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## LEGAL INSECURITY AND LAND CONFLICTS IN MGETA, ULUGURU MOUNTAINS, TANZANIA

*Jan Kees van Donge*

It is not surprising that land disputes erupt if land becomes scarce, as is the case in the Mgeta division in the Uluguru mountains, Morogoro rural district, Tanzania. The Uluguru mountains rise up steeply behind the town of Morogoro, about 200 km inland from Dar es Salaam, the main city in the country. Pressure of population on land, made more severe by erosion and land exhaustion, is a main feature of life. Agriculture is, increasingly, a reserve activity and few people can make a living in the area without being dependent upon remittances from outside (van Donge, 1992). Despite the decreasing economic importance of agriculture, in the words of the district magistrate of Morogoro: 'People in Mgeta always have quarrelled and always will quarrel endlessly about tiny pieces of land of little value.' The idea of a 'reasonable' Luguru land litigant, analogous to Gluckman's description of the Lozi litigant (Gluckman, 1954), is absent in this perception, as conflict is seen as being propelled without reason. People in Mgeta consider a land dispute to be one of the great tragedies that can befall them. Land disputes entail great costs and effort, yet people in Mgeta become deeply involved in such cases. Conflicts can be taken as far as the highest judicial organs of the country.

This article aims to explain why people become entangled in such situations, which seem not to serve the self-interest of the parties involved. For example: if land conflicts were settled in semi-autonomous fields outside the state legal arena (Moore, 1978), great cost and effort would be saved.<sup>1</sup> The possibilities exist in Mgeta for conflicts to be settled in such ways, yet, for everyone, the risk of being dragged into cases in the state legal arena is very great. The working of the state legal system is not the central focus of analysis here, but it is an essential aspect of the cases described. As will become clear, the courts resort to a great number of procedural devices to procrastinate and avoid coming to a decision. If a decision is reached, then the courts do not usually make judgements on legal principles relevant to the substantive issues of law involved but treat each case in isolation. The state legal system is an arbitrary social universe to enter (van Donge, forthcoming). This often frantic search for justice does not lead to binding decisions which clarify future situations. According to popular wisdom in Mgeta, the outcome of a land case is often the depletion of the resources of all parties involved. People locked in these disputes feel themselves prisoners of a process from which they cannot escape. The question as to why people nevertheless become involved in them is thus a vexing one.

The main point to be made here is that this situation is caused by a breakdown in the social construction of reality. 'All reality is subject to social definition, and all social definition of reality has its legal aspect' (von Benda-Beckmann, 1979: 385). The interpretation of new situations with legal principles is often inherent in the application of law. An abstract set of principles can never foresee the situations that will emerge in the process

of social change, and interpretation is therefore needed. In order for this social definition of reality to become law, these interpretations have to be formulated—to a minimal degree—in an authoritatively binding way. Authoritatively binding interpretations can be made by recognised authority or by a process of group consensus. This article describes why there is a need for such social definition with respect to land law in Mgeta and how society there fails to produce such definitions in an authoritatively binding form.

The issue here is not a normative one. The question is not 'What decision should the courts have reached, given a set of legal rules?' On the contrary, the article aims to show that this is not a relevant question, as it assumes that law is an ahistorical product. Legal norm complexes are not relatively independent of the particular time and place in which they are applied but, rather, are social constructions which are continually adapted and developed. The perspective on the formation of law is from below: why do legal issues emerge and develop into such overwhelming social phenomena as is the case in Mgeta? A discussion as to what the national law is or how it interacts with local legal systems is not relevant here, because national law does not impinge on life in Mgeta and the local legal system is not a fixed but a fluid entity. These land conflicts cannot, therefore, be explained in terms of struggle between particular norm complexes, e.g. local law versus state law or communal versus individual tenure. Such elements are inextricably intertwined in social practice, and it will be evident that adherence to a particular norm complex does not alleviate the need for social definition of reality as it arises in actuality.

#### LUGURU IDEAS ON LAND TENURE

Luguru land tenure has been described by Fosbrooke and Young (1960) and Brain (1973), and the normative system they described was still adhered to in the late 1980s. Luguru life is described by them as structured by matrilineal descent in terms of clans and lineages. Lineages, and to a lesser extent clans, trace a common descent from the original settler of an area. The identity of a Mluguru is established through identification with such clans: this identification implies a right to live on and work land.

Any Mluguru will answer when asked about land tenure, '*Sisi tunafuata mama*' (We follow the mother). Land in this ideology is inherited in the female line and held by a corporate entity: the matrilineal clan. The clans are exogamous and therefore an individual's clan identity derives from his/her mother. Unless land is sold, the ownership of land is inalienable from clans. Under certain circumstances the ideology allows people to farm land even though they have a different clan identity from the land. Ideally, land is inherited in the female line, but the ideology allows a son to inherit land from his mother. The identity of the land and of the person who works the land remains the same in this instance, because the son inherits his clan identity from his mother. The son's children, the grandchildren of the mother from whom the land originates, may also inherit the land from their father—this despite the fact that their clan identity is different from that of the land they work: the land originates from their father but they get their

TABLE 1 Mgeta division household survey: stated claims to land owned

<i>Nature of claim</i>	<i>No. of plots (%)</i>
<i>Clan-based claims</i>	
Women from mother's side	508 (48)
Men from mother's side	255 (24)
Women from father's side	121 (11)
Men from father's side	70 (7)
<i>Outside clan relations</i>	
Borrowed/rented	34 (3)
Bought/started themselves	69 (7)
Total	1,057

clan identity from their mother. When these grandchildren die, however, the land should revert to the clan from which it originated and cannot be passed on to the children of the grandchildren currently working it.

People in Mgeta reason about and interpret land conflicts in terms of clan ownership and kinship. Table 1 shows the legitimisation of land ownership in a household survey of nine neighbourhoods in Mgeta.<sup>2</sup> It appears that only 10 per cent of all plots were claimed on grounds other than clan ownership and only 7 per cent of all plots were claimed on an individual title. The majority of all claims on land were based on direct matrilineal descent (72 per cent). In the mid-1980s people continued thus to defend land ownership mainly in terms of matrilineal descent, but two institutions which are central in earlier accounts had lost meaning. Fosbrooke and Young (1960) mention a whole terminology surrounding the concept of lineage. This terminology elicited no response among informants. People merely reasoned in terms of the very wide clan (*ukoo*) or in terms of direct descent (*kuhusiana*). As will be made clear below, groups of people in dispute can often not even be classified in terms of a lineage, but may be better classified as action sets. Fosbrooke and Young (1960), as well as Brain (1973), describe the lineage head as the source of authority in matters of corporately owned land. By the time of the present study the institution of lineage head had disappeared.<sup>3</sup> The disappearance of the idea of lineage and lineage head probably indicates individualisation in society (van Donge, 1992). Old social structures may thus lose a meaning they once had, but matrilineal descent and corporate claims on land remain a powerful social force.

Social change may have weakened the conforming force of social structure. It may also be that the earlier studies (Fosbrooke and Young, 1960; Brain, 1973) reified social structure. Theirs is a structural approach, which pays little attention to the way kinship is manipulated in social affairs (kinship in action). Holy (1976) and Kuper (1982) have suggested that the concepts of the lineage and the clan as corporate groups may be more a construction of anthropologists looking for a logic of descent than actual observable entities. Holy (1986) has made the point, in a study of the Toka in Zambia, that people's behaviour may be at variance with such structural

models, but such models remain nevertheless a potent ideological form in society. That is also the case in Mgeta. These models may be merely ideological expressions, but it is significant that they remain powerful in people's consciousness.

The question then arises as to why such norm complexes may be important artefacts in society while their relation to behaviour may be questionable. The point made here is that social change demands continuous interpretation of such norm complexes. Social behaviour is a continuous construction of realities which cannot be caught in formal rules: law is a process embedded in social contexts (Moore, 1978). A court case is, of course, only a fraction of the social situation which creates the conflict, and one can argue that an article like this one should be embedded in a general overview of land tenure as observed to give meaning to the cases. Nevertheless, this article is mainly based on cases which appeared before Mgeta Primary Court, because court cases have great heuristic value in explaining society in the particular situation in Mgeta.

Luguru local culture strongly disapproves of conflict. People will not deny that there are numerous conflicts about land, but they prove unwilling to talk about them. As mentioned above, people adhere to an ideological claim that land ownership originates from clan identification. The material presented here will show that, in the light of the facts, this is often a tenuous claim. Court cases offer an important opportunity to probe the reality behind such a claim to social conformity.

This does not mean that the nature of land conflicts was immediately obvious in court cases. The courts and litigants define the conflict in formal terms: debates in court centre more on what happened at particular moments than on why things happened. The particular nature of court proceedings in Mgeta may best be illustrated by the way in which charges of the use of unacceptable language (*matusi*) were dealt with. Such language usually involves statements concerning forbidden incestuous sexual behaviour and may imply witchcraft allegations. These words are normally not repeated in court, and so one can hear long deliberations about whether terrible statements have been made, very carefully avoiding the actual words used. Court cases in such a cultural setting are, of course, valuable sources of information, but, in order to reveal their real meaning, cases have to be followed up by observation and interviews with the parties concerned. This was necessary not only because of the nature of court procedures, but also because claims on land are legitimised in normative terms which are often at odds with the facts. A mere interpretation of facts as presented in court can, therefore, hide an underlying reality.<sup>4</sup>

#### MATRILINEAL DESCENT AS A SOCIAL CONSTRUCTION

Land in Mgeta is extremely fragmented. People see this as a problem, but they feel powerless in the face of the social forces causing the fragmentation. These forces manifest themselves especially when land is being distributed from a deceased person's estate. All interested parties agree at the outset that fragmentation should be discouraged. Plots should, therefore, be allocated as much as possible to people who already have land in the

vicinity, and small plots should not be further subdivided. Disputes then erupt about the relative value of the plots, as the plots can differ so much in fertility, and the only solution is to divide the plots equally among the contending parties, with the result that the land is further fragmented. Consequently, most estate distributions leave bitter feelings. The result is that there are many disputes about neighbouring plots.

The driving force behind these conflicts is, of course, scarcity of land, especially good land. It is not surprising, therefore, that it is a source of jealousy. If there is a desperate shortage of land, and a neighbouring plot is lying fallow, the temptation to move in is, of course, very great. Such tendencies can be exacerbated when neighbouring plots differ greatly in fertility. This is often the case, because erosion deposits fertile soil from higher plots onto lower ones.

A common form of conflict is, therefore, a claim on a neighbouring plot, and this raises issues about the division of these plots in the past. It would be logical to expect stretches of land in Mgeta to be owned predominantly by people of one clan, because the matrilineal ideology assumes corporate ownership of land by people descended from a common ancestor who is supposed to have been the first settler of the area. However, one finds that adjoining plots can be farmed by people belonging to any one of a multitude of different clans. The matrilineal ideology may presume descent from the original settler of the area, but, in specific cases, actual memory of such descent is still alive only in some instances. People assert their clan affiliation with great certainty but are blank, vague or contradictory if one asks about actual patterns of descent (van Donge, 1992).

The identification of land with particular clans is therefore often problematic. Similarly, there is often no clear connection between the clan identity of the land at stake and the clan identities of the litigants. It may be claimed that the ideology of matrilineal descent is hegemonic, but, in practice, it indicates only partially how people come into the possession of land. The following case illustrates how the identities of the litigants and that of the land can be different in matrilineal terms. It also illustrates how such situations can come about.

Criminal case 23/86, *Shabaan Ali v. Kristina Medard*, was about a piece of land farmed by Kristina Medard. One day she found her neighbour, Cyprian Kikoma, working on the plot and she protested. Cyprian Kikoma then approached Shabaan Ali, as representative of the clan, to open a case at the Primary Court. They claimed that both plots had originally been one and belonged to their clan. Kristina argued that the land belonged to the clan of her late husband and his matrilineal relatives, and that she had continued to farm it with their permission after his death.

Shabaan Ali won the case in Mgeta Primary Court. Kristina appealed to the district magistrate, who decided that the case should have been opened not as a criminal case but as a civil one. He directed the litigants to reopen the dispute as a civil case at Mgeta Primary Court. Shabaan Ali then gave up and Kristina continues to farm the land.

The Primary Court's judgement mentioned as the reason for deciding in favour of Shabaan Ali that Kristina Medard could not properly prove who had given her the plot.<sup>5</sup> The transfer to her late husband had been wit-

nessed by his mother and his mother's sister. They were, however, no longer alive at the time of the case and a younger sister of her late husband was Kristina's witness. She was only a child at the time of the transfer and had not herself witnessed it. The evidence brought by Shabaan Ali was not particularly convincing, either. He brought an old person of uncertain status with respect to clan matters to testify that the whole plot had originally belonged to one person of Shabaan Ali and Cyprian Kikoma's clan.

The case illustrates that any testimony which refers to the distant past is vague in a society where written records are scarce. In order to make problems manageable, one has to limit the collective memory of land rights. Structural amnesia is, therefore, a powerful force in Mgeta. The more the distant past is taken as a source of law in such a situation, the more insecure present claims on land become.

The structure of communal land ownership is therefore not fixed but is continuously constructed. A fundamental reason is the inability of legal systems to foresee the issues that will crop up in human interaction. Social life can create situations which simply do not fit a legal normative system. This is illustrated in a string of cases fought by *Isdori Patris and Bernard Laurens* (criminal case 77/85; criminal appeal 94/86; civil case 2/86; civil case 3/86). They gave up only because they no longer had the resources to fight each other, and they accepted then the judgement of Solomon originally given by the *baraza la usalahishi* (see note 1) to divide the disputed field in half.

The facts of the case were not in dispute. The plot had belonged to one Koseni Lunghwamba, who belonged to the Mbena clan, and the land was also Ukena. Koseni Lunghwamba had given the plot to Antony Masese. Antony Masese, in turn, had given the land to his brother Laurens. Both were Wabena, Bernard Laurens had inherited the land from the latter, his father, and was farming it at the time the dispute erupted. The other party in the dispute, Isdori Patris, was the husband of Anna Koseni, the daughter of the original owner of the plot. She claimed to have inherited the plot from her father.

The two opposing parties claimed, therefore, to have inherited the plot from their father, whose clan identity was identical to that of the land. Both Anna Koseni and Bernard Laurens had, of course, inherited their clan identity in the logic of matrilineal descent through their mothers and therefore belonged to clans other than that from which the land had originated. Consequently, matrilineal descent as such gave no guidance in solving the case. In addition, Anna Koseni was represented in this case by her husband and not by matrilineal relatives of her father, who should be the proper authorities in a case like this. Matrilineal affiliation is simply irrelevant in such a case.

The Primary Court magistrate recognised this problem in his final judgement and summed up the clan identities involved: 'The *shamba* in question is Ukena, Bernhard Laurens is Mchuma, Esdore Patris is Mwafigwa and Anna Koseni is Mwenda.' He resorted, however, to referring the case back to the *baraza la usalahishi* and, despite the fact that conflicts of this nature are certain to crop up time and again, he did

not develop perspectives which could structure decisions in future conflicts.

The two cases discussed show that there are strong forces which drive land out of clan control: inheritance from the father and dispersal of land allocated on marriage after the divorce or death of a spouse. In both these cases, courts resorted to procedural grounds rather than face the substantive issue of law. These two cases ended not in a solution resulting from a confrontation of legal principles with factual situations but in both parties simply giving up the struggle after spending time and energy in a search for justice.

A possible reaction to this situation would be individualisation of land tenure where people can dispose of land at will on the grounds that they are in possession, especially as the concept of lineage as a coherent corporate identity seems to have disappeared. However, claims are seldom made by individuals seeking individual title. Groups of people are usually in dispute with each other, and disputing parties are often represented by others who exemplify a larger unit of family or clan. Land rights in Mgeta are framed in terms of provisional and residual property relationships in which corporate claims play a dominant role (cf. von Benda-Beckmann, 1979: 45). The following case illustrates how such residual corporate groups can reassert their claims if people seem to dispose of land according to individual will.

The case concerns land which, through marriage, appears to slip out of clan control. Civil case 27/88, *Pauline Fabian v. Stephan Joseph*, involved land which a father had transferred to a son of a marriage which had broken up. Stephan Joseph's father and Pauline Fabian belong to the same clan. Land which was identified with this clan had been given to a brother from the same marriage, Paul Berege. The last-named had transferred it to Stephan Joseph. Pauline Fabian claimed the land back for the clan on the grounds that the marriage had been dissolved and that a relationship therefore no longer existed between these children and the clan. In this case the court asserted corporate ownership and Pauline won.

Corporate claims are, however, also social constructions. Matrilineal ideology may be adhered to, but in disputes people can form alliances or action sets which are at odds with the rules as generally asserted. The corporate claims in the next two cases illustrate this.

Civil case 4/88, *Emilian Mahoe v. Pius Karoli*, was a dispute about a plot adjacent to one owned by Emilian Mahoe. The facts of the case were not in dispute. Originally the plot belonged to the same clan as that to which Emilian Mahoe belonged. The last person who farmed the land and who had the same clan identity was Francis Libigwa's father. Francis Libigwa inherited it from him. Francis died young. His children were looked after by a maternal relative of Francis, Pius Karoli. Pius Karoli also farmed the disputed plot after the death of Francis Libigwa. Emilian Mahoe argued his case according to the logic of matrilineal ideology. Pius Karoli belonged to the same clan as Francis Libigwa, but this clan identity bore no relation to the land. Mahoe argued that, whereas Francis could claim the land through his father, no such claim could be made by Pius Karoli and that the land should therefore be returned to his, Emilian Mahoe's, clan.

This was a bitter dispute involving a string of cases and appeals. In a sense one cannot conclude that there was a winner or a loser, because the court decided that the rightful owners of the land were the children of Francis Libigwa. They had all moved out of the area and were working in Dar es Salaam. They testified that the land should be worked by their guardian, Pius Karoli. A corporate group thus emerges which is composed of the children of a father and a matrilineally related relative of the father. This does not fit the matrilineal ideology: the children of Francis Libigwa should, in the first instance, find solidarity among their mother's relatives instead of among their father's matrilineal relatives. One therefore sees here a corporate group which does not fit the logic of solidarity along matrilineal lines, but one does not see an assertion that land should be disposed of at the will of the individual who owns it.

Civil case 8/88, *Emilian Thomas v. Paolo Dominic*, was a conflict among a group of matrilineally related people. The disputed plot was planted with trees by the late Gideon Mahenge. Gideon died in 1966, and the plot became the collective property of Gideon's matrilineal relatives. They used the plot for their timber requirements, and sometimes timber from the plot was sold. One person, Jovitt, was entrusted with the general supervision of the plot. The dispute arose when Jovitt allowed Paolo Dominic, a son of his sister, to plant beans on the plot, Paolo had felled young trees to make space for beans: that was unacceptable, as it could imply a completely different use of the plot. It would mean that the plot would move from collective to individual use. The other matrilineal relatives of the late Gideon then asked Emilian Thomas to bring an action.

The judgement was similar to the one in the previous case: the rightful owners of the plot were the seven children of the late Gideon Mahenge. This was certainly so with respect to the trees, because trees, as distinct from the land on which they stand, can be inherited in direct line from a male. The construction which had emerged after Gideon's death was thus on this point at variance with the legal rules as normally accepted. Gideon's children sided with Emilian in the dispute and laid no claim to the land themselves. In this case, also, corporate ownership is a force which is not easily displaced by individual claims. Such corporate ownership may, however, be constructed in ways which differ from the hegemonic rule of law or kinship ideology.

These cases illustrate how the quest for justice which results in such land disputes originates from below. It is not the case that legislation imposed from above creates conflict; the conflict emerges from the development of social practice. In the last three cases the courts did provide a ruling which, more than usually, followed principles involved in the case. It is more typical that no authoritatively binding decisions are made.

#### A VACUUM OF AUTHORITY

One can argue that there is nothing unusual in the situation described above. The construction of social life is a creative activity, and people may interpret and legitimise changes using an ideology. This is especially so in societies which are not centralised and which are loosely structured. Such

ideologies may give meaning to social life, but such ideological statements do not need to correspond to actual behaviour. It is, however, a great strain on society when all arbitrary behaviour is justified. The legal aspect of the social definition of reality usually sets the limits within which this interpretation takes place. It is not an automatic or necessary process. The legal expression of the social definition of reality can originate from the courts, and people turn to the State legal system for that reason, despite the fact that they cannot reasonably expect the courts to produce such legal definitions of a normative social universe. It would therefore be logical for semi-autonomous fields (Moore, 1978) within the local society to take over this function, either through the production of a group consensus or through local authorities outside the State sector. That is not the case in Mgeta, however.

The most common legitimisation for land ownership (Table 1) is inheritance, and most land conflicts originate in inheritance disputes. The source of authority in executing estates is, therefore, a logical starting point from which to analyse this vacuum in authority. It is possible to ask the Primary Court to appoint an executor to an estate. Three such cases cropped up in Mgeta in the course of one year, all concerning the property of people who had moved out of the area. Inheritance issues are usually settled outside the State legal arena, at the *pombe ya msalaba*, a beer-drinking party held forty days after a death in order to settle all disputes relating to the deceased's estate. An executor is usually chosen then from among the matrilineal relatives of the deceased.

Conflicts between the children of one father and one mother are common, but do not often result in court cases. Usually, a group of matrilineal relatives is in dispute with the children of a deceased father.

If a court case erupts immediately, the executor is a clear source of authority, but cases are brought to the court which date from much earlier times. It was not unusual for a case brought to court in 1988 to refer back to an inheritance issue in 1976. In cases concerning inheritance through the father's line it is important to establish when the land in dispute left the matriclan: this could also have taken place decades before. People who are appointed as executors tend to be old and may have died by the time conflict erupts. The case of *Severin Florian v. Johanna Konstantin* (civil case 5/82; criminal case 42/87) illustrates this.

The land in dispute was brought into the marriage by Severin's father and it belonged to the father's clan (Wanyagatwa). The dispute centred on the decision taken at the *pombe ya msalaba* after the father's death. On the death of his mother, Severin claimed that the plot had been allocated to him at the *pombe ya msalaba*, but the Wanyagatwa claimed that his mother had been allowed to use it until her death; thereafter, it had to be returned to the Wanyagatwa. The person appointed to execute his father's estate was dead by the time his mother died. Consequently, there was no authoritative source any more.

The result was a string of court cases, and ultimately the case reached the High Court. Both parties were summoned to Dar es Salaam. Johanna Konstantin's party had the 'luck' to meet the High Court judge in the district capital, Morogoro, where he was on circuit duty. When he appeared

at the appointed time in Dar es Salaam, Severin was informed of this and rushed back to Morogoro. He met the judge there but found that the case had already been judged in his absence in favour of Johanna Konstantin. Severin then gave up, although he never received a written judgement of the case, and it cannot be traced in the records, either. The court did not, therefore, act as a source of legally binding authoritative decisions here. The most likely explanation for the outcome of the case was that the Wanyagatwa had outspent Severin Florian rather than any issue of law.

The case also illustrates that the formation of a group consensus imposing a dominant interpretation of the past is the ultimate source of authority in such a situation. Severin Florian had fought the case as a loner. He was the only one among his father's children to come into conflict with the Wanyagatwa. One of Severin's brothers even testified against him. They all continued to have an amicable relationship with the Wanyagatwa and, for example, made communal use of a plot of trees in a Nyagatwa field belonging to their father. Severin claimed that all the others had received a Nyagatwa plot except him. That may or may not have been true, but the case illustrates how group processes become dominant if the past has to be interpreted in the absence of written records. Selective memory or the dominant interpretation of the past need not be an insecure source of law if it is interpreted and reinforced by an independent, authoritative institution. Such institutions were, however, absent in this case.

It is therefore logical for individuals to try to protect themselves, through the use of written documents (testaments, for example), against what they consider as undesirable interpretations. The courts, however, are reluctant to admit such evidence, as it has, in their opinion, to be witnessed by all the parties involved. In practice this means that a will is valid only if it is accepted by all parties to a dispute. This makes documents like testaments ineffective as a means of avoiding disputes.

A case in point is that of *Canisiana Leo v. Petri Edwards* (civil case 8/84). The accused, Petri Edwards, rented a plot from the late Honore Sengo. After the latter's death, the plot was inherited by his son, Juma Honore, who had agreed to the arrangement and allowed Petri Edwards to continue. Juma Honore lived in Dar es Salaam.

Canisiana Leo represented the clan from which the plot originated and claimed that Honore Sengo had left a testament relating to the plot. It had been witnessed by the clan representative, Medard Felix, and said that Petri Edwards was allowed the use of the plot to grow onions. In the event of his putting it to different use, it had to be returned to the clan. It was claimed that as Petri Edwards had carrots on the plot he had lost the right to it.

It took Mgeta Primary Court three years to come to a judgement. Procrastination and delay are usually interpreted as a sign of corruption, and it was said that a lot of money was involved. The unofficial explanation was that the case concerned an unofficial sale. Honore Sengo had, in agreement with his son, sold the plot but had difficulty in getting agreement to the sale from the clan. That was why he had written the declaration asserting the rights of the clan to the plot. Plots which are suitable for

vegetable growing are scarce and valuable in Mgeta, and this must have exacerbated the bitter fight.

As usual, these circumstantial factors were ignored. Neither did the court pay any attention to the will, although the complainant had surrendered it as evidence and it was in the file. Petri Edwards won in the Primary Court, and Canisiana Leo appealed to the District (civil appeal 31/81). The district magistrate ignored the will as well and decided in favour of Petri Edwards, as Canisiana Leo had 'no proper relationship with the late Honore'.

This last sentence from the judgement is significant. The crucial question is who has a 'proper' relationship to the deceased and to the land he or she worked. The courts never define that in specific terms. This vagueness is also reflected in their attitude towards clan ownership of land. They do not deny that the clan has authority over land but repeatedly repudiate claims of people to represent the clan. They do not subsequently define who the proper authorities are. This is compounded by the problem that authority tends to be diffuse in matrilineal societies, but especially so in Mgeta. Fosbrooke and Young (1960) as well as Brain (1973) identify a clear source of authority in land issues, the lineage head. As mentioned earlier, this institution had completely disappeared in Mgeta and was only vaguely remembered in the mid-1980s. The brother of the mother is another clearly identifiable source of authority in matrilineal societies, designated in Kiswahili as *mjomba*. This can be a well defined role, but in Mgeta it is interpreted very widely. The term can refer in Mgeta to any matrilineally related male and therefore qualifies an enormous number of people as potential sources of authority. For example: three disputes, in which matrilineal relatives of a deceased man challenged his daughter's right to the land, erupted about different fields. Each party of matrilineally related people in the three disputes brought their own *mjomba* as a source of authority.

People in Mgeta adhere to a matrilineal ideology, but, as is the case with all ideological constructs, this and its historical interpretation have to be constantly interpreted to cope with social practice as it develops. Old people are the main source of oral evidence, but because they are old they are a fast disappearing repository of witnesses. The courts are reluctant to accept written evidence and they avoid making authoritative interpretations of the legal situation. There is no clear source of authoritative interpretations in the clan structure. Social pressure can, in such a situation, curb greed and arbitrary behaviour, but it will not necessarily do so. That it may not is borne out in the following case, which illustrates how these various elements result in great social insecurity.

*Antonia Mbago v. Albertina Petri, Maria Komolo and Emilian Palala* (civil case 6/88) seemed a straightforward case. The charge was contempt of court because the accused had invaded a field which had been awarded to the complainant in a previous court case. The accused did not deny the invasion and the records proved that the plot had been awarded to Antonia Mbago. It was logical that the accused should be convicted.

This, however, begs the question as to why the accused nevertheless did not accept the court's decision, and one must move at this stage beyond the formal argument of the case. The key person among the accused was Maria

Komolo; Albertina Petri was her daughter and Emilian Palala was Albertina's husband. Maria was old and her husband had died recently. The husband belonged to the clan of the Wanyagatwa and had brought into the marriage a plot which he had inherited from his mother and which was identified as Nyagatwa. Lucia Devis, representing the Wanyagatwa, claimed the plot back for the clan. Maria Komolo retaliated by claiming a plot in the possession of Lucia Devis belonging to Maria's clan, the Wang'amba. Lucia's father had farmed the plot before her and he in turn had inherited it from his mother, a Mng'amba. According to Luguru rules the plot had to be returned to the Wang'amba after Lucia's death.

Lucia was very old and the plot was fallow. Maria Komolo therefore claimed it on behalf of her daughter, who was desperately short of land.

Lucia decided not to fight for the plot herself, but incited Antonia Mbago—a friend and a Mng'amba—to bring a case claiming the disputed plot. The form of the conflict before the court was therefore different from the actual conflict which gave rise to it. It was originally a conflict between two clans and it was turned into an internal conflict of the Wang'amba. The issue of authority over allocating land within clans therefore became a relevant question. Antonia Mbago claimed that the plot had been promised to her a long time ago by her *mjomba*, Modest Kinole. At the time of the court case, Modest Kinole was already long dead. Maria Komolo brought as witness her *mjomba*, Victori Nihengula, who had allocated the disputed plot to her. The *wajomba* were quite closely related to the respective litigants. Modest Kinole was said to have been a brother of Antonia's grandmother and Victori was a brother of Maria Komolo's mother. Antonia and Maria were, however, very distantly related. They claimed only a common clan identity (*ukoo tu*) and did not claim any further kinship links (*hawahusiana*). The judgement of the Primary Court was in favour of Antonia Mbago on the grounds that she could claim a closer relationship to Lucia Devis's father than Maria Komolo.

This case illustrates the situations that can arise in Mgeta owing to the breakdown in the construction of the social reality of matrilineal corporate control over land. First, the case was fuelled by envy. Lucia Devis grabbed a plot from Maria Komolo and the latter retaliated. The fact that Lucia had encouraged Antonia Mbago to fight for the land indicates that the aim of the case was, in the first place, to prevent Maria owning the plot and that Lucia must have already given up hope of retaining it. Lucia Devis was, within Luguru matrilineal ideology, on weak ground. Her claim to the plot which belonged to Maria's late husband was based on the claim of corporate ownership of the matrilineal clan. Maria's claim on the plot Lucia had inherited from her father was based on the same principle. Lucia's claim on the land which was farmed by Maria was flawed, as, under Luguru rules, land can be inherited in the male line for one generation. Accordingly, Maria's daughter, Albertina Petri, had a right to inherit the plot. Lucia was therefore in a much weaker position to challenge ownership of the land than Antonia Mbago. Second, the reconstruction of the past became a major issue. The plot had been in the ownership of Lucia Devis and her father for a long time. Lucia was very old at the time of the case; 1945 was mentioned as the year in which Modest Kinole had pronounced on the ownership of

the plot. The absence of living witnesses and written records made a reliable reconstruction of such a distant past virtually impossible. The court refused to reach a decision as to who could legally represent the clan and found a way out by looking at the kinship relations between the last Mng'amba owner of the plot and the contending parties.

In this case the weak were defeated by the strong. Albertina Petri and Maria Komolo were poor and did not have the money for an appeal, although they utterly rejected the decision. They resorted, therefore, to contempt of court and were then faced with a conviction and a stiff fine. They subsequently thought they might as well appeal after all, but the term within which they could appeal against the judgement in the original case had lapsed. In the contempt of court case an appeal stood no chance.

Yet this case cannot be reduced to a mere morphology of struggle in which the weak are outspent by the rich. The legal universe described here is a threat to any established position, whether it is a position of wealth or one of poverty. Inherent in the ideology is that claims to ownership may be widespread among many people. Kinship and claims on land are a constructed reality, and structural amnesia is in this an essential aspect of kinship. If, as in this case, close relationship to a previous owner is a legitimate reason to challenge ownership of land, many opportunities are opened to challenge land ownership. Legal insecurity may arise for many people, rich or poor. As there are no clearly identified authoritative sources of law on such issues, the risk of being drawn into court cases about land is a threat to everyone.

#### INDIVIDUAL TITLE AND THE SOCIAL CONSTRUCTION OF REALITY

The perspective on African law presented hitherto is similar to other current writing on the subject. African law is less and less seen as 'customary' law which is a product of tradition, and more and more as constructed by social forces interpreting and changing what is tradition and custom (e.g. Cheater, 1987, 1990). Such a position leads logically to the question of who interprets the law and whose interests are served by which interpretation. Mackenzie (1990), for example, argued in the case of Murang'a district, Kenya, that legal reality is constructed and appropriated in relations of class and gender.

Gender is not an issue in land disputes in Mgeta. The case did not show clear patterns of gender relations; they are as likely to be inter-gender as intra-gender. In the groups that mobilise in land disputes one finds often a mixture of male and female. Class seems at first sight more important. Land disputes may be framed in terms of kinship and corporate descent groups, but money is an aspect of all cases. It is often mentioned in court as a subsidiary factor, but money is a prerequisite to fight a land case in court. It is also clear from the cases that social life in the area is encapsulated in wider exchange networks through, for example, migration or the vegetable trade (van Donge, 1992). Commoditisation, in the sense of the structuring of social relations by exchange relations based upon money, is therefore undoubtedly an aspect of life in Mgeta.

Snyder (1981), following Bernstein (1977), argues in his study of legal

change among the Banjal, Senegal, that in contemporary Africa 'the reproduction of all forms of production depends ultimately upon capitalist commodity relations'. A logical consequence of such a perspective is to see legal disputes as expressions of such relations, which are by definition antagonistic. There do not seem, however, to be any grounds on which to reduce the land disputes in Mgeta to expressions of antagonistic capitalist commodity relations.<sup>6</sup>

The spread of monetary values in Mgeta is not associated with the rise of an emerging bourgeoisie exploiting an increasingly impoverished mass (van Donge, 1992). Some people are undoubtedly wealthier than others, but that does not structure the nature of land conflicts. As a rule, one does not find economic inequality between parties engaged in conflict. It is more typical that the two parties locked in dispute cannot be clearly differentiated economically. They will try to mobilise resources in as big a group as possible, but the dispute is fought at great cost to both.<sup>7</sup> Land disputes are definitely not seen in local wisdom as an instrument for accumulation. Long and expensive litigation about land ownership, without much hope of a resolution of the conflict in the State legal arena, is a dominant feature of life. The folk moral in Mgeta of a court case is that in the end everybody is worse off.

One can therefore not see a hidden logic of exploitation, accumulation and class differentiation resulting from commoditisation as an underlying pattern in these cases. Also, only two of the thirty-one land cases before the courts in this study resulted from an outright sale of land. It is probable that commercial transactions in land are much more widespread than this suggests (see the case of *Canisiana Leo v. Petri Edwards*, above), but purchase is not a particularly useful way to legitimate a claim on land. It is accepted in court appearances as well as in day-to-day legal consciousness in Mgeta that commercial ownership of land gives a right to dispose of land at individual will. The case material shows, however, that in practice such a claim still has to be legitimated with corporate groups. One of the major reasons is, again, that evidence is to such a great extent a social construction in a society where literacy is weak and written records are of minor importance, as is illustrated in the following case.

The dispute in the series of cases which opened with criminal case 77/86 *Venance Mkungu v. Albert Mbago, John Kazao, Gaitan John*, before Mgeta Primary Court was about half an acre of land. It was brought when Venance Mkungu found the accused building a house on the plot. The house was for Albert Mbago and the other two were helping him. John Kazao is married to a sister of Mbago's wife and Gaitan John is his son. Charges against the latter two were dropped at the first hearing. Albert Mbago claimed to have bought the land from Rashidi Maghati.

The neighbouring plot was inherited by Venance Mkungu's wife from Rashidi Maghati, and Venance claimed that she had inherited the whole plot.

The Primary Court accepted the case as one of forced entry and destruction of property on November 1986. On 6 July 1987 the court came to a judgement after hearing the case in a total of eleven sessions. Venance

Mkungo won the case, as he was considered to have presented better evidence.

Albert Mbago appealed to the district magistrate in Morogoro on the grounds that he had paid the Primary Court magistrate for a visit (which never took place) by the court to the disputed plot. The district magistrate refused to give judgement as to the ownership of the plot. The Primary Court had made a procedural mistake: the case should never have been accepted as a criminal case, only as a civil one (criminal appeal 63/87).

Albert Mbago then initiated a civil action against Venance Mkungo (civil case 5/87) on 23 October 1987. The court convened a total of fourteen sessions to deal with the case. In four of these, one of the parties or their witnesses did not turn up, and, once, the scheduled judgement was delayed without reason. Albert Mbago won, because his evidence was considered much better than that of Venance Mkungo.

Venance Mkungo then appealed to the district magistrate (civil appeal 28/88). The district magistrate again refused to arrive at a judgement as to who owned the plot. He argued that, as the wife of Venance Mkungo owned the plot, she should have initiated the case.

She did not take up a case, however, but Albert Mbago brought one against her (civil case 17/88; *Albert Mbago v. Sesilia Cosmas*). It was still in dispute when I left Mgeta in July 1989.

The case shows clearly how the litigants become involved in a dispute which bears no relationship to capital accumulation. It deals with a tiny piece of land. Both are faced with a legal system where they are pawns in a game instead of players with a clear chance of winning. The courts have used many procedural means to avoid coming to a decision. For example, in addition to the general directive to open a civil case, the district magistrate could have indicated at the time of the first appeal that Venance's wife was the affected party and therefore the appropriate person to initiate proceedings. The litigants are locked in protracted battle and can have little hope of a clear direction from the court.

The quality of the evidence is crucial in reaching a judgement, but there are no guidelines as to what makes some evidence more reliable than other evidence. Albert Mbago cited as evidence mere facts of possession. He had built a beer shop on the plot and had planted a sisal fence between the neighbouring plots. He claimed that a written document had existed but had been destroyed in a fire. Even if it had been produced, the courts could have easily cast doubt on its validity by insisting on proper witnessing and form. It is easy to suggest forgery when confronted with such documents, which are often scraps of paper.

Sales of clan land have to be properly witnessed by representatives of the clan claiming to own the land. Therefore claims on land which is bought and held on individual title has in practice often to be legitimated by the corporate group from which it came. The more time passes, the more such claims become a construction of reality. Even the date of the sale of the plot was in doubt in this case (1950? 1968? 1970?). The owner of the plot died in 1982 and none of the people mentioned as witnesses was still alive. In such cases of individual title, therefore, legal claims are as much a process

of social construction as in those made on the basis of kinship and membership of corporate groups.

The legal status of land can be transformed as it is transferred in a network of social relations. The following case illustrates this. The case did not reach Mgeta Primary Court but was brought before the *baraza la usalahishi* of Tchenzema in May 1989.

The origin of the plot in dispute in the case of *Lea Ramadhani v. Skola Mbegu* was beyond doubt. The case actually related to two neighbouring plots which had originally been a single plot, owned by one Ngulumbi. Ngulumbi had divided the plot in half and sold the halves to two people. One of the plots is now farmed by Lea Ramadhani, the other by Skola Mbegu.

Lea Ramadhani had inherited her undisputed half of the plot from her mother's mother, Sara. The plot was a gift to Sara from Sara's mother's brother. The latter had inherited it from the person who had bought the plot from Ngulumbi. It had thus been transferred in the last two instances according to the principles of matrilineal succession.

Sara, Lea Ramadhani's maternal grandmother, was the person who had bought the other half of the plot from Ngulumbi. Sara had, during her lifetime, given this plot to her brother. The brother had given it to Skola Mbegu. Lea Ramadhani argued that, as she had inherited the neighbouring plot from Sara, she should also inherit this one.

Both parties belong to the same clan, but, although Lea Ramadhani is directly related to Sara in the female line, such was not the case with Skola Mbegu. The noteworthy point of this dispute is, however, that clan authority over land was not in doubt and the *baraza la usalahishi* referred the matter to clan elders. The idea that commercially acquired land can be disposed of at will by the owner, irrespective of corporate claims of clans, was not entertained. Lea's own plot had also through inheritance effectively become clan property.

Virtually all the cases presented here show that allegiance to corporate groups continues to provide claims on land, even if through circumstances of marriage, divorce, inheritance, etc., ownership has changed in character. That is also the case with the sale of land. The following case shows this in a clear and unambiguous form.

Civil case 12/88, *Pauline Binti Mkimbu v. Mattias Emil*, was a dispute about a plot which Pauline had given to her daughter's son, Mattias Emil. The litigants and the plot had therefore the same clan identity. Emil sold the plot, however, to somebody outside the clan and Pauline claimed the land back. She brought a matrilineally related witness and produced a written document to the effect that the land had been allocated to her on the basis of clan affiliation. Pauline won, and the court asserted, therefore, the corporate ownership of the clan.

This case material shows, therefore, that one cannot speak in Mgeta of a clear distinction between a form of modern, individual or commoditised land tenure and traditional, corporate or pre-capitalist forms of land ownership.<sup>8</sup> The former forms have no meaning outside the context of the latter. Such claims have also to be socially constructed; but this process can also break down, so that no legal authoritative definition emerges.

## CONCLUSION

The general perspective on law presented here as a process of social definition interpreting and developing new forms in society may be universally applicable. These land disputes in Mgeta show, however, that the emergence of legal forms is not an automatic process. The cases illustrate a breakdown in the legal definition of the social construction of reality. Group consensus in semi-autonomous fields does not produce such definitions; there are no clear local sources of authoritatively binding decisions, and people therefore have recourse to the State legal system. Long and expensive court cases which do not lead to binding decisions based on authoritative definitions of the social construction of reality ensue. The result is great insecurity, as people can become entangled in wasteful disputes which deplete resources.

The analysis adopted here stresses the construction of social reality by actors and illustrates how the need for such a construction originates from below. It avoids, therefore, the assumption of a necessary teleology or deterministic biases which stem from grand social theories, e.g. commoditisation or modernisation. For example, the material presented here does not show a predictable development towards individual title. A recent ambitious economic study of Tanzania referred to 'truncated factor markets' in the case of land, implying that a removal of legal constraints imposed through government would lead to the commoditisation of land (Bevan *et al.*, 1990; 46). On the basis of the present material there is no reason for assuming this to be so. There are elements of commoditisation in land tenure, but there is an equally strong trend towards the de-commoditisation of land which has been bought by bringing it under some form of corporate control.

Phenomena which are considered essential for commoditisation or modernisation are present in Mgeta. These are inescapable forces. Money is a pervasive aspect of social life and individualism is a strong force (van Donge, 1992). Money and migration are also aspects of many of the cases described here. There are, however, many ways in which people can respond to such forces: they are not, in themselves, determining factors in social behaviour. Responses to these changes can take many legal forms, as examples from elsewhere in Africa illustrate. For example, cocoa farmers in Côte d'Ivoire adopted individual title to land (Hecht, 1985), while in a Nigerian area which is not dissimilar corporate land tenure appeared to be resilient in the face of nationalisation (Francis, 1984).

Nor does a review of the wider literature provide an explanation for the breakdown of the social definition of reality in Mgeta in terms of an inability of the 'traditional' legal system, matriliney, to cope with the new forms of exchange.<sup>9</sup> An institution like the matrilineal clan can have a social meaning in many different circumstances (Douglas, 1969). As in Mgeta, von Benda-Beckmann (1979) found the matrilineal ideology persisting among the Minangkabau in Indonesia, but people had adapted to the growth of individualism and monetary relationships by pawning. An explanation which interprets this need for the social construction of reality as a cultural lag between matrilineal systems and modernisation/

commoditisation does not, therefore, hold. However, corporate forms of land tenure such as those found in Mgeta do not necessarily adapt harmoniously to social change. That may be the case, as Francis (1984) has, for example, shown to be the situation in Nigeria. Chanock (1985) correctly argues, however, not only that there is an ideological argument depicting African legal systems as impediments to change, but also that these have been idealised. The material presented here shows that legal conflicts do not automatically lead towards some form of homeostasis where new power relationships are crystallised.

The puzzling aspect of these disputes in Mgeta remains that rational choice considerations do not seem to be applicable. No obvious interests seem to be served by these disputes, which lead only to entropy: a depletion of resources. Foster (1972) has argued that envy is a pan-human emotion which is abundantly present in every society. This reflects exactly the nature of these conflicts. 'It is important to note that an envier is not envious of the thing he would like to have; he is envious of the person who is fortunate enough to have it. The possession is the trigger, but not the target, of envy' (p. 168). It is also a particularly dangerous and destructive emotion, and society therefore devises many mechanisms to bridle its force. Foster describes merely symbolic behaviour as envy-reducing mechanisms, but the authoritative pronouncement of law is of course an obvious mechanism for controlling envy as well.

Unbridled envy is one important causal factor of these wasteful and unnecessary court cases, but it is also true that people long for justice. A stated motivation for continuing very costly and wasteful court cases is the fear that people will take the law into their own hands. The fear of the consequences of envy can be seen clearly there, and one should not belittle the many attempts made. A semi-autonomous field of law (Moore, 1978) exists: many conflicts do not reach the State legal arena but are settled within the community. This does not, however, resolve the breakdown in the social construction of reality as embodied in law. The disruptive force of envy can therefore manifest itself in land disputes which the force of law does not control.

#### NOTES

<sup>1</sup> The Primary Court is the lowest specialised judicial organ of the Tanzanian State. The Primary Court magistrate, who has a basic specialist education in law, hears cases with two lay assessors, and judgements must be majority decisions. The lay assessors are supposed to provide specific local expertise on legal matters. As a rule Primary Court magistrates come from outside the area. They claim, however, familiarity with local legal ideas, and I have no reason to doubt that. The party structure has a veto on the appointment of the assessors, but I found no indication that these latter represent specific local interests. Many land disputes come before the courts. I made a detailed record of all cases before Mgeta Primary Court in the period 12 May 1987 to 28 June 1988. The total number of cases was 142, thirty-two of which were land disputes. There is, however, ample opportunity to resolve disputes without recourse to the Primary Court because it is only one of the legal arenas in Mgeta. People can bring cases directly there, but in the main they turn first to the neighbourhood leader (leader of the local party cell, *balози*). Neighbourhoods are subdivisions of villages, and most villages have a reconciliation council (*baraza la usalahishi*) to mediate in local conflicts. If that fails, people can turn to the ward secretary (*katibu kata*), who is a combined party and government appointee at ward level, the next level above the village. The division (*tarafa*) is the level above

the ward and the level at which the Primary Court functions. The court sometimes relegates matters to lower authorities, e.g. the reconciliation council, if people have not made enough effort to sort matters out among themselves. Often there is pressure on litigants to withdraw cases brought in the Primary Court and to attempt to settle the matter informally.

<sup>2</sup> People in Mgeta live mostly in clusters perched on mountain ranges and these are designated by specific names. The surveys covered nine such neighbourhoods in three different wards. There did not appear, however, to be any significant differences between the three different environments. This subdivision in communities should be distinguished from administrative subdivisions. The lowest unit of government is the ten-house party cell. Mgeta division, like all of Tanzania, is administratively subdivided into villages and wards. These administrative subdivisions do not, however, refer to communities, as the whole area is densely populated and people will designate themselves in the first place as belonging to these informal hamlets (van Donge, 1992).

<sup>3</sup> During my research in Mgeta I encountered only one person who had been designated a lineage head in the way described by Fosbrooke and Young (1960): Mr Nassoro Uhadi in Mizugu. It may be that their and Brain's (1973) description of the lineage head is a reification, just as their detailed description of lineage terminology may be. P. C. Duff, a long-serving administrative officer in the area, wrote: 'On the general reliability of evidence based on clan genealogies, I found over a period of six years of hearing land appeal cases . . . that when lucky enough to arrive at the correct sequence of clan heads . . . then the general buzz of approval from a large audience representing both sides of the dispute left one in no doubt that this was the true position' (personal communication, 22 June 1987).

<sup>4</sup> It may be useful to make clear how difficult it was to gather this material. The then serving Primary Court magistrate was originally willing to explain land cases himself only from records in front of him. After clearance with the district magistrate, I got formal permission to research land disputes at Mgeta Primary Court. I could not continuously attend court in Mgeta, as I was employed as a lecturer at the University of Dar es Salaam, so I paid one of the court clerks to make a record of all appearances before the court and I discussed these with him at three-monthly intervals. I then built up trust and was allowed to read case records myself. This revealed significant discrepancies between the stories as presented to me and what I read. Then I followed these up with visits to the litigants. As a rule, only one of the two parties involved was willing to talk to me. I then checked these versions with people whom I got to know in the community. This phase of the research was not rounded off until August 1989. In the course of my research I came to know about many more land conflicts. If these had been resolved in successful reconciliation, people flatly refused to talk about them.

<sup>5</sup> The written judgement as I found it in the court records was different from the oral presentation of the judgement according to Kristina Medard. The Primary Court magistrate stated then that Kristina's argument may have been stronger, but that she lost because she had not paid the court enough respect (*heshima*). Respect, according to her, meant money. The possibility of arbitrary action in the State arena is virtually always an aspect of these cases.

<sup>6</sup> The perspective of this article, which sees commodity relations as an aspect of legal development that people can incorporate into their constructions of social reality, is not at variance with the empirical material as presented by Snyder. For example, see his elegant case material on pp. 230–8. Commoditisation does not necessarily lead to a unilinearly determined path of development. For example, on p. 222 Snyder writes about 'different mechanisms, changing forms and uneven penetration of commodity relations'.

<sup>7</sup> If one asks people about how much court cases have cost them, they mention staggering amounts: one wonders how such sums could be raised in a society which shows so little visible differentiation in wealth. It is said that much money acquired illegally (e.g. through the transport of elephant tusks, illegal cutting of hardwoods or emerald mining) is used in these cases.

<sup>8</sup> In his study of land tenure among the Mbeere of Kenya, Glazier (1985) similarly describes a process of social construction in which various ideologies of land tenure are intertwined. 'My initial question is: Why do the Mbeere find descent constructs the appropriate idiom for representing the social organisation of land tenure before land reform when such constructs only partially image the actual group of claimants the ideology purports to explain? . . . Secondly, why don't people simply organize themselves as an interest group without taking pains either to record official genealogies or to articulate to each other and to the government their land claims through the primordial symbol of descent?' (p. 277). 'The solidarity and cooperation within groups designated "clans" is no less essential than in earlier

days, although these values are now borne as much by contractual and monetary concerns as by the diffuse symbolism of descent ideology' (p. 281). The situation in Mgeta differs essentially from the one in Mbeere, as there has not been an active government policy in Tanzania of introducing contractual and monetary elements into land tenure.

<sup>9</sup> It has been strongly argued that pressures towards particular social forms stem from particular systems of agriculture, but that still leaves ample scope for the social construction of diverse realities. Goody (1976), for example, has suggested strong links between land scarcity and inheritance of property: 'I suggest that the scarcer productive resources become, and the more intensively they are used, then the greater the tendency towards the retention of those resources within the basic productive and reproductive unit, which in the majority of cases is the nuclear family' (p. 20). According to him, in Africa, land was relatively abundant, and political domination depended therefore more on gathering followers than on the retention of land. Succession is, in such a situation, more important than inheritance. If one accepts this as a typical situation, then the Waluguru are exceptional. Political authority among the Waluguru has always been decentralised, but, according to available accounts, it depended in the first place on control over land. In addition, land has long been scarce. In ideological terms, however, land was not meant to be inherited strictly in the basic productive and reproductive unit. Goody contrasts the African situation with the Asian one, where pressure on land is widespread. However, in Minangkabau, where land is also scarce, von Benda-Beckmann (1979) also found a persistence of 'provision and residual property relationships in which corporate claims play a dominant role' (p. 45).

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#### Abstract

This article explains why people in Mgeta become locked in long and expensive land disputes. These disputes cannot be explained as rational choice strategies: the value of the land involved bears no relation to the costs people claim to incur: and people have recourse to the State legal arena without any reasonable expectation of a resolution of the conflict there. The explanation offered here is that there is a breakdown in the social definition of reality. The quest for justice is seen as a legal expression of a search for such definition.

The Waluguru reason about land mainly in terms of a matrilineal ideology. This ideology is not, however, an ahistorical identity which gives automatic answers in disputes; it has to be continuously constructed as society copes with social change. The problem cannot be seen as one of cultural lag, where modern forms of law clash with older forms. Case material shows that recourse to individual title, for example, requires as much social construction of reality as recourse to Luguru systems of law. It also shows that these forms of law are inextricably intertwined. The failure to express a social construction of reality which is experienced as authoritative and binding is exacerbated by a vacuum of authority which has emerged in Luguru society.

The obvious force driving these seemingly irrational conflicts is envy. In a situation, as here, where there is a breakdown in the social construction of reality and where a vacuum of authority exists, this disruptive force can manifest itself in unbridled form.

#### Résumé

Cet article explique pourquoi les populations de Mgeta se trouvent enfermées en de longues et onéreuses querelles concernant la terre. Ces querelles ne peuvent être analysées comme des stratégies de choix rationnel: la valeur de la terre en cause n'a aucun rapport avec les frais que les personnes concernées prétendent encourir; et

ces gens ont recours aux instances légales sans en attendre la moindre solution raisonnable à leurs conflits. L'explication fournie dans l'article est qu'il y a un écroulement de la définition sociale de la réalité. La recherche de justice est considérée comme une expression légale de la recherche d'une telle définition.

Les Waluguru, en ce qui concerne la terre, raisonnent en termes d'idéologie matrimoniale. Toutefois, cette idéologie ne constitue pas une identité historique qui fournit des réponses automatiques en cas de querelle, elle doit se construire continuellement au fur et à mesure que la société subit des changements sociaux. Le problème ne peut être vu comme celui d'un retard culturel, où des formes modernes de loi entreraient en conflit avec des formes plus anciennes. L'analyse des cas en cause montre par exemple que le recours à un titre individuel exige autant de construction sociale de la réalité que le recours aux systèmes des lois Luguru. Elles démontre aussi que ces formes de loi sont inextricablement emmêlées. L'échec de l'expression d'une construction sociale de la réalité, qui est ressentie comme autoritaire et contraignante, est exacerbé par une vacance de l'autorité qui a émergé dans la société Luguru.

La force manifeste qui conduit à ces conflits apparemment irrationnels est l'envie. Dans une situation telle que celle-ci, où se manifeste une débâcle de la construction sociale de la réalité tandis qu'existe un manque d'autorité, une telle force disruptive peut se révéler sous une forme débridée.