man to whom he sold the house and negotiate to return his money to him. Pili claimed that almost all of the money has been used as an investment to start his own garage repair center. Seeing the difficulty of the situation, the lawyer asks that all three of them come back for a reconciliation session to see what can be worked out. Perhaps Pili is going to have to pay the man back in installments since he no longer has the money. Pili is resistant to this, arguing that it was his house to sell and he should not have to be involved in repaying the man who is now the rightful owner of the house. The lawyer asks him again if he is willing to return for the reconciliation / mediation session with the three parties and when he does not give a clear indication, she informs both of them that she will instead have to file the case in court.

Again, in the excerpt above the husband employs the rhetoric of the “good wife” in an attempt to reframe the terms of the debate. Though the dispute at hand involves the sale of the house, he turns to their relationship years before while they were still married and claims that his wife was going around with other men, as if this should have some bearing on the case. It is at this point that the lawyer interrupts the husband’s moralizing and directly confronts him about the house.

Excerpt 9

L: However, I am telling you now that a judge will not allow you to sell a house that was acquired during marriage. The law is very clear on this. Your wife has rights in this case and the judge will respect those rights.

A: Also, he has not paid maintenance for the children.

L: Eh heh.

P: I will speak to that man.

In the above exchange, the lawyer informs the husband that the law is clear on the wife's rights in this case and warns him that taking the case to court will surely result in Pili having to rescind the agreement with the man anyway. Abiba takes this opportunity again to assert that she fully knows her rights by threatening that the judge will *also* hear about the lack of maintenance paid to her by Pili. Pili's response to this is compliance, he agrees to settle the case with the man in a future session mediated by the lawyer.

After that, Pili and Abiba left the office, neither of them seemingly particularly pleased with the outcome. The lawyer confided that she suspects Pili will not speak to the man and will not show up for the next scheduled reconciliation session, so the case will most likely end up in court.

Conclusion

Using the processual approach to the study of law, this chapter looks at how the domain of ADR has the potential to change women's situations under the law and how the law is actively employed to implement women's rights, albeit on an individual basis. While legal rights are invoked in ADR cases, NGO lawyers use rights as moralizing discourses, blending notions of legal rights with religious and customary notions of rights in order to come to what they think is a just conclusion. Where the law does not meet up with their notions of justice, NGO lawyers go beyond the bounds of the law to devise

their own standards for payment of alimony and child support based on what they feel the men in these cases can and will pay.

The examples above illustrate what is at root in so many cases of land and property rights in Tanzania. The Tanzanian state invested heavily in creating a market in land through the New Land Acts, purportedly as a way to ensure women and the poor security of tenure. However, in the process a major factor was consciously sidestepped – the case of the family. The state chose not to rectify how their husbands, fathers, and brothers dispossessed women of land. The cases above illustrate how these deeply ingrained processes and gendered family relationships work to daily dispossess women of land. In turn, legal and human rights NGOs have over the past five years seen a proliferation of matrimonial and inheritance cases. This evidence suggests that a significant threat to women's land and property is not only the state, but the family.

What do we learn through these examples of the potential for human rights through processes of alternative dispute resolution or “informal” legal settlements? Are the cases above illustrative of an ideology of “coercive harmony” as Nader argues or could they be as Mertz suggests, informal spaces where the “...invocation of formal “rights” discourse [can] sometimes ha[ve] the effect of empowering marginalized people” (2002)? As is most often the case, the answer lies in neither one nor the other in absolute terms. On the one hand, by keeping these cases out of court they do not have the potential to serve as legal precedent or to be made “public” in traditionally legal ways. However, these disputes are mediated by *human rights* lawyers, whose goal is to make rights a reality for women. Their cases would be handled differently in other contexts and be contingent upon the position of the mediator. Over time with the state's

receptiveness to the NGO's evidence and persistence of mounting matrimonial and inheritance problems and how they affect land relations, this will cause changes or "movements" in the law.

On the other hand, the use of ADR in Tanzania does support Nader's thesis in that there is an underlying ideology (at least on behalf of the state) that courts are associated with conflict and ADR with peace and harmony. For instance, the state has made it compulsory that a couple must seek out ADR through the Marriage Conciliatory Board (*Usuluhishi ya Ndoa*), if they wish to seek a divorce. There were a number of clients at the clinics who complained to me about this process since their marriages involved instances of domestic violence (at times quite severe). Still, they were forced to go through a process that tried to mend their marriage while at the same time forcing them to make a decision to publicly expose what was to them an embarrassing and threatening experience. These cases are indeed ones of "coercive harmony" and are in urgent need of redress by the state.

In this chapter, I have argued for the importance of attending to the role of language use in order to discern what power relationships are at play in guiding the processes and effectuating the outcome of ADR cases. The rhetorical devices, including proper gender roles, the notion of a "good wife," and legal and moral rights and responsibilities that are employed in the cases above are reflective of other reconciliation cases and lawyer-client exchanges I witnessed at the legal aid clinics. Central to these processes and outcomes is the human rights lawyer's role as mediator in guiding the case away from moralizing women's positions to one that frames the discourse in terms of legal and human rights. However, in the first case, the lawyer also frames the situation in

moral terms, detailing the duties and responsibilities of “the good husband.” Likewise, NGO lawyers take advantage of the ADR process by considering what is just and asserting their power to make decisions about remuneration that sidestep the letter of the law.

As the role of language use and the position of judges were central in Hirsch’s (1998) study of *kadhi* courts in Mombasa, gendered subjects and gendered language remains an important area of inquiry in ADR practice in different contexts. Though the historical evidence offered by Nader’s accounts of ADR as “hegemonic ideology” and “coercive harmony” are well researched and convincing, we would be well served by taking a step back and (re)evaluating present usages of ADR. Scholars should not be bamboozled by the languages and practices which until now have been associated with ADR but examine closely how it is being used in some contexts as a tool for empowerment and as an alternative pathway toward the realization of women’s rights. As I have demonstrated in this chapter, Tanzanian human rights lawyers use ADR to challenge gender relations and make legal awards to women in ways that would not be possible in other legal settings such as the courts.

CHAPTER SEVEN: CONCLUSION

This study contextualizes the work of human rights and feminist NGOs and NGO professionals within the broader structures, history and power relationships in which they are situated. I have argued that it is a combination of historical and contemporary, international, national and local social relationships that have worked to inform and structure how NGOs advocate and carry out rights work. NGO members' professional and feminist subjectivities also work on an individual level to construct members' conceptions of human rights and perceptions of feminism. How NGOs theorize women's rights and in turn work to make them a reality is investigated methodologically by attending to how rights are *used* in daily discourse as well as how they are used as a tool for legal change. I have shown through using Wilson's "social life of rights" approach that Fem Act NGO professionals *(re)created* rights differently in different forums. In inter-NGO dialogues such as the inheritance conference, religious inheritance practices were relegated outside the scope of rights while in the legal aid clinics, customary "rights" were invoked in order to persuade men to maintain their wives. However, NGO members dominant conception of rights as an abstract referential system is also *reified* as they assume a shared understanding of rights as legal goods.

This potentially poses a problem for Wilson's suggestions to examine how rights are used in daily context to "build stronger theories of rights" that move away from the universalism / cultural relativism framework. If, as I have discovered, people's use of rights are continually shifting and contextually variant – at times using local normative orders of rights and at others international legal conceptions of rights – we are still left with the problem of how to adjudicate rights *rightly*.

Processual approaches to the study of law, such as this one, allow anthropologists to examine legal changes by taking into account not only the time factor but the many actors involved in legal change. I have shown how competing interests between the state sponsored Commission and NGOs worked to structure how each group of actors framed rights in the land tenure reform debates. Focusing on NGO obligations to donors and their constituents and their commitment to their profession allows us to see how these forces structure NGO concepts and use of rights. While the Commission focused largely on historical and contemporary state abuses and alienation of citizens' land, it pushed for recognition and protection of group rights and the preservation of customary law regimes. The Fem Act NGOs on the other hand, adhering to international conceptions of rights, recognized the many problems of preserving customary (group) systems of tenure. They argued that women are bound by marriage arrangements that disadvantage them as property owners especially on divorce or death. Using international laws, especially the CEDAW, the NGOs approached the land tenure reform by arguing on principles of nondiscrimination embedded in the Tanzanian constitution and the CEDAW that women should have individual rights in land.

Originally confused that I was not witnessing inter-NGO dialogues that specifically "theorized" women's rights, I came to learn that their silences were not silences at all but rather their adherence to instantiating rights through the law. NGO members adhere to the rule of law, which at times may act to narrowly circumscribe their rights work. However, as chapter six shows, NGO members also sidestep the letter of the law in making decisions on alimony and the division of property between disputing

clients. NGO members also carry out extra-legal work such as research and education programs that inform ordinary Tanzanians about their new and changing legal rights.

Reassessing NGOs' Place in Land Tenure Reform

External factors are at work structuring the phenotypical expressions of rights. As NGO members argued for women's rights during the land tenure reform, NGOs consciously chose to focus on legal rights by speaking in the language of the law so they were ensured their voices were heard. Critiques from scholars like Manji and Shivji, who criticized the NGOs on a number of counts are important. The NGOs came late to the debates, they focused only on technical legal fixes, they were not unified in their efforts. To a degree, these criticisms are valid. What I have aimed to show in this study are some of the reasons *why* this is the case. This analysis provides a greater understanding of the complexities that are involved with NGO human rights networking and advocacy. Obligations to donors, the concomitant struggle for associational autonomy and a desire to work with the state are all factors that need to be considered when "assessing" how successful the NGOs were, and are, in advocating for women's land and inheritance rights.

Structuring Rights and Feminism – Localizing Normative Orders

Both NGOs and the Tanzanian state theorized women's positions during the land tenure reform if not explicitly, then through their assumptions about how women behaved in relation to land. While the state significantly ignored women's existing social relationships to land, they pressed for a market-driven approach to land reform and land relations; an approach the state assumed would create a level playing field to land

acquisition, formal property rights and, in turn, economic development. This is evidenced in the initial program for the 20,000 plots scheme. As the scheme's designers did not fully theorize villagers' multifarious relationships to land, it sought merely to relocate villagers without recognizing the many ways in which this plan would disrupt people's lives. As I have shown, the scheme largely left urban women unable to enter the land market, and dependent on renting or acquiring land in the informal market. It is through these scenarios that we can see how gendered relations in the family and larger economy are key to structuring women's access to and rights in land and property.

Fem Act NGO members recognize through their own research as well as through the increasing number of women clients they receive in their clinics that urban women are in a double bind. Many are not able to enter the land market through the state due to the high cost, but they are also being prevented by family members from fully enjoying their rights in land and property. It is this recognition that has led many of the Fem Act NGOs to pressure for inheritance and marriage rights for women. These NGOs theorize women's relations to land beyond conventional market based approaches by examining the existing, non-economic social relations that will inform women's land rights.

NGO members most often spoke of rights in terms of legal rights and in so doing, referred to international conventions to back their claims. However, NGOs structured their use of those rights in practice according to their obligations to the legal profession and their clients, state-NGO relations and the many obligations to their donors. Conversely, NGO members' feminism is constructed largely on the basis of a notion of "proper gender relations" as well as an acute awareness and partial rejection of what they perceive white western feminism to be. Rights are largely configured on principles of

nondiscrimination while feminism is consciously constructed against white western feminist discourses. Fem Act professionals hold ideals of gendered balance in their communities, marriages and politics. They consistently voiced worry over leaving men out of the debates on women's rights and the actions necessary to ameliorate women's positions at the expense of men. Their conceptions of and strategies for feminist activism are exemplary models with which to undertake changing unequal gender relations. Too often western feminist activism does not fully strategize how to include men in our conversations and activities. However, NGO members' concerns over "extremist feminism" and their rejection of lesbianism and abortion needs to be critically examined and debated in legal and ethical terms by NGO members themselves.

Feminist scholars and legal theorists of the global north and south have identified a number of problems with respect to international human rights laws and their potential to affect social change. They argue that they are indeterminate, they embody an excessive individualism and they do not clearly tie rights to duties and responsibilities. Further, feminists have argued that there is a conceptual bias in international rights laws that rely on a false public / private dichotomy, that international rights laws substantively reflect a male bias and that procedural aspects prevent women from realizing their full rights under international conventions.

Human rights NGO members in Tanzania often identify some of the same problems with international law. They cannot be used in primary courts, where they often would be very useful. NGO members, though not wholly, *are* concerned about the excessive individualism enshrined in international rights laws as they are not reflective of different social arrangements and group rights. This concern accounts for the ideological

confusion among NGOs over what to do with customary law. This “confusion” is well warranted however as NGO members recognize customary laws as protecting valuable rights, rights which could be endangered by adopting wholesale an individual conception of rights.

The fact that inheritance rights were left out of the new land acts suggests that there remains a conceptual divide between public and private in Tanzanian national and local law. The state as well as the Commission argued that by changing “other” gender discriminatory laws that inheritance practices would fix themselves by coming into alignment with international standards. They relied on an evolutionary model for legal change while the NGOs advocating for inheritance rights advocated for a hard law approach to ensuring women’s rights and argued that without the laws on the books, the basis for ensuring women’s equal inheritance rights would be weak.

With the inheritance laws remaining as they are, NGO members have continued to press for legal change based on international conventions and evidence from their own research. However, they go beyond legal reform measures by bridging the gap between the guarantees provided by international rights laws and the national laws and local practices regarding inheritance. Instead, they interpolate their conceptions of fairness and justice at the local level through dispute resolution and inheritance rights education in urban and rural settings.

The Transformative Potential of ADR

The Tanzanian state has begun to take rights seriously, leading Tanzanian women to view themselves as legally and socially entitled to their rights, evidenced by their increasing numbers in the legal aid clinics. Sally Merry argues that an important factor in

constituting a rights culture is for women to see themselves as “rights-bearing citizens” (2006:179). However, in many cases she overlooks the fact that women already see themselves as “rights-bearing” people, though their notions of rights are associated with local social structures and kin relations. They know they have certain and long-standing rights as mothers, and daughters though these rights may not be on an equal basis with men. However, women are beginning to understand that they have legal rights as well, that often offer different entitlements than do local rights. While much of the legal machinery is not in place or is not accessible for women to pursue their cases in courts, they are continuing to use NGO dispute resolution forums to “get their rights.” Contrary to Nader’s (2002) thesis on ADR as coercive harmony, I have argued for the transformative potential of ADR especially for women’s rights.

NGO members working in the legal clinics continually struggle to assert their ideas of fairness and justice in the context of national laws which do not consistently meet up with international human rights standards and with local conceptions of women’s rights. With the legal machinery as it is in Tanzania, NGO workers find themselves operating in a context of legal pluralism – in the interstices between the state court system and various local avenues including customary courts, religious and other community leaders, for remedying social conflicts. It is evident from these ADR cases that NGO lawyers themselves take advantage of this legal pluralism by utilizing gender normative orders such as the victim status of the woman, the notion of “the good husband,” and by relying on socio-religious norms of heads of household in order to shame men into supporting his wife after the dissolution of the marriage.

Many of the clients coming to the NGO legal aid clinics have previously tried other measures of dispute settlement, including local customary courts with whose decisions many were not satisfied. The legal and rights education and information they receive at the clinics during the course of their cases is affecting not only the success of their cases in court but is spreading slowly to other women in Dar es Salaam through word of mouth as the number of women coming to the clinics increases annually.

Indeed, the education women receive at the clinics has the transformative potential to foment change at the most local level, in the household. In other African contexts, the spread of legal rights education has been shown to lead more disadvantaged women to seek legal redress for gendered wrongs (Tsanga 2003, Stewart and Tsanga 2007). The increasing number of women coming to legal forums has the potential to reorient practitioners' legal concerns and in turn press for legal reform. While many of the disputes are settled through ADR and do not officially enter the "public" arena, we should not assume that ADR does not have transformative potential. It provides forums to discuss and challenge existing gender relations and the parties will carry those experiences back to their communities with them. Indeed, through Fem Act NGOs paralegal units around the country, women are continuing in large numbers to utilize the legal aid clinics for dispute resolution.

This research has shown how processes of ADR in the legal aid clinics allow women to voice their complaints and be heard by a sympathetic ear. Legal officers will often work out their conceptions of justice based on the situations before them and devise awards that advantage women, often times beyond the letter of the law. Urban areas of contemporary Africa have been seen as important catalysts for socio-cultural change and

it has been widely accepted that new attitudes and structures are emerging among people living there (Mikell 1997). One woman remarked to me that she would not have thought she could one day bring her problems to court but her situation deemed it necessary. Her husband had evicted her from their house and she told me, "I must do this for my daughter. She will see what I am doing. These problems here...they cannot be her future."

Directions for Future Research

This study raises a number of issues that necessitate future research. This project will explore the potentialities for test litigation to instantiate human rights for Tanzanian women. Recently, a major test litigation case was undertaken by Tanzanian lawyers and spearheaded by the Women's Legal Aid Centre (WLAC). The team of lawyers called into question twenty-five provisions of a national customary inheritance law that was shown to discriminate against the two women clients they represented. I plan on investigating the consequences of (re)presenting the women's cases in local and national forums through the particular framing and language of human rights. I will investigate how the client's understanding of their case and their notions of justice have or have not been fulfilled throughout this process and framing. Further, researching how a high profile case such as this has affected the women's communities and their inheritance practices will reveal how test litigation as a strategy for effectuating women's legal rights "travels" to the place from which they come. Will the processes of test litigation and the outcome of the case effect debates and inheritance practices in these clients' home villages?

A second area of research is a logical extension of my dissertation research to explore class dimensions of human rights work in Tanzania. Rather than studying western-developing country linkages, this project examines how rural human rights paralegals are trained by their educated urban counterparts and how they in turn carry out their work in inheritance and marriage reconciliation sessions. While my dissertation research explored alternative dispute resolution and mediation sessions carried out by urban women lawyers, this project seeks to uncover how the majority of rural Tanzanian women access and experience the law in these relatively new domains. Comparing the outcomes for women using paralegal clinics with those who taking similar disputes to be adjudicated in other forums, such as customary courts or neighborhood reconciliation boards will allow a better assessment of how human rights clinics are benefiting women.

Finally, this study brought forth a number of questions about how scholars and donors assess the work of lawyers and how they influence legal change. While I found that donors typically assessed advancements in women's rights according to legal standards, I want to investigate how lawyers' extra-legal measures including network formation, research, and activism outside of legal domains is structured and how it works to create a culture of human rights in Dar es Salaam.

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