

The story of a post-feminist in post-patriarchy

The Consequences of Customary Laws and Practices on Rural Women's Land Rights and Livelihoods in Tanzania

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Abstract

In rural Tanzania, customary laws and practices have for over 50 years been the major constraints of women's land rights and livelihood. According to customs, a man has inherent powers to own and control land, and he is considered to be the rightful heir of such resource, and a woman is not. In most cases, women get to experience such disposition in matters of inheritance, succession, and division of matrimonial properties after divorce.

This study is aimed to investigate on the experience of rural women brought by the laws and cultural practices applied in ownership of land, and how these laws and practices affect women's livelihood in Tanzania.

A combination of two conceptual frameworks of patriarchy and livelihood was applied to answer the research questions, where the conceptualisation of patriarchy follows the idea of the importance of culture in explaining the experience of rural women in matters of land ownership, whilst livelihood was important in order to provide an understanding of the impacts of cultural practices applied in land issues on the livelihood of rural women, since securing of livelihood can be done when a person have access to resources, which enhances their capabilities to earn a living. Both frameworks are derivate of Amartya Sen and Chambers & Conway's definition, and were situated within the mode of application done by three development actors who are UNDP, DFID, and CARE. The study is structured into two phases, in which phase 1 consists of document analysis, while phase 2 carries the case study where a purposive sampling of Local Government officials and local female villagers was made and employed semi-structured interviews as the data collection approach.

The findings insinuates that, cultural practices, assumptions, beliefs, customary laws and national laws have not only led to the dispossession of rural women in land ownership, but also lowered the social position of women in household decision making processes. As a consequence, this constrains the capability of rural women to earn a living since land is the major asset needed for them to secure their livelihood.

The findings concluded that there is a need for reconsideration of the prevailing patriarchal assumptions in the land ownership discourse, which largely focuses on male and disregard the position of their female counterparts.

Keywords: patriarchy, rural women, customary laws, poverty, livelihood, women's rights

Word count: 12,972

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Dedication

I dedicate this research to my beloved Mother Orper Kopweh, my father Dr. Peter Kopweh, and to my late grandfathers Stephen Shekighenda Kopweh and Vaita Eskia Kirekero who dared me to dream.

List of Abbreviations

AD - Administrator

CARE - Cooperative for Assistance and Relief Everywhere

DFID - Department for International Development

DS – District

GN – Government Notice

GV – Government

HRBA – Human Right Based Approach

ICCPR – The International Covenant on Civil and Political Rights

ICESCR – The International Covenant on Economic, Social and Cultural Rights

JALO – Judicature and Application of Laws Ordinance

LA - Land Act

MRGI – Minority Right Group International

NBS – National Bureau of Statistics

NGO – Non-governmental Organisations

REPOA – Research on Poverty Alleviation

TAWLA – Tanzania Women Lawyers Association

UDI – Universal Declaration of Human Rights

UN – United Nations

UNDP - United Nations Development Programme

URT – The United Republic of Tanzania

VLA – Village Land Act

Table of Contents

1. BACKGROUND.....	1
2. PROBLEM IDENTIFICATION, RESEARCH AIM AND QUESTIONS.....	4
2.1. RELEVANCE FOR SUSTAINABILITY SCIENCE	6
3. CONCEPTUAL FRAMEWORK.....	8
3.1. PATRIARCHY.....	8
3.2. LIVELIHOOD	10
3.2.1. <i>Livelihood Capabilities</i>	11
3.2.2. <i>Stores and Resources</i>	12
3.2.3. <i>Claims and Access</i>	13
4. METHODOLOGY	14
4.1. RESEARCH STRUCTURE.....	14
4.2. THE GOVERNING ONTOLOGY AND EPISTEMOLOGY	14
PHASE 1.....	15
4.3. ANALYSING HOW THE LAWS AFFECT WOMEN’S LAND RIGHT IN TANZANIA	15
4.3.1. <i>Literature Review</i>	15
PHASE 2.....	16
4.4. CASE STUDY	16
4.4.1. <i>Description of the Place</i>	16
4.4.2. <i>Why this Place?</i>	17
4.7. SELECTION OF INFORMANTS AND APPLICATION SEMI-STRUCTURED INTERVIEWS.....	17
4.4.5. LIMITATIONS OF THE STUDY	20
4.4.6. FIELDWORK REFLECTION	20
5. RESULTS AND ANALYSIS	21
5.1. WOMEN’S PROPERTY RIGHTS TO LAND	21
5.1.1. <i>Lower the Economic Opportunities</i>	22
5.1.2. <i>Limited Access to Justice</i>	23
5.1.3. <i>Increased Economic Dependence</i>	25
5.1.4. <i>Silenced Women’s Voices</i>	26
5.1.5. <i>Increased Domestic Violence</i>	26
5.2. RURAL WOMEN’S LIVELIHOOD	27
5.2.1. <i>Identifying the Necessary Resources for Rural Women’s Livelihood</i>	27

5.2.2. <i>Claims and Access to Land Resource</i>	29
5.2.3. <i>Rural Women’s Capabilities to Earn a Livelihood</i>	31
5.3. REFLECTION ON THE RESULTS	33
<i>Limitations</i>	36
7. CONCLUSION	37
<i>Suggestions for Future Research</i>	37
REFERENCES	38
APPENDICES	45

1. Background

In 1995, in Beijing-China, almost 30,000 women from around the globe met and invited delegation from over 185 countries including Tanzania, with the agenda of debating and proposing an action for gender inequality, which was later termed as “gender mainstreaming” (Bonnet and Bilton, 2002). Amongst many other agendas discussed, was measures to improve women’s economic strength. The principal goal that’s was suggested was “women empowerment” through, capacity building and sensitisation through the laws and policies around them amongst others as a way to implement gender mainstreaming (Bonnet and Bilton, *ibid*).

Although the conference seemed as a milestone for empowerment of women around the world, less can be explained on the accomplishment of proposed actions and the improvement of rural women’s social and economic situations. Despite this conference and many other movements in gender problems, rural women have progressively been the victims of sufferings, injustices and they have not bee liberated (Akosua, Beoku and Osirim, 2008).

The present national laws of Tanzania pledges equality of rights to acquire, use and deal with land for male and female. Any adverse or discriminatory attitude towards women who have applied for right of occupying land adopted by a village council or any other council is punishable by the law¹. In this respect, the laws of Tanzania are possibly the most advanced in the African Continent (Maoulidi, 2007). Nonetheless, in rural areas this is not the case as customary laws² and norms are enormously biased against women. In many cases, daughters, widows, wives, and divorced women have a limited ownership, and control of land due to customary laws and practices (Kaarhus et al., 2005).

National laws are the legislations enacted by the Parliament, and that are in force within the borders of the territory of Tanzania (Sutherland, 1891; Section 4 of the ILA). Historically, after achieving its independence in 1961, Tanzania enacted the Judicature and Application of Laws Ordinance (JALO) No. 453 (James & Fimbo, 1973). JALO was the order that maintained

¹ Village land Act and Land Act 1999

² Customary law is “[...] any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African Community in Tanzania and accepted by such community...as having the force of law [...] Section 4 of the Interpretation of Laws Act, Cap 1 of 2002”

the application of customary law on matters that involved rural and property ownership³. It was after JALO that customary laws in Tanzania were written under the Government Notice (GN) No. 279 and 439, from the rules of communities, which were then established and accepted to form law (James and Fimbo, *ibid*). Similarly, the application of these laws was to be done between community members and in matters that were relevant to these laws (Shivji, 1998).

In 1963 Tanzania introduced a new system of property rights. This was just after the rejection of the Free Hold land ownership policy that was introduced by the British colonialists (Nyerere 1967; 1970). The new system came to abolish the old customary land laws, and brought a chain of enactments, which introduced individual access, control, and ownership of land (Shivji, 1998). However, in 1985 the legal framework on property right underwent gradual transition (Myenzi, 2009). It was this transition, which brought back the customary laws, which were abolished back then, and unified them with the statutory laws⁴ (Myenzi, *ibid*). Although the statutory laws recognised land ownership, access and control to be equal for male and female, the customary law did otherwise by favouring men (Myenzi, *ibid*).

In the year 1995, the then Ministry of Lands and Human Settlement Development came up with the National Land Policy (NLP). NLP was aimed to facilitate the fair share of land allocation to men and women (UN_HABITAT, 2002). However, the problem continued when the NLP stipulated clearly that in case of village land, matters should be under the governance of customary laws. This is because since the genesis of customary laws in Tanzania, property ownership for women have been a matter of concern as it only recognised family heads which as a patriarchal society over 80% of the population are male headed families and the rest 20% belong to the matrilineal system (UN_HABITAT, 2002). Hence the denial of women's right to own and control land carried on.

Since the period before independence until today, Customary Laws in Tanzania have been one of the major constraints of gender equality not only in land ownership but also in other land rights matters through succession, inheritance and division of matrimonial assets (Rutazaa, 2005).

³ Section 9(1)

⁴ By 'unification' it means both statutory and customary laws were admissible in the courts of law, and in land matters concerning village land it is the rule of the customary law alone that is applicable.

Traditionally in Tanzania, while men's activities involve commercial production, women produce almost all the family food due to their full engagement with food crop production, firewood collection, and collecting water (FAO, 2008). It is estimated when it comes to subsistence farming over 70% of family food is produced by women (FAO, *ibid*). Nevertheless, women have only enjoyed a very limited access to these lands, but ownership and control have always remained with men (National Land Use Planning Commission, 1998). Women are allowed to cultivate, but the product of their labour is later decided for by a husband or a clan head (Rutazaa, 2005). The same persons also decide for what should be the uses of production that a woman has done (Rutazaa, *ibid*). In the event of separation or divorce, the woman shall by force go back to her parents and leave behind the land she cultivated and other immovable properties, since a man is considered the lawful successor of such properties (Rutazaa, *ibid*). In case of widowhood, a widow should leave her deceased husband's properties if she would refuse to marry a selected relative of her husband (Rutazaa, *ibid*).

Although the disparities between men and women on land ownership are practically universal, there are varying effects when it comes to low-income countries (Odgaard, 1999). There is a clear link between gender inequalities in ownership of resources like land assets as well as income or economic challenges (Myenzi, 2009). It is this link that explains the limited flexibility of rural women in Tanzania in responding to poverty and earning their livelihood (Myenzi, *ibid*). According to Sen (2003), land can be a vital asset for poverty reduction and earning a livelihood. Having the laws, and norms rejecting the position of a woman in owning and controlling land, denies women the opportunity to be more productive, and imposes a real cost on women in terms of poverty and incapability to earn a livelihood (Sen, *ibid*). Not only ownership of land is important in food production, but also in many cases it is essential in securing credit for other investments on land (Myenzi, 2009).

2. Problem Identification, Research Aim and Questions

“All human beings are born free and equal in dignity and rights”. These are the words from Article 1 of the Universal Declaration of Human Rights (UDHR), which were adopted in the Bill of Rights of the Constitution of the United Republic of Tanzania. However, Odhiambo (2006), Tsikata (2001) and Myenzi (2009), make it clear that this is a mere declaration that have not been effective since the legal framework of property ownership constitutes provisions of the laws that segregate females from male in the aspect of land ownership.

In 1963 Tanzania introduced a system of customary laws that makes clear of the position of a woman in matters of inheritance, division of matrimonial assets and succession (including land ownership) to be inferior compared of that of men. Following the introduction of customary laws, the country introduced the Land Act (LA) and the Village Land Act (VLA) with the aim of regulating rural and urban land issues by the aid of customary laws. In the Acts it was made clear that the application of customary laws is mandatory in case of any dispute concerning land rights and obligations, customary laws shall determine the disputes⁵.

Today in Tanzania, women’s land rights remain a very vital cultural, economical, social, and political issue (Myenzi, 2009). For many rural women in Tanzania land ownership, access and control has to be related to a husband, father, brother or any male family member, and in the absence of them the ownership is considered forfeited (Odhiambo, 2006). This is in most cases affecting rural women since they are the ones considered subject to customary land laws and belong to village land as the VLA declares, and they are often dependent on land for their livelihood, while women in the cities are seldom trapped into the wholesome dependence on land for day-to-day survival (Myenzi, *ibid*). This is because rural women are from the bulk of smallholder farmers, and majority obtains land through marriage, succession or inheritance (Odhiambo, *ibid*).

On the other side, cultural beliefs and practices that are rooted in the idea that a woman is a subordinate to a man have been a major constraint of women’s land rights (Odhiambo, 2009). This is because according to customs a woman is inferior to a man and therefore she is disposed from ownership of not only land but other assets as well (Myenzi, 2009). Another belief is that allowing women to own family or clan land would pose insecurity to the asset

⁵ Section 20 of the VLA

since women get married to other families and therefore there is a danger of having the family land owned by another (Odhiambo, 2006).

The National Bureau of Statistics (2013, p.46) has shown that 69.3% of land in Tanzania is owned under customary laws while only 15.7% is owned under statutory laws. This means almost 70% of land in Tanzania is subject to be under the ownership and control of men as opposed to women (Myenzi, 2009). Such women's land rights denial has impacts at the household, family and national level since it affects the *economic functions, food security, social functions, environmental conservation*, and decrease people's *ability to mitigate shocks/vulnerability*.

On the matter of food security mentioned above, rural women in Tanzania make up an approximate 98% of small scale farmers who engage in the beginning to the end process of farming which is from site clearing, land preparation, sowing and planting, weeding, harvesting, transportation, threshing and storage (FAO, n.d.). In the report published by WFP (2014) it was stated that over 38% of children under the age of 5 are stunted due to poor nutrition. Worse enough, majority of these children who make up the 38% are female children from rural areas. WFP continues to argue amongst other reasons, women's denial of land rights and traditional beliefs and customs have greatly contributed to lowering *food security*. A study conducted by Tanzania Food and Nutrition Centre (2011) found out that the discriminating attitudes have reached a point of affecting the eating habit where in times of hunger males are given priority of being fed as opposed to girls and women. In times where there is enough food availability, still some societies continue the same choice of who should be fed first continues (2010).

On the same issue of food security, a quarter of the GDP of Tanzania is dependent on agriculture, which contributes to over 85% of export product, and 80% of people's employment (IFAD, 2014). Therefore considering agriculture as the backbone of the country's economy, denying women's land rights prevents a huge percentage of the rural population to access the vital production resource, and effectively raise food prices and imports (Maro and Mwajande, 2014). The food price trend analysis presented by the Ministry of Industry and Trade (MIT) shows that maize and rice prices have increased from 500 USD per Metric Ton to 2000 USD per Metric Ton from 2004 to 2013 (Maro and Mwajande, 2014).

On the issue of environmental conservation, Panayotou (1993) argues that giving small-scale farmers rights to secure occupation in land incentivises farmers to efficiently use land. He continues that through this, farmers can secure credit and ensure environmental sustainability (Panayotou, *ibid*). This is because it gives enough time for farmers to invest in land maintenance, long-term crops, and some other land conservation activities that could lead to its sustainability (Feder and Feeny, 1991). There is therefore a need to understand the culture and the legal framework that either undermines rural women's ability to access land and land resources, or that such women can use to advance the fight for equal rights on matters of land access and ownership (Myenzi, *ibid*).

Some of the existing gender equality literature has deeply delved in the failure or success of the policies and legislatures in attending the issues of gender inequality. For instance, Larson (2006), Gomes and Tran (2012), Åberg (2005), argues for the effectiveness of the laws and policies in Tanzania and how they have evolved to help or fail sustaining the agricultural sector. However, there is a clear gap in the discourse when it comes to the experiences of rural women in matters of property ownership, as research has shown little on this issue, and how it affects rural women's livelihoods (Kaufmann, 2001). To add to the discourse, *this study aims to investigate the experiences of rural women brought by the laws and cultural practices applied in ownership of land, and how these practices affects rural women's livelihood in Tanzania.*

Through this study the following research questions were asked:

- RQ1: How do customary laws and practices affect women's rights of access, control and ownership of land resources in Tanzania?
- RQ2: How do these customary laws and practices affect rural women's livelihood?

2.1. Relevance for Sustainability Science

At these times of globalisation, when developing countries like Tanzania are undergoing major land use changes and law reforms, it is important to conduct studies that will assess, monitor, and contribute into strengthening the strategies towards achieving development, especially now that the country is implementing its development plan termed Vision 2025. It is undeniable that in many developing countries, policy reforms that later come to produce laws and regulations have been giving little weight on the issues of gender equality (Knight, 2010). This includes the laws (both statutory and customary) and regulations relating to land, which for over 50 decades, have been operating in a manner that denies women the

right to own land in URT (Knight, *ibid*). This has therefore constrained their livelihood. Therefore by addressing the issue of women land rights, not only will this study be adding to the gender equality and economic stability debate, but also addressing the improvement of rural women livelihood (Sen, 2003; Campese et al., 2009; Chambers & Conway, 1992).

3. Conceptual Framework

The problem was approached through a combination of two conceptual frameworks of patriarchy, and livelihood.

3.1. Patriarchy

Patriarchy is conceptualised in order to answer RQ 1, which looks at the importance of culture in explaining the experience of rural women in matters of land ownership as provided by the customary laws and practices.

The word “patriarchy”, which is synonymously used as ‘andrarchy’, simply means the rule of the males (Mies, 1998; Sultana (2012; Fiorenza (1992). Scholars have used the word patriarchy in different perspectives in order to explain or understand social relations with regard to gender (Bagguley et al., 1990). Although there are many epistemological differences in which social scientists have been using to fit the word patriarchy in their argument, one thing found in common is that many use it as a path to explain or understand subordination of women (Batson-Rollock, Soares & Phillips, 2011).

According to MacInnes, “patriarchy as a gender system is reproduced through the ability of fathers to bequeath to their sons the power to command resources, direct the labour of their wives and children, monopolise material control of the ‘public sphere’ ... [and] enforce ideologies which legitimate all this as natural, godly and inevitable state of affairs” (MacInnes, 1998A, p. 3). MacInnes’s idea here is that in patriarchal social orders, men are more favoured than men with regard to transferable resources like land and other assets. Similarly in Tanzania, customary laws and norms position men in more favourable conditions in ownership, succession, and inheritance of land compared to their female counterparts. MacInnes takes the regular sexual orientation point of view and proceed from the assumption of male against female. From his arguments, it can therefore be said that patriarchy are social structures, which are categorised by the male domination, exploitation and oppression of women (Kalabamu, 2006; MacInnes, 1998B).

Walby (1990) explains the concept of patriarchy as systematised social constructions characterised by six distinct structures, which are patriarchal mode of production which highlight the household class relations where men are producers and the appropriating class and women and the exploited ones; paid employment which looks at the segregation of women in work places; state power; male violence; sexuality; and culture (p. 21). In a

nutshell, Walby's position is that in a patriarchal society men are presumably positioned and highly privileged in the six structures he provides. However, to Kandiyoti (1998) patriarchy is conceptualised as power and the exercise of power. Kandiyoti argues that in patriarchal social structures the power of men is derived from culturally constructed customs on domestic activities, marriages, social status, and inheritance among others (Kandiyoti, *ibid*). This is clearly manifest when looking at the customary norms in Tanzania where men are considered the rightful heirs of the assets and clan elders, husband, and other clansmen are bound to decide the division or succession of properties. He further maintains that although it is difficult for power to simply manifest itself through gender relations, but there is an assumption that gender itself is made up of power, and therefore as social relations which may not necessarily be about gender use certain languages which points out the sexual distinctions which often connotes the element of power (Kandiyoti, *ibid*; Kabeer, 1999).

There are many distinct ways in which feminist researchers have conceptualised the word patriarchy. Rubin (1975) tried to fit patriarchy only as a rule of the father in the nomadic societies, where the fatherhood forms a ruling class. For Mg'ccoiochi (1979) patriarchy is what constructs the female sexuality. By this, Mg'ccoiochi restricts the concepts only within the relationship between a father and a daughter. Mitchell (1975) relates patriarchy to the culture in which power is vested in the male members of society and flows from up to bottom. But the most commonly way in which patriarchy has been used is the concept of male control of women's labour, sexuality, and exploitation through the surrounding culture, laws, policies and the likes. Rowbotham (1973) supports this assertion by arguing that patriarchy can be assessed at various levels in our societies. It can be at a personal level, culture, laws and policies and the likes. This is why in this research a look upon the patriarchal nature of the laws regarding land in Tanzania, and the way social structures facilitates subordination of women was made.

However, Jonson (2005, p. 35) states that "it is a mistake to assume that we can understand players' without paying attention to the game they're playing [...] we create even more trouble by thinking we can understand the game without ever looking at it as something more than what goes on in the people who play it." The idea suggested by Johnson here is that although many explanations of patriarchy come forward as male centred, there are many other interconnected parts that stand as ideas that constitute culture (Johnson, 2001). There is therefore a need to dig further in the institutions that influence patriarchal practices rather than sticking on the individualistic explanations of it (Johnson, 2001). In

correspondence with Johnson (2005, 2001), Walby (1990, p.20) identifies patriarchal relations in culture (culture institutions) as one of the interconnected parts in which the unconstructive customs, laws, and medias amongst others could help to explain the centre of the idea of patriarchy. Similarly, the conceptualisation of patriarchy in this study follows the ideas of Johnson (2005, 2001) and Walby (1990) on the importance of culture in explaining the experience of women on land ownership.

The blue rectangle symbolises 'male' and the blue spherical shape is a symbol for 'female'. The pointing arrow shows the flow of power and control over resources as provided by customary laws and culture.

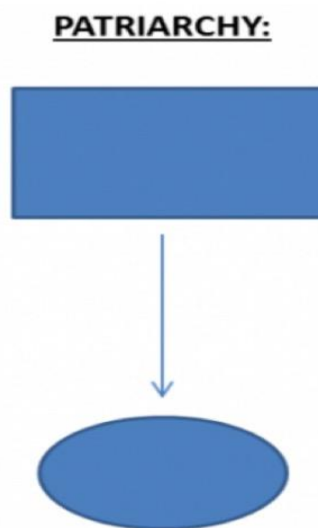


Figure 1: A visualisation of the concept of patriarchy

3.2. Livelihood

This concept was applied in order to direct the analysis of RQ 2, which seeks to investigate the effects of customary laws and practices on rural women's livelihood.

"A livelihood in its simplest sense is a means of gaining a living (Chambers and Conway, 1992, p. 5)." Chambers and Conway (ibid) provides the often used definition of livelihood to mean the means and capability of people in sustaining their living, which comprises of income, assets and as well as food. Chambers and Conway (ibid) groups assets into tangible and intangible, in which tangible includes resources and stores whilst intangible comprises of claims and access.

Although there are many other scholars and organisation that came up with extended definition from one provided above, majority traded on the same ideas given by Chambers and Conway. Frankenberger and McCaston (1998) in drafting livelihood framework for CARE International understand the concept of livelihood as capabilities, and access to both intangible and tangible resources. With this, Frankenberger and McCaston views people as effective agents of change in deciding the ultimate result of their livelihood. Similarly, Carney et al. (1999) in writing for DFID considers livelihood as the assets and capabilities which people use as means of living. By 'means' Carney includes social resources and assets. Carney is delving in a human-centered approach of providing a manifest understanding and looking at how poor people achieves a living, and this follows the drafting of policies as well (Carney et al., *ibid*; Krantz, 2001). Also Carney definition seeks to give the poor a window of opportunity to significantly contribute to the activities that affects their day-to-day lives (Carney et al. *ibid*). Banks (2015) in drafting the framework for UNDP on the other hand views livelihood in an asset-centered way to mean, claims, assets, and all other activities in which people make a living from. Banks tries to suggest that there is a need for people to be empowered so as they can assume control over material things in which their lives depends. The central idea here is how well do stakeholders access the available assets, as Geiser et al. (2011, p. 317) calls it "bringing stakeholders from benefaction to entitlement". For instance, how well do women access land and the landed resources, can significantly impact their livelihood.

3.2.1. Livelihood Capabilities

Sen views capability as the freedom of the people to achieve the life styles they want (Sen, 2003), while Chambers and Conway (1992) refer to capability as the means and ends of livelihood. There is no much bigger difference between the two assertions above, however Chambers and Conway (1992) go further saying capability as an end it acts as a platform for people to realise their ability to make choices and as means it acts as a method earn a livelihood. Sen's definition positions people's progress as a result of freedoms people are given by the surrounding laws, culture, customs and the likes (Sen, 2003), and they can appear in an instrumental or constitutive way and determine the eminence or worseness of life. The idea here is that people have the ability to choose and determine what toy want to be in life, since it is the freedom of choice that decides the wellbeing and quality of people's life (Chambers and Conway, 1992, Sen, 2003). Also, freedoms can take social, political or economic shapes (Sen, 1999). Socially, freedoms can be in form of social structures,

traditions, norms, institutions, practices and etc. (Robeyns, 2003; Sen, *ibid*). From Sen (2003, 1999) and Chambers and Conway's (1992) ideas therefore, livelihood capabilities are the means and ends to which a livelihood can be achieved, and any limitations in realisation of these capability amounts to 'unfreedom' (Sen, 1999). Likewise, if women have limited access to land and landed resources on which they depend on to achieve a livelihood, this amount to unfreedoms⁶ and significantly impacts their quality of life (Sen, 1999).

3.2.2. Stores and Resources

To Chambers and Conway (1992) these are tangible and intangible assets. They categorise stores as food, gold, bank credits, and the likes, whilst resources are like land, water, tools and etc. (Chambers and Conway, 1992). In a similar way, Carney et al. (1999) groups capital in natural to mean biodiversity, air, land, water etc.; and human capital to mean knowledge and awareness, good health etc.; Social capital to mean societal institutions, networks, relationship etc.; and financial capital to mean credit and savings (Carney et al., 1999). However, Carney's framework includes financial capital in the analysis of this research it is replaced by culture because according to Bebbington (1999) culture is an important element for the realisation of all other capitals. Although financial capital is an important element, my observation on vulnerability⁷ and institutional⁸ arrangement in the field compelled the modification due to the vitality of culture in Tanzania (Bebbington, *ibid*).

⁶The word 'unfreedom' is used to mean lack of freedom in Sen's (1999) arguments

⁷ According to Carney et al. (1999) these are situations that can impacts someone's access to resources

⁸ As per Carney et al. (1999), these are the institutions that are available as for people to have access to these resources, which in the case of this research they are families, clans, local government and central government departments and etc.

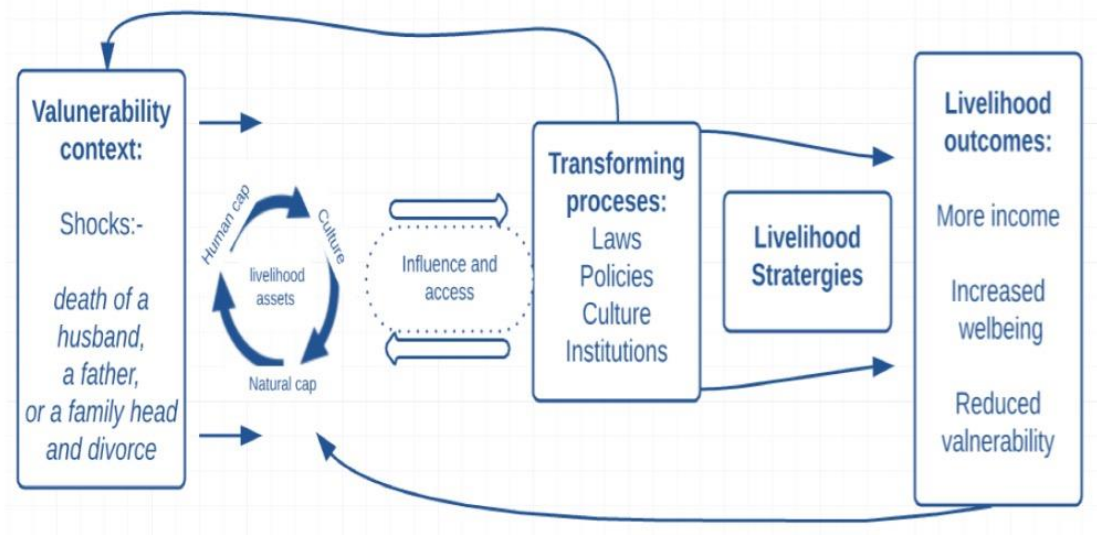


Figure 2: A visualisation of livelihood conceptual framework and how it has been applied in this research

(Source: Chambers and Conway, 1992)

3.2.3. Claims and Access

“Claims are demands and appeals which can be made for material, moral or other support or access” (Chambers and Conway, 1992, p.8). As opposed to stores and resources, claim and resources form only “intangible assets of a household” (Chambers and Conway, 1992, p.8). In other words, claims are the requests that people make to demand for access of materials (Chambers and Conway, *ibid*), and access is opportunity they get to make use of the demanded materials. And here is where Amartya Sen entitlement approach comes in when he asserts that feminine could symbolise the people’s inaccessibility to food, and in order to comprehend famine understanding the relationships between people’s access to resources and ownership is important (Sen, 2003. p.2). Access to resources can significantly affect livelihood of people subject to the available opportunities (Sen, 2003). Similarly, the accepted rules put in a particular context can affect people’s right to access and own resources or properties (Sen, 2003). Thus it is important to understand how the laws of land in Tanzania affects women’s ownership and control of land in Tanzania, since securing of a livelihood can be done when a person have resources by invoking clams, acquiring access and ultimately improving capabilities (Sen, 2003; Chambers and Conway, *ibid*).

4. Methodology

4.1. Research Structure

This is a qualitative research and it is divided into two phases, in which each carries its own part of methodological approach and analysis.

4.2. The Governing Ontology and Epistemology

The viewpoint adopted in the methodology of phase 1 of this research is the feminist epistemological approach. According to the feminist theory, social relations play a role in shaping the knowledge about the social world and therefore create divided power relations (Haraway, 1988). It is through these power relations that the requirements of male are being greatly favored compared to the requirements of females and hence disregard the “opinions of the oppressed” (Hekman, 1997). According to Gray (2009) the social position we bare usually influences the knowledge of the social world that we conceive. This is because of the situational and the perceptiveness of this knowledge in itself (Hekman 1997; Gray 2009). This therefore calls for a need for the prioritisation of the oppressed standpoint (Gray, 2009; Haraway 1988) due to the fact that through their own experiences they have access to a profound reality of their situation (Hekman, 1997). The feminist standpoint in the methodology follows its usefulness in understanding of the effects of customary norms and laws on women in Tanzania, and to support gaining intense understanding of reality of facts through the experience of women themselves (Hekman, 1997).

Notwithstanding, while the use of standpoint theory is at the center of feminist epistemology in explaining the ‘experiences of the oppressed’ (Kandiyoti 1998), different social researchers have brought it into a number of scrutiny. According to Rolin (2009) in spite of the theory’s effort to fight against essentialism, its core operations are dependent on essentialism. In explaining Rolin’s assertion, West & Turner (2004) holds that although the theory is meant to dismiss the generalisation of females, it still relies on the same generalisation of females by splitting up the world based on gender which West and Turner calls “the progressive stuck”. And so if we stick up with stand point theory alone we only get a progressive stuck of men and women, the inclusion of race, sexual orientations and other dividing qualities are not considered in stand point theory (West and Turner, *ibid*).

On phase 2, due to the previously explained inadequacies of the feminist epistemological approach, I combined the standpoint theory with Amartya Sen’s entitlement approach to

help understanding the experience of the women in Tanzania and what would be the cause of such experiences. According to Sen (1981) extreme hunger signifies failure of entitlement and access to food. Similarly, in phase 2 of methodology it was presumed that the inability of women from the field area to earn their livelihood signified their lack of entitlement and inaccessibility to resources that support their day-to-day living which in this case is land. Sen continues that people's progress is as a result of freedom people are given by their surrounding laws, culture, and customs to access, own and control resources, and they can appear in an instrumental or constitutive way and determine the eminence or worseness of life. The idea here is that people have the ability to choose and determine what they want to be in life, since it is the freedom of choice that decides the wellbeing and quality of people's life (Sen, 2003).

Phase1

4.3. Analysing How the Laws Affect Women's Land Right in Tanzania

In this phase I did an appraisal of the current and previous legal framework pertaining to land in Tanzania.

4.3.1. Literature Review

In this phase I performed secondary data and document analysis (Bowen, 2009). I consulted different document materials like statutes concerning Land in Tanzania, which are the Village Land Act and the Land act both of 1999 – regulating urban and village land and accommodating the acceptability of customary laws, Land Regulation Act, and the Constitution of URT revised edition of 2002 as amended from time to time – directing all laws to abide in it and providing for equality of ownership of properties for both men and women. It also seemed useful to get other materials from the government of Tanzania like court decisions with regard to unequal land ownership for men and women (cases that were previously decide under customary law), National Development Plan, Poverty Reduction Strategy, amendments of the statutes, regulations and their respective government notices; communiqués; press releases; and circulars. Other secondary data used were publication (Bryman, 2015) examining land laws and rights in Tanzania and an array of other areas related to this thesis like land rights, patriarchy, and livelihood. All these documents were searched and obtained from SCOPUS and LU-Web of Science and the keywords keyed in were mostly “land laws and gender in Tanzania”, “patriarchy and property ownership” and

etc. Although interviews were not prioritised at this phase, I used some of the responses from phase 2 to evidently support answering RQ1, and these were from the village chairman and, court official and the gender desk.

Phase2

4.4. Case Study

In phase 2 I applied a case study (Bryman, 2015), which is aimed to show the experience of women in land ownerships, and how it affects their livelihood. This is a theory-guided case study whose results cannot be generalised except in the cases of similar nature (Bryman, *ibid*).

4.4.1. Description of the Place

The setting of this study was Maramba Village located in Tanga, Tanzania. Although there are many other villages in Tanga, the reason for this selection was due to the easy access to the setting (Bryman, 2015). Tanga is one among the 30 regions of Tanzania located at the very north-east side of the country around 370-39010° East of the Greenwich meridian and about 40° and 60° below the Equator. Tanga consumes only 3% of the total area of Tanzania and it is bordered with Kilimanjaro Region and Kenya to the North, the Indian Ocean to the East, Pwani Region to the South, and Manyara region to the West side of it, and it has a total of 7 administrative Districts (United Republic of Tanzania/REPOA, 2005). The 2014 population of the village was estimated at 27,000 people, and geographical situation of Maramba village has made it a focal point where variety of tribes migrates in search of settlement, and fertile soil for cultivation. Since, data collection could not cover the whole region, the 'heterogeneousness' (Yin, 2013) of the population of Maramba made it the area of interest.

4.4.2. Why this Place?

Taking the entitlement theoretical approach into consideration, case selection ought to follow the household poverty level data provided in the 2005 Tanzania National Bureau of Statistic (NBS) report. I adopted a classification table from NBS (2005), which I named “poverty score sheet” (appendix I) and I grouped 6 regions (codenamed A, B, C, D, E and F), which carried a totality of 12 districts (2 from each region) that assisted me in identifying which region scored highly in poverty level. The use of poverty as a criterion is because, as hunger would symbolise people’s inaccessibility to resources in which they make a livelihood, similarly poverty would indicate lack of entitlement or inaccessibility to assets in which a livelihood can be achieved (Blaike, 1989; Sen, 1981; Bebbington, 1999A).

However, worth it is to admit that there could be other factors responsible for the poor condition of the people in the area, which Bebbington (1999) identifies as means of enhancing assets and resources to improve their livelihood, social organisation, and opportunities, but in most rural cases there is a close relationship between assets, resource accessibility, livelihood and poverty (Sen, 1981).

4.7. Selection of Informants and Application Semi-structured Interviews

Source of data from this case was obtained through primary data, which was collected from interviews of key informants who offered unique information that I cannot find anywhere else (Bryman, 2015).

This was a ‘convenience sampling’ (Bryman, 2015). I grouped my informants into two groups, one of villagers and another of administrators. I administered semi-structured interviews to the villagers and administrators (attached in appendix III (A) and (B) in order to obtain “rich detailed answers [...] that can be coded and processed quickly”, and avoiding the chance of pigeon-holing the feedback from my participants (Bryman, *ibid*, p. 470). All data was coded and transcribed (Williman, 2006) for purposes of proving the answer for RQ 2 in the analysis. However, some of the responses were used in answering RQ1. Likewise I used secondary data to support the case study analysis, some were obtained from those of phase 1 and some were randomly searched without specific keywords.

It should be noted that, the sample taken is not an accurate representation of the entire population of Tanzania, so the results can not be the same if the sample was not narrowed

down (Bryman, 2015). Therefore it can only be generalised in matters that are very similar to the sample used in this research (Bryman, *ibid*).

Table 1: Detailed categorisation of participants and sample

Region	District	Data Source	Quantity
C	DS6	Administrators	3
		Villagers	10
Total			13

Source: Author's summary

Administrators

In relation to the research objectives I selected the administrators using one criterion, which was 'the relevance of their assigned duties of the participant with this study'. I looked at the relevance of the duties in which the participant performed with the aim of this research. I kept my options within the village chairman, primary court officer, and the gender desk representative since there was an assurance of rich information from these departments (Bryman, 2008). Traditionally the village chairman is the representative of the local government and he is the person of the first instance once land issues arise. Therefore there was a high likelihood of getting more information on the nature of land ownership for women and the issues of access, ownership and control of land. The court official's duties were important since his day to day duties are to determine decisions for land issues amongst other, using customary laws and other relevant laws. Finally, the gender desk is a special unit assigned to deal with issues of violence against women. They are normally made up of officers from the Ministry of Internal Affairs, Ministry of Social Welfare, the police force and other relevant departments and it is normally the office of the second instance before land matters are taken to court.

All participants were identified as 'AD No.1-3' to mean 'administrator', and the numbers were given to distinguish them. All the three participants were identified by a contact person from an NGO, which operated in the region of the field area.

Villagers

In selecting participants from the villagers group I used gender criterion in which only female subjects were chosen, because the objectives of the research targets the experience of

women in the issues of land ownership, and how it affects their livelihood and therefore there was no need of including male participants. Age was the second factor in which they all had to be of the age of 18 above, because in accordance with the laws of Tanzania ownership of property is considered to be executed by people of the age of 18 above. And lastly, marital status where majority were supposed to be currently married, divorced and widowed so as not to isolate the aspect of division of matrimonial assets (land), as it is one of the main issues covered in the analysis part. 10 participants took part, all of them were interviewed, and all were identified as participant No.1 to participant No.10.

I identified my participants by the help of the village chairman who assisted me to know the people who matched the criteria. All participants were approached based on their availability and willingness to participate in the interviews.

The Role of the Researcher and Reflexivity

Reflectivity implies the quality of the researcher of being open, aware, forthcoming and transparent (Jupp, 2006; Creswell, 2012; and Lichman, 2010). Jupp (ibid) adds that this is the phase where the researcher bends back on oneself and examine her or himself by well-informed thoughts. However, openness may induce extreme emotion and therefore it is good for the researcher to keep a good awareness their impact on data collection, interpretation and analysis (Jupp, ibid; Finlay, 1998). Therefore I approached data collection process with a full awareness that I had my biases that posed as a reminder for me to keep in mind that I should minimise as much a possible the extent to which my bias could influence the findings of this research. I interviewed participants, keenly listened to them, and recorded their responses using a voice recording device and a pen and paper. I took time to gather and interpreted all data I collected and analysed them using patriarchy and livelihood framework.

Ethical considerations

It is important to take consideration of anything that may go against research ethics and try to minimise it or prevent it completely (Guilemin & Gillam, 2004; Clark, 2006). Wiles et al. (2008) consider anonymity, confidentiality, privacy, informed consent and safety to be the fundamental ethics to be followed. Similarly, I strived to abide in the ethics by ensuring that the identities of my participants were not disclosed, their responses are well privately stored, and that they have enough information to know what they are consenting to.

4.4.5. Limitations of the Study

Generalisability of the sample - the main limitation of this study falls on the generalisability of the results (Fink, 2003), in that the sample taken is not an accurate representation of the entire population of the region or the country, so the results presented may not be the same if I were able to assess the situation through the entire population of the village (Bryman, 2015). Therefore it can only be generalised in matters of the same populations that are very similar to the sample used (Bryman, *ibid*).

4.4.6. Fieldwork Reflection

There were other encounters faced by the researcher, which are worthy mentioning. Speaking of infrastructure, there were challenges in getting electricity, transport, printing facilities, Internet connection and cellular communication in the region and therefore it slowed down the data collection process. Lastly, although I explained to the participants about the purpose of my research and what exactly I was there to do, many of them either confused me with a journalist or thought I was a journalist who disguised as a researcher. This was due to several journalist visits that many expected that would contribute into solving some of their social problems but did not, therefore they got angry and did not want to participate in any journalistic talk.

5. Results and Analysis

5.1. Women's Property Rights to Land

How do the laws and practices pertaining to land affect women's land rights? In this part I will report the findings and do an analysis in order to answer RQ1. I will first show the attributing feature of property rights to land and then analyse how customary laws and practices in Tanzania affect rural women in the field area by listing and analysing each noticed effect. As noted in the background part of this report, customary laws in Tanzania began in the 1960's when the country adopted JALO Chapter 453 (Makaramba, 2006). The provisions of Section 9(1)⁹ permitted the use of customary laws in matters of civil nature. It is also worthy to note that in Tanzania the application of customary laws is limited to matters of *division of matrimonial assets, inheritance and succession of properties*, it is majorly in these areas that issues of land ownership and women's position arises (Odhiambo, 2006).

On division of matrimonial property, schedule 2, paragraph 27 of the Customary Declaration reads,

"[...] The widow has no right of share of the properties if the deceased left relatives of his clan" (GN. 436, Schedule 2, Para 27).

Paragraph 77 Order 4 of the Law of Person provides that in case of death of a husband, all removable or transferable properties shall be returned back to the husband's family in case the woman remarries again or she shows intention of getting married to someone else. The procedures are that the woman (widow) would be asked if she wishes to be married to one of the deceased husband's relatives in order to retain her rights to the properties again. In case the woman refuses to remarry a husband's relative, it will automatically be considered that she has forfeited her rights to the properties jointly owned with the deceased husband (Rwegasira, 2012). The applicability of customary law with regard to land matters is permitted under Section 20 subsection 1 to 5 of the VLA where the Act put it clear that any matter concerning the right and obligations of people, group of people or any person in a village, shall be determined by customary laws. In this respect therefore, the VLA commands the application of customary decisions in case of matter that arise in village lands (Rwegasira, *ibid*).

⁹ Judicature and Application of Laws Ordinance of 1963

With regard to succession and inheritance, according to the Customary Declaration No. 436, families have a duty to protect family and clan land from alienation from other family or clans. Therefore many fall under the assumption that daughter do get married away from their families and that would mean, allowing daughters to inherit or succeed land would pave a way for other families to own the daughter's family or clan land through marriage.

The second schedule of the Local Customary Law Declaration reads: -

"[...] If a child is the only child, he shall inherit all the property – except for a female child, she shall not inherit land...if there are daughters, but there are no sons...then there is no first and second degree...if there are sons, but there are no daughters...then there is no third degree. (GN. No. 436)"

The above provision groups heirs of land into degree in which they shall be given priority to inherit family or clan land. However there is a clear male domination and oppression of women (Kalabamu, 2006) by considering sons and disregard daughters.

5.1.1. Lower the Economic Opportunities

According to MacInnes (1998A) patriarchy as a gender system creates schemes that render more power to own, control and command resources to men as opposed to women. The idea here is that the favour is directed to males and deludes females to be dependent to male. In the field area it was realised that customary laws together with statutory laws have contributed to place men in more supreme position in land resource ownership through succession, inheritance and division of matrimonial assets. An officer of the primary court had this to say,

"[...] You see the constitution is not clear since it declares equality for all while we have the Village Land Act and the Local Customary Declaration Order that declares men to be supreme land owners as opposed to women when it comes to rural areas like this. These laws were made decades ago, but it is a shame that even until today no parliamentarian is speaking about amending or repealing them. The answer is very simple; our law making processes are unequal in nature because we are patriarchal at birth and in patriarchy did our mothers conceive us." (Fieldwork 4/1/2016-AD No.2)

Land is a major asset needed in order for rural women to obtain credit and make progress in their farming activities (Akosua, Beoku and Osirim, 2008). Through credit rural women can afford to access necessary requirements like seeds and farming equipment in order to produce. However it was stated in the field that the nature of customary law and the practices adopted did less to allow a woman to own land so as to fight their poor economic situation. A woman who was lately refused a loan for agricultural purposes remarked,

Woman:*The Bank said I need to have official papers which showed that I have a land of my own. But I do not have those papers; it is my husband who keeps them. Every when I ask him, he seems to suspect that I would do something evil with that land. It's been four years now and I have decided to give up.*

Researcher: Is there any other reason as to why your husband doesn't want to give you the papers?

Woman:*Yes, because I'm a woman. For us here, a man makes all the rules because the customs and the laws say so.*

Researcher:*Interesting! So do you think if you had successfully secured the loan your current economic situation would have changed?*

Woman: *My son, I would have made up enough to have a far better life than what I have now. I would not be a goalkeeper.*

Researcher: *What do you mean by "goalkeeper"?*

Woman: *A woman who waits for her husband to provide.*

5.1.2. Limited Access to Justice

The discriminatory nature of the laws have gone further to not only be the reason for worsening the rural women economic situation in the field area, but also limiting their access to justice. In this respect, I wanted to know the practical constraints to justice as according to women in the field area. The responses were made up of four major constraints which were 1) lack of awareness 2) distance to the justice organs 3) language and 4) bias.

When talking about these constraints, one woman whose land was confiscated by her father in-law after the death of her husband showed that she did not see the court as a possible option since it was located very far from the village she lived, the running fees were high,

and it required bureaucratic procedures and ability to understand the language written in the laws. The woman said,

“Look, the court is in town, and if I want to take the case to court that means I will have to frequent attend court sessions. I do not have that money to go to the city everyday. But remember, you need to have money to register your case; you need to be educated to understand the laws, and many many many other complications that I am not ready to go through. It is better for me to stay quiet than to incur all those costs just to fight for something that I know I can not win” (Fieldwork 27/1/2016-Participant No.7).

One more woman indicated that a little number of women in that village engaged with the judicial system in the attempt to regain their land rights from men, but for the majority, including her, there was no need of taking matters to court because of the bias in the justice system. She stated that men majorly run the courts and most of them tend to give decisions in favour of their fellow men as opposed to women. The most accessible ways of channeling a woman’s grievances in the village as according to her was through a village chairman who is also a man and therefore there is still a high risk of not getting justice. This means there was no viable option for her to attain her land rights since the justice system seemed to be there for men and not for women like her. She further said,

“Son, you are educated, don’t tell me you don’t know that the laws are biased on women. The magistrates are men, the village chairman is a man, and men run everything. And bad enough the laws we are talking about here were literally made for men. Am I lying? Now where do I go?”(Fieldwork 22/1/2016 – Participant No.2).

Even for one educated woman who seemed to have a clear understanding of her rights, she indicated that understanding your rights without having a proper platform to exercise them would always amount to nothing.

“If you ask me what are my rights in property ownership, I will tell you. But if I am asked to effectively exercise my rights I can’t because the law itself ties my hands. So with my knowledge and education, going to court, or the village chairman is like chasing the wind” (Fieldwork 21/1/2016 – Participant No.1).

5.1.3. Increased Economic Dependence

Another way in which customary laws and practices were claimed to have affected women in the field area is that, it rendered many of them economically dependent either on their husbands, friends or the society around them. In the interview with one woman in the village I noted that her inability to access land due to customs made her unable to produce but rather stay home and wait for her children to work and bring food and other basic needs to her at home. She made it clear to me that her economic situation was better before her husband divorced her and took all the properties including land they jointly owned.

“Without my children, I don’t know where I would be right now because every food I eat comes from them. I do not enjoy giving them a burden of feeding me, but do I have a choice? No!”

The patriarchal nature of the laws can seriously impact the progress of women as argued by Maoulidi (2004), which has a direct connection to women’s economical situation (Odgaard, 1999; Koda, 1998). I sought to hear the opinion of the gender desk since this is the place of second instance where many women go to seek help in times on need. The Gender Desk officer held,

“[...] Almost every month here, there must be reported a case of a woman whose land is taken by their husbands families as a result of death of a husband, or taken by their husbands due to divorce. Most if not all of these women tend to come here for two things. First they come to seek for legal support to regain their properties back, and second they come to seek for basic needs like shelter, food and financial support because many of them are farmers, and once the farms are gone they face it hard to survive. We have tried several times to take their cases to court but I can confirm to you that no one of them won, the law is very clear about their position in ownership of assets like land” (Fieldwork 5/2/2016-AD No.3).

The above evidence from the field area evidently shows that patriarchy has led to the implementation of social constructions that pioneers subordination and disposition of women in owning land and as well as other properties.

5.1.4. Silenced Women's Voices

The study also revealed that although the women's denial of land rights have existed for over 50 years in this village, not much has been done by women to raise their voices to seek change. Actually some two widows made it clear that there would be two things if they tried to raise their voices in the fight to gain property rights to land. One said there is fear of death since traditionally you would annoy the 'ghosts of the ancestors' and therefore they would haunt you, and eventually drink your blood as a sacrifice (Fieldwork 24/1/2016-Participant No.4). The second one disclosed that there was a risk of being considered a traitor of the culture they inherited from their forefathers (Fieldwork 27/1/2016-Participant No.7).

Similarly in the study conducted by Pietila and Vickers (1994) it is shown that customary laws and practices can be one major factor that inflict in women the fear of being vocal to claim what is rights for them. IFAD (n.d.) also agrees with the above Pietila and Vickers argument, by providing evidence from the Mang'ati societies of Tanzania. In the IFAD study, it is reported that majority of the women in the Mang'ati tribe showed the fear of being harmed by their husbands or male heads of the family if they claimed for right to get involved with land activities. The study continues to show that for some women who got access to land, still the allocation of product of their labour had to be controlled and decided by their husbands (IFAD, n.d.).

5.1.5. Increased Domestic Violence

Two respondents revealed that customary laws and practices have contributed to increasing domestic violence in the village due to the fact that it made men feel inherently empowered and permitted by the law and social customs to rule their wives. Testimony of the one woman in the field further show that domestic violence that domestic violence is done in form of spouse beating, psychological injury, harm and threats, and it majorly occurred when the woman tried to claim to her husband for her right to access the family land for production purposes.

"I was tired of staying home. I felt like I also need to do something to help him provide for the family, but whenever I brought the question of land it appears like he thought I'd sell it or mess with it somehow. So all conversation ended up with a beating and threats. Sometimes he'd come and threaten me that he'd marry another woman and bring her here. Whenever I think of having to be a second wife,

I don't even wish to continue with the same thoughts again" (Fieldwork 24/1/2016
- Participant No.4).

5.2. Rural Women's Livelihood

How do customary laws and practices affect rural women's livelihoods? In this part I will report the findings and analyse them to answer research question 2. In answering RQ 2 I will discuss three things. 1) I will first identify and explain the necessary assets for rural women livelihood 2) how well are rural women given opportunity to make claims to access and own such assets and lastly 3) I will analyse their capability to earn a livelihood.

As acknowledged in the livelihood conceptual framework part of this paper, it is inarguable that land may not seem as the only source of living since there are some other ways in which people earn their livelihood (Gaillard et al., 2009). However, while this fact was taken into consideration, in the field area land is of critical importance due to low levels of education that have rendered many women to engage into small scale farming as their means of earning a livelihood. As observed in the field, with an exception to a relative number of few women who have had an opportunity to formally been educated, the cultural role and notion of wifehood has made many to be dependence of their husbands, as a result of being home in order to keep family running.

5.2.1. Identifying the Necessary Resources for Rural Women's Livelihood

Carney et al. (1999) pinpoints certain resources to be necessary for rural livelihood as opposed to urban livelihoods. These are social capital, physical capital, natural capital, human capital and financial capital (p. 9). However in this research, amongst the resources identified by Carney, *only human capital, natural capital and culture* will be applicable. This account is based on the responses given by participants in the study area. The three applicable resources mentioned above are termed as the most important resources for the livelihood of rural women in the field area and they are explained as follows:

Human Capital

Human capital is made up of knowledge of a person (Bebbington, 1999). Similarly, as far as this study is concerned, it is knowledge of women's right to access, own and control land, which makes up an asset. The idea here is that a woman needs knowledge in order to know her rights and how to go about them and to make a choice of a life she desires (Sen, 2003).

This is because knowledge amounts to capability for one to realise, utter and choose to live the life they want to live (Bebbington, 1999). In the field area, experience showed that there were two groups of women in which one had the majority number. These are the non-educated which carries a huge number of women and educated ones which carried a small number of women. Eight women amongst those interviewed showed less knowledge of their rights to own and control land as they ideally thought this is inherently for men in order to take care of their wives.

One of the non-educated women remarked,

“[...] A man has inherent power to take care of a woman. This is why a man should own and control land in order to fulfill the needs of a woman and family in general. I grew up in a family that a woman was not allowed to inherit land and that was okay for us because we believe that it is a man who should own in order to accomplish his duties” (Fieldwork 24/1/2016 - Participant No.4)

For the educated woman she opined otherwise by saying,

“[...] I do not need a degree to know what is right and wrong for me. With my primary education however no one of my deceased husband’s family will dare to come and talk about our piece of land or any property we owned together. This is because they know I am educated so I can manoeuvre my ways to defend my properties” (Fieldwork 21/1/2016 – Participant No.1).

Natural Capital

Although natural capital is made up of different components, as far as this research is concerned, it stands for land resource. Land resource and livelihood are in tandem with one another when one shifts the focus to rural women (Akosua, Beoku and Osirim, 2008). Therefore I wanted to know whether their lack of right to own this capital has led to their inability to earn a living and how. As small-scale farmers, eight of the interviewed women in the field area pointed out that land is their major resource needed for their survival. That is why in this study natural capital is identified as land. In confirming the above assertions, two women had these to say,

“[...] Farming is my life, I farm in the morning, I farm in the afternoon and sometimes I farm in the evening too” (Fieldwork 23/1/2016 – Participant No.3).

“[...] I do not like farming, but I have to do it because if not then what else shall I do to make the ends meet?” (Fieldwork 25/1/2016 – Participant No.5)

Culture

According to Bebbington (1999) if we factor culture in explaining the social relations in one or multiple contexts and its influence in ownership and control of resources, then it is possible to realise all other capitals. It is this assertion that led to the investigation of culture in this study. In the field area cultural norms and beliefs was noted to be rooted in the ideas that women are lower than men and therefore they are bound to be under men’s control in the aspect of land ownership amongst others. One woman remarked,

“[...] When we were young, we were told clearly that as women we are not entitled to own or inherit family land because we would once get married and our husbands would take our family property” (Fieldwork 22/1/2016 – Participant No.2).

As argued by Ashong & Smith (2001), in order to earn a livelihood one needs opportunities to access the necessary assets. However, not only lack of opportunity can affect ones livelihood. It is here where shock and vulnerability context comes into play. Assets in which a woman’s livelihood depend on can be impacted by such shocks and ultimately deny her a living (Ashong & Smith, 2001). According to the responses of two widows in the field area, it was noted that for some women who lost their husbands, such loss brought up an excessive shock that later impacted their assets and ultimately denied them a living. For some other women, such shock was endured as a result of loss of a father.

5.2.2. Claims and Access to Land Resource

As previously explained, claims are the requests that people make to demand for access of materials, and access is opportunity they get to make use of the demanded materials (Chambers and Conway, 1992). Therefore it is not availability of resources only that determines one’s livelihood but also access to resources plays an important role (Sen, 2003). Material can be available but if women do not invoke claims for access to these materials, a livelihood can hardly be met (Sen, *ibid*). Claims and access are governed by accepted specific rules of rules of conduct, customs, and institutions, therefore opportunities are determined by the customary laws of inheritance, succession and marriage (Sen, 2003; Ashong & Smith, 2001). However as realised in the study area, these rules of conduct, customs and

institutions are male centred as they submit the control and ownership of resources to men and dispose the right of women to own land resources.

Social capital is yet another asset that was realised to be important for women in the field area to make their claims. As argued by De Haan (2012) the society around, kinship, and networks altogether can be ways in which one can use as a support to have their needs be addressed. Similarly, family and friends can play a key role in assisting their community members to make claims in attempt to access the necessary resources to achieve a livelihood (De Haan, *ibid*). But it was indicated by one woman in the field that, cultural norms, which deny women the right to own land, have greatly reduced their social capital. For instance in case of widowhood, channelling social support is based on how well was the widow getting along with her husband's parents and relatives, how many male children does she have, and how village and clan elders perceive her character. In correspondence with the assertion of having sons as a way to secure husband's properties after his death, two widows had this to say,

"[...] When we got married he brought me here. I found everything including this house and the farm behind you. I am still living in it and get my everyday bread from that farm although I did not contribute a penny in buying these properties. But all this grace is due to my two sons, because here if you have a son he is the rightful heirs of the family's properties" (Fieldwork 23/1/2016 – Participant No.3).

"[...] If a woman is lucky to get along well with her husbands family, then maybe they can give you something when her husband dies. Mostly a piece of land. But if she is married in an evil family they would always disregard her because traditionally its is believed that if that woman remarries then the family land would go under the control of another man" (Fieldwork 21/1/2016 –Participant No.1).

The second quote above seeks to evidently show how a good relationship with husband's family can determine the fate of the woman right to properties after the death of the husband. However, she confirmed that there were preconditions of her being given access to such properties and this was that she was not allowed to remarry. Remarrying, even for the educated widows constituted enough reason of having the deceased husbands family to evict them from owning and accessing the assets.

With regard to the opinion of village chairman who traditionally are there to represent the local government it was confirmed that culture norms do not allow women to either inherit,

get a share of matrimonial assets, or succeed any immovable properties including land. In answering about the reason why women are not considered rightful heirs as it is for men, the village Leader has this to say,

“[...] A boy and a girl are not equal. We give land to our boys in order to maintain the name of the family. But a girl will have to get married to a boy from another family. This means if you give land to that girl, when she is married that land will be under the ownership of another family name, which traditionally it is a shameful thing” (Fieldwork 28/1/2016 – AD No.1).

The gender desk confirmed that there are other ways in which women can make their claims. These are through the social welfare desk, gender desk, and the primary court. Nonetheless, culture and beliefs were termed as the barrier for women to invoke their claims because there was a fear for such a woman who would make a claim to be isolated by the rest of the community. Also there were other specific consequences that women who lost their husbands feared, like being considered a traitor by the husband’s family, and annoying the ‘ghosts of the ancestors’ who could later curse the woman and cause serious harm or death as maintained by one of the respondents below,

“[...] If you dare to go to court or raise your voice so the authorities could hear, you might get your land, but believe me, you will never enjoy that land. It is either you will die or end up with a disease because the ghost of the ancestors will curse you. Moreover, you will be at risk of being considered a traitor of the customs by the rest of the society” (Fieldwork 24/1/2016-Participant No.4)

5.2.3. Rural Women’s Capabilities to Earn a Livelihood

In explaining about livelihood capabilities Chambers & Conway (1992) maintains that this is a platform for people to realise their ability to make choices and means to earn a livelihood. Therefore, capability is when people are given freedom by their surrounding laws, culture and society to choose the life they want (Sen, 1999). Capability appear in an instrumental way in that it can ultimately decide the better or the worst of one’s life (Sen, *ibid*). Also, according to Sen (1999) livelihood capabilities can determine how well can a person cope with shocks, which as earlier explained that shock emanated from loss of a husband, a father, and divorce. A woman indicated,

“[...] My daughters used to attend a good school, and I could buy books, uniforms and pay their school fees using the money I got from my little piggery and the vegetable I used to sell. But look at me now, the properties are no more, and I cannot afford that cost anymore. My husband’s family would not care because my daughters will get married anyway, so why educating them?” (Fieldwork 27/1/2016-Participant No.7)

Similarly, another woman indicated,

“[...] I and my husband contributed 50% each when we were buying that land. No one of his relatives was involved or knew that we both contributed to buying it. Now that he is gone, they have taken it. No more planting, no more harvesting for me. Sometimes I can not even buy kerosene to light up my house at night because where else do I get money to pay for it while the piece of land they took was my everything?” (Fieldwork 1/2/2016-Participant No.8)

In the above case, after the death of her husband, the husband’s family took the major means of livelihood she depended on in sustaining her needs and the needs of her children, however, as argued by Sen (1999) the current worseness of this woman’s life was due to the shock she suffered from the loss of her husband, which consequently led to her denial of land by the husband’s family which in Chambers and Conway’s (1992) ideas it is the denial of her opportunity to utilise her capability to earn a living.

“[...] I was 22 years when our father died. I was old enough to be allowed to own property. My little brothers were not even 10 years. But our uncle said he was taking custody of our land until my brothers grow up. However, almost 20 years have passed... I never heard of the land till now. I’m not educated to say I can get a job somewhere; I was not lucky to be married. I’m just living by chance, today I get tomorrow I do not get, but life must go on. If our uncle did not take that piece of land, my life could have been better today” (Fieldwork 2/2/2016-Participant No.9).

The idea here is that although there may be doubts as to whether the land would have entirely support the woman’s livelihood, but she clearly indicated that it would have supplemented her other means of survival hence give her an opportunity to earn a livelihood.

In the case of loss of a father, a woman remarked,






“[...] The room you see here is where I live with my three daughters. Friends of mine rented it and they are the ones who pay my monthly rent. When my in-laws took the farm I owned with my deceased husband they kicked me out of the house and never wanted to see us there again” (Fieldwork 3/2/2016-Participant No.10)

“[...] Before my farm was confiscated by my father in-law, I had a piggery and used to sell vegetable from my small garden. These were the only things my life depended on. Right now I cannot even afford two meals in a day. My neighbour allowed me to plant a few cassavas in her farm. That is what is keeping my life running until now” (Fieldwork 27/1/2016-Participant No.7)




Lack of access to land resources can affect the livelihood of rural women (Ashong and Smith, 2001, Pp. 14). In a similar ways the lives of rural widows can be impacted due to confiscation of their deceased husband’s lands. As seen above, widow No. 7 above is sharing the effects she has had on her livelihood as a result of having her husband’s land confiscated by his family members after his death.

5.3. Reflection

The first part of this study aimed to investigate on how customary laws and practices affect rural women’s and rights in Maramba, Tanzania, whilst the second part aimed to find out how the livelihood of women is impacted by the same laws and practices. In the first part, findings showed that customary laws and practices have:

-  *Lowered women’s economic opportunities*
-  *Limited women’s access to justice*
-  *Increased women’s economicdependence*
-  *Have contributed to silencing women’s voices over their rights to own resources, and*
-  *Increased domestic violence*

In the second part, the study found that customary laws and practices have rendered women in the field area

-  *Unable to afford basic needs of life like food and shelter, and rent.*
-  *Made women incapable to pay school fees for their children, and*
-  *Made women incapable of making choices of the life they want to live.*

It is inarguable that the statutory laws declare the right of both men and women to acquire, use, hold and deal with land to be equal¹⁰. Section 23(2) (i and ii) of the LA put it clear that there should not be any authority that may adopt adverse discriminatory practices or attitudes towards women who have shown interest in acquiring rights of occupying land. Section 3(2) declares that there should be no gender segregation in matters of ownership of land. Section 17(20) makes it clear that there should be a balanced number of male and female in the land advisory counsel in order to ensure gender equal decisions. Section 20(1) declares that all Tanzanians (both male and female) shall be allocated land. Section 159(8) give a possibility for a joint occupancy of land for married couple or people in a civil relationship. And finally section 161(3)(b) permits no transfer or assignment of land owned by spouses or people in a civil relationship without consulting each other and consent to the transfer or assignment. There are numerous other provisions of the Constitution of Tanzania that provides for equality of land rights between men and women. Article 12(1) provides the fundamental law of equality between male and females and that they are born equally and are all equal. The right to own property is provided under Article 24(1 and 2) whilst Article 13(1) provides for equality before the law. There are a number of arguments put forward by scholars that agrees with the findings of this study.

In a study conducted by the Gender Land Task Force (GLTF) in collaboration with Tanzania Women Lawyers (TAWLA) it is argued that customary laws are discriminatory on women and as a result have limited the progress of rural women (Maoulidi, 2004). If we are to fashion a more equitable legal system in property rights then there is a need to eliminate the social system of male power exercises through the enactment of the laws (Maoulidi, *ibid*). This would be a way forward to provide solutions the current rural poverty since it will bring women from endowment to entitlement of resource ownership (Maoulidi, *ibid*).

According to Koda (1998) ideology and practices perpetuated through legal governance are the root source of gender imbalance that ultimately affects rural women's rights and livelihood. Koda continues to observe that land is a crucial resource for rural livelihood, and if the laws on land issue are not neutral there is a risk of putting rural women in difficulty as opposed to men as it affects men and women differently (Koda, *ibid*). Since the current laws on land are made in patriarchal structures in that they give power to command resources to men and dispose women then the issue remains not only political, but also a crucial economic issue (Koda, *ibid*).

¹⁰ Section 3(2) of VLA and LA

Odgaard's (1999) position the laws related to land in Tanzania as indirect, uncertain, and substandard to the modern governance. She further argues that such law does not enable women to effectively utilise resources around them. This has in turn demoted women especially those from rural parts of Tanzania to an inferior societal position (Odgaard, *ibid*).

According to Rwebangira (1990) and Wagao (1988), the denial of property rights to women in rural Tanzania has to a larger extent contributed to rural poverty and restraining of the national economy. This is because there is a great involvement of women in agriculture activities, which supports the economy at local level which ultimately affects the national level (Pietila and Vickers, 1994).

5.4. Visual Implications of the Findings

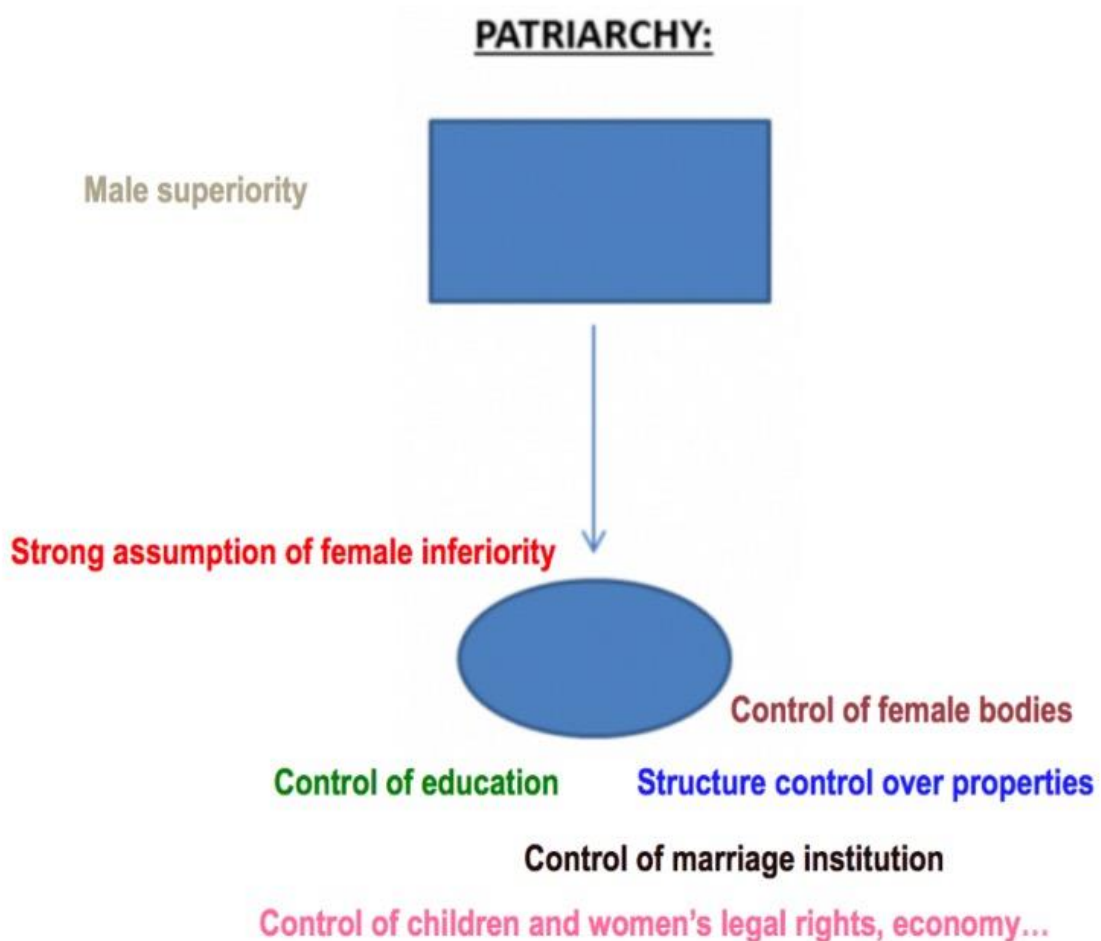


Figure 8: Visual matching the findings of research question 1 with the guiding framework of patriarchy.

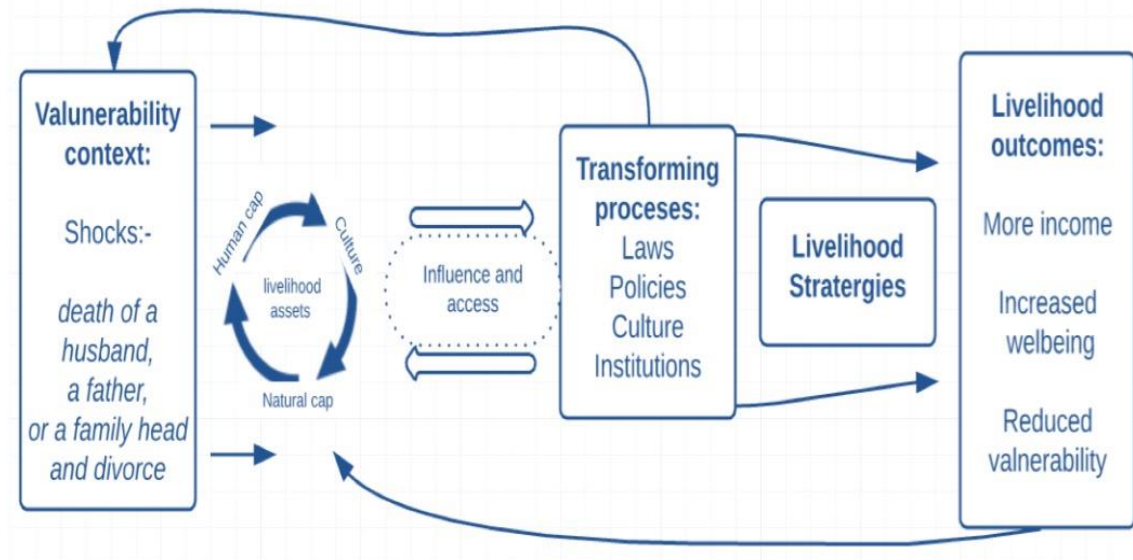


Figure 9: Matching the livelihood framework with the findings of research question 2

Figure 9 shows how livelihood assets, influence and access; transforming processes and strategies work together to support people in earning their livelihood. Human capital which in this research stands for rural women’s knowledge of their rights to own and access land resources, work in tandem with natural capital (land) and culture to form the vital assets needed for rural women in the field area to support their living. Laws, policies, culture and other institutions, support or hinder the creation of influence and access, which are important in forming livelihood strategies that consequently determines the better or the worseness of rural women’s livelihoods (Chambers and Conway, 1992; Sen, 2003).

Limitations

Also, it is worthwhile to acknowledge that there is a possibility of bias in the results as only 13 interviews were done since the process of getting participant seemed cumbersome and time barred. More interviews would have reduced this possibility of bias, and or influence the use of other different tool of analysis. The results of this study are not statistical but rather they can be representative in a small or large scale, and can be use to test operationalisation of a framework or ‘theoretical replication’ (Yin 2003:49-51).

7. Conclusion

This study aimed to investigate the experiences of rural women brought by the laws and cultural practices applied in ownership of land, and how these practices affects rural women's livelihood in Tanzania. In the country customary laws and practices have made rural women suffer from denial of access, ownership and control of land. As a result, their land rights and livelihood have been put at risk. In this research I have argued that low economic opportunities, limited access to justice and economic dependence are the effects brought by customary laws and practices on rural women's land rights. I have also presented arguments on the effects of customary laws and practices on rural women's livelihoods to be inability to afford basic needs of life like food and shelter, and rent; inability to pay school fees for their children and as well as inability to make choices of the life they want to live.

Suggestions for Future Research

Finally, future research could focus on how possible it is to implement gender capacity building and sensitization and its effectiveness in reducing gender imbalance and household poverty in rural areas. Likewise, only women and administrators were interviewed in this study, it would be motivating if future research could include the opinion of heads of the households, husbands and fathers but in another area of similar nature.

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Appendices

Appendix I:Poverty Score Sheet

		Poverty indicators																
Regions	Districts	i	ii	iii	iv	v	vi	vii	viii	ix	x	xi	xii	xiii	xiv	xv	xvi	xvii
A	DS1	44,107	25	2,928	0.008	22	5	8	32	29	21	10.8	4.2	7.9	73	81	66	100
	DS2	178,434	42	5,932	0.007	32	16	11	29	29	17	7.0	2.1	5.3	71	75	66	100
B	DS3	205,133	55	4,419	0.007	30	20	8	31	30	15	7.0	1.8	5.6	61	67	54	87
	DS4	230,164	27	6,025	0.004	30	11	11	30	29	21	10.8	4.1	8.1	63	73	54	93
C	DS5	260,525	42	4,803	0.009	26	11	7	31	30	18	9.1	3.6	6.4	68	76	61	81
	DS6	279,423	66	7,579	0.015	33	22	15	34	29	24	8.4	2.8	6.3	71	79	64	100
D	DS7	194,209	9	5,086	0.002	28	2	8	33	27	17	10.3	3.6	7.6	72	82	63	68
	DS8	132,045	20	5,048	0.014	32	20	9	30	28	20	11.5	4.7	8.4	74	83	66	100
E	DS9	185,237	12	4,393	0.003	24	3	7	33	50	14	8.1	1.1	7.4	43	53	35	71
	DS10	115,620	54	2,678	0.020	27	14	6	29	38	25	10.5	3.1	8.3	91	94	88	100
F	DS11	141,676	7	5,041	0.001	24	2	6	30	42	10	6.8	1.4	5.9	62	71	52	72
	DS12	212,325	33	3,781	0.009	32	11	9	31	34	23	7.9	2.6	6.0	90	93	87	100

Key to the poverty indicators	
i	Total population, 2002
ii	Population, 2002, Per km2
iii	Population per health facility, 2002
iv	Number of health facilities per km2
v	Per cent of the population below the poverty line, 2000/01
vi	Number of poor, 2000/01, per km2
vii	Poverty gap, 2000/01
viii	Gini coefficient, 2000/01
ix	Per cent of households which are female-headed, 2002
x	Per cent of households headed by a person 60 or older, 2002
xi	Per cent of children under 18 who are orphaned – mother or father has died, or both have died, 2002
xii	Per cent of children under 18 whose mother has died, 20002
xiii	Per cent of children under 18 whose father has died, 2002
xiv	Per cent of people 15 and older who are literate, 2002
xv	Per cent of males 15 and older who are literate, 2002
xvi	Per cent of females 15 and older who are literate, 2002
xvii	Primary education net enrolment rate, 2004

Source: United Republic of Tanzania/REPOA (2005) Poverty and Human Development Report 2005

Appendix II(A) – Interviews

Interview Guide for Administrators

Introduction

Thank you for your acceptance to participate in this interview. My name is Clement Kopweh a postgraduate student from Lund University, Sweden. I am conducting this interview for proposes of fulfilling the requirements for my Masters' thesis. What I am determined to understand from you is how the customary legislations related to land affect women's right to own, access and control resources in land in this municipality. Therefore I will ask questions that are limited in the period before and majorly after independence.

I consider your participation in this study to be completely voluntary and therefore you have the liberty to choose to either answer or not to answer any question you will be ask at any given time of this interview. The details of your name will be completely anonymous as they will not be mentioned anywhere in this study. However this interview may last for at least 40 minutes to 1 hour and therefore I would request for your permission to take notes and record it on a voice-recording device.

Here I will examine what have been their experiences in working with women in their communities

Personal Information

Name:.....

Post:.....

1. What are your duties in your leadership/position in this village?
2. What is the nature of land ownership to men and women in this place?
3. How is the appropriation of division of matrimonial properties, inheritance and succession to men and women in this village? Why is it like that?
4. Do you think men and women should equally own land? Why?
5. The national laws, and many people across the country and outside argue that customs that discriminate women in property ownership are not appropriate. What is your opinion on this?
6. Have there been any formal complaints from women over the issue of land rights denial? What are these issues related to and what did the authorities in which the complaints were logged do?
7. Do you think women are capable of controlling land if given opportunity?

***** Thank you very much! *****

Appendix II(B) – Interviews

Interview guide for the Villagers

Introduction

Thank you for your acceptance to participate in this interview. My name is Clement Kopweh a postgraduate student from Lund University, Sweden. I am conducting this interview for proposes of fulfilling the requirements for my Masters' thesis. What I am determined to understand from you is how the customary legislations related to land affect women's right to own, access and control resources in land in this municipality. Therefore I will ask questions that are limited to your experience as a citizen and dweller of this municipality.

I consider your participation in this study to be completely voluntary and therefore you have the liberty to choose to either answer or not to answer any question you will be ask at any given time of this interview. The details of your name will be completely anonymous as they will not be mentioned anywhere in this study. However this interview may last for at least 30 to 40 minutes and therefore I would request for your permission to take notes and record it on a voice-recording device.

Personal Information

Name:.....

Age:.....

Gender: Female

1. Please tell me about your age, occupation, number of children and marital status.
2. Do you own land? If yes how did you acquire it? If no, why?
3. What activities do you do with that land?
4. Do you think there are any discrepancies in customary land ownership to you as a woman compared with men?
5. Do you or have you or any woman you know in this village ever experienced any complications in land ownership? What or who brought those complications? What did you/they do?
6. Are you aware of any avenues or organs that are there to protect women land rights in this place? If yes, do you think they are accessible?
7. Do you think the customs are there to protect you as a woman when it comes to your issue of ownership of and its resources? Why?
8. How much contribution do you make to your family and how much comes from the activities you do on land?

***** Thank you very much! *****

Appendix IV(A):Administrators chart

Participant	Gender	Occupied Department	Interview / Focus Group Discussion	Interview Date
AD No.1	Male	Village Chairman	Interview	
AD No.2	Female	Gender desk	Interview	
AD No.3	Male	Primary Court Official	Interview	

Appendix IV(B): Villagers

Participants	Gender	Age	Marital Status	Education or Occupation	Interview	Interview Date
Participant No.1	Female	24	Married	Farmer	Interview	
Participant No.2	Female	30	Married	Farmer	Interview	
Participant No.3	Female	42	Married	Housewife	Interview	
Participant No.4	Female	58	Widowed	Farmer	Interview	
Participant No.5	Female	61	Married	Housewife	Interview	
Participant No.6	Female	39	Widowed	Porridge seller	Interview	
Participant No.7	Female	41	Married	Vegie seller	Interview	
Participant No.8	Female	59	Widowed	Farmer	Interview	
Participant No.9	Female	42	Divorced	Farmer	Interview	
Participant No. 10	Female	61	Widowed	Jobless	Interview	