

IMPLICATIONS OF THE RECENT LAND REFORMS IN TANZANIA ON THE LAND RIGHTS OF SMALL PRODUCERS¹

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Background

The land tenure system of Tanzania has passed through different historical milestones which form the basis for the analysis of the land tenure regime in general and tenure relations for land owners and users in particular in the past eight decades. The history dates back to 1923 when the British colonial legislative assembly enacted the **Land Ordinance cap 113** to guide and regulate land use and ownership in Tanganyika which was their protectorate colony. Prior to this law, all the land in Tanzania was owned under customary tenure governed by clan and tribal traditions. Ideally, elders of respective clans and tribes were bestowed with powers to determine land allocations and resolve conflicts whenever they arose.

When the 1923 land law came into force, it ideally imposed radical changes on the land ownership and use pattern that existed prior to colonialism. The noble arrangement in the local land administration systems were disrupted and traditional institutions replaced with colonial machinery that had little regard on the rights to land of the colonial subjects.

It also stated that, all the land in Tanzania and the use rights were under the control of the British governor and that any use must be subject to the will and permission of the governor. This was virtually a transfer of ownership and control over land from the people to one person, the governor. In order to reinforce administrative decisions, a new form of ownership through granted rights of occupancy was introduced. Although the deemed rights of occupancy that the natives enjoyed were not dissolved by this law, the actual practice revealed big differences in realization of the two sets of occupancy rights. Deemed rights were considered to have low value and unenforceable unlike the granted rights which one could prove by just a show of title deed or certificate. Thus between 1920's and 1960's when Tanzania got her independence, the natives who owned land customarily experienced loss of their lands to the colonial state in favor of introduction of commercial farm estates. Those whose land was alienated were forced to become casual laborers in the estates.

Land reforms after Independence

Tanzania got independence in 1961. However, no significant changes were made on the land tenure regime. The only notable change made was the replacement of the word *governor* with *president*. The law also clearly stated that, all the land in Tanzania is public but vested to the president on behalf of all the citizens. Ideally, this notion entails that the president should be the custodian of the people's property which includes land. However, vesting radical title in the presidency has over time revealed grave problems as the powers have either been misused or abused by the executive arm of the state which

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virtually reinforces presidential powers. Cases of land acquisition and disposition without compensation filed up the court registries throughout 1970's to 1990's. Most of the cases were filed by ordinary villagers versus the state which was behind all the moves for land alienation and acquisition. The famous Mulbadaw case in which Yoke Gwako and Aku Gambul and 67 other villagers took over NAFCO and the government to court objecting acquisition of Bassoutu complex grazing plains is a good case in point. The battle extended from courtrooms to villages and reserved estates where endless disputes emerged between various land users for different reasons. In all the deals, the state and its agents were behind both as cause and sympathizers or arbiters of whenever problems arose.

Various laws and declarations were also enacted during this period to reinforce decisions in land administration such as the Land acquisition Act number 47 of 1967. This gave the president powers to acquire land in any part of the Republic of Tanzania for the so called national interest. Much as this sounds good for national development, the so called national interest was by then, vaguely defined as to include alienation of people's land to establish state owned corporations some of which had little link if any with local people's wellbeing. National interests have actually expanded in the nineties to include almost everything without forgetting pushing away villagers from their land and re allocating the same to a foreign investor even if the latter is given such land for free in addition to five years tax holiday as incentives.

Other laws included the 1967 Arusha Declaration, the Village and Ujamaa village Act of 1975, the land regularization Act of 1982 and the Local Government District Authorities Act number 7 of 1982. All these acts of parliaments and laws had a bearing on the rights to land of majority small producers but didn't transform the land tenure system into a better form than the previous one. The Arusha declaration for example, was a blue print for a new turn in national development where all the major means of production had to be owned and managed by the public to bring about equality in the access to and ownership of national resources and services.

Despite the good intentions however, it has always been on record that implementation of programmes and projects in the post Arusha declaration era, was associated with gross violations of land and human rights especially for rural based small producers. Villagers were moved from their old settlements to new ujamaa villages through out 1970's but this also meant loss of their old means of living and sources of livelihoods especially for those who were moved to semi arid and less arable lands. To make it worse, the land acquisition act of 1967 was purposely enacted to empower the president acquire land from anybody for the so called public interest which critics have maintained that it amounts to misuse of presidential powers than serving public interests because the latter finds no legality in the books of law . Even the justified compensation has never been left free of criticisms as experience and practice have gathered complaints from recipients that it is neither commensurate with the value of the land and properties acquired nor based on principles of fair and justice.

Recent land reforms and their implications

The 1990's land reforms mark a very significant turning point in the development and administration of land tenure system in Tanzania. This is a time when the land administration system was dominated by serious problems of corruption, mal administration, grabbing of poor people's land by the rich and political elites, alienation and eviction of small land holders out of their lands for private interests, etc. Those problems called for major transformation in both the administration and management of land issues. As response to the looming public outcries, a presidential Commission of inquiry into land matters was established in 1991. This made a very comprehensive search of public views and opinions through out the country and recommended for alternative land tenure system that would take into consideration the values, interests and rights of all the groups in a socially just and equitable manner.

However, the National land policy of 1995 and the land acts of 1999, (Land Act number 4 and village land act number 5) selectively espoused the recommendations leaving out fundamental issues that formed the basis of the commission findings. For instance, the commission had proposed that the radical title be decentralized away from the president to the lower organs of people's representation like the village assemblies, district Councils and national Assembly but this has never been the case despite the efforts from the civil society to push for the reforms.

Secondly, the commission had also recommended that land be made a constitutional category as means to enhance security of tenure. This was said, it would be easier to manage a constitutional reform with public support than a mere act of parliament which experience has shown that it can sometimes be passed by simple majority in the house or under certificates of urgency even when it doesn't reflect the interest of the people. This gain is merely echoed in the National Land Policy but does not appear anywhere in the land laws.

The third biggest recommendation was with regard to land administration. The commission had proposed that participatory land administration machinery parallel to the state bureaucracy be established. This would help resolve some of the chronic problems in the land tenure that emanate from archaic governance structure of the state. Again, this met with a lot of resistance and was thrown out. That is the reason why the new land laws have always been criticized as pieces of legislation that have to the greatest extent, jeopardized security of tenure of majority small producers especially rural peasants and pastoralists while embracing the rights for well connected people in society who either come in as investors or purchasers of land from the poor.

Salient features of the recent land reforms and their implications

The driving force behind recent land reforms in Tanzania which appears to cut across the entire East African region is the commercial interests that capitalize on commoditizing land to attract foreign investors. As said earlier, Tanzania land act was enacted in 1999 as Land Act number 4 of 1999 for general land and village land Act number 5 of 1999 for village land. The preamble and main principles of both the land laws and National land policy indicate that land has value and must be used to serve more commercial interests

than the subsistence value it has always contained. Given the fact that majority rural based small producers depend on land for their subsistence like food security and related use, they are subjected to vagaries of the market where their survival becomes at stake.

That became vivid in the recent amendments that have been made on the land act number 4 of 1999 in early February 2004 which spelt out the objects of the reform as to ease and facilitate land marketing and mortgaging, allow for sale of bare land and soften conditions for foreigners to invest on land. The amendments have for the first time in the history of Tanzanian land tenure system, attached commercial value on land and authorized sale of land without unexhausted improvements which was previously prohibited to protect majority customary and small land users' rights. This will obviously bear far reaching implications in the near future as the value of land keeps on appreciating while its size remains intact. Economically, this is a simple arithmetic, that when the demand is high and the supply is low the prices automatically go high. Land price will rise far higher than the ability of majority rural based producers to afford. That is only one but there are many other effects linked to this including food insecurity.

Another significant development in the recent land reforms in the country is the establishment of LAND BANK. Much as its brand name resembles a progressive financial Institution one would think of, this is not one, but just a data base of information on arable land that is potential for investment. The Tanzania Investment Centre (TIC) coordinates data collection exercise in four linked phases of earmarking, identifying, acquiring and allocating such land to a needy investor. Recent reports provide that, around 3.5mil acres of arable have already been earmarked for acquisition and eventually allocation to *potential* investors.

The motive behind introduction of the land bank is obviously not to help rural based customary land users but simply facilitate alienation of their land for private occupiers most of whom are allegedly mere speculators or hoarders of land. Yes, rural communities land is liable for alienation because of two main reasons. First, they are not considered as potential investors for many reasons including the allegations that their subsistence nature of economy is out of date while that is basically the means of livelihood which sustains more than 90% of rural and urban residents.

Secondly, there are technical gaps in the land legislation regarding the definition of village land and general land which awful speculators would admire using it for private gains. Section 2 of the land act number 4 of 1999 defines general land as; all public land that is not village land or reserved land and includes unoccupied or unused village land. By this definition, it means village land which is not occupied or used by villagers will be earmarked as potential land for investment to be acquired and allocated to needy investors no matter whether such land falls within the land use plans of the respective villages.

This, too much emphasis on Individualization, titling and registration (ITR) of land has been adopted like a liberation doctrine in the policy and land act documents of the nation without due regard to its implications on the rights to sustainable livelihoods of the rural

peasants and pastoralists. Some of the typical consequences of these reforms include the following;

- The recent land reforms have failed to balance between commercial interests with security of tenure of small land holders and users
- The reforms have put too much emphasis on individual property rights while threatening communal access to and enjoyment of their rights to land and land based natural resources like forests, water sources and pastures. It should be noted that more than 80% of land in Tanzania is held under customary tenure regime by rural communities which live in village settings. The law recognizes such customary rights of occupancy.
- Commercial banks interest on land will obviously result into massive loss of land for small owners and users. Small land users will obviously rush to access financial credits in commercial banks whose primary motive is profit maximization. Given the uncertain business environment in the country, it is likely that most of them will fall victims of delayed loan recoveries and hence loose their lands to the banks.
- Similarly, use of land as collateral for financial credits will obviously benefit a small segment of people with capital. Much as the law permits sale of land, the rich elites will obviously purchase huge chunks of land from indigents to use them as collateral in banks. On the contrary, the majority poor are in the losing end on these transactions. The only advantage for them that is also spelt out in the law albeit ironically, is that they will get money to do other business. How feasible is this option in view of the nature of our economy that relies on whims of the market, is a question of further discussion.
- Authorization of sale of bare land also has far reaching implications such as commoditization of land and thereby creating a market value of land hence creating a class of land speculators and hoarders as explained earlier on to the disadvantage of the majority poor to whom, land has use value rather than market value. Land hoarding certainly results into scarcity and consequently, endless conflicts between various land users.

In view of the foregoing brief analysis therefore, one can be prompted to predict that the future of small land owners and users especially in regard to their rights to access, own and control of land is darkening. The reforms are increasingly de-linking them from their natural means of earning and sustaining their living hence pushing them to the margins of abject poverty.

It is high time for policy and legal reformist to pay attention to the voices of the poor which are increasingly demanding inclusion in policy processes with little success if any. One big challenge for the Civil Society is to facilitate positive transformation of the policy orientation through mobilization, coordination and creation of forum for the public

to engage seriously in policy dialogues and processes. With public policy debates, differences could be realized in local policies and practices taking into consideration issues of common people. Poor people especially in rural areas need land for their sustainable subsistence. For them to be able to withstand the waves and pressures of market driven policies, the civil society must chip in to play one of its traditional roles, which is facilitation.