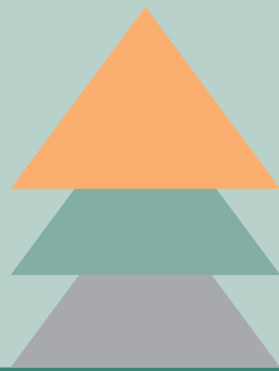


Religions and Development Research Programme

The Women's Land Rights Movement, Customary Law and Religion in Tanzania

Bernadeta Killian,
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Working Paper 57- 2011



Religions and Development

Research Programme

The Religions and Development Research Programme Consortium is an international research partnership that is exploring the relationships between several major world religions, development in low-income countries and poverty reduction. The programme is comprised of a series of comparative research projects that are addressing the following questions:

- How do religious values and beliefs drive the actions and interactions of individuals and faith-based organisations?
- How do religious values and beliefs and religious organisations influence the relationships between states and societies?
- In what ways do faith communities interact with development actors and what are the outcomes with respect to the achievement of development goals?

The research aims to provide knowledge and tools to enable dialogue between development partners and contribute to the achievement of development goals. We believe that our role as researchers is not to make judgements about the truth or desirability of particular values or beliefs, nor is it to urge a greater or lesser role for religion in achieving development objectives. Instead, our aim is to produce systematic and reliable knowledge and better understanding of the social world.

The research focuses on four countries (India, Pakistan, Nigeria and Tanzania), enabling the research team to study most of the major world religions: Christianity, Islam, Hinduism, Sikhism, Buddhism and African traditional belief systems. The research projects will compare two or more of the focus countries, regions within the countries, different religious traditions and selected development activities and policies.

The consortium consists of six research partner organisations, each of which is working with other researchers in the four focus countries:

- University of Birmingham, UK: International Development Department, Department of Theology and Religion, Centre for West African Studies, Centre for the Study of Global Ethics.
- University of Bath, UK: Centre for Development Studies.
- Indian Institute of Dalit Studies, New Delhi.
- Nigerian Institute of Social and Economic Research, Ibadan.
- University of Dar es Salaam, Tanzania.
- Lahore University of Management Sciences, Pakistan.

In addition to the research partners, links have been forged with non-academic and non-government bodies, including Islamic Relief.

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Key words: gender, Islam, Muslim, Christian

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Summary

Religion is often seen as either a means of achieving or an obstacle to lasting social change, for example, improvements in gender equality. In practice, what role has it played in recent movements for social change in developing countries? In particular, how has the women's movement engaged with religion, with what outcomes? In Africa, women's disadvantaged access to land has been an important concern of many women's movements. This study examined whether and how the women's movement that campaigned for improvements to proposed land legislation in the 1990s in Tanzania engaged with religious beliefs and organizations.

Like many ex-colonial countries, at independence in 1961 Tanzania inherited a plural legal system including customary law and practices, Islamic personal law for Muslims and a statutory legal system introduced by the colonial powers (influenced especially by the English common law system). Termed a legal 'stew' or 'quagmire', the Tanzanian government has tried ever since to reform the system in order to achieve development objectives while keeping effective control in the hands of the state. However, by the time political and economic liberalization occurred at the beginning of the 1990s, the legal and administrative system governing land was full of contradictions, ambiguities and inconsistencies. The government announced its intention to reform land law and its administration, establishing a commission of enquiry to review the existing system and identify necessary changes. Two alliances of NGOs formed to lobby for the needs of disadvantaged groups to be addressed in the proposed legislation: the National Land Forum (NALAF) and the Gender Land Task Force (GLTF). The latter was particularly concerned with the ways in which existing laws discriminated against women, exacerbated by changes in agricultural production and pressure on land. Campaigning focused on the draft Land Bill, which eventually was split into two Acts: the Land Act no. 4 and the Village Land Act no. 5, both of 1999.

Between 2008 and 2009, a research team based at the University of Dar es Salaam reviewed available material on the issues involved, the draft Bill and the final legislation, and reports produced by the two alliances and their member NGOs; interviewed fifteen women activists, including many of the individuals most centrally involved in the GLTF; and interviewed representatives from five of the religious organizations that were drawn into the campaign.

Because rural land is still governed mainly by customary law and practice, the campaign adopted a rights-based approach, focused on ensuring that the constitutional principle of gender equality was incorporated in the new legislation and applied to customary as well as statutory law. They lobbied successfully to include clauses

- ensuring women's equal rights to use, occupy and control land
- safeguarding married, widowed and divorced women's rights through a requirement that certificates of occupancy are put in the names of both spouses, and
- providing for women's representation in village level bodies with land-related responsibilities.

Although some of the demands of the land rights campaigners were not met, the GLTF saw their campaign as successful. Its success was attributed to the organizational capacity, professional skills (especially in law) and distinctive contributions made by the Dar es Salaam-based NGOs that worked together in the GLTF.

Religion entered the picture (or did not) in a variety of ways:

- In Africa, customary beliefs and practices, including those relating to land, are often seen as having a spiritual dimension (often labelled African traditional religion/s). However, Tanzanians see them as custom and culture rather than religion, so campaigning for reforms to (or, by some, the abolition of) customary tenure was not seen as having a religious dimension.
- Islamic laws on property ownership and inheritance specify men's and women's entitlements, and are available to Muslims in Tanzania, although they are not always used. The women's land rights movement chose not to tackle gender inequality in Islamic law, to avoid antagonizing Muslims.
- Although almost all Tanzanians are either Christian or Muslim, GLTF members did not claim a specific religious motivation for their involvement, avoided the use of religious discourse, and accommodated diverse religious and cultural needs (e.g. accepting that some women are in polygamous marriages despite the disapproval of the Christian churches), to ensure wide support for the campaign.
- Civil society Organizations (CSOs) are prohibited from engaging in active politics in Tanzania, so the women's land rights movement had to negotiate a delicate political terrain. No religious organizations joined the GLTF, although during the campaign some, notably the Roman Catholic church (the Tanzania Episcopal Conference), the Christian Council of Tanzania (an umbrella organization of the Protestant

churches) and, to a lesser extent, the Evangelical Lutheran Church and BAKWATA (the main Muslim umbrella organization), helped to publicize the issues amongst their members to generate public support for GLTF's demands.

Implementation of the Acts is arguably beyond the capacity of the legal and governmental system and has been very slow. Although NALAF continues to organize an annual meeting, in the last ten years the organizations involved in the 1990s campaign have tended to pursue their own specific programmes and little evidence on the outcomes and effects of the legislation for women's land rights is available.

The Tanzanian research demonstrates that the ways in which social movements engage with religion depend on the local religious, cultural and political context, as well as the issue of concern. It also indicates that religious organizations can act as facilitators rather than obstacles to campaigns to improve women's land rights.

List of acronyms

BAKWATA	National Muslim Council of Tanzania
BAWATA	National Women's Council of Tanzania
CCM	Chama Cha Mapinduzi (formerly TANU)
CCT	Christian Council of Tanzania
CSO	Civil society organization
ELCT	Evangelical Lutheran Church of Tanzania
GLTF	Gender Land Task Force (also KIKUHAHI)
JET	Journalists' Environmental Association of Tanzania
KIKUHAHI	Kikosi cha Kuketea Haki ua Ardhi Kijinsia
LHRC	Law and Human Rights Research Centre
NALAF	National Land Forum
NOCHU	National Organization for Children, Welfare and Human Relief
PINGOs	Pastoralist Indigenous Non-Governmental Organizations' Forum
TEC	Tanzania Episcopal Conference (Roman Catholic)
TGNP	Tanzania Gender Networking Programme
TAHEA	Tanzania Home Economics Association
TANU	Tanganyika Africa National Union
TAMWA	Tanzanian Media Women's Association
TAWLA	Tanzania Women Lawyers Association
WAT	Women's Advancement Trust
WLAC	Women's Legal Aid Centre
WRDP	Women's Research and Documentation Project Association
UWT	Umoja wa Wanawake Tanganyika (Women Union of Tanzania)

1 Introduction and background to the study

1.1 The main objective

The main objective of this study was to investigate the extent to which the women's land rights movement in Tanzania in the 1990s 'engaged with religion', by mobilizing the support of religious organizations, invoking religious values and teachings in pursuit of its goals, and/or openly critiquing religious traditions where they were perceived to stand in the way of the movement's aims. The study is part of a larger comparative research project involving studies in India, Nigeria and Tanzania, which had the aim of gaining a deeper understanding of the way religion facilitates, inspires or hinders social movements. This is significant from a development perspective since, compared to external interventions, indigenous social organizations and movements often have the potential to generate the lasting progressive social changes that are required to improve wellbeing. In many contexts, religious organizations are important social bodies with potential mobilizing power, authority and wide networks, but there is a perception that they more often oppose social change.

This research aimed to assess when and under what circumstances religious organizations support or obstruct movements for social change, as well as to gain a better understanding of the ways in which social movements attempt to engage with religious teachings and actors in order to further their goals. While a range of social issues have stimulated social movement activity, a key social problem that has prompted individuals to coalesce in social movements across the globe, and which also has a particular significance with respect to religion, is gender inequality. On the one hand, religious traditions and institutions are well known for their unequal treatment of men and women, as well as their opposition to various 'feminist' or women's agendas that aim to bring about equality and equity (e.g. in the sphere of reproductive rights). On the other hand, central to all religious traditions is a belief in fairness and human dignity and often religious traditions are important sources of ideas and support for movements that campaign against abuses of human rights, including those of women. A focus on gender and social movements is, therefore, both timely and relevant in different developing countries. For this study, a salient issue around which the women's movement had recently mobilized in each country was selected for study.

1.2 The women's land rights movement

In Tanzania, one of the issues on which the women's movement has recently campaigned is the question of women's access to land, with the women's land rights movement focusing on legal

change as a first stage in facilitating broader social change related to women's ability to own and inherit land within the confines of the prevailing religious and cultural systems. Following campaigns in which the women's movement participated, two new pieces of legislation were passed in 1999, both of which have a bearing on women's ability to acquire, hold, use and deal in land: the Land Act no. 4 of 1999 and the Village Land Act no. 5 of 1999.¹ Amongst other things, these acts seek to override customary law if it denies women their right to use, transfer and own land and to achieve a gender balance with respect to participation in land administration and decision making. Moreover, the Acts protect married women's right of co-occupancy - such a spousal co-occupancy clause exists today only in Tanzania and South Africa (Tripp, 2004).

Women's engagement in the struggle for land rights must be seen in the light of the importance of land to the majority of people in Tanzania and the implications of this for women. More than 85 per cent of Tanzanian livelihoods depend on agriculture for subsistence and income and women are key producers of food, providing between 60 and 80 per cent of the labour required for farming activities in the country (Kameri-Mbote, 1992). According to the 2000/01 Household Budget Survey, 63 per cent of women in Tanzania claim that agriculture is their main activity (URT, 2002). Only a small number of land parcels are registered under statutory law, with an issued title, and most of these are in urban areas. In rural areas, the majority of land holdings are held and managed under customary land tenure (Kironde, 2009, p 12). Access to land for most women in the country is therefore primarily governed by ideas and practices related to customary forms of tenure, which are discussed in more depth in Section 2. However, these tend to discriminate against women with respect to the ownership and control of land (the existence of legislation to protect women's rights notwithstanding). Customary practices can be written or "unwritten social rules and structures of a community derived from shared values and based on tradition" (Kameri-Mbote, 2006, p 11). On the Tanzanian mainland, about 80 per cent of rural communities are patrilineal, with succession passing along the male line (URT, 1994; Tsikata, 2001; Lugoe, 2007), and women tend to access land largely through men, as "daughters, wives, mothers, dependent widows and divorcees" (Ik Dahl et al, 2005, p 37).

The predominance and persistence of customary land tenure practices is favoured by Tanzania's pluralist legal system. Like other African countries that went through colonialism, at independence Tanzania inherited a pluralist legal system in which "a 'legal stew' of European laws [had been]

superimposed upon or [were] existing concurrently with indigenous systems of customary and religious law” (Calaguas et al, 2007, p 475).² Amongst the many inconsistencies and contradictions between the different bodies of law, “legal pluralism provides for different norms to be applied to different persons in the same situation” (ibid, p 476). The problems were compounded by state administrative actions. It is this problematic situation that led to the 1990s attempt at a systematic overhaul of the system, the results of which were embodied in the 1999 Acts, although many earlier pieces of legislation remain in force, so the legal framework is still confused and complex.

Customary law, Islamic law and statutory law are all used by individuals, families and communities to regulate access to land, tenure and transfers, and also by the judicial and administrative systems as they attempt to resolve disputes and achieve government objectives. As noted above, there are many inconsistencies and contradictions, not only between but also within the different legal systems. For example, the 1999 legislation contains a proviso that customary law should be utilized only when it does not conflict with statutory law and the Constitution (especially gender equality), but it is not clear how this is supposed to be operationalized. “Islamic law is applicable to Muslims...in matters of succession in communities that generally follow Islamic law in matters of personal status and inheritance” (Nyanduga and Manning, 2006).³ However, in practice, matters of land rights and inheritance are negotiated, with great variety in the law called upon. In practice, many Muslim families and communities use customary law rather than Muslim law. Individuals are free to seek justice using any body of law. Thus in theory, if women feel discriminated against by Islamic or customary law, they can seek redress under state law (and judges are supposed to use state law to settle cases where Islamic or customary law is less equitable) (Rwezaura, 1995). In addition, on the Tanzanian mainland, in cases of conflict between customary law and Islamic law, the former takes precedence (Legal brief Africa, 2004, p 1).

It is frequently claimed that the clear rules regarding inheritance in Muslim law protect women, especially widows, better than other systems, although the shares to which they are entitled are smaller than those of male relatives (Brown, 2001). In addition, in Tanzania, Muslim law is often not followed, leaving many women without property (Maoulidi, 2006). Nevertheless, for complex political, cultural and strategic reasons discussed below, the women's land rights movement did not seek to challenge Islamic law. Instead, it concentrated on customary law, which is also sometimes argued to

be inextricably linked to religion, in this case 'traditional religion' (Odgaard, 2002). What does this apparently selective critical engagement with different forms of religion tell us about understandings of 'religion' in contemporary Tanzania? To begin to answer this question it is necessary to look at the nature of religious affiliation in Tanzania, which suggests that 'traditional religion' is not viewed as a 'religion' in the same way as Islam or Christianity.

1.3 Religion in Tanzania

Tanzanians are highly religious: according to a 2009 study carried out by the Pew Research Center Forum on Religion and Public Life, 93 per cent of the 1,504 Tanzanians interviewed said that religion is very important in their lives, making Tanzania the second most religious of the 19 countries surveyed in Africa. The proportion of Christians and Muslims in the country is controversial. According to the 1967 census, 32 per cent of the population was Christian, 31 per cent Muslim and 37 per cent followers of African traditional religions (Masanja and Lawi, 2006, p 98). Because of the dangers of religious competition, the question has not been asked in any subsequent census, although according to the National Demographic Survey (1973), 39 per cent was Christian, 40 per cent Muslim and 21 per cent followers of traditional religion (ibid, p 98). The emerging trend has intensified subsequently, with a sample survey carried out by the Department of Political Science of the University of Dar es Salaam in 2000 showing that 46 per cent of the 850 people interviewed identified themselves as Muslim, 48 per cent as Christian and only 1 per cent as followers of traditional religion (Masanja and Lawi, 2006, p 98). In the most recent survey, 60 per cent of respondents identified themselves as Muslim, 36 per cent as Christian and 2 per cent as followers of traditional religion (Pew Forum, 2010, p 69). Clearly traditional religion no longer competes for 'religious space' with Islam or Christianity in contemporary Tanzania.

There are an estimated 120 ethnic groups in Tanzania, distinguished by specific socio-cultural characteristics. Overall, however, there are commonalities in the belief systems of all the African ethnic groups, including beliefs associated with so-called African Traditional Religion (or religions) (ATR). ATRs tend to share five fundamental beliefs, namely, belief in a supreme being, belief in lesser gods, belief in spirits (including ancestral spirits), belief in ritual sacrifice and belief in the power of magic and medicine (Kayode and Adelowo, 1985; Lawi and Masanja, 2006; Mbiti, 1969; Mhina, 2006).

In practice, while most Tanzanians identify themselves as being Muslim or Christian, the majority also practise traditional or customary religion.

In the 2000 study, when asked whether they practise traditional rituals, 29 per cent of respondents affirmed that they do perform some, and over half believed that traditional practices continued in their area (Masanja and Lawi, 2006, p 99). Even respondents who identified themselves as leaders of ATR often claim to be followers of the organized religions. Of those interviewed, 312 claimed to be leaders of ATR, referring to “leadership in administering family or local community rituals” (Masanja and Lawi, 2006, p 102). While 38 per cent claimed that they only practised traditional rituals, 21 per cent said that they were Catholics, 11 per cent identified themselves as Ahmadiyya Muslims, 7 per cent as Sunni Muslims and 7 per cent as Lutherans (ibid, p 102).

The Pew survey asked respondents whether they follow eleven specific beliefs and rituals associated with traditional religion. 62 per cent of Tanzanian respondents acknowledged agreement or engagement with six of more of these beliefs or practices, interpreted as exhibiting a high level of commitment to traditional religion (the highest proportion amongst all the African countries in which the survey was carried out) (Pew Forum, 2010, p 34).

While the findings of surveys like these need to be probed in greater depth, they demonstrate that in contemporary Tanzania traditional beliefs and practices are no longer seen by most people as alternatives to the world religions. As Masanja and Lawi (2006, p 76) put it

In Tanzania...people generally use the Kiswahili word “dini”, which is borrowing from the Arabic “din”, to refer to organized religions such as Islam and Christianity. Our own research has shown that rural Tanzanians seldom refer to their traditional ritual practices and religious beliefs as ATRs or, in Kiswahili, *dini za jadi*. They are instead more comfortable referring to these practices and beliefs as traditional customs or *mila na denture asilia*.

However, it is also clear that such beliefs and practices maintain a strong hold over the cosmology and ritual practices of many Tanzanians, whose belief systems are highly syncretic.

1.4 Research questions and methodology

The women's movement aimed to ensure that the drafting and implementation of the new laws expanded women's rights to own land. Because there are few state courts in rural areas, people's legal knowledge is limited, and the process of pursuing justice through the courts is slow and bureaucratic, customary land tenure practices that govern property relations between men and women continue to be widely used and disputes are generally settled informally. Because customary law, which disadvantages women, continues to be recognized, there is still some way to go in ensuring that women are able to use the new land acts to protect their rights. This research focussed on the period leading up to the enactment of the Land and Village Land Acts of 1999 and sought to specifically understand the ways in which the land rights movement engaged with religion. It does not address the question of what role the women's movement has played in the implementation of the Acts since 1999, although this could be followed up in future research.

The main research questions were:

1. In its struggle for women's land rights, has the women's movement in Tanzania engaged with religious organizations?
2. To what extent did the movement openly critique religious traditions if they were perceived to stand in the way of the movement's aims?
3. How have religious values and practices influenced actors within the women's land rights movement in Tanzania? Did religious values ever inspire women or underpin their arguments and strategies?

The study was conducted in two phases between 2008 and 2009. Data was collected through documentary review, including various reports of the member organizations of the women's land rights movement and acts of parliament related to land, and semi-structured interviews. Interviews were carried out with selected respondents from civil society organizations (CSOs), academicians and religious leaders (see Appendix 1). Many of the respondents were women activists who had participated in the struggle for women's land rights in the 1990s. Members of religious organizations with links with the women's land rights movement were also interviewed.

The report proceeds as follows. Section two looks at women's land rights and the evolution of customary land tenure practices. This will be followed by an historical account of women's activism in

Tanzania. Section four analyzes the nature of the struggles by the women's land rights movement of the 1990s and the ways religion was mobilized. The outcome of the struggle in bringing about social change for development will be assessed in Section five. The last section will draw out some conclusions of the study and explore their implications.

2 Women's land rights and the evolution of the customary land tenure system

2.1 The pre-colonial period

The evolution of the women's land rights movement in Tanzania needs to be understood in the context of the land tenure system in Tanzania since pre-colonial times. The historical account clearly shows that customary land tenure practices, colonialism and the state-led policies of the post-independence government, as well as economic liberalization, have all affected women's land rights.

In pre-colonial African societies, land was communally owned and vested in the family or clan. Land ownership was conceptualized in collective rather than individual terms. Chiefs or headmen were in charge of the land on behalf of all clan members. The role of chiefs as custodians of land was similar in both patrilineal and matrilineal communities (Koda, 1998, p 198). At the core of African land tenure is what James and Fimbo (1973) refer to as the principle of the non-alienability of land. African land tenure systems are complex because they entail a range of relationships, not only between humans, but also between humans and their physical and spiritual environment. As James and Fimbo point out "in Africa, and particularly in Tanzania, land is more than just property, and land tenure rules form a part of the whole complex of culture. Thus, tenure rules are informed by the need to protect groups in relation to specific areas of land. Each family, clan, or wider community has its corpus of law which is directed towards maintaining the interests of that unit against outsiders and defining the rights and duties of all within the group" (James and Fimbo, 1973, p 6). Thus while *used* by individuals, land is really *owned* by a community, which is defined as comprising those who are dead, those who are alive and those who are yet to be born (ibid, p 8). Three types of land can be distinguished: clan, family and self-acquired land. Whereas under traditional systems of land tenure, clan land is vested in the clan, family land is a piece of land that in the past individuals of the same family lineage had rights to. Self-acquired land is a piece of land that has been obtained through the efforts of an individual or family (James and Fimbo, 1973; Manji, 1998).

The essence of customary law in land ownership is that inheritance is largely along the male line, with boys in a family regarded and brought up as future fathers and girls expected to get married and leave the family (Mbilinyi, 1972).⁴ By bequeathing land to male heirs, clan and family land is protected from being transferred to outsiders – if a woman were to inherit such land, there is a fear that she might pass it to another clan upon her marriage, enabling her husband to control the affairs of her clan, of which he is not a member (Carr, 2003, p 9). Thus if a family has male members, widows and

daughters cannot inherit family or clan land or, traditionally, a house or household property, other than what is defined as belonging to them (e.g. cooking pots). In the allocation and inheritance of land, first sons are highly favoured, receiving the largest share of land, followed by other sons and ultimately daughters, who get the smallest portion. The latter can only inherit the self-acquired property of their deceased father. Widows traditionally receive nothing and have to rely on their children to take care of them. Women generally only have usufruct rights to land, that is, they can work on land without rights to own or bequeath it. There is no doubt that in customary law, widows, divorced women and female children are discriminated against in matters of inheritance (ibid).

However, the application of customary law on land tenure has evolved over time. During pre-colonial times, land was abundant and, hence, despite the fact that women could not inherit clan land, in certain ethnic groups women had security of tenure as users and occupiers. Given the abundance of fertile land, all clan members, regardless of sex, could clear the bush for cultivation without many restrictions, and non-clan members could seek permission from a local chief to do likewise, hence acquiring limited rights of use (Koda, 1998; Koponen, 1991). Because land was available, “anyone with energy to do so could obtain land simply by clearing it or establishing woodlot, grazing area or watering point, provided the person had the permission of the clan head, the lineage authority” (Kauzeni et al, 1998, p 75). Also, in certain areas of Tanzania, for instance, among the patrilineal Pare of Kilimanjaro region, women had both use and control rights over small plots around the homestead. A father could give such a piece of land to his daughter on her marriage and she was entitled to use it and later pass it to her own daughter (Tsikata, 2001). As Marjorie Mbilinyi, Professor of Development Studies and activist, pointed out “...historically, in pre-colonial societies, the family would ensure that a sister, daughter or an auntie has a piece of land to farm” (interview, 25th September, 2009, Dar es Salaam).

2.2 The colonial period

Women's limited rights were, however, eroded by agrarian changes brought about by colonialism and post-independence policies and programmes. These changes made it increasingly difficult not only for women to inherit clan land, but also for them to even enjoy the limited use rights that they had had in the past. Colonialist agrarian policies and laws put constraints on the use of land and disrupted customary land tenure, leading to pressure on land.

In 1895, the German administration (1891-1914) instituted a decree that declared all land crown land vested in the Empire (Tsikata, 2003). Land owned under local custom and tradition was regarded by the colonial powers as 'unowned land' and was subject to expropriation. Both the German and British colonial governments confiscated large areas of land, much of which was given to European settlers. The concept of individualized ownership was introduced for European settlers, but was not applied to the indigenous population (Lugoe, 2007). In this system, documentary evidence was required as proof of title, and many Africans who held land under customary land tenure lacked such evidence (James and Fimbo, 1973, p 31). As Lugoe writes, "...by 1914, some 1.3 million acres of fertile lands in the northern highlands and the coast Districts had been alienated" from the African natives to European settlers (2007, p 6). During the British administration (1922-1961) the land alienation policy continued. As with the German administration, all land - both occupied and unoccupied - was declared to be 'public land' under the control of the Governor (Land Tenure Ordinance of 1923). Using the 1923 Land Tenure Ordinance, a total of 3.5 million acres were alienated from African natives to settlers (Lugoe, 2007, p 7).

In 1928, the Land Ordinance of 1923 was revised to include statutory recognition of community 'ownership' of land under customary law. However, this 'right of occupancy' by indigenous people was merely 'permissive', meaning that Africans were allowed the right to use but not to legally own land. Thus the Act did not establish any rights against the colonial government and no provision was made for the issue of documentary title. In practice, the interests of foreign settlers and planters were given priority and when deemed necessary, customary rights of occupancy over a piece of land were extinguished (Fimbo, 1992, p 66). The Land Ordinance specifically stated that "all native lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Governor....The Governor was entitled to grant rights of occupancy to natives or non-natives as he deemed it fit" (section 4 of the Ordinance, James and Fimbo, 1973, p 33). In 1953, the colonial government issued Circular no. 4 declaring that in all urban areas, customary law ceased to exist once an area was declared a township, municipality or minor settlement. Further directives were issued regarding areas the colonial government defined as reserved and preserved lands for forests or game. Once declared to be reserved or preserved land, such land ceased to be governed by customary land tenure rules.

The colonial government also encouraged indigenous producers to engage in commercial agriculture, especially for export. It was assumed that this would be the responsibility of men, and encouraged by a requirement for men to pay taxes. Domestic production, it was intended, would remain the responsibility of women, although their labour was also required to assist with commercial and livestock production. Changes to customary tenure practices resulted, with the need and desire to engage in commercial production strengthening men's attempts to assert their claims over land (see, for example, Becker, 2008). All these changes created new relationships between local communities and their natural resources, particularly land. Men and clan headmen became more protective of what was left to them and in turn further limited women's access to land (Koda, 1998), although some analysts stress that the picture should not be over-simplified, with evidence that many women continued to achieve secure access to land because of the balance between rights and obligations enshrined in customary law and practice (see Odgaard, 2002, 2005; Yngstrom, 2002).

2.3 Independence and the *Ujamaa* period

Following independence in 1961, there was a short period of multi-party politics.⁵ However, by July 1965, a single-party system had been adopted in which the Tanganyika Africa National Union (TANU) was elevated to the legal status of being the only political party in the country and all other political parties were forced to disappear from the political scene. This move was accompanied by a ban on all independent associations, such as trade unions, farmers' cooperative unions, student unions and the media. Furthermore, the newly independent state was secular, which set limits on how social groups could mobilize and organize. Not only was Tanzania's new constitution modelled on those of more developed countries, competition between Muslims and Christians was seen as potentially dangerous and divisive. According to the Tanzanian constitution, religion is considered as the "private affair of an individual citizen." Article 19 (2) of the constitution states that "without prejudice to the relevant laws of the United Republic, the profession of religion, worship and propagation of religion shall be free and private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of the state authority" (1977 Constitution of the Union Republic of Tanzania). Following this, any mobilization along religious lines was severely suppressed.

The role of a pre-eminent secular state was strongly promoted and defended. In 1963, the chieftainship was abolished through the Chiefs (Abolition of Office) Act. Also, the separate court

system that existed prior to independence was abolished.⁶ Laws and the court system had been organized along ethnic, racial and religious lines, with the majority African population having their own native courts, Muslims having Kadhi courts and Europeans and Asians having so-called 'superior courts'. Instead, in 1963 a single court system was established, ranging from primary courts to the high court (Makaramba, 2006, p 274, 362). Moreover, many of the Christian-owned schools that had been established by missionaries were nationalized and made to cater for Muslims and children of other religions, and major church hospitals were also nationalized in 1971 (Mhina, 2007, p 9). It is in this context of this process of establishing the pre-eminence of the state in economic development, service delivery and politics that the East Africa Muslim Welfare Society (EAMWS) was banned in 1968 (Tambila, 2006, p 181).

Regarding land tenure, however, colonial land tenure policies remained more or less in place and were absorbed by the newly emergent state, which by 1965 monopolized both political and economic spheres. The word 'Governor' was merely replaced by the word 'President' in the new constitution. All rights of land ownership, 'the radical title', were transferred to the President of the United Republic of Tanzania, meaning that "no title to the occupation and use of any such lands shall be valid without the consent of the president" (URT, 1994, p 19).⁷ The President, as custodian of all land on behalf of the people, can expropriate any land in the public interest, including land owned by individual citizens under customary law. The legal regime was designed in such a way that it empowered the President even further on land matters and the post-independence government has made a series of significant legal moves to regulate and acquire land. For example, the Range Development and Management Act of 1964 led to the acquisition of certain areas that were turned into selected development areas, and the Land Tenure (Village Settlements) Act of 1965 empowered the Commissioner for Village Settlement to acquire, hold, manage and deal with property.

During the same period, women's vulnerability in land ownership in Tanzania was increased by the codification of customary practices under the Customary Law (Declaration) Order No. 436 of 1963. This law sought to codify and simplify customary law, whereas before it had been unwritten and varied from place to place and over time. It deals only with patrilineal societies and is the interpretation of customary law on which the courts draw when dealing with rural land disputes (Rwebangira, 1996), although the customary practices that are followed in the allocation, use and transfer of land are much

more varied and flexible than is reflected in the Order. The Order provides rules of inheritance that aim to bring about uniformity, to safeguard the immediate family as the key institution of society, by protecting the rights of the deceased's immediate family descendants, with other relatives only being accorded succession rights in default of an immediate family (Rwebangira, 1996). Rule 26 recognizes both female and male children as heirs of their father's property, stating that: "If the deceased left sons, or sons and daughters, these will inherit all his property exclusively." However, daughters are not treated equally to sons. According to Rule 20 a woman cannot inherit family or clan land. Also, heirs are categorized into three degrees, which discriminates against daughters by putting the sons in the 'first degree' with daughters in the 'third degree'. The eldest son of the 'first house' is the main heir and if the deceased left no son in the 'first house', then the eldest son of another wife (the 'second house') becomes the heir (Rule 19). In so doing, the first son is in first degree, other sons are in the second degree and daughters are in the third degree (Rule 25). The person in the first degree is the first heir and he gets a bigger share than any of other heirs (Rule 22). The mode of distribution of property among people in the second and third degrees is according to their ages, i.e. the oldest ones will get more than the younger, and males will get more than females (Rule 30). Widows are the most vulnerable as they receive no share of the inheritance if the deceased left other relatives of his own clan. She is to be cared for by her children just as she cared for them. She can only inherit if the deceased left no child or other relative of his own clan, and even then can only acquire usufruct (use rights) and may not sell the land (Rule 27) (Rwebangira, 1996).

Overall, however, during this period, the most powerful piece of legislation was the Land Acquisition Act of 1967 that empowered the President to acquire any piece of land for 'public purposes' including state farms, cities and town settlements, industry, transport, forest reserves, national parks and game reserves. In 1967, TANU adopted an ideology of socialism and self-reliance, or *Ujamaa*, as it was known in Swahili, the basic tenets of which were outlined in the Arusha Declaration, which called for the nationalization of all major means of production. Under the banner of a socialist ideology, the state took over the ownership of lands, industries, farms, schools, banks and other firms. Part of land that had previously been under the jurisdiction of customary law was nationalized for large-scale farming, ranches and state-owned industries.

A policy of 'villagization' was adopted, involving the resettlement of rural people living in scattered homesteads in clustered villages to speed up development by increasing agricultural production and facilitating the provision of services such as schools, health facilities and improved water supply. This was enabled by the Village and Ujamaa Villages Act (1975), which provided for the establishment and administration of villages but did not provide a legal framework for the new tenure arrangements. It was assumed that, because of the President's radical title, customary land tenure rights in areas where new villages were established could be ignored and the land re-allocated to village councils and those resettled (Coldham, 1995, p 228; Kauzeni et al, 1998). In 1975 and 1976 large-scale resettlement of people into *Ujamaa* villages occurred. Land was allocated to these villages for collective farming and individual village members were provided with plots of land for farming at the household level. However, the lack of a legal framework for land administration during villagization meant that it was unclear whether alienation and inheritance should be dealt with under customary law or general law (Coldham, 1995). Unlike in the past, when clan heads were responsible for allocating land, Village Councils with authority to allocate land were established. These Councils have been dominated by male members, who have tended to interpret land administration in accordance with their knowledge of customary practices, including practices that discriminate against women in order to maintain rights over clan land exclusively for males. Research undertaken by the Dar-es-Salaam Institute of Land Administration and Policy Studies (DILAPS) suggests that by 1979 about 15 million people had been relocated, some forcibly and without any compensation, to 8,300 registered *Ujamaa* villages (Lugoe, 2008, p 5). As people were displaced from their ancestral lands, pressure for males to control and own what land remained increased. In addition, many areas that already had consolidated villages continued to operate customary tenure.

2.4 The end of the *Ujamaa* period

With the introduction of structural adjustment policies, including economic liberalization, in the mid-1980s and the introduction of a multiparty political system in the 1990s, people's struggles for land rights intensified. The privatization of many previously state-owned farms and businesses, coupled with increased commoditization of land, has resulted in a series of conflicts and disputes between communities and the state, communities and foreign investors, pastoralists and farmers, small and large-scale farmers, and conservationists and farmers (Maoulidi, 2006).⁸ Other types of land disputes also dominated much of the two decades prior to the study, including conflicts based on the violation

of customary land tenure (e.g. the sale of clan land without seeking the agreement of other clan members or giving daughters inheritance rights to clan land without the sons' agreement); conflicts brought about by the inadequacy of the legal system and the existence of conflicting legal regimes; and inefficient government machinery to deal with land matters, such as the issuing of title deeds, the double allocation of land plots, compensation and delays in settling court cases (Koda, 1998, p 213). The lions share of disputes between pastoralist communities and the state and foreign investors over land and natural resource rights have occurred in the northern part of Tanzania in the Arusha region, where pastoralist communities such as the Maasai, the Barabaig and others reside (Mckie, 2007; Neumann, 2006). Moreover, clashes over land have been exacerbated by urbanization and population growth, which have increased the pressure on land. For instance, between December 2005 and December 2008, a total of 33,163 land disputes were filed at the district land tribunals (Kironde, 2009, p 23).

Following the end of the *Ujamaa* period, many people who had customary land rights prior to the 'villagization process' began to file their cases before the courts in attempts to reclaim their land. Faced with a large number of demands, in 1986 the government reacted by amending the "Rural Lands (Planning and Utilisation) Act of 1973 that empowered the...Minister responsible for regional administration to extinguish any deemed right of occupancy in any 'specified area'" (Coldham, 1995, p 236-237). Also, District Councils were granted power to distribute land as they deemed fit. In 1987, Government Notice no. 88 was issued to extinguish "customary land rights in certain districts where serious disputes had arisen" (Coldham, 1995, p 237). In the early 1990s, as pressure mounted, the government enacted the Land Tenure (Established Villages) Act of 1992, which extinguished all pre-existing customary rights in areas affected by villagization (ibid, p 238; see also Shivji, 1994).

Studies have found that the ways in which customary law on land tenure is interpreted and practised vary between communities and over time (see, for example, Becker, 2008; Odgaard, 2002, 2005; Yngstrom, 2002). It is particularly influenced by the degree of pressure on or demands for land. For example, Kauzeni et al (1998), in their studies of four villages in Arusha and Dodoma, found that in villages where there was a greater perception of land scarcity (e.g. Ilkirevi and Ipala villages in Arusha region), the majority of villagers reported that they would not dare to dispose of their clan or family land without seeking authority from the head of the clan or lineage, since they would suffer serious

consequences through social sanctions if they did. In contrast, in villages where the perception of land shortage was lower (e.g. Arkatan and Mahoma Makulu in Dodoma region), many villagers reported that “they could dispose of privately held resources without consulting any clan or lineage heads” (Kauzeni et al, 1998, p 76). The study further found that in Arusha, women could only access land through their husbands or as custodians for their sons and it was very difficult for them to inherit land. In Dodoma, however, many villagers reported that their daughters could inherit land. Thus, as land becomes scarcer, women’s vulnerability with respect to their rights to access, control and inherit it increases.

Over time the flexibility of customary land law has been reduced and the rules governing access to and control over land have been made more rigid by changes brought about by both the colonial governments and some of the laws and policies of the post-independence government.

In the mid-1980s, however, the privatization of the economy called for greater security of tenure and it was in this context that the government embarked on a process of land reforms, which (as we discuss below) formed the basis of struggles for land rights by various groups. According to Shivji, by the early 1990s, the machinery for resolving land disputes had virtually broken down, largely because there was overlapping jurisdiction between various bodies, including state and party officials. Also, disputes lasted for too long without resolution, in part because the organs of justice were remote and inaccessible to many people (Shivji, 2002, p 205). As land became more valuable, women’s land rights were increasingly weakened (Kironde, 2009). Indeed, the use by families, communities and courts of customary practices and law, accompanied by increased demand for land, have resulted in further marginalization of women in land ownership, control and access. Women’s struggles for land rights in the 1990s need to be understood in this context and it is to these struggles that we now turn.

3 Women's activism, religion and the state: a historical account

3.1 Women's activism in the pre-independence period

The history of women's activism goes hand-in-hand with the development of the Tanzanian state. Social movements that aimed to challenge exploitative colonial structures and processes were organized by peasants, workers and ethnic associations. Women's struggles during the colonial period remain largely undocumented. Women's activism became more organized during the modern nationalist struggles for independence, beginning in the mid-1950s, when political parties started to emerge. For example, the nationwide nationalist party Tanganyika African National Union (TANU) was formed in 1954. In the early years of the nationalist struggle, TANU did very little to mobilize women's support as members or leaders of the party. Thus up until 1955, its central committee included only male members (Geiger, 1987). However, by the end of 1955, TANU had registered about 5,000 women members (Geiger, 1987, p 1). This marked the beginning of an organized women's mobilization, in which women were organized as a section of TANU. Bibi Titi Mohamed became the first chairperson of TANU's women's section. Indeed, she purchased TANU card number sixteen and became TANU's first female member (Geiger, 1987, p 15). She was instrumental in encouraging increased numbers of women to become TANU members. Subsequently, Bibi Titi emerged as not only a leader of women but as a major TANU figure throughout the country (Geiger, 1987). She is widely remembered as playing a prominent role in mobilizing both women and men to join the party, thereby expanding the party's mass base (Geiger, 1987; Mallya, 2005; Tenga and Maina, 1996).

The composition of TANU's women section is worth revisiting. Initially, the party's female members were mainly coastal women with no formal education engaged in the selling of doughnuts, local beer and fish. In addition, many of the women had one thing in common: they were members of different dancing groups. While the colonialists did not regard these popular women's dance/musical groups as significant avenues for women's political mobilization, they soon became more than just entertainment (Geiger, 1987). In 1965 the women's section of TANU developed into a national women's organization called Umoja wa Wanawake Tanganyika (UWT) (discussed below). Overall, however, women's activism during the struggle for independence restricted itself to the nationalist struggles for the country's independence from the colonial power.

3.2 Women's activism during single-party rule

The nature of Tanzania's single party political system set boundaries on the extent to which women could mobilize themselves in organizations or as a social movement. Tanganyika was the first country in Africa to institutionalize a de jure single party system in 1965. All the political parties that had existed after independence were banned and only one party, TANU, was allowed to operate. All non-state actors, with the exception of churches and mosques, were either banned or had to become affiliates of this party. Independent ethnic-based organizations, cooperatives and labour unions were all brought under the control of the party and used to disseminate the party's policies. By its very nature, single-party rule greatly restricted freedom of association and expression and thereby jeopardized women's space to organize and mobilize. Any opposition to the government and its policies was severely suppressed. All this affected the nature of women's struggles because, like other civil society organizations (CSOs), women could not organize independently.

Following the imposition of single-party rule, as mentioned above, the only organized women's body was the Women Union of Tanzania (UWT), previously the women's section of TANU (which, in 1977, changed its name and became Chama cha Mapinduzi (CCM)). UWT was among other party-affiliated organizations involving youth, parents and workers. It was "not in any way an independent organization of women, for and by women" (Tenga and Maina, 1996, p 150). Instead, it was largely an organ of the party, used to disseminate the party's policies to the grassroots, a structure to serve TANU's political interests and promote its ideology, the women's wing of the party rather than an independent and legitimate political forum for women. By 1982, about 10 per cent of women in the country belonged to the UWT (Meena, 1989, p 31), the leadership and programmes of which all had to be approved by the party. This was a case of 'directed mobilization' where "the authority and initiative come from outside and stand above the collectivity itself" (Molyneux, 1989, p 229).

Yet, despite its lack of autonomy, UWT was able to make important gains to further women's interests. It played an important role in amending the 1971 Marriage Act, by ensuring that, in "very clear terms, and with the sole reason of protecting family, the law provided grounds for divorce" (Tenga and Maina, 1996). Also, the UWT was instrumental in pushing the government to enact the Employment Ordinance (Amendment) Act of 1975, which provided paid maternity leave, originally provided only to married women, for all working women, regardless of their marital status,. Also, in 1976, the UWT was

able to push for early university entry for women so that they could be exempt from serving a compulsory two-year period working in villages or other workplaces before joining a university. According to the UWT, this requirement would have an adverse effect on women's education, because they could be discouraged from pursuing further studies after becoming pregnant and/ or getting married (Tenga and Maina, 1996).

Moreover, throughout the single-party period, the Tanzanian state pursued policies that aimed at unifying diverse social groups and creating a single national identity. Unlike neighbouring countries, Tanzania is a highly unified country with relative harmony and civic peace, despite the presence of diverse ethnic groups and religions. As noted above, there are 120 ethnic groups and different religions, yet the country has remained relatively calm. The use of one national language, Swahili, has been one of the contributing factors. Also, government policies to promote national unity and nation-building throughout the period of single-party rule helped to make Tanzania a unified nation. The socialist ideology instilled in people a sense of collectivity and togetherness rather than difference and animosity. In 1967, the nationalization of the major means of production, including cooperative farms owned communally by villages, in which both men and women worked, led to a sense of collective ownership of the economy.

Overall, however, throughout the single-party period, despite its emphasis on equality for all, TANU paid little attention to women's political representation or land rights. In the area of the political representation of women in decision-making bodies, from independence until the first multi-party elections of the 1995, fewer than 10 per cent of members of parliament (MPs) were women. Also, women were poorly represented in the village councils that had a great deal of power at the local level, including land allocation. In addition, little attention was given to how a series of state laws and policies on land use impacted upon women, making them even more vulnerable to land insecurity.

3.3 Women's activism during the multi-party period

Since the introduction of a multi-party political system in 1992, there has been unprecedented growth of civil society organizations in Tanzania. Between 1993 and 1997 the number of registered CSOs increased from 224 to 8,360, of which 80 per cent were women's associations (Tripp, 2000, p 15). Since the mid-1990s, the struggle for equal access to resources, political influence and economic

improvement has been intensified on various fronts. Women's organizations have waged struggles for increased political participation and representation, equal employment rights, land rights, educational opportunities and economic empowerment. It is women's struggle for equal access to the ownership and use of land that formed the basis for the emergence of an organized women's land rights movement in the 1990s.

While the multi-party competitive system opened up opportunities for women to organize, this had to take place within the prescribed rules of association, as stipulated in the country's 1977 constitution. CSOs are free to operate as long as they do not engage in political activism by supporting a political party or any electoral contestant. Likewise, the constitution prohibits any political entity aimed at "promoting or furthering the interest of, among other things, any group" (Article 20(2)(a)(i) of the 1977 Constitution of the United Republic of Tanzania). As a result of this constitutional de-linkage between civil society organizations and political entities, women have mobilized rather cautiously, in order to maintain a delicate balance between pursuing the goals and interests of women as a 'group' without over-stepping the boundaries specified in the constitution.

The case of the Women's Council of Tanzania (BAWATA) illustrates this issue. Efforts to form an independent women's organization after the advent of pluralist politics in 1992 faced a great deal of resistance from the government in power. Registered in May 1995, BAWATA, an autonomous non-governmental organization, headed by an economics professor, Anna Tibaijuka, was intended to liberate women from all forms of gender exploitation, oppression, discrimination and degradation (Tenga and Maina, 1996). However, its expanded support base and grassroots nature made it threatening to the government, which led to its forceful demise. The government de-registered it in 1996, accusing it of being 'political' and operating like a political party. During its brief existence, BAWATA was able to mobilize women from all levels of society, regardless of their party affiliations, enabling it to become a nationwide women's movement.

While the UWT still exists as the ruling party's women's wing, it has lost its status as the only organization for women in the country. There are today numerous civil society organizations, the majority of which are gender-based organizations. These are, according to Tripp, "independent women's organizations", which can be seen as part of a wider movement that is challenging the

pervasive powers of African states (Tripp, 2001a, p 33). According to Tripp, they were able to emerge as independent organizations because of four related changes in political opportunity structures, namely, the loss of state legitimacy, the opening up of political space, economic crisis and the shrinking of state resources (Tripp, 2001a). It is in this context that Tripp refers to women's organizations in Tanzania as constituting a movement, which campaigns, amongst other things, for an increased number of women leaders. In addition, women's struggles in the 1990s against customary land tenure in Africa have given rise to active women's movements. Cases of women's mobilization against discriminatory land policies and practices have occurred in Uganda, Tanzania, Mozambique, Zambia, Eritrea, Namibia and South Africa (Tripp, 2004). In particular, Tripp argues that it is important for women's movements to be autonomous. For example, in her study of the Ugandan women's movement, she demonstrates that because of its autonomy from the state and the party in power, it has become one of the most effective women's movements in Africa (Tripp, 2001b, p 101).⁹

Pluralist political systems have created spaces for women's organizations to play advocacy, lobbying and developmental roles, thereby pursuing gender-related policies and issues in the areas of political participation, land rights, employment, education, and other spheres. The effectiveness of women's organizations in Tanzania can be assessed in terms of the role they play in effecting changes in policies and legislation. For instance, women's organizations have been at the forefront in pushing for an affirmative action policy to increase the number of women representatives in parliament and local councils. As a result of their efforts, beginning in 1995, the number of women in parliament began to rise, although largely through affirmative action ('special seats' allocated for women) rather than through direct competition at constituency level. Through the special seats arrangement, the number of women in parliament increased from 37 in 1995 to 48 in 2000 and 75 in 2005. Currently, women constitute 30 per cent of all MPs. Efforts to mainstream gender in government institutions have also been made, including the adoption of a gender budgeting initiative (GBI) in selected sectors. Also women's organizations exerted pressure for the enactment of the Sexual Offences (Special Provisions) Act of 1998, which provides safeguards against sexual abuse of women, girls and children, for example setting the age for consensual sexual activity at 18.

Women's struggles have been taking place amidst changes in the nature of religious relations in the country. Despite the presence of long-time civic and social peace, tensions between Christians and

Muslims are on the rise, especially on questions of equal access to resources, including education and political power (Campbell, 1999; Heilmann and Kaiser, 2002; Mukandala, 2006). Cases of sporadic confrontation between Muslims and the state have occurred, especially in the early 1990s. The liberalization of the economy and politics led to a resurgence of suppressed notions of social identity based on ideas of ethnicity and religion (Campbell, 1999). As various groups compete for power, influence and resources, the boundaries between established identities are being redefined, leading to different forms of group mobilization. Yet the secular neutrality of the state is still in force. Political groupings are able to organize and mobilize, but not along religious lines. Thus, neither civil society organizations nor political parties are free to use religion as a tool for mass mobilization. Nevertheless, religion and religious organizations are very significant features of Tanzanian society, as described in Section 1. They are inevitably linked to wider social and political change through their influence on people's worldviews, the role of religious bodies as a source of social capital and their organizational resources. For this reason, it is important to understand the way in which any political and social movements interact with religion and religious organizations. This study examines women's struggle for land rights, highlighting the manner in which the land rights movement engaged with religion, the state and like-minded civil society organizations in the 1990s to promote women's interests across all religions in Tanzania. How did the women's land rights movement organize its struggles? It is to this discussion that we now turn, before we look more closely at its engagement with religion.

4 The women's land rights movement of the 1990s: strategies and tactics

4.1 Legal reform and land rights

The women's land rights movement waged its struggle by interacting and negotiating with various actors, including government officials, members of Parliament, non-governmental organizations and religious organizations. First and foremost, the movement emerged in reaction to the Tanzanian government's plan to introduce legal reforms in the land tenure system. With the shift from a state-led to a liberalized market economy in the mid-1980s, the government faced the daunting task of devising policies that could provide secure land tenure. In the process of reforming land policies, three developments were critical, namely, the formation of a Presidential Commission of Inquiry into land matters in 1991, the adoption of the National Land Policy of 1995 and the Land Bill of 1996. Ideally, the findings of the Commission were supposed to inform both the policy and subsequently the bill. However, in drafting the Land Policy and the Land Bill, the government decided to disregard many of the recommendations of its own Commission, for the reasons discussed below.

The Land Commission, headed by prominent professor of law and renowned critic of liberal market policies, Issa Shivji, visited all twenty regions of mainland Tanzania and held 277 public meetings in 145 villages and 132 urban centres. The Commission, commonly referred as the Shivji Commission, also visited Kenya, Zimbabwe and Botswana. Within 18 months of coming into existence, the Commission presented to the President a two-volume report, including a series of recommendations. The Commission's terms of reference included, among other things, to gather complaints from the general public regarding land, to identify the basic causes of land disputes and to propose remedial measures, to review matters of policy and laws pertaining to land, and to analyze the organizational structures involved in land matters (URT, 1994).

The Commission's recommendations sought to democratize land tenure systems in order to empower poor communities against the forces of the market and the state, including men and women, pastoralists and small-scale farmers. As noted above, the executive can determine the use of any piece of land in the public interest, including village land and customary land, and can allocate land to either government agencies or private investors for large scale farming or mining. Despite the provision of financial compensation to the original owners, this practice has led to a great deal of land alienation, particularly from pastoralists and small-scale farmers (Shivji, 1998, 2002). In response, the Commission recommended detaching land ownership and administration from civil servants,

suggesting instead that land matters should be the responsibility of representative structures, namely the parliament and village assemblies. It recommended, therefore, that the 'radical title' over land should no longer be vested in the President of the United Republic.¹⁰ Instead, administration of land should be vested in a body to be known as a National Lands Commission (NLC), which would be governed by a Board of Land Commissioners and answerable to parliament, and village land should be vested in village assemblies (URT, 1994, p 154). The Shivji Commission thus recommended reform of the statist top-down institutional structure by abolishing the powerful Ministry of Lands and creating room for people's participation in the administration of land matters (Shivji, 2002).

Regarding customary law, the Commission recommended an evolutionary approach, in the sense that customary law, in its view, should be allowed to operate and evolve over time through people's struggles, rather than through legislative intervention (Tsikata, 2003). Supporting the Commission's recommendation, Professor Kabudi of the School of Law of the University of Dar es Salaam asserted that "*you cannot legislate against culture*" (interview with Prof. Kabudi, April 17, 2010, DSM). In this regard, the Land Commission made it clear that "our recommendation on land tenure on village lands has the customary base as its point of departure. In that respect, it is not a fundamental departure from the existing situation" (URT, 1994, p 157). The report further states that "from the evidence we received we were convinced that customary law and practices with respect to land tenure have greater legitimacy with our people than any statutory system imposed from above would have" (ibid, p 157). This clearly set Shivji's Land Commission in sharp contrast with the spirit of the women's land rights movement. Indeed, one notable criticism of the Commission was its neglect of the gender question in its analysis (Manji, 1998). As Maoulidi puts it "the Commission report failed to challenge sexist ideologies and patriarchal structures that further the exclusion of certain groups, particularly women and youth, from social, political and economic processes" (Maoulid, 2006, p 4).

The government strongly rejected the Land Commission's recommendations and decided to ignore many of its recommendations in the formulation of the subsequent Land Policy of 1995 and draft Land Bill of 1996. Both the policy and the bill departed in many ways from the Shivji Commission's recommendations. In both, the intention was for land to continue to be publicly owned and the 'radical title' vested in the President as trustee on behalf of all citizens. The Land Bill sought to empower the Commissioner for Lands in the government Ministry of Lands to be the sole authority, with ultimate and

final powers of intervention and decision in all matters related to the administration of land (Shivji, 1998; Sundet, 2005). It was suggested that the pluralist legal system, which includes statutory, Islamic and customary law, should continue to operate. It is on this basis that Shivji concludes that “on fundamental policy questions, the bills, in my view, represent no departure from the existing principles, which were laid down in the Land Ordinance of 1923. In short, what was regulated administratively has now been codified” (Shivji, 1999, p 3).

With regard to women, the Land Policy acknowledges women's disadvantage in accessing and owning land, due to customs that predominantly favour men. It states that women should be entitled to acquire land in their own right through purchase or allocation, but that “inheritance of clan land shall continue to be governed by custom and tradition, provided that such custom and tradition is not contrary to the Constitution and is not repugnant to the principles of natural justice” (URT, 1997, paragraph 4.2.5), also stating that it did not recommend legislation with respect to “ownership of land between husband and wife” (paragraph 4.2.6), although it did not specify how the first was to be operationalized or refer to the Law of Marriage Act (1971) which does refer to domestic property. Thus, according to the women's land rights movement, neither the Commission report nor the National Land Policy and the subsequent Land Bill addressed gender issues in a comprehensive manner (GLTF, 1998; Manji, 1998).¹¹ As a result, the women's land rights movement began its work challenging the content of the 1996 Land Bill and lobbying for a more gender-sensitive bill, as discussed below. It is this struggle for equal access to land ownership and use that formed the basis of an organized women's land rights movement in the 1990s.

4.2 The beginnings of the women's land rights movement

The movement began to take shape when a coalition called the Gender Land Task Force (GLTF) was formed in March 1997. This coalition was headed by the Tanzania Women Lawyers Association (TAWLA) and included six other organizations, namely the Tanzanian Media Women's Association (TAMWA), the Women's Advancement Trust (WAT), the Women's Legal Aid Centre (WLAC), the Tanzania Gender Networking Programme (TGNP), the National Organization for Children, Welfare and Human Relief (NOCHU) and the Tanzania Home Economics Association (TAHEA). It is the collectivity of these organizations that is referred to here as the ‘women's land rights movement’.

The context in which the GLTF was formed is also of relevance, in terms of characterizing the emergence and nature of a women's land rights movement in Tanzania. The decision to form the GLTF emerged as a result of the government's banning of the National Women's Council of Tanzania (BAWATA) in 1996. BAWATA had originally aimed, among other things, to push for land reforms. When it was suspended in 1997, it was decided that TAWLA would take the lead and facilitate the formation of a land coalition (Haki Ardhi, 2009). Unlike the GLTF, which was a network of independent CSOs, BAWATA had emerged as a nation-wide movement comprised of individual women from all walks of life, both rural and urban, regardless of party affiliation and socio-economic status. The abolition of BAWATA by the government clearly indicated how restrictive the political environment was during the initial years of the multi-party competitive system. The women's land rights movement had to learn from this saga and carefully navigate a delicate political terrain in order to achieve its objectives.

Throughout the struggle for land rights, the GLTF defined its demands as primarily being directed against a discriminatory customary land tenure system that is detrimental to women's interests, in terms of their access to, control over and inheritance of land. As the Executive Director of the Women's Legal Aid Centre (WLAC), Scholastica Jullu stated:

We directed our struggles to those customs that discriminate against women in land ownership and control. For instance, in certain tribes such as the Kerewe, a widow has to be purified if she is to inherit part of the husband's property. Purification here can include even to have sex with a male son, if any, or when cleaning the dead husband's body, a woman/ widow is forced to sleep under the bed so that water from the deceased body will wash her and purify her and [she will] be able to stay and use some of the clan's property (interview, 14th August, 2009, DSM).

The GLTF's demands for the reform (or, sometimes, the abolition) of customary land tenure and the associated laws also stemmed from the magnitude of the problem. Many cases brought to legal aid centres by women involve matters of inheritance and land disputes. In Kilimanjaro region, for example, a non-governmental organization dealing with legal counselling, the Kilimanjaro Women Information Exchange and Consultancy Organization (KWIECO), received a total of 1,859 clients in 1989, 45 per cent of whom had legal problems with respect to inheritance and land disputes (KWIECO, 2005, p 22). The same trend is observed at the Women's Legal Aid Centre (WLAC), where in 2007 alone legal services were provided to 6,093 women, many of them relating to inheritance and land disputes (WLAC, 2007). WLAC provides legal advice, counselling, court representation, judgement follow-up,

drafting of legal documents and reconciliation (WLAC, 2007). It concludes that “the existence of discriminatory laws such as the 1963 Customary Law of inheritance makes WLAC’s work difficult in enabling women to access justice” (WLAC, 2007, p 9).¹² In 2005, WLAC filed strategic litigation on inheritance rights in the High Court to challenge customary laws of inheritance that discriminate against its clients. Two years later, the case was still unresolved (WLAC, 2007, p 36).

The GLTF’s demands included the following (Mallya, 2005, p 192-193; see also Tsikata, 2001):

- The abolition of discriminatory customary law on land tenure, because it denies women inheritance rights over clan and family land.¹³
- Village councils rather than families or clans should be in charge of governing all matters pertaining to village land ownership.
- The Land Bill should categorically state what constitutes women’s land rights, rather than merely recognizing the inferior position of women vis a vis men.
- Concerning the co-occupancy clause, the GLTF demanded joint ownership of land by spouses, with both husband’s and wife’s names appearing on a land title in all monogamous marriages. In polygamous marriages, it argued, the land registration certificate should show the names of a husband and all his wives. The law should also show how land is to be distributed after divorce.
- Women should be not merely represented, but equally represented, not only in village councils and councils of elders, but also in other authoritative institutions dealing with land issues, such as the High Court and the primary courts.
- Youth should be allowed to own land regardless of gender, and should also be represented in all institutions dealing with land matters.

The GLTF used various strategies and tactics to lobby for the changes in the Land Bill. First of all, each member organization was supposed to make a contribution to the movement based on its expertise. In this case, each organization was assigned to play a leading role in certain assignments (Chale and Ubwe, 1999, p 1; Haki Ardhi, 2009, p 2; Mosha, 2005, p 3). The allocation of duties was done during the first meeting, held from March 3rd-5th 1997 at the Russian Cultural Centre in Dar es Salaam (Haki Ardhi, 2009, p 1). The Tanzania Media Women’s Association (TAMWA) was made responsible for media advocacy and publicity. It used the media to publicize the deficiencies in the Bill and to inform the public about its content in relation to gender relations. Radio, television and newspapers were all used in advocacy. The Tanzania Women Lawyers Association (TAWLA) was

assigned the task of reviewing the provisions in the bill, particularly those that discriminated against women, and proposing some amendments. The TGNP was responsible for parliamentary lobbying, providing information to individual legislators to try to win their support for the proposed changes to the Bill. Community outreach activities were placed under the guidance of TAHEA, and WLAC. NOCHU and WAT were responsible for creating a public awareness raising campaign (Mosha, 2005, p 3) and press releases, fliers and bulletins were distributed to various stakeholders.

The second strategy was the use of seminars and workshops involving a varied range of stakeholders, including government officials, religious institutions, civil society organizations, members of Parliament, and media editors and reporters. TAMWA took the lead and organized workshops for members of parliament (MPs) in Dodoma in July 1998 and January 1999. Moreover, on January 26th 1999, the GLTF and other civil society organizations attended a parliamentary public hearing of the Finance and Economic Parliamentary Committee in Dodoma (Haki Ardhi, 2009, p 5). TAHEA organised a workshop in the rural area of Mandaka in Kilimanjaro region and a land symposium was held in June 1998, attended by different stakeholders, including the Commissioner for Lands. The engagement with government officials involved inviting them to the GLTF workshops and seminars, and direct communications with the key three government ministries, namely, the Ministry of Justice and Constitutional Affairs, the Ministry of Lands and the Ministry of Community Development, Women Affairs and Children (interview with Executive Director, WAT, 19th August 2009). The GLTF's cooperation with government officials was facilitated by one of its members, who was a member of parliament from the ruling party, CCM (Manji, 2001).

In addition, drama and live street performance shows were organized by the famous Parapanda Group for three days between 27th and 29th January 1999 in Dodoma (Haki Ardhi, 2009, p 5), with the aim of raising awareness amongst members of parliament and the people of Dodoma. Religious organizations were involved as partners in the public awareness campaigns in sensitizing their own members about the Land Bill debate (Haki Ardhi, 2009; Mosha, 2005; interview with Haki Ardhi Programme Officer, 7th July 2010). This will be discussed in the next section.

Furthermore, in an attempt to widen its base, the GLTF collaborated with another organization that had also been created to influence the Land Bill, called the National Land Forum (NALAF). In a workshop

held on the 15th-16th May 1997 in Dar es Salaam, a group of CSOs came together to discuss how to influence the proposed land legislation. It is important to point out that, after the Shivji Commission's recommendations were disregarded by the government, Shivji founded a CSO called the Land Rights Research Institute (popularly known in Kiswahili as Haki Ardhi), with the purpose of advancing and promoting the rights of peasants and pastoral communities. It was this organization that was instrumental in organizing the workshop, which then resolved to form the NALAF. Unlike the GLTF, which was comprised of women's organizations, the NALAF was more broad-based, including a variety of CSOs. Some of the GLTF members also became part of the NALAF (with both alliances together being referred to as the 'land coalition'). Given the instrumental role of Shivji and his organization, Haki Ardhi, the NALAF was driven by a commitment to push for the Land Commission's recommendations to be implemented (Odhiambo, 2002). The NALAF included fourteen organizations, including Haki Ardhi, the Law and Human Rights Research Centre (LHRC), the Journalists' Environmental Association of Tanzania (JET), the Pastoralist Indigenous Non-Governmental Organizations' Forum (PINGOs), the Women's Research and Documentation Project Association (WRDP), Ilaramatak Lorkonerei, Inyuat-e-Maa, Kipoc-Barbaig, the Aigwanak Trust and the Sahiba Sisters Foundation. GLTF members who were also members of the NALAF included TGNP, TAWLA and TAMWA.

In its campaign, the NALAF came up with an elaborate document that clearly spelt out the weaknesses in the government Land Bill and presented alternative positions. This document was called the *Declaration of NGOs and Interested Persons on Land* (1997), known popularly in Kiswahili as *Azimio la Uhai*. In its preamble, the declaration made three key observations: first, members of the NALAF "expressed their deep concern at the undemocratic way in which the bill had been prepared", without involving the people and by disregarding the "grievances of the people which were collected by the Presidential Commission of Inquiry"; secondly, "under the bill, the large majority of land users run the risk of losing their lands" to foreigners and the rich and powerful within the country; and, thirdly, "the bill continues to perpetuate discrimination and inequality for the most vulnerable groups particularly women, pastoralists, hunters and gatherers, the youth and small and poor peasantry" (Shivji, 1998, pp 111-112). Based on this, the NALAF resolved to present the declaration "for debate and discussion by the public in a National Debate on Land" (Shivji, 1998, p 112).

The NALAF used similar strategies to the GLTF, including organizing seminars and workshops and media publicity. In addition, it made some efforts to reach out to the grassroots. This was made possible largely because some NALAF members were indigenous pastoralist non-governmental organizations based in the Arusha region. Also, as will be discussed below, the NALAF used religious organizations to gather the support of members from these organizations (interview with Haki Ardhi Programme Officer, August 28th 2009).

The establishment of the NALAF, three months after the GLTF was formed, resulted in two simultaneous movements that were trying to combine their energy and resources for the purpose of influencing the proposed land legislation. Haki Ardhi was the leading organization for the NALAF and the Tanzania Women's Lawyers Association (TAWLA) was the leading organization for the GLTF. However, the differences between them were too glaring for them to remain a "*cohesive land movement*" (interview with Former Executive Director, Haki Ardhi, 28th August 2009; Manji, 2001; Shivji, 1998). Among the dividing issues were questions of the radical title and gender (Haki Ardhi, 2009; Manji, 2001). Thus, throughout the land debate two parallel movements waged struggles that pushed for different agendas. The NALAF and the GLTF were divided in terms of their diagnosis of the nature of the problem, their priorities and their approaches. The demands of the NALAF were defined in terms of empowering poor communities to have a voice in the future of their land by getting rid of the radical title (Manji, 2001). Hence, it demanded a law that would restrain the power of the state, the market and foreign investors to have unlimited access to land at the expense of marginalized groups, including pastoralists, hunters, peasants, youth, the disabled and women. For the NALAF, therefore, women's land rights were seen as irrelevant if whole communities were likely to lose their land due to the excessive power of the state, market and foreign investors. The entry point for the NALAF was class and not gender. By contrast, the GLTF's demands were geared towards transforming gender relations on matters of land ownership, use, control and disposal. Hence, the struggle was aimed at influencing the parliament to enact a gender-sensitive land law.

However, in terms of operation and membership, there were no strict boundaries between the two alliances. As the Haki Ardhi evaluative report on the land rights movement stated "many members of one process [NALAF or GLTF] were also members of the other" (Haki Ardhi, 2009, p 2) The two organizations also met with each other to assess the progress of the movement and to attempt to

resolve their differences (NALAF, 1999). For instance, joint meetings were held on the 4th April 1998 and May 5 1998 (ibid, p 1). Despite the differences in their priorities, both the NALAF and the GLTF collaborated with religious organizations in sensitizing the public on the content of the Bill and their proposed changes to it. It is to this that we now turn.

4.3 The women's land rights movement and its engagement with religious organizations

Religious organizations in Tanzania have played an important role in the provision of social services, particularly education and health. For instance, 45 per cent and 12 per cent of private schools are Christian and Muslim respectively (Ishumi, 2006, p 462). In the health sector, the Catholic Church owns a total of 39 fully-fledged hospitals, 29 health centres and 363 dispensaries. Likewise, the Lutheran church operates 20 hospitals and 144 dispensaries (Mukandala, 2006, p 1). With the beginning of the multi-party political system in 1992, accompanied by an increase in the number of civil society organizations, religious or faith-based organizations have also been involved in advocacy on various matters affecting the marginalized and the vulnerable, particularly women, the youth, the disabled, children, orphans, people living with HIV/AIDS and the elderly. In the struggle for land rights, four religious organizations in particular were highlighted during our interviews as having collaborated with both the NALAF and the GLTF to influence the Land Bill: the Tanzania Episcopal Conference (TEC) of the Catholic Church; the Christian Council of Tanzania (CCT), an umbrella organization for the Protestant churches; the Evangelical Lutheran Church (ELCT); and the Muslim Council of Tanzania (BAKWATA). All of these organizations have 'women's desks' in their structures.

In characterizing the nature of their involvement, it is important to point out that these religious organizations were not the most active members of the GLTF or the NALAF. The constitutional separation of religion and politics in Tanzania partly explains their caution in becoming directly involved in the women's land rights movement. Instead, they were involved as 'partners' of both the GLTF and the NALAF. Religious organizations were contacted by the NALAF and the GLTF and asked to disseminate information about the Bill to their followers in order to build a wide national movement for land rights. In so doing, the religious organizations were involved as part of the sensitization strategy of the land rights movement. Moreover, as the Deputy Secretary of Social Service of the ELCT said,

We [the ELCT] were not directly involved with the GLTF because we realized that when Christian groups get directly involved in this kind of movement, it tends to discourage people of other religions to participate, thinking that the movement is for Christians only (interview, 28th August, 2009).

This suggestion that the movement deliberately attempted to avoid forming formal alliances with particular religious groups, so as to avoid alienating other religious groups, was also indicated in our interviews with members of the women's land movement (see below). Thus, the cooperation between the women's land rights movement and the religious organizations can be understood as networking and coalitional processes (Diani and Bison, 2004). In addition, as we shall see, the movement itself did not want to align itself with particular religious traditions or for its campaign to be seen as in any way engaging critically with religion. Thus the cooperation between the women's land rights movement and religious organizations in Tanzania can be seen as an example of a "coalitional process rather than an interaction occurring explicitly within the boundaries of the movement itself" (Diani and Bison, 2004, p 283).

Among the religious organizations, the Evangelical Lutheran Church of Tanzania (ELCT) played a key role in disseminating information and publicly expressing its support for the NALAF demand for a national debate about the Land Bill before it was tabled in parliament. The ELCT is comprised of a total of twenty dioceses, with a membership of 5.3 million, making it a leading Lutheran church in Africa (www.elct.org/news). In a consultative meeting of its bishops, held on the 12th -17th August 1997 in Moshi, a resolution was passed supporting the *Declaration of NGOs and Interested Persons on Land (Azimio la Uhai)*. In this resolution, the ELCT called on the "government to desist from sending the Land Bill to Parliament so that a national debate could continue and to stop alienating land to foreigners until the new policy had been fully discussed and approved by the people" (Shivji, 1998, p 71). Furthermore, the ELCT attended some of the NALAF meetings, where it was represented by the head of its democracy and human rights desk, Dr. Rogatha Mshana. Haki Ardhi, the leading organization in the NALAF, addressed the ELCT Executive Council on land rights during the campaign (interview with ELCT Communication Coordinator, Elizabeth Lobulu, 7 June 2010). Also, in response to a NALAF request, on 31st October, 1997, the ELCT Secretary General wrote to various organizations in Arusha to solicit their support for the NALAF demands.

The ELCT has a clear focus on gender issues within its structures and activities, running a programme on gender and human rights that aims to increase the participation of women in the decision making structures of the church, as well as their participation in development groups (interview with Deputy Secretary of Social Services, 28 August, 2009). In 1990, women started to be ordained as priests and in 1999, the ELCT bishops adopted a policy statement on gender equality. Furthermore, the ELCT's religious values and teachings seem to be compatible with the general spirit of promoting the land rights of the marginalized, including women, men, pastoralists and youth. This is reflected in one of the speeches given by its Secretary General in Morogoro diocese, when he said "God created man and women as equal and commanded them to become one as husband and wife. God promised to be with his people and if we cry for his help, we would overcome the barriers toward equity between men and women" (ELCT Press release, July 3 2000). The same point of view was expressed in an interview with the ELCT Deputy Secretary of Social Services, who said that:

We teach husband and wife during marriage that they have become one and in so doing they are life partners and they should not segregate each other in property ownership. Hence, the concept of sharing wealth and making decisions together has started to grow among our followers (interview, 28 August, 2009).

The Christian Council of Tanzania (CCT), which has a membership of fifteen churches and fourteen church-related organizations (<http://ccttz.org>), was also invited to participate in the meetings of both the NALAF and the GLTF, as well as to disseminate information. For instance, the CCT in Morogoro region collaborated with the NALAF in disseminating booklets and attending meetings (Haki Ardhi-NALAF database, 1998¹⁴), and the CCT in Dar es Salaam collaborated with the GLTF in disseminating information to CCT members (interview with TAMWA member, 5th June 2010). One of the CCT's main aims is to

...promote and take an active role in the development and provision of welfare services for the communities of people served by the churches; [and] to strengthen and build capacity of the member churches to respond effectively to emergencies, human displacement, gender equity, good governance, justice and HIV/AIDS pandemic and orphans... [In its strategic plan, the CCT sets out to] integrate the Rights Based Approach to development and enhance participation in public policy engagement and advocacy through capacity building, collaboration and networking among CCT membership, faith based organizations and the wider civic society. (<http://ccttz.org>).

The organization has a desk dealing with women's development, children and gender, with the goal of empowering women and children in order to achieve gender equity and improved quality of life. It also has a policy analysis and advocacy desk that aims to promote the participation and engagement of CCT members in influencing public policy (Leurs et al, 2011).

In addition to the ELCT and the CCT, the National Muslim Council of Tanzania (BAKWATA) and the Tanzania Episcopal Conference (TEC) were invited to attend both NALAF and GLTF meetings (interview with Programme Officer, Haki Ardhi, 7th June 2010). Our interviews do not indicate that the involvement of these two organizations was as extensive as that of the ELCT and CCT.¹⁵ Nevertheless, both TEC and BAKWATA do seem to share some commonalities with the spirit of the land rights movement. For example, both have been engaged in advocacy on various issues, including conducting civic education and participating as election observers during general elections (Leurs et al, 2011).

4.4 The women's land rights movement and its interpretation of 'customary law'

As we have seen above, although none of the religious organizations were formal members of the NALAF or the GLTF, the women's land rights movement did engage with them to mobilize support for its campaign. In addition to looking at the extent to which the women's land rights movement engaged with religious organizations in pursuit of its goals, one of the aims of the research was to understand whether and how religion plays a role in the uneven allocation of land rights in Tanzania and how this was addressed by movement actors. This discussion has two dimensions. First, while customary laws and practices are often considered to be linked to African Traditional Religion (for instance, in scholarly accounts of religion in Africa, also see Masanja and Lawi, 2006), none of our respondents took this view. They were adamant that their campaign did not tackle or engage negatively with religion, while it did engage negatively with customary law. Second, the movement did not attempt to challenge Islamic law, despite its unequal treatment of women in matters of land rights. Thus, the movement's interpretation of 'customary law' was divorced from any discussion of religion. On the one hand, customary rules and practices were not seen to be religious and, on the other hand, Muslim law, although problematic for women, was not tackled by the movement. This section seeks to provide some explanations

Despite the impression gained from our interviews, in some communities in Tanzania, customary land tenure practices do have links with ATR.

Indigenous African religions may be defined as interactions between people and non-visible reality,, seen in expressed ideas, attitudes, values and ritual practices that acknowledge the presence and powers of a more or less elaborate system of non-physical reality... [They] are culture and environment specific (Masanja and Lawi, 2006, p 79).

Traditional beliefs are likely to have been much stronger in pre-colonial times, when “religion pervaded all spheres of the social, economic and political life of individuals and societies” (ibid, p 80), but as noted above, they are the primary belief systems for some groups in Tanzania today and continue to influence many more. For instance, according to the Maasai’s traditional religion, certain hilltops are considered ‘sacred’ and no individual “is allowed to own, control or manage them except for religious functions” (Kauzeni et al, 1998, p 77). Similarly, according to Hehe customs, “the presence of graves is itself a justification for legitimate land claims... [That is to say, only those people regarded as the] rightful heirs to the property of the deceased can use land where ancestors are buried” (Odgaard, 2002, p 78). A preliminary search of the anthropological literature to ascertain whether such spiritual dimensions of rights and attachments to land are typical of customary tenure systems did not reveal other discussions of the matter, and an extensive search was beyond the scope of this research. In addition, studies of colonial and post-colonial land expropriation and villagization do not seem to have considered whether the extensive displacement of ethnic groups and clans from their ancestral land has influenced their views about such spiritual dimensions.

Despite the possible connection between ATR and customary land tenure systems, the findings from our interviews indicate that our respondents did not regard customary land tenure practices to have religious dimensions. Typical responses included:

We did not challenge religion at all. Instead we directed our struggle against discriminatory customary law and practices on land tenure (interview with the Executive Director of the Women’s Legal Aid Centre (WLAC), 14th August, 2009).

I consider customary land tenure systems as just customs and taboos and not as ATR (interview the Legal Officer of the Legal and Human Rights Center (LHRC), 25th Sept. 2009).

On our part in TGNP, we have not really talked much about African traditional religion as such...Religion did not feature at all in the struggle for women's land rights (interview with Prof. Marjorie Mbilinyi, 25th September 2009).

While this is a limited sample, it is reflective of a more general observation from our interviews that, even though the women's land rights movement was waging a struggle against customary land law and practices, it did not view those practices as having any religious dimension.

With respect to traditional beliefs and practices, the responses affirm, first, that these are not seen as 'religion' in the same sense as Islam or Christianity, and second, that there is a lack of agreement over what ATR encapsulates. To scholars of religion this lack of clarity is not surprising, since unlike Islam and Christianity ATR is not a codified set of beliefs and practices with clear institutional arrangements. The above discussion of the syncretic nature of much African religion supports this view. As noted above, it is clear that many Tanzanians regard indigenous beliefs and practices as 'culture' rather than a separate religious tradition. Instead, people often see themselves as Christian or Muslim *and* a believer or practitioner in some aspects of what elsewhere is labelled as traditional religion.

However, this divorce of customary law from 'religion' may also reflect the fact that the land rights movement was largely urban and that the rural women who are most affected by customs and tradition were not directly mobilized to wage the struggle and, hence, their interpretation of custom and tradition (and the interpretations of the men who take on responsibilities and roles in customary rituals and practices) was not taken into account in the struggle. The women's land rights movement did indeed face a major limitation in its struggles to influence the Land Bill because of its failure to reach out to the majority of women in rural areas. As Agripina Mosha explains, "originally, the intention was for the GLTF to have representatives from all over Tanzania, however, due to financial constraints most coalition members came from Dar es Salaam" (Mosha, 2005, p 2). As a result, the women's land rights movement remained largely urban-based and lacked organized grassroots support, possibly influencing its interpretation of the nature of customary practice. Future research into contemporary claims by clans and families for the restitution of land expropriated by the government and the dynamics and power struggles accompanying the implementation of the Land Act could explore such issues.

The second sense in which the campaign was divorced from religion was with respect to its lack of engagement with Islamic law, which has its own sets of rules and customs that shape land ownership and inheritance. As discussed above, Muslim personal and family law is available to Muslims in Tanzania, although the extent to which it is used to regulate gender relations, marriage and property outside Zanzibar is unclear (although see Becker, 2008, for some discussion of this in southeastern Tanzania). As with so-called customary law, as noted above, Muslim law treats men and women differently. Our interviews suggest several reasons why Islamic law was left alone. First, traditional customary law is localized and not strictly codified (despite the 1963 Order that sought to standardize it), so is negotiable. In contrast, Muslim law emerges out of Islamic religious principles and teaching. As a member of the Sahiba Sisters Foundation, an organization dedicated to improving the welfare of Muslim women in Tanzania and a member organization of the NALAF, asserted:

Challenging Islamic laws is virtually impossible as they are God's law. They are non-negotiable. They only need to be properly implemented for women to inherit their due share (interview with Subira Mohammed, 23rd Sept. 2009).

Muslim law governing inheritance and succession was therefore not challenged, even though some respondents acknowledged its discriminatory nature. Muslim law provides for women to own land in their own names. Sheikh Mohamed from BAKWATA emphasized the rights afforded to women in the name of Islam compared to customary law, telling us that:

Unlike Islamic law that already provides rights for women to own land, customary law tends to discriminate against women in owning land. Thus, there is no any clash between the GLTF demands and Islamic law (interview 15th August, 2009).

In addition, as noted above, Muslim law provides for one eighth of the property of a deceased husband to be inherited by a widow or divorcee with children, and a quarter of a property if the couple has no children, although in practice, it has been difficult for women to get their due share.

Becker's research shows that even in Muslim communities in south eastern Tanzania, customary law is frequently used, and the outcomes of disputes have for many years been

...arrived at through negotiations in which both Muslim and non-Muslim rules could be evoked, but legal rights, however defined, mattered little if their holders were too young, too old, too far away, or too weak – educationally, financially, socially – to claim them. It was not so much legal practice that was changing as the domestic balance of power in

which legal rules were but one element. That this power balance turned to the disadvantage of wives within households and maternal uncles within lineages is, nevertheless, clear (Becker, 2008, p. 152).

Her informants explained that the rules to be applied (including Muslim rules) are often negotiated through gatherings of those concerned held within two months of a death, usually to avoid ill feeling and perceived injustice (for example including illegitimate children in the distribution of inherited property or according equal shares to sons and daughters), to the dismay of local *shehe* (scholars) and Muslim reformists (Becker, 2008). Subira Mohammed also argued that, in most cases, “*Muslim sheikhs do not follow what the Holy Quran requires them to do*” (interview with Subira Mohammed, 23rd September, 2009). This view is shared by the legal officer of the Legal and Human Rights Centre (LHRC) who said that:

A majority of cases in [our] legal clinics involve women (as widows and divorcees) claiming for rights to inherit land and other property and a good number of them are Muslim women in polygamous marriages... If religious organizations gave proper services to their followers, we would not have many women coming to us resolving inheritance disputes (interview with Gloria Mafole, 25th Sept. 2009).

However, there was also a strategic reason for leaving Islamic law alone, as the executive director of WLAC told us:

Our movement did not engage directly with religious issues. We knew from the beginning that if we condemned religion, we were not going to get any far... Whenever you are dealing with legal matters concerning people's lives, do not touch their religious beliefs. You will not achieve the intended objectives (interview, 14th August, 2009).

There was a strong sense from our respondents that there was a need for ‘neutrality’ in religious matters in order to keep the women’s movement united and as a result, according to Thabitha Siwale, executive director of WAT, “*we decided to be neutral so that not to get into trouble with religious organizations*” (interview 21st August, 2009). Moreover, the women’s land rights movement included organizations whose members belong to different religions and the religious values of individual members did not seem to pose an obstacle to the demands of the struggle. For instance, while some members of the campaign were Christian and therefore believed in monogamous marriage, the women’s land rights movement made a collective demand to ensure that the rights of all wives in polygamous marriages (whether Muslim or not) to own land would be protected by joint ownership

certificates, and in requiring the consent of all legal wives to the disposal of the matrimonial house or any land. Thus, in their aim to remain neutral the movement found ways of negotiating and accommodating diverse religio-cultural needs, rather than adopting a monolithic approach. As Ananilea Nkya, executive director of TAMWA said:

We were very strategic not to offend some of our members who were in a polygamous marriage themselves. We needed unity. Hence, we said, we were defending interests of women, regardless of their religions, to own and control land. For instance, we did not say that polygamous marriage is bad but rather we said all legal wives must consent to the disposition of the matrimonial home or land (interview, Ananilea Nkya, 18th September, 2009).

This desire to remain neutral and representative therefore shaped the extent to which women used religious discourse to underpin their arguments and strategies. Moreover, the particular religious background of women did not seem to be a direct influence on their motivations to engage with the land rights issue. Although, as Prof. Marjorie Mbilinyi said, during the struggle we “*never engaged in any religious discourse at all*” (interview, 18th Sept. 2009), those involved were nevertheless sensitive to the diverse backgrounds from which women come.

5 The struggle for women's land rights and its outcomes

The women's land rights movement was ultimately successful in their campaign and the government incorporated significant recommendations proposed by the GLTF in the legislation. In particular, the right of every woman to acquire, hold, use and deal with land is provided in both the Land Act no. 4 of 1999 and the Village Land Act no. 5 of 1999: "...to the same extent and subject to the same restrictions as the right of any man." Moreover, the Land Act overrides customary law if the latter denies women, children or persons with disabilities their right to use, transfer and own land and "the Village Land Act also protects women against [discriminatory] customs and traditions" (Komba, 2009), providing under section 20(2) that any rule of customary land law is void and inoperative to the extent that "it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land" (Lugoe, 2007, p 17).

On the acquisition of land rights, both acts contain gender-neutral provisions that give men and women equal entitlement to a right of occupancy, either a granted right over a piece of general land (through, for example, allocation or purchase) or a customary right. Section 23(3) of the Village Land Act for instance states that:

In determining whether to grant a customary right of occupancy, the village council shall "have special regard in respect of the equality of all persons, such as: that an application from a woman, or group of women [shall be treated] no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women" (Lugoe, 2007, p 17).¹⁶

Women's rights of co-occupancy are also protected. Thus if a spouse obtains a right of occupancy, the Registrar of Titles is required to register both (or all) spouses as occupiers in common, which means that disposal of the land cannot occur without the consent of each occupier, who is entitled to a share (Lugoe, 2007, p 17; Myenzi, 2009, p 21). Furthermore, special provisions have been made with respect to a mortgage on a matrimonial home, to protect spouses from the risk of default and the possibility of becoming homeless. Thus, "Section 112 of the Land Act ...requires the consent of all the spouses before a matrimonial home is subjected to mortgage" (Myenzi, 2009, p 19).

In general, therefore, the Land Act and the Village Land Act are complementary, as they both address land rights with an eye on gender equality. However, ambiguities remain, not least that the Customary Law (Declaration) Order (No. 4), GN No. 436 of 1963, has not been repealed, even though it contains

discriminatory rules against daughters and widows with respect to land use and inheritance. Despite the fact that district councils have a mandate law to review customs in the Customary Law Order no 436 every five years, this has not usually been done. Even the judges have been reluctant to declare the discriminatory customary law on inheritance unconstitutional (interview with Prof. Kabudi, 17th April 2010). Efforts to get the Order repealed were made by the GLTF without success. Thabitha Siwale, former MP and a member of the GLTF referred to the Order as being “*an insult to women and it has been quite a tough battle get it repealed*” (interview 21st August, 2009).

Some campaigners believe that, given the problems associated with customary land tenure law, it should be abolished rather than reformed. For example, the Director of WLAC said “*we need to continue fighting for the abolition of [the] customary land tenure system*” (interview 14 August 1999, DSM). Recently, under the coordination of WILDAF, a few CSOs, including WLAC, have come together and formed a “task force for the abolition of Customary Law of 1963” (WLAC, 2007, p 9). Other CSOs involved include LHRC and TAHEA (WILDAF, 2008, p 1).

In addition, the implementation of the 1999 legislation needs to be monitored and assessed with respect to its effects on women's access to land in different parts of the country. Although the women's land rights movement felt that it had succeeded in obtaining real improvements to the 1999 legislation, progress with implementation of what is an extremely complex and bureaucratic system has been very slow. In addition, what information is available on the implementation of the Acts indicates that it has not had the desired effects, since the majority of women in rural areas are not informed of their legal rights and therefore do not take advantage of the law (WLAC, 2004). According to a needs assessment study done in 2004 in four regions of Tanzania by WLAC, WAT, LHRC and TAWLA, it was found out that “for most participants who attended the training workshops and seminars, it was the first time to hear about the enactment of the land Acts” (ibid). Haki Ardhi continues to hold an annual National Land Forum that brings together different organizations to discuss and deliberate on issues of land and natural resources, including minerals (interview with Haki Ardhi Programme Officer, 7th June 2010). However, it is reported that mobilizing organizations that were members of the GLTF prior to 1999 to collaborate has not been an easy task, apparently because each organization has become preoccupied with the implementation of its own activities.

6 Conclusions

The campaign to improve the proposed Land Acts in Tanzania, among other things to adequately address women's concerns, achieved what Schumaker (1975) calls 'access responsiveness', in which decision-makers are willing to listen to the demands of a group. In addition, the women's land rights movement achieved 'policy responsiveness', by getting some of their recommendations into the legislation. However, it is yet to achieve two further levels of responsiveness, namely, 'output responsiveness,' which requires that measures are taken to ensure that legislation is enforced, and 'impact responsiveness', which is achieved if the underlying grievance is actually alleviated (Schumaker, 1975, p 494-5).

This study adds to earlier work on the strategy and tactics of the women's movement (e.g. Mallya, 2005) by helping us to understand the engagement between social movements and religion in the pursuit of social change for development. Firstly, in the case of the women's struggle for land rights in Tanzania through a campaign to improve proposed legislation in the 1990s, religious organizations acted as facilitators rather than obstacles to the land rights movement. However, given the nature of Tanzania's political system, it was not possible for them to be overt 'members' of the women's land rights movement. Nonetheless, they did support and publicize its goals as informal 'partners'. Second, the movement was secular in the sense that it did not itself invoke religious teachings and values, nor did individual members state that religious values and practices influenced their involvement or inspired their arguments and strategies. As almost everyone in Tanzania regards themselves as either Christian or Muslim, most of the individual women activists were members of a faith tradition. However, they did not consider their religion relevant to their involvement in the land rights movement. Indeed, our respondents drew attention to the importance of the movement remaining 'neutral' with respect to religion, in order not to alienate women from different religions and also because religion is a politically sensitive issue in Tanzania. Instead, the movement was largely guided by a legalistic, human rights-based approach and the struggle confined itself to the issue of gender equality with respect to women's rights to land, especially land held under customary tenure arrangements. It focused on safeguarding women's rights by improving draft legislation, rather than engaging with culturally and politically sensitive issues around gender relations or religion. It appears that the Tanzanian context is not conducive to overt engagement with Christian or Muslim organizations by social movements, or of critical engagement with religion where it is perceived to block social development. This contrasts with social movement activity in other contexts (for example, Nigeria, see Adamu et al, 2011; Para-Mallam et al, 2011).

The land rights struggles in Tanzania have demonstrated that changing discriminatory customary land tenure systems is a complicated process. Despite demands by some for the abolition of customary land tenure, it is still the prevalent tenure system in rural Tanzania and the attempt to codify it in the Customary Law (Declaration) Order no. 436 of 1963 is still used by the courts. Traditional law and practices are considered to place women at a disadvantage, and changes in agricultural production and social relations have often worsened their position further. The struggle for women's land rights in Tanzania did not take place in a vacuum, but was shaped by politics, culture and religion, and is therefore to be understood as an outcome of processes of negotiations (Manji, 1996; Odgaard, 2005). In addition, in negotiating for women's land rights, the women's movement attempted to maintain a delicate balance between women's land rights, the state and religion. On the one hand, the movement mobilized the support of religious organizations in raising awareness of the Land Bill amongst their members. On the other hand, however, it took a cautious approach by not challenging religious beliefs and teachings relevant to women's rights to land. Instead, the movement directed its demands towards reforming customary land tenure law and the governance arrangements for decision making with respect to land, which it sees as undermining women's rights to own, control and use land.

In addition to not addressing any perceived injustices arising from the principles or practice of the law on land and inheritance in Islam, activists did not identify any links between customary law and practice and African traditional religious beliefs and practices. Our respondents, when asked whether their movement was underpinned by 'religious' values and whether they consider that customary law is 'religious', replied in the negative because of a conception that the category 'religion' does not include traditional beliefs and practices, which they regard as custom and culture. Evidence from other studies demonstrates that a majority of Tanzanians do, alongside adherence to Christianity or Islam, hold one or more beliefs and/or engage in practices associated with what is understood elsewhere as African traditional religion. The category 'religion' is understood by most contemporary Tanzanians to mean one of the world religions, although many mix traditional beliefs and practices with those of Christianity or Islam. At present, limited progress has been made with implementing the 1999 Land Acts and systematic evidence of the effects of what implementation has occurred on women's access to land in different parts of Tanzania appears to be lacking. Nor is it clear whether rural men and women whose land rights are governed by the rules and practices of customary tenure have similar views of the legislation, its implementation and traditional religion to the educated activists involved in the 1990s campaign. All these matters are subjects for further research.

Appendix 1

List of interviews

1. Salma Moulid, Executive Director, Sahiba Sisters, 10th June 2008
2. Prof. Marjorie Mbilinyi, Coordinator, Research and Publications, TGNP, 11th June 2008, 25th September, 2009
3. Mary Rusimbi, former Executive Director, TGNP, 2nd July 2008
4. Prof. Ruth Meena, Member, TGNP, 25th July 2008
5. Scholastica Jullu, Executive Director, The Women's Legal Aid Center (WLAC), 15th July 2008, 14th August 2009
6. Maria Shaba, Member, Tanzania Gender Networking Programme (TGNP), 16th July 2008
7. Sheikh Mohamed Hamis Said, Deputy Secretary on Religious Issues, Muslim Council of Tanzania (BAKWATA), 15th August, 2009
8. AnnMarie Mavinjina, Executive Director, Tanzania Women's Lawyers Association (TAWLA), 18th August 2009
9. Hilda Stuart, Principal Researcher, Tanzania Women's Lawyers Association (TAWLA), 18th August 2009
10. Thabitha Siwale, Executive Director, Women's Advancement Trust (WAT), 21st August 2009
11. Benard Baha, Programme Officer, Institute for Land Rights (HAKIARDHI), 28th August 2009
12. Robert Charles, Deputy Secretary Social Services, Evangelical Lutheran Church of Tanzania, ELCT, 29th August 2009
13. John Chikomo, Executive Director, Journalism Environmental Association of Tanzania (JET), 29th August 2009
14. A.Msangi, Executive Director, Tanzania Home Economics Association (TAHEA), 3rd September, 2009
15. Ananilea Nkya, Executive Director, Tanzania Media Women Association (TAMWA), 25th September, 2009
16. Subira Mohammed, Member, Sahiba Sisters, 23RD September 2009
17. Jane Mrema, Coordinator CARITAS, Gender Desk, 25th September 2009
18. Dr. Ngwanza Kamata, former Executive Director, HAKIARDHI, 17th July 2008

Notes

- ¹ The land for which the President of Tanzania holds radical title is divided into three categories: general land (including unused village land, on which rights of occupancy can be granted), reserve land (land set aside for national parks, forests, roads, utilities etc) and village land. The government can transfer land from one category to another. The 1999 legislation, which repeals eleven existing Acts and amends others, was at one point intended to be a single Act but because of its length was divided into two, the Land Act dealing with general and reserve land and the Village Land Act dealing with village land (Palmer, 1999; Sundet, 2005).
- ² Tanzania's statutory law is based on English common law, so in addition to the legislation itself, the courts play a major role in interpreting laws and their judgements contribute to the creation of law.
- ³ In cases of inheritance, for Islamic law to be applied, three conditions must be established by a court: "it must be shown that the deceased was a Muslim, that he or she had left oral or written instructions that Islamic law should govern the distribution of the estate, and that the person lived in a way that demonstrated an intent that the estate be divided according to Islamic prescriptions" (Legalbrief Africa, 2004). In practice, marriage, land and inheritance amongst Muslims may be governed by customary or statutory law rather than Muslim law. There is no separate body of law governing Christians' personal status.
- ⁴ This can include the allocation of land by a man while still alive, as well as inheritance after death. Most groups in Tanzania are patrilineal, with inheritance passing from father to son. However, there are also matrilineal groups (about 20 per cent of the population), which were often uxori-local (husbands move to live with their wives' families), and in which heirs are a man's uterine brothers and his sister's sons (Rwebangira, 1996).
- ⁵ At independence, Tanganyika had seven political parties including the Tanganyika African National Union (TANU), the United Tanganyika Party (UTP), African National Congress (ANC), the All-Muslim National Union of Tanganyika (AMNUT), the Tanganyika Federal Independence Party (TFIP), People Democratic Party (PDC), Peoples Convention Party (PCP) and the National Enterprise Party (NEP)
- ⁶ Although Kadhi courts were retained in Zanzibar.
- ⁷ The concept of radical title has its roots in the feudal history of England, where it was stated that "every acre of land in the country was held of the King" (Shivji, 1998, p 73)
- ⁸ For details on land disputes in Tanzania, see Shivji (2002); Odgaard (2002); Kironde (2009).
- ⁹ For further information in women's movements in Africa see Tripp (2001a) and McFadden, 1997.
- ¹⁰ The 'radical title' empowers the President to acquire any portion of land in the 'public interest'.
- ¹¹ Many of those analysts who do refer to women's rights over land do not distinguish between women in different social positions in relation to others, for example, as daughters, wives, divorcees, widows etc. Their analysis is often over-simplified, in contrast to the picture portrayed by anthropologists and historians who have studied particular regions or ethnic groups in depth.
- ¹² One example of such a case follows. In the WLAC para-legal centre in Arusha, one case involved Ms. Nai Losululu Meriki, aged 54 years, with five children born out of wedlock. Ms Nai lived with her old parents and cared for and nursed them when they were sick, until they died. The parents left behind a farm and a 24-roomed house. Nai's only brother never maintained contact with the parents but upon their death, he came to claim sole ownership of the property, as he was the only son. He evicted Nai and her children from the house. Nai went to local, regional and religious leaders to plead her case but this was in vain. The brother refused to give Nai even a room to live in. Nai then approached the WLAC para-legal centre in Arusha, which was able to convince the brother to settle out of court and provide Nai with a room in which to stay and other rooms for renting out. Nai and the brother signed an agreement before village and religious leaders (WLAC, 2007, p 22)

- ¹³ The position paper presented by the GLTF to a meeting of the National Land forum in 1998 appeared to call for the abolition of customary tenure, but Tsikata (2001, p 21) notes that an interviewee clarified that their call was for the discriminatory aspects of customary tenure practices to be reformed.
- ¹⁴ As the leading organization for NALAF, Haki Ardhi has a collection of files comprised of information on the activities and communications of the movement during the struggle e.g. letters, memos and publicity materials. It is this collection of documents that is referred as the Haki Ardhi-NALAF database.
- ¹⁵ This may be partly due to the manner in which these religious organizations are organized. The ELCT and CCT operate in a decentralized way, which enables individual dioceses to get involved in various activities with minimal control from the headquarters/centre. In contrast, the TEC of the Catholic Church seems to operate with a strict hierarchical structure managed from the centre. The Muslim Council of Tanzania (BAKWATA) also operates in a structure in which the centre/headquarters exercises considerable control over the regional and district offices.
- ¹⁶ Some critics believe that the Act should have provided for all land to be registered and certificates of occupancy issued to all those with occupancy rights on a village by village basis, rather than introducing an intermediate system of certificates of customary occupancy for land currently occupied by virtue of customary rights. They believe that, despite the legal provision, the process of applying for certificates of customary occupancy will favour the more prosperous and powerful rather than protecting the rights of all the poor, as the latter will not have the resources needed to tackle the bureaucratic process (see, for example, Sundet, 2005).

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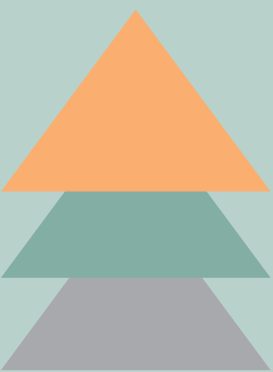
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