Land Rights Research and Resources Institute

(HAKIARDHI)

Critical Analysis of the Land Laws- A study

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Foreword

The task at hand entails the critical review of the Land Laws of Tanzania, chiefly Act No.4 and Act No.5, 1999 and their subsequent revisions. This could not be done out of context, or by confining oneself solely to the statutes. It was pertinent to review the factors and processes that informed the legislation. Towards this end, an extensive literature review on various aspects related to land reforms in Tanzania was done.

A reasonable amount of references were available for review, most being by academics and researchers. The bulk of the work is thus technical and academic focusing on the historical than the discursive. Feminist and women's organizations tried to balance the discussion by emphasizing the gender dimension of the land question but because it was often in reaction to the perceived shortcomings of the core analysis, it did not necessarily offer new inroads to the debate.

The most active debates concerned policy directions and legal provisions before their adoption by the legislature. A considerable amount of critique is thus on the Land Policy and the Land Act Bill, not on the Land Act or its implementation. Remarkably, the Land Commission Report continues to serve as the blue print for advocacy on land matters and forms the basis for most discussions, a fact that raises a fundamental question in so far as the agenda of land advocates is concerned i.e. whether the debate has moved beyond what could be to what is?

Indeed, this draws attention to a deeper dilemma facing land activists- since the passage of the Land Act activist action has waned. Yet, all is not yet done! The momentum at the height of the reform process focused on policy and legal options, leaving operational aspects unexplored. Likewise, a mass movement to legitimize and transform the advocacy agenda beyond visible individuals and institutions engaged in civil and intellectual protest is yet to be amassed thereby defeating the vision of democratizing the land debate- equality, people's participation and security for livelihoods and tenure.

This review, therefore, attempts to discern the active interaction that shaped and continues to shape the discourse over the policy and legal framework towards a viable land tenure system and structure in Tanzania. Perhaps, for the first time the breadth of views on the matter are posited against each other, not only with the view to discredit and challenge, but with a view of capturing the dynamism of the reform process and enactment so as to enrich the analysis towards a more holistic appreciation of the advocacy content and process informing legislative reforms.

Accordingly, the study is organized in five parts. It begins by setting the context for the discussion on land matters and reviews two major documents that informed and continue to inform tenurial matters in Tanzania- the Shivji Report and the National Land Policy- and the environment in which the reforms were introduced. The second part presents major provisions of the Land Acts and its amendments to engage on a discussion on the implication of salient features of the land regime. It also includes a discussion on the advocacy process, in part to explain the context of legal developments, but also to provide useful lessons for activists (and policy makers) concerned with promoting a citizen's development agenda.

I. The Context

The land issue has generated much debate, touching at the heart of democracy. Shivji declares, "Over 80% of the Tanzanian population live off the land…organized in some 8,300 villages…where this large majority of countrymen and women and children produce, shelter and socialize. The overwhelming portion of civil society in Tanzania is, therefore, constituted by the village society. If we are talking about 'democracy and civil society' we would have to logically begin with villages". (Shivji: 1996b)

This view represents the undercurrent that informed activist engagement not only with the land question, but also the overall process of social, economic and political reforms in the country.

A. Introduction

A concise account of the land reform process is made by a number of authors reviewed, albeit with different emphasis. Some link the reform process with the promulgation of the new Agricultural Policy in the early eighties and, which gained momentum in the early nineties as Tanzania intensified the implementation of her economic and political reforms. The rest situate the reforms in the latter period and associate it squarely with the economic liberalization project. It is perhaps fair to say that the Commission Report on Land Matters remains a key refrence point because it provides by far the clearest articulation of the issues, in-depth analysis of the problems and offers a viable framework for implementation.

Prof. Shivji, who headed the Commission on Land Matters, confirms that the land tenure system in Tanzania was in need of overhaul (1998:19) and revolutionary steps were required, mainly, democratizing the land to guarantee security of tenure to the majority. The purpose of land reforms was, therefore, to have a coherent land policy but, in light of the assumptions underlying the Land Policy and subsequently the Land Act, it is still an open question if, indeed, coherence was achieved.

Notably, the debates on democratization introduced to the discussion the whole issue of public participation in policy matters. Indeed, Tanzania does not have a history of judiciousness in implementing key policies, or in promoting governance at the local level. The aim of democratizing land is to ensure accountability in the administration of land matters, largely perceived to constitute a major sticking point in the implementation of past legislation. Procedures in place lacked transparency and therefore encouraged "executive corruption".

The Land Commission's recommendations were on two broad fronts: the first pertained to tenure reform while the second concerned the restructuring of the institutional mechanism for land allocation, administration and adjudication. A central recommendation was the divestiture of the radical title and de-linking of land from the Executive, vesting the same to the National Assembly and Village Assembly. Admittedly, this did not require cosmetic changes but implied significant reorganization of the state super structure.

The Commission findings confirmed that a high percentage of Tanzanians were without security of tenure; a high incidence of double allocation; the prevalence of land disputes; and the need to create an enabling investment climate on the other prompted the government to expedite the reform process to the legal framework of Land laws in Tanzania. The Land Policy was published in 1995 and soon followed by a Draft Land Bill in November 1996.

The process of reforms was however bitterly opposed by activists. They protested against the extraordinary manner in which the Policy and Bill were prepared and eventually passed. Significantly, activists deplored the lack of popular discussion on the proposed policy and law. They noted the process of drawing up a new land policy occurred parallel to the Commission's work, which most saw as being consultative and representative yet, its main recommendations were not taken on board in initial drafts of the new legislation. In the end, observes Willy, the Land Act Bill submitted to parliament in 1998 was not fundamentally different from the initial draft.

While the Land Act introduces substantial changes to the tenurial framework, most of the critique made prior to its passage remains valid. Indeed, the centrality of land to current realities is undisputable particularly in light of the effects of resource strains manifested by repeated scuffles between pastoralists and farmers; small scale miners and big mining companies; small farmers and large scale farming; and rural impoverished folk and urban dwellers; conservationists and farmers, herders, hunters and miners. In short, land matters are now topping legal aid registers.

Clearly, the campaign to promote a national debate on land was motivated by a need to guarantee security of tenure to Tanzanians, most of who depend on land for their sustenance. Perhaps, because of the unprecedented uproar and mobilization by CSOs and the wide media coverage the matter attracted, the initial legislation was conservative, failing to fully implement the desires of bankers, investors and donors.

In February 2004, however, in what can be described as a hasty and undemocratic process that caught activists off guard, the government introduced two major changes to the Land Act- 1. the sale of undeveloped land, and 2. the possibility to mortgage land thereby threatening the property interests of the poor. The circumstances in which the changes are introduced highlight the external factors motivating the privatization of land in Tanzania. Remarkably, the changes are introduced when the principal legislation had just come into force, raising questions as to what justified the reforms absent precedent to support legislative intervention.

Indeed, the inability to justify the sustainability of the legal framework and the need for coherence is at the heart of popular discontent over policy direction, a theme that informs this and similar debates on democratization. The debate on land does not only bring to the fore the issues of livelihood security, environmental sustainability and governance but also highlights the impact of globalization and global policies to local situations and why local communities should engage with these developments.

B. The Report of the Presidential Commission of Inquiry into Land Matters

The Report of the Presidential Commission of Inquiry into Land Matters put together after a highly participative process provides a detailed and in-depth analysis of the land tenure system and structure in the country. It was thus expected to form the basis of the new land policy, particularly, since it, in a way, epitomized people's aspirations with regards to land matters.[1]

President Ali Hassan Mwinyi appointed the Commission into Land Matters in 1991 by constituting of nine commissioners, only one being female. After almost two years of field visits, consultations and comparative studies the Commission identified five areas of concern[2]:

i. Pervasive insecurity of tenure;
ii. Radical title vesting in the presidency (powers of control and administration over land);
iii. Overlapping institutional structures over land allocation and administration, and dispute adjudication;
iv. Lack of transparency and popular participation in the administration of land;
v. Poor institutional structure for adjudication of land rights and disputes

The Commission's work and its ultimate value was tested from the start. A few months into its work to draw up a legal framework to address pertinent land issues, the government passed the 1992 Land Tenure Act that threatened to abolish the deemed right of occupancy and hence deny most Tanzanians the right to occupy land. (Koda, Tenga) it was nonetheless able to finalize its work and made the following broad recommendations:

i. Land to be a constitutional category as is the case in Uganda;
ii. To set up a body to address land disputes and guidelines in settling land disputes;
iii. Allow for a transition period to operationalize the new land regime;
iv. To do away with the Radical Title and instead divested land matters to representative structures i.e. Parliament, National Land Council and the Village Assembly; and
v. Land to be governed under two legislations providing for Village Lands and State Land respectively.

An elaborate summary of the Commission's report in Kiswahili is made by Georgios Hadjivayanis. The summary focuses more so on the rights of herders and hunters and less so those of farmers though it acknowledges the latter comprise the majority and form the backbone of the economy. Likewise, it does not explore the rights dimension arising from the tension between dominant interests and minority interests[3].

[1] At least the Commissioners' interpretation of the same.
[2] Chapter 13 of the Report includes the summary of issues, which number 15. These five were the most prominent and formed, together with the question of gender equality, the basis of Civil Society advocacy on land.
[3] In the commission report minority interests are included and presented in the form of dissenting opinions.

Nonetheless, the report is formidable in itself. It calls for increased people's participation and governance in land matters notably in the allocation, distribution and adjudication of land. It argues against top-down processes of land tenure based on bureaucratic approaches and statutory systems of adjudication and titling since they reinforce insecurity of tenure to peasants and pastoralists. Instead, it recommends a two-tier land system, Village Land and State Land vesting the radical title on the Village Assembly and the National Assembly respectively.

Tenga finds the goal of democratizing the eminent domain in favour of the people was laudable, but radical making policy-makers seem like "beggars for land". It is thus not surprising, the government out rightly rejected this recommendation avoiding it in the National Land Policy document. (Tenga: 1993) Instead, the government unilaterally selected recommendations to adopt, in part or in full, without offering adequate explanations with regards to the choices made effectively killing the debate on land!

Sadly, not enough critique has been made of the Commission's proposals. It may be that by suppressing the debate on land led many to assume the Commission's findings were set in stone and thus it sufficed as a blue print for a plausible legal framework. The principal critique, however, related to its gender analysis, which a number of activists found lacking. Women activists particularly Koda, Kitunga, Silaa deplored the silence of women's voices in the case studies, the lack of rigour in the gender analysis and the Commission's proposal in dealing with the identified shortcomings.

The report recommends customary law to form the basis of land law in rural areas, with Shivji arguing for local interpretations of customary laws. In this regard, the report failed to challenge sexist ideologies and patriarchal structures that further the exclusion of certain groups, particularly women and youths, from key social, political and economic processes. At most, it proposed including the wife's name in the customary rights of occupancy as a way to relieve some of the problems married women face in case of alienation and divorce.

Further, it proposes 'people's' structures proposed to manage land, an identification that perhaps has more to do with their physically location than their essence considering that the structure sets up its own bureaucracy not synonymous with facilitating participation of the masses. Moreover, it does not seek to reform the organization or the hierarchy. Consequently, the culture of these structures is not interrogated or transformed. In the end, it threatens to substitute actors and locations rather than creating new and inclusive structures in form and practice.

Overall, the report theorizes an ideal of active citizenship in practice and, therefore, assumes a certain level of maturity and impartiality with regards to people's motives and dealings with land.[4] Checks and balances are stipulated to ensure accountability of relevant structures, but the political reality i.e. the lack of a real opposition and a retributive political culture makes them ineffective. Most importantly, it does not sufficiently show how to "conscientize and empower" communities beyond knowing their rights but claiming the same responsibly.

[4] Chachage for instance points out that the Land Commission uncovered numerous incidents of land deals between village leaders and outsiders. P. 14

C. The National Land Policy

The National Land Policy forms the basis of existing Land Laws and addresses four major areas:

1. Land tenure and administration;
2. Surveying and mapping;
3. Urban and rural land use planning; and
4. Land use management,

The classification intends to respond to what the government identifies as sore issues with regards to land matters mainly the value of customary tenures; political pluralism; resolving land conflicts; and land speculation, investment and development.

In so doing, the policy recognizes that land problems are not confined to individual claims to tenure but involve issues such as the economic use of land, rural and urban development, housing, squatting, the quality and security of title, advancement of agriculture and the protection of the environment which all call for a policy that is holistic and aimed at giving substance to the government's development objective.

Accordingly, its overriding concern is stated as "the equitable distribution of and access to land to all", ensuring that land is put to productive use.[5] It thus sets out to modify and streamline land management systems and improved delivery systems through institutional arrangement in land administration and adjudication.

But as already noted, the process to formulate the policy occurred parallel with the work of the Land Commission. Consequently, it departs significantly from the premise the Commission adopted, as well as its recommendations. In principle, it agrees that land should be a constitutional category and maintains the right of occupancy system but proposes the Commissioner for Lands, to be the chief administrator of land. Also, that village councils, and not village assemblies, administer land matters in rural areas.

The preface and definition sections set the tone of the policy. The policy, posited as a new turning point in Tanzania's development, is largely patchwork. Consequently, it is loaded with contradictions as will be appreciated in the discussion. Unlike past policies, it is openly market oriented with the investment policy being the major impetus for land alienation and the individualization of titles.[6] Thus, whereas past tenurial system discouraged the emergence of a small landed class by promoting communitarianism, the current policy endorses the individualization of titles.

While the Policy sets out to open up land to market forces, it claims concern for the poor.[7] Similarly, it resolves to protect risk groups like displaced persons, children and the poor against dispositions[8] yet in principle it does not prohibit the market transfer

[5] Paragraph 4.2.4 (i)
[6] Although some authors appear to use the terms individualization and privatization of land tenure synonymously, some, like Englert, distinguish the same and argue individualization is not foreign to customary holding systems while privatization is.
[7] Paragraph 4.2.12 (iii)
[8] Paragraph 4.2.12 (iii) of the Land Policy

of land.[9] Essentially it recreates the situation under Cap 113 where customary land rights were not protected against volountary acquisition for the benefit of foreigners.

The policy, as have subsequent studies, recognize that land in Tanzania is plentiful and hardly used to its full capacity[10] yet the government attributes the population strain and increase in livestock as necessitating changes in the land tenure system. In this regard it makes a link not only with the question of land tenure but also with the economic use of land, environmental protection and rural and urban development. It is however telling that a significant proportion of adjudicated cases involving land disputes involve land areas that are inhabited and held under customary titles. Because the bulk of titles are held under customary ownership, guaranteeing customary land titles equal recognition under the law becomes paramount.

Paragraph 4.1.1.(i)(c) provides that the rights and interests of citizens in land shall not be taken without due process of law. Yet it allows for compulsory acquisition. Also while the consent of the Village Council is required before any alienation[11], in practice their consent is irrelevant. The excessive power of the executive in acquiring land makes the question of consent and due process in land acquisitions redundant.

The policy puts customary land rights at par with the granted right, but restricts the ability of customary landholders to alienate land in order to attract foreign investment in their areas. Its overall focus is on facilitating tenures for urban folks while restricting the security and ability of rural populations in land management and exploitation. In effect, this defeats the whole idea that governance over (rural) land should be with local councils much as it maintains the colonial economic model whereby rural areas are first and foremost seen as agricultural havens and thus not subject to commercial exploitation beyond farming.

The Policy is categorical about land acquisition by non-citizens being in accordance with the law[12] and while it prohibits customary land transfer from citizens to non-citizens, the same is possible through the government. Upon closer scrutiny, such provisions seem to be at odds with the objects of the Land Policy and subsequently the Act in promoting land use for economic purposes. Moreover while the policy sets land ceilings to limit land grabbing and concentration so that more citizens can own land[13], it allows for land grabbing by foreigners in the guise of economic investment. Also, discouraging lateral development in urban areas means that only people with capital will be able to acquire and develop land in urban areas.[14]

Additionally, although the Policy sets out an equitable framework to land tenure, the Land Policy does not seek to disturb means through which most customary lands are allocated i.e. through inheritance; nor did it temper with land holding between

[9] Paragraph 4.2.12 (v)
[10] See paragraph 1.2 and **Tanzania in Figures 2003**, pp. 4,5,8 and 9.
[11] Paragraph 4.1.1. (iv)
[12] Paragraph 4.2.4
[13] Paragraph 2.3
[14] Paragraph 6.1.2 (i)

husband and wife arguing the same was beyond the purview of legislation.[15] Benschop argues that this provision was included to prevent 'family matters' from becoming part of the National Land Policy.

Activist argue that by recognizing custom and tradition in land matters[16] it denies women rights to landed property and fails to challenge the ideological and juridical basis upon which land rights and existing patterns of community order are regulated. Fierce protest and lobbying by women's organizations saw this changed, ultimately making gains in the principal legislation by challenging discriminatory practices in land alienation and governance and recognizing spousal co-occupancy.
The Land Policy envisages community participation in land planning and use[17] but the unilateral actions of the President, Minister and Commissioner sanctioned by the policy and Land Acts especially with regards to facilitating foreign investments thwart efforts to involve communities in land planning and use.

While land used for agriculture is recognized and included in the category of land used for economic purposes, land used for grazing is omitted as if livestock breeding is nor an economic enterprise that is land intensive with environmental consequences.

In essence, the Land Policy rejects the Land Commission's proposed institutional framework and instead adopts a framework that centralizes and concentrates power over land control and administration in the executive not the populace (4.2.14; 4.2.16). The policy is very vague with regards to dispute settlement machinery and fails to make a rigorous analysis of the effectiveness of bodies concerned with dispute settlement.[18] Yet a fundamental problem with land administration is with the systems and mechanisms to require and ensure accountability where the executive is the sole administrator and arbiter of its own decisions and actions. Tenga argues this hardly guarantees the achievements of land reforms, examined in greater detail in part two of this study.

[15] The relevant paragraph 4.2.6, states: "Ownership of land between husband and wife shall not be the subject of legislation". Also see paragraph 4.2.6 (i) and (ii)
[16] Paragraph 4.0
[17] Paragraphs 6.8.1 (ii) and (iv) as well as 8.2.0 and 8.2.1 (iii)
[18] Paragraph 4.2.26

II. The Legal Framework

This part sets out the legal framework governing land and is divided in three sections. It begins with a general comment on the legal framework and then proceeds to highlight salient features of the legislation and its subsequent amendments with particular emphasis to questions of gender, the rights of rural land users mainly farmers and pastoralists. Next, it addresses the issue of land acquisitions and examines the institutional framework for adjudicating land matter.

A. The Laws[19]

The National Land Policy was the basis for the subsequent drafting of the Land Act Bill in 1998, which ultimately formed the basis of the new Land Laws.[20] The Acts maintain the dual land tenure system: statutory or granted rights of occupancy on the one hand, and customary rights of occupancy on the other hand, with the difference that customary land rights are no longer 'deemed' but now also 'granted', therefore with equal status and effect.[21] Land is still centrally managed with the Commissioner of Lands exercising full control. Procedures pertaining to land matters are detailed in the 2001 Land Regulations.

Public land is divided into three categories: (a) general land: all land that is not village or reserved land; (b) village land; land within the jurisdiction of a village, and (c) reserved land which includes forests, national parks, and land reserved for public utilities. This categorization aims to facilitate land management, allocation, and administration but it is not uncommon to find provisions relating to Village Lands and customary titles in the Land Act and vice versa.[22] Land can be transferred from one category to another, as it is still liable to acquisition for public interest. [23] Similarly, titles can be revoked on a number of grounds. Payment of compensation is, however, provided in case a right of occupancy is acquired.

The market aspect of the Acts comes across clearly as land, leases and mortgages in land become auctionable and transferable. Likewise, both acts recognize the prevalence of corruption and attempt to put in place measures to stop people engaged in corrupt practices from benefiting from corrupt transaction.[24] What amounts to a corrupt act is however not defined nor is refrence made to the principal legislation related to corrupt practices.

There are still some loose ends in the Acts. Foremost, there are a number of provisions in laws related to land matters that are yet to be amended or repealed. The relevant principal and subsidiary legislations are detailed at length in Chapter 23 of the Land Commission's Report. Moreover, a number of prior provisos in the Act are in contradiction with the latest amendment, such as the time holders of customary

[19] Both Acts came into operation on May 1, 2001.
[20] § 3 of the Land Act (LA) and the Village Land Act (VLA) acknowledge this much.
[21] § 18 of VLA
[22] E.g. § 53 (1) of LA
[23] § 5 of LA and §§ 4 and 5 of VLA
[24] §§ 24 (5) and 64 of VLA

right of occupancy are required to move. Also, the 2001 Act talks of small mortgages but the 2004 Amendments in repealing Part X got rid of the language, though other provisions still use the term. Sections 56(2) (f) and 57 (3) of the VLA makes refrence to S. 57 (2) but the section is not in the legislation

1. The Land Act, Act No. 4 of 1999

The Land Act is divided into fourteen Parts and 186 sections and applies to public lands, which consists of general land, village land and reserved land.[25] Part one and two are the introductory sections. Part four provides for the classification and tenure of land. Land administration is outlined in Part V, and lays responsibility over land matters squarely on the Commissioner for Lands.[26] Likewise, it provides for Land Allocation Committees, appointed by the Minister at central, urban and district authorities. Supervision over land matters is the responsibility of the Minister for Land who is advised by the Land Advisory Council.[27]

Rights and Incidents of Land Occupation are provided for under part V.[28] Most importantly, it describes the attributes of a granted right of occupancy, which in case of the Land Act occurs on surveyed general or reserved land. Moreover, a granted right of occupancy is liable to revocation, compulsory acquisition and is subject to prescribed conditions.[29] The procedure to apply for a right of occupancy is outlined in Part VI and can be issued for a period up to 99 years.[30] Where land is occupied without title or right within a jurisdiction, a residential license may be issued.[31]

Occupancy is legalized by the issuance of a certificate of occupancy[32] preceded by an offer.[33] In addition to development conditions, land occupation attracts rents and a number of taxes.[34] The Act claims to and no longer requires the consent of the commissioner before disposition of a right of occupancy, unless the same concerns an assignment of a right of occupancy that is less than three years, a loan or lease granted as security, a notification being sufficient.[35] Nonetheless, it still requires one to obtain approval to be operative.[36] A radical departure introduced by the 2004 Act to this part is the recognition of sale of bare land discussed at length below.

[25] § 4
[26] §§ 9 and 10 of LA in line with Paragraph 4.2.2 (1) of the Land Policy. However, the term "sole authority" is used whereas it may be more appropriate to substitute it with supreme authority in view that other institutions administer land in varying capacities.
[27] § 17 (4)
[28] This part has been amended by the 2004 Act.
[29] § 22 (1) a-k
[30] An applicant can be granted a lease of 33, 66 or 99 years.
[31] § 23
[32] § 29 (1)
[33] § 27 and 28
[34] § 33 and 34
[35] § 36
[36] § 37 (5)

2. The Village Land Act, Act No. 5 of 1999.

The Village Land Act consists of six parts and 66 sections. Village land is divided into 3 categories (a) communal village land for communal and not individual use; (b) land used or occupied by an individual or family under customary law; and (c) vacant land, which may be allocated for communal or individual use.[37] As aforementioned, the Act declares customary titles at par with granted rights of occupancy. Therefore, a lease and a sublease can be granted out of a customary right of occupancy i.e. "customary leases".[38] A customary right of occupancy is inheritable and transmissible by will.

Section 7 of the Village Land Act defines 'village land' to include lands that are registered under section 22 of the Local Government (District Authorities) Act or those designated by the Land Tenure (Village Settlements) Act, 1965 or any other law or procedure. The law empowers the village council to allocate (and manage) parcels of village land or grant customary rights within the village to individuals, households, clan, community, or other lands and their adjudication, registration and titling.[39]

Accordingly, a village council is responsible to maintain the certificate of village land.[40] Moreover, the Council is obliged to take into consideration factors that will ensure sustainable development and the balance between land use and its effect on the environment as well as on natural resources on village land.[41] The powers of allocation of village land by the Village Council is, however, subject to the approval of the village assembly, the supreme authority on all matters of general policy making in relation to the affairs of the village.[42]

An effort is made to deal with the consequences of Operation Vijiji, which took place between 1970 and 1977.[43] The Act stipulates that an allocation of land to a person or group of persons under this Operation is confirmed to be a valid allocation, extinguishing any previous rights in that land. In many other respects it is to be read with the Land Act.

3. The Land (Amendment) Act, 2004

The Land (Amendment) Act 2004 makes a few but significant amendments to the Land Act 1999. The Objects and Reasons section introducing the amendment makes clear that they seek to strike a real and more practical balance between interests of the mortgagor and mortgage such that property based lending by financial institutions is encouraged. Thus, the amendments allow and regulate the sale of undeveloped land, an innovation in the law. Another important development in the law is the introduction of the principles of the LMA in so far as protecting a spouse's interest in the matrimonial home in case of a mortgage or sale.

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[37] § 12
[38] § 19
[39] Detailed in § 8
[40] § 7(8) while the Commissioner of Lands maintains a register of village land under § 7(10)
[41] § 8 (3) (a)
[42] § 8(5)
[43] § 15

In many cases, the amended (or repealed) sections have actually been retained, changed only in terms of arrangement or language with the effect of making the amendment less verbose, shorter in length and sharper. This, however, may also be due to the fact that the typesetting and font used in the Amendment is more decisive than that used in the principal legislation, which may suggest the haste in which it was initially prepared.

B. Land, Gender and the Rights of the Marginalized.

1. Women and Land Rights in the 1999 legislation

The rights of women to, acquire, hold, use, and deal with land to the same extent and subject to the same restrictions as a right of any man is explicitly recognized in the law.[44] A Village Council may not adopt adverse discriminatory practices or attitudes towards women, who have applied for a customary right of occupancy.[45] In this respect, the Tanzanian legislation is perhaps the most progressive in the East Africa region.

A number of provisions exhort equal treatment between men and women in so far as acquiring land, even land held under customary titles or when applying customary law;[46] loans, leases, assignment or mortgages;[47] and their representation in public bodies related to land matters is assured trough direct elections or affirmative action. However, the text in the Acts is still rated as gender biased in favour of men.

The most important part of the Land Act for women is Part XII, dealing with co-occupancy and partition. §159 (1) defines co-occupancy as "the occupation of land held for a right of occupancy or a lease by two or more undivided shares". Co-occupancy exists in two forms:

> *1) joint occupancy*: where the land as a whole is occupied jointly under a right of occupancy or a lease, and no occupier is entitled to any separate share in the land.[48]
>
> *2) occupation in common*: where each occupier is entitled to an undivided share in the whole. An occupier in common must have the consent of the remaining occupier(s) before s/he can deal with her/his undivided share in favour of any other person.

Under the Act, joint occupancy can only be created between spouses, but spouses can be presumed to occupy in common.[49] Any two or more persons can occupy land together under a right of occupancy, either as joint occupiers or occupiers in common

[44] See § 3(2) in the LA and VLA.
[45] § 23 (2) (c) (i and ii) of the VLA
[46] (§§ 20 (2); 23 (2) (c); (30 (4) (b), (35) (2)
[47] § 19 of VLA and §§ 141 and 142(1)(d)(ii) of Land (Amendment) Act 2003
[48] §159(4)
[49] §§ 159(8) and 160(1) respectively. The presumption of co-occupancy applies to both a granted right and customary occupancy.

depending on how the co- occupancy is registered.[50] All co-occupiers must agree to any disposition, freely and without undue pressure.[51] Each co-occupier is entitled to a copy of the certificate of occupancy.[52]

The Law of Marriage Act of 1971 recognizes the right of married women to acquire, hold and dispose of property. Married women can also enter into contracts and can sue or be sued in their own name. Further, the law provides for distribution of property upon divorce, not death in which case the law of succession applies. In suit of the LMA, the Land Act stops the spouse who owns the matrimonial home from alienating the same while the marriage subsists absent the consent of the other spouse.[53] Upon death the share of an occupier is liable of being inherited.[54]

Activists hope that the obligation to register the spouses as occupiers in common, will help to ensure that women's name is actually written on the certificate of occupancy. Training of all officials that deal with land matters, such as allocation and registration is therefore crucial in this respect.

2. Land Rights of Pastoralists and Peasants under Act No. 4 and 5 of 1999

Land use in rural areas is provided for under part IV of the Village Land Act. Pastoral land has not been recognized as a specific category of reserved land as demanded by activists,[55] but the Act recognizes their claim to a customary right of occupancy.[56] Additionally the Act recognizes land-sharing schemes between farmers and pastoralists. Shauri argues that reserved areas for natural resources management at village level can be created from the category of communal village land. Farmers and pastoralists can thus apply for the use of communal land.

The earlier version of the Land Bill provided for pastoralism in three ways; first, by the creation of corporate farms under which pastoralists may organize themselves, with supervisory powers over these entities entrusted with the Administrator General. Also, statutory pre-conditions are set-out to meet the requirements of pastoralists when decisions on land management are made including mechanisms for conflict resolution in cases where their interests collide with those of other land users. Provision is made for an inter-village mechanism for reaching land use agreements.

NGO's working with pastoralists, however, were unimpressed by the provisions, which they felt would have little positive impact on their constituencies, especially in light of the earlier abuse of pastoral schemes. They felt the needs of pastoralists were given little consideration. For instance, while the land needs of pastoralists are above

[50] § 159 (2), (3) and (7) of the LA
[51] § 159(6) of the LA
[52] § 160(1) of the LA.
[53] § 59 of the LMA. Also §§ 112 (3) (a), 114 (4) and 138 (2) (b) of the LA and 35 (7) (c) (i) of VLA. However, §114 (2) (a) and (b) does not make it clear if a relationship operating under the presumption of marriage enjoys the same protection as a solemnized but unregistered marriage.
[54] §159(3 (b) and (5).
[55] According to Mekacha Pastoralists demanded for community rights in land ownership in form of reserves but § 6(1) does not include pastoral lands as part of reserve land.
[56] §§ 7 (7) and 20 (4) (d)

those of ordinary peasants or urban dweller, a similar limit of land holding of 2,500 hectares was imposed on them prompting groups to call for the Bill to be revised to better address issues of tenure related to pastoralists. It is also notable that while Tanzania has one of the highest population on livestock in Africa, the economic potential of livestock breeding as an industry is not emphasized. The policy framework seems to favour breeding in ranches while the government does not have a good record in running such endeavours.

C. Land Acquisitions.

1. Acquisitions under 1999 Acts

Land can be acquired for public interest under the Land Acts. As observed earlier the President can transfer one category of land to another i.e. General Land to Village Land; Village Land to General Land; or General Land to Reserved Land.[57] Both the granted right of occupancy and the customary right of occupancy can be compulsory acquired. There is a greater possibility for village land to be acquired by the executive, moving it from the jurisdiction of the Village Council such as by allocating it to non-village organizations[58] or to foreigners under the National Investment (Promotion and Protection) Act 1990.[59]

The Village Land Act qualifies the application of Part III of the Land Acquisition Act relating to development areas. Land can be acquired under a regularization scheme;[60] or in the event of the termination of an assignment of a customary title of occupancy; [61] in case of revocation of a customary right of occupancy;[62] or for breach of condition including abandonment; or to effect an order for possession.[63]

In effect, land is not only acquired by the State as the supreme landlord but the commodification of land also means that lenders can invoke the legal system to recover their security on loans or mortgages. Of concern for activists is the ability of the mortgagee to lease, enter into possession, or to sell the mortgaged land upon serving the mortgagor thirty days notice after which time the mortgagor should discharge the mortgage. A mortgagee may claim remedies available under the Act.

The court is to provide a balance with regards to a domestic dwelling, agricultural land, pastoral land, land subject to a small mortgage or land subject to customary mortgage but only in so far as it has ascertained itself of the mortgagor's ability to pay in due time.[64] Eventually, it will have to grant the mortgagee the relief's sought. Thus the distinction made between a mortgage as conveyance or as security is of no

[57] § 5 (7) (8) and (9) of LA and § 4 and 5 of VLA
[58] § 17 (1) (2) and (3) of VLA
[59] Amended in 1992.
[60] § 59 (2) of LA
[61] § 30 (2) (c) of the VLA
[62] §§ 44, 45 and generally and 45(9) in particular of the VLA
[63] §§ 74 (1) (e) and 130 of LA
[64] §140 (5) and (6) revise

consequence since it entitles the mortgagee to some relief, which relief threatens the proprietary rights of the mortgagor.
The bulk of directives on acquisitions are contained in the Land Acquisitions Act discussed below.

2. The Land Acquisition Act, Act No. 47 of 1967

The Act is divided into four parts and 41 sections. The longest part deals with compulsory acquisitions, compensation and related matters. The Act empowers the President to acquire any land for any public purpose[65] including environmental purpose, public works, a developmental purpose, or resource exploitation.[66]

Minimum compensation is allowed under the Act, [67] an approach also adopted in the 1999 Land Acts.[68] But whereas the initial Act did not allow for compensation for bare land current amendments do as they legalize the sale of bare land.[69] In many respects, the government did not want to be responsible to meet any obligation towards any party who may have suffered from the compulsory acquisition and refuses to take into consideration any improvement or work done on or to be done on the land or the future value of the land.[70]

3. Available relief for acquisitions

§ 173 the Land Act establishes a Land Compensation Fund to provide compensation to any person should they suffer any loss, deprivation or diminution of any rights or interests in land or injurious affection in respect of any occupation of land or its use.[71] Part III of the Village Land Regulation 2001provides for compensations. Under Regulation 20 of the Land (Management of the Compensation Fund) a right to compensation is inheritable. Additional protection is afforded to buyers or landowners who loose their interest to land by a sale that is rescinded, through fraud by voiding such transaction or disposition.[72] One can always appeal against an aggrieved decision relating to land occupation and use.

Compensation for compulsory acquisitions may be monetary or may entail relocation or alternative allocation. Items liable for compensation include the value of unexhausted improvement, disturbance allowance, allowance for transport and accommodation; and loss of profits. The Land Regulations do not provide for compensation for unoccupied land.[73] Thus there is a real likelihood that undeveloped plots of land, such as used for grazing, will not be compensated for the acquisition.

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[65] § 3
[66] § 4
[67] Generally §§ 11- 18
[68] E.g. § 156, which provides for compensation in respect to public right of way.
[69] §12
[70] §14 (a) and (d) respectively
[71] §56 compensates public ways. Regulations in respect to the VLA are made under §65. A person can apply for relief from court against any act of the Village Council or authorities under § 46.
[72] E.g. § 71, 75 of the LA
[73] Regulation 12 of the Land (Assessment of the Value of Land for Compensation) 2001

4. Adjudication

Part XIII of the Land Act, comprises of a single section, and Part V of the Village Land Act deal with dispute settlements. Organs having exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land are the Court of Appeal, the Land Division of the High Court, the District Land and Housing Tribunals, Ward Tribunals and Village Land Councils.[74]

The Commissioner for Lands is empowered to make major determinations with regards land matters.[75] He may also commission an inquiry on land matters, which operates like a judicial proceeding.[76] The Village Land Council is empowered to mediate on matters concerning village land and recognizes the use of customary land law.[77] The Council can establish a Village Adjudication Committee whose members are elected by the Village Assembly consisting of nine persons, four being women.[78]

The Local Customary Law (Declaration) Order No. 4 of 1963 is the major source of codified customs readily invoked by courts. Section 20(1) directs that any dispute relating to a customary right of occupancy, including a dispute on succession or inheritance will be determined in accordance with customary law but does not specify which customary law to be used. Before granting customary rights of occupancy, boundaries and interests in land must be determined.[79]

[74] § 167(1) of LA and Section C of Part of the VLA.
[75] § 10 (5)
[76] § 18
[77] §60
[78] § 53
[79] § 48

III. Beyond the Legal- Implications of the land regime.

This part comprises the critique of the policy and legal framework governing land matters. The discussion is organized around four themes which informed and continue to inform advocacy efforts on land- security of tenure which will examine the implications of compulsory acquisitions; information and participation; governance which will focus on the institutional framework and how the same ensures accountability; and gender equality.

A. Security of Tenure

1. The radical title

The Land Act retains the radical title vesting ultimate control and ownership over land to the sovereign with power being centralized and concentrated on Commissioner for Lands. Ndonde, amongst others, observes that linking land to the executive has meant a security of tenure fraught with uncertainty. Likewise, Chachage argues that the retention of the radical title serves well and protects the interests of capital in general, rather than those of the users and occupiers of land.

The Land Regulations published in 2001 highlight the true spirit and reach of the legislation. For example, it is clear from the deed of surrender of a right of occupancy that only the president is empowered to accept or refuse the surrender of a registered right of occupancy. Until the 1999 legislation undeveloped land could not be sold.[80] In actual fact, it was improvements on the land, never the land that was sold.

Land, under the 2004 amendment, is a market commodity with a market value. The Object and Reasons sections purports that the amendment is made to serve the commercial interest of people. Hence land is commodified with an emphasis being put on its productive use. Prof. Shivji argues that the amendments, contrary to past legislations and prevailing ideology, introduces the concept of freehold giving the individual ultimate and unrestricted rights to ownership and tenure defeating the notion of land being "public property". (2004) Such a system, in effect, invites social inequalities something the founding father tried to discourage.

The reforms awaken the ideological battle within the land question made prominent by the Commission on Land Matters. Indeed, these developments are an about turn with past policy of guaranteeing Tanzanian nationals land. It is ironic that the very principles activist campaigned for in a bid to guarantee greater safeguards for the common person, but were adamantly resisted by the government, should now be reversed, but not in the interest of the populace, but of big capital.

Shauri further notes that, to a large extent, the legal framework separates land tenure from tenure on natural resources. Radical changes in natural resources policies, particularly the National Forest Policy 1998 and the Wildlife Policy 1998, urges community management of village and community forest reserves and Wildlife

[80] § 37 (8) and (9).

Management Areas. But despite policy reforms postulating community involvement in natural resources management, legal reforms have been tardy and uncertain. Hence, communities are unable to assert their right of access to and tenure over natural resources. This, he maintains, may explain the continued and rapid deterioration of the natural resources base in the country.

2. Compulsory acquisitions

Mekacha holds that the land policy aims to provide citizen's with equal and equitable land rights translating in security of tenure but in actual fact allows the president to transfer land between categories and also provides for land alienation, especially to foreigners, in many instances without the village government's knowledge. Shivji contends that provisions of land policy facilitate alienation of village lands and provide legitimacy to land grabbing. Indeed land concentration is facilitated through investment promotion where foreigners and wealthy Tanzanians can amass bog tracts of land, while prohibitive surveying costs and land rent will bar the majority of the masses from owning land.

Existing grievances and land disputes regarding large-scale alienation documented in the Report of the Land Commission are entrenched and legalized.[81] (1998:96) The Land Commission is not opposed to land alienation, but recommends the same to benefit the people allowing for accumulation from below. Activists argue that land appropriated for "public interest" as was the case in Misumbwi or with the Barbaigs need more clarification and a mechanism to compensate dispossessed population.

The Land Act does not resolve the problem of land alienation. Instead, it attempts to provide a managerial answer to a structural problem, shifting from the village council and local authorities power of land administration to central control. Ndonde notes that under the Village Land Acts 1999 it is possible to alienate village lands through a number of ways including to foreign investors. It is easier, under the Act for the government to acquire or dispose of land than it is to protect one's title to land. In particular activists take issue with the provision that allows the president to transfer village land for public interest.[82]

The unlimited power of the President to transfer or acquire land reminds one of the nationalization exercise that accompanied the Land Acquisition Act of 1967. A major weakness of this Act is the undemocratic manner in which such power is exercised whereby a decision unilaterally taken, possibly in haste, has profound consequences for many with minimum checks in the exercise of such power. Many people lost their rights to landed property on the pretext of fighting bourgeoisie accumulation. It has since evolved that senior members of the Party and government took advantage of this system to acquire real property in prime areas. Amidst economic liberalization, there is evidence that a number of well-placed public servants have used their positions to benefit themselves or their families from investment deals.

[81] The most popular cases involve the Maasai communities in Arusha and Tanga where grazing lands were appropriated for agricultural development and mining. *See* Mchome's book for specific cases.
[82] §§ 20 and 21.

Similarly, the right to transfer land from one category to another by the President negates the powers of village councils and assemblies in managing village lands. The intention to acquire land may be noble, the manner in which the same is done is not. Tenga contends that the Villagization schemes of the early seventies responsible for the compulsory collectivization of peasants lacked legal backing. The Village Land Act attempts to deal with the remnants of this programme and makes provision for a special fund for compensation to mitigate the illegality of such acquisitions.[83] The legacy of the villagization scheme is, however, not just with people inhabiting these areas but of previous land holders displaced from their villages and who still claim land rights.

Moreover, customary laws do not allow automatic transfers of land through sales, mortgages or leases. Since surveys and maps are unavailable to ascertain ownership and nature of title, proof of title remains precarious. (Tenga:1992) A research by Englert looking at attitudes and practices of registration in Uluguru reveals that most people do not like to apply for titles, as it not only implies money but also bureaucracy. Also, since many villagers have experienced forcible removal from their land they have no faith in the formal title as protecting them from forcible acquisition.

The Land Act and Land Regulations all provide for the payment of compensation in case a right of occupancy is acquired. Compensation is not automatic and one has to lodge a claim.[84] Additionally, it offers the least attractive deal to an aggrieved person e.g. pays transport allowance only within 20 Km from point of displacement, by rail or road which ever is cheaper. The risk here is that only poor people will be dispossessed most of whom can only afford to travel by road or rail. But then again it fails to do justice in that the bus or rail is not at someone's doorstep and rural communities often have to use both means of transport to arrive at their destination.

It is also worrisome that under the categories of those who can claim for compensation, four of the five items in Rule 4 explicitly refer to transfers of village land or customary titles, which suggests that it is rural populations that will be most at risk of land acquisitions. Clearly, the preference is in assisting outsiders to occupy village land possibly for investment purposes rather than granting rural populations greater security over their titles. Such a proviso hints to the fact that, contrary to the stipulated intention of making the deemed right of occupancy at par with the granted rights of occupancy, the latter is still more valued and viewed as more desirable.

Consequently, foreigners stand a better chance in being allocated land than poor citizens as they can meet development conditions. Likewise, the fact that land can be acquired in the event of termination of an assignment of customary right of occupancy [85] made to a citizen indicates the possibility of outsiders, who may be nationals but not locals getting access to village lands. Shivji argues that only foreigners who hold land through leases can benefit from compensation packages since their will be a contractual relationship with the state and the state will be liable to pay 'full, fair and prompt' compensation on acquisition. He points out that this runs contrary to the stated objective of the policy to protect citizen's access and security to land.

[83] §15
[84] Regulations 3 and 4
[85] § 30 (2) (c)

Moreover, the regularization schemes in the Act, which have been poorly defined, remind one of the notorious villagization schemes. Tenga asserts that most schemes in Land regimes cannot withstand constitutional muster. Nonetheless, it is not clear why there are provisions that enable the President to take land in public interest while Part III provides for regularization schemes. In fact, the procedure detailed for the latter is more consultative, and takes into account the element of risk before it approves of the same and seems premised on a common good. In all effect, public interest is better served by involving local authorities to determine what is good for them and by taking the necessary steps to ascertain the viability or potential harm of an undertaking.

B. Governance

1. Accountability

An important consideration in drawing up a sound institutional framework is accountability to the public and redressing the gross injustices done to the population by scrupulous land officers. Accordingly, the Commission into Land matters sought to rein the powers of the state with respect to the allocation, administration and supervision of land but this was resisted and rejected by the state. Instead, the Land Act 1999 provides a top down bureaucratically managed procedures involving considerable outlay of resources for land administration. Shivji and others have criticized the workings of the large land bureaucracy, seeing it as part of the problem. The concern is that a large bureaucracy creates room for corruption.

According to Benschop, the main innovation in these Acts, and in particular the Village Land Act, is the devolution of a great deal of authority and administration over 'village lands' to the grassroots level. While general and reserved land, as described in the Land Act, are still managed through a centralized governance machinery (the Commissioner of Lands being designated the central management position), control over property relations with regard to village lands is 'democratized'.

This democratization, however, is only a façade for what indeed comes out to be an undemocratic and inegalitarian land regime. Much as it is an elected body, the Village Council is toothless, unable to do anything without first obtaining the approval of the Commissioner; nor can they act until they hear from the Commissioner.[86] For instance, the Land Allocation Committee is obliged to have regard to the approved ceiling by the Minister rather than use their discretion in making allocation thereby balancing the needs of different groups in their midst.

The Land Allocation Committee described in the Land (Allocation) Regulations 2001[87] comprises overwhelmingly of the executive, putting into question its impartiality. In effect, besides including guiding provisions to undertake its work, it threatens to reduce the work of local bodies to merely endorsing the wishes of the

[86] § 43.
[87] Regulations 4 (A) (B) and (C)

executive. Likewise the structure and roles of the organs dealing with matters i.e. committees, councils and Board are described in very traditional terms raising questions as to their adaptability to meet the needs of a new land regime. Rather, a more effective land delivery system demands a reconceptualization of how to organize and work in ways that allow structures to respond to roles and their functions and not positions and their hierarchy.

Shauri concludes that while 25% of natural resources are protected under gazetted areas, the remaining 75% of the country's natural resources are under village land. The lack of a proper system of land administration and tenure in village areas where most of the resources are, would, undoubtedly, lead to serious natural resources degradation.

2. Information and participation

The need to bring about a greater involvement of the citizenry, both directly and through their representatives, in the management of land was one of the assumptions that guided the drafting of the Land Bill, and later legislation.[88] It is striking, however that during the parliamentary session meeting to discuss and pass the 2004 amendment a number of parliamentarians, some who took part in passing the principal Act detailed numerous land related complaints which suggests that most are unaware of existing mechanisms to solve or enforce land disputes, or more appropriately, the land dilemmas in their midst.

Providing timely information to the population thus appears to be one of the main strategies to urge citizen involvement in land matters. Under the Land (Conduct of Auctions and Tenders) Regulations, 2001 information on land sales, auctions and acquisitions is be mainly via notices. This assumes that publishing notice of auctions or tenders in newspapers is sufficient. The reality is that the circulation of newspapers in Tanzania is still low, with an average of 15,000 to 20,000 copies in a country of over 34 million. Consequently circulation is limited to urban centers.

Forms outlined in the Land Regulations 2001 provide helpful reference in applying the Acts but they still need to be translated in the local language. The bigger challenge, however, is in the processing of the forms as one expert observes that land and title records in Tanzania have traditionally been maintained for legal and archival purposes with each division maintaining independent records and file referencing system for each parcel. Thus, while the Land Registry and the Title Office are in the same division, each maintains independent set of records for each parcel. An obvious problem with this system is duplication of information.

To rectify the problem a comprehensive computerized land information system is recommended. However, mere computerization will not resolve inherent problems of inconsistencies, incomplete and noncurrent data caused by manual system of record keeping. Equally, Derby stresses completeness of the land records if the database is to support land administration activities such as predicting market trends, determining

[88] Similarly the Land Commission promoted efficiency by proposing greater participation of people in decision-making.

availability of land for development, monitoring environmental impact of development and controlling excessive land development and land degradation.

3. Adjudication

Both customary land rights and statutory land rights are recognized under the present regime with two statutes providing for each type of tenure, a fact that invites a parallel process of land administration and adjudication. Koda observes the prevalence of institutions- judiciary, executive, political and local government all empowered to address tenurial issues, and so in doing, are not devoid of over lapping powers and jurisdiction.[89] Shivji, on his part, argues that the process of adjudication aims to facilitate the transferability and alienability of land within villages and not to record the interest in land in favour of villagers against alienation.

The current Land Act modifies this in so far as making the Commissioner for Lands or Minister having ultimate control over tenurial decisions. But most Tanzanians have no faith in the legal system seeing it as corrupt and unreflective of their ideals of justice. Leaving aside the huge case backlog in the judiciary that results in cases taking inordinately long to adjudge, nothing has changed in operations, composition, orientation or ethics to warrant this unqualified endorsement of the legal system.

In the interest of guaranteeing impartiality, it may be more worthwhile if members of the adjudication committee serve on a rotating basis. Only the Village Assembly, observes Shivji, specifies that the chair should be rotated. The same is not required of the National Land Council whereas it is ensured at the Village Council level through elections. Rotation will minimize the incidence of established members creating a "monopoly" or familiarity with people and thus a situation of bias or tempering with the case. The Land Advisory Council comprises of people from the different ministries with very few independent members.

One of the main criticisms against the land regime, which essentially has been retained with the new Land Act, is its potential for abuse. The Adjudication Officer[90] for example wields enormous powers such that he overrides an elected body, the village adjudication committee, can remove members from the body as well as nominate a chair for the committee or dispense with the chair all together! Little regard is thus given with respect to assuring the integrity of elected structure, or putting safeguards to assure the impartiality of the officer. Also, § 56 (2) (a) of the Village Land Act talks about a Village Adjudication Adviser whose envisaged role is not to give advice but to take "orders and directives" from the Adjudication Officer and to comply with the same.

[89] Maoulidi recounts a matter in Naberera Village, Semanjiro District where the village government decided on a matter involving a land dispute in its jurisdiction. A settler had encroached on village land beyond the land allocated to him. The ongoing saga soon attracted District Authorities and they in turn forwarded the matter to the Commissioner for Lands for direction. Without consulting or involving the village government, the Commissioner ruled to allocate more land to the settler, most of which was not put to use but effectively putting it beyond the mandate of the Village Government.

[90] Appointed under § 56 (2)

A number of legal aid schemes in the country report an increase in cases involving land matters. In many instances, these form the bulk of legal aid cases surpassing other human rights violations like gender based violence. Indeed, the customary rights of millions of rural landholders in Tanzania have been abused at will and their vulnerability is very much alive. (Juma 1996, Shivji) Perhaps this fear prompted the insertion of provisions on corruption, which is yet to remedy the situation.

Chachage highlights a number of instances where laws related to tenure and conservation have been violated by the government, its agencies and investors including disregarding prohibition in a number of legislations related to reserved and general land. For example, he cites the 1964 Antiquities Act No.10 of 1964 which puts a 5 km radius from the Olduvai Gorge for construction work but the presence of foreign lodges in the area demonstrate systematic violation of legal provisions. Legal challenges have been brought to challenge executive excesses mainly compulsory acquisitions but have involved a protracted and lengthy legal process with unsatisfactory exposition of the law.

C. Gender Equality

Gender activists worry that the 2004 amendments threaten the gains made in the Land Act as land and improvements on land become negotiable instruments capable of being used as collateral in loan applications or sales. Likewise, the criteria in setting a ceiling on land specified in Rule 3 of the Land (Ceilings on Land Occupancy) Regulations 2001 may discriminate against youth, women and the poor as they often do not have the capital or history of credit to develop land in a big scale. This may limit the amount of land allocated to them.

As noted earlier, under the Land Act, a woman has the same rights to acquire, own and deal in land as a man. In fact, both men and women can own land, mostly surveyed land in urban areas, leading some activist to argued that the provision granting equal rights is a mere restatement of the existing law, and adds little to the existing legal situation. Others, however, feel that the provision marks the beginning of manifestation of women's rights, previously taken for granted. A study done by GLTF revealed that compared to men, women hold less land because the whole process of acquiring land requires money.[91]

Koda advances that the root cause of the gender imbalance is the traditional/cultural norms (ideologies and practices), influences from both foreign religions, and perpetuated through concepts of modern governance and modern economy. She goes on to observe that land issues are not gender neutral. Land tenurial matters affect men and women differently. Because the power to control use of resources still favours men and patriarchal structures, accessibility to and control over land remains a political, economic and gender issue intimately embodied in cultural rules and land tenure systems.

[91] One needs around USD 28, almost ¾ of the minimum wage to obtain a title deed.

The Land Law retains the use of customary laws. Activist believes that under customary law women's rights to land are indirect, insecure and inferior to those of men. GLTF emphases that, "in an environment where cultural norms relegate women to an inferior position in society, there is need for support systems to enable women own and use the land they own without constraints". In this respect, Odgaard proposes land entitlements should be based on the fulfillment of obligations.

The law does requires customary law and any decision taken in respect of land held under customary law to be in accordance with the fundamental principles of land policy and any other written law. It makes such law inoperative and void, if it denies women, children and persons with disability lawful access to ownership, occupation or use of any such land. A change of emphasis in language is however noted in the Act. The original text had used the word "right" but the adopted version uses "lawful access" to ownership, occupation or use of any such land.

Activists argue the use of "lawful access" is weaker than "right" as it implies that customary laws are upheld and that women's statutory rights to customary land are not recognized. Additionally, the use of such terms may influence legal interpretations in legal and administrative structures. Benschop, however, remarks this provision is not only about "lawful access" in itself, but also about lawful access "to ownership, occupancy or use"; customary law is known to provide secondary user rights to women, not lawful access to ownership and occupancy rights. She concludes that lawful access to ownership and occupancy is a concept laid down in statutory law and therefore women's statutory rights to customary land *are* recognized in this provision. The intention of non-discrimination is still sound and the provision can be used to help women where customary rules apply.

Such divergence in opinion reflects the weak gender analysis prior to the passage of act where key questions regarding gender relations were not properly defined or taken up. The Commission's analysis built on Marxist class analysis to explore the issues of power and class. Implied in its argument is the assumption that class struggles are similar to gender struggles. Thus, while recognize women's relative disadvantaged status to land, it only recommends including wife's name in the certificate of occupancy to protect family's interest in the land but falls short of addressing structural causes of women's subordination.

Such a position is not uncommon, even in the most radical movements. To be transformatory, it would have benefited from a feminist analysis on class and power to appreciate what the same means for specific groups. As noted by bell hooks, "As with other forms of group oppression, sexism is perpetuated by institutions and social structures; by the individuals who dominate, exploit and oppress; and by the victims socialized to behave in ways that make them act in complicity with the status quo. It would strengthen and affirm the praxis of any liberation struggle if a commitment to eradicating all sexists oppression were a foundation principle shaping all political work".

Rie Odgaard remarks the view that women's access to land as the right of use obtained through marriage is much too simplified. According to her, excessive focus on formal land laws and regulations misses many changes in the current scramble for

women's land. Swantz writing about southern Tanzania, but her observation applies equally to other parts of Tanzania, asserts that migration has affected women's ownership and property rights unfavourably since in the new place of residence there was no lineage land to claim or return to. As a result women can no longer claim land as their inherited right.

Indeed, women, be they urban based or rural based, have a lot to be concerned about when their agency with regards to the acquisition, disposal of land is predicated by custom, religion and patriarchal interpretations thereof. Thus, the gender discussion remains pertinent since the vast amount of land is still held under customary titles and is transferred under the same system effectively marginalizing women. With increased insecurity women have more the reason to ensure that whatever interest they have is assured so that they do not become landless, a situation that will not only exacerbate household poverty but also food insecurity. As to who should carry the banner in upholding the rights of women to land, it may be that the ability of middle class women to acquire land unencumbered will be significant in influencing a new culture with regards women's ability to own landed property.

D. Land ownership in the changing political economy of Tanzania- Who benefits? Whose interest is protected?

Most of the works reviewed detail the history of Tanzania's political economy in their analysis of the evolution of the land regime. It is thus futile to repeat the same here. What is useful is to appreciate the significance of land ownership and the undue emphasis of the new land tenure system to the economy. President Mkapa, as quoted by Kapinga (1998) makes the point when he explains, "land as an asset in terms of investment opportunities …and asset in terms of borrowing conditionalities…an asset in terms of livestock industry…can be used as part of shareholding in industrial enterprises...to be established in Tanzania".

Kapinga notes further "the legal land regime targets the participation of that sector of society with financial means or capacity to invest in industry". Most of the natural resources in Tanzania are under lands earmarked as village land, it is therefore logical to conclude that management of such resources is directly linked to how village lands are being managed and owned. Mekacha identifies three distinct interest groups concerned with land reform- the masses who seek security of tenure so that they can guarantee their sustenance; the bourgeoisie class interested in gaining maximum profit from land by engaging in land speculation and sale; and foreigners who are interested in investing and making profits.

Shivji explains the goal of the land regime is to create a private property regime in land that will also facilitate the transferability and negotiability of real property. It is in this context that calls have been made to streamline legal and administrative procedures and the machinery involved in the allocation, supervision, registration and titling of land (1998). Consequently, the emphasis of the land acts is the negotiability of land not security of tenure for the masses.

Koda notes that dramatic changes with respect to land accessibility, land transfers, land ownership and land control have been witnessed in the last few decades. Such changes have affected both inter and intra-household gender relations. Chachage associates the proliferation of investors in the eighties to increased land and natural resource disputes. Perhaps after the villagization exercise, the main victims of massive land alienations have been pastoralists, agro-Pastoralists and hunter-gather communities. For the working people of Tanzania the assertion of mercantile interest has meant further marginalization, aggravation of tensions and more hierarchization.

Muchunguzi for example shows how land shortages, especially of banana and coffee farms, is critical in Bukoba, Muleba and Karagwe districts. He notes how, over the years, farm plots have been getting progressively smaller as the human population grows pushing the price of farmland beyond the reach of the masses. An acre of a well-managed banana plantation in Muleba District fetches between one to two million shillings while the same acreage of grassland without crops is sold at Tsh.250, 000 to 300,000. In urban areas, land struggles entail the acquisition of building plots.

Koda asserts that both colonial and postcolonial land tenure changes drastically eroded women's land rights and the concomitant benefits. She concludes, "The process of privatization and commoditization of land emanating from the profound restructuring of both the local and global economy has stimulated parallel and gender specific tenurial challenges with specific class and gender dimension".

HIV/AIDS, for example, affects women disproportionately. Muchunguzi's research in Mulebya and Kagera regions depicts. He observes, "many men living on clan or family land, cannot pass these farms to their wives or children. In-laws often blame widows for the untimely death of their son. Often, they assault and banish the widow from the marital home and family land, which is then sold off. A research done in 2000 revealed that the number of cases relating to relatives selling off confiscated land was 32 and 37 percent of received cases respectively. He warns that land problems will increase at the same rate if measures to address the cause of land disputes facing widows and orphans are not addressed.

Some of the changes in the land tenure regimes have occurred as a result of shifts in political ideology. The 2004 Amendments introduces the notion that bare land is transferable. In so doing, it reiterates its aim to serve commercial interests and introduces a more substantive law to facilitate mortgage lending. Ndonde holds that in the wake of liberalization in Tanzania, security of tenure for rural landholders has been undermined with thousands of acres of land belonging to villagers being alienated to foreign investors with dire consequences to local communities.

Chachage shows how forcibly a removal of the Wamasai has impacted their lives. Many have been displaced having lost prime grazing lands to farmers and miners. It has thus become difficult for them to depend on their livestock for survival. Consequently their purchasing power has diminished. Compounded by drought, Maasai areas are gripped by famine. Marglin advances, "the over emphasis on individualistic profit making degrades communal values, which are seen as a hindrance to economic success .. the failure of *Ujamaa* in Tanzania has further degraded attitudes towards communal management of resources. (Swantz: 158) In this

regard Silliman recounting the experience of activism against the Narmada Valley stresses the importance of addressing the needs of special groups. In particular, the special needs and rights of indigenous groups such as the pastoral and hunter/gatherer communities needs to be considered and integrated in the advocacy agendas of political and social movements particularly when their livelihoods are in peril.[92] However, activists and policy makers must not lump the needs of indigenous or poor men and women as they experiences the world differently. A gender analysis is therefore key for any development enterprise including legislation to appreciate how different groups will be impacted as emphasized by the Narmada Valley case.

Further, in opening up the land market, the government should anticipate increased transactions involving sale, transfer and mortgage of land as well as increased land development by both public and private sectors warns Derby. The implementation of the Land Acts over a period of 10 years is estimated to cost USD 1.7 billion mainly to fund the areas of land tenure security, market reforms and information management. Above all, the state has to provide the necessary infrastructure to expedite such transactions and monitor such activities effectively particularly, problems associated with land delivery process- titling and registration practices and the recording of such information.

Tanzania's internal resources will thus be stretched and directed to fund activities that will facilitate the siphoning of resources out of the country by foreign investors. The new land and economic framework demand Tanzania alienates local populations by dispossessing them of their only economic resource- land, while at the same time abandoning local farmers by denying them much-needed subsidies to fund agro-business. Accordingly there is a disconnect between the vision for development and impetus for reforming land policy. Land is no longer to ensure food security and landed security but to facilitate investments. Moreover, while there is a recognition of the importance of food security nationally, it is striking that such issue is not connected with women's access to land since they are the major producers; or to other viable economic enterprises such as livestock breeding.

Likewise, the notion that the sale of "bare land" would benefit the common person- allowing them to take a mortgage, is false since it is improvements on land that attract value. It may be taking a mortgage can avail people of credit to develop their properties. But equally it puts them into debt considering income levels, repayment rates and purchasing power. In the end, the borrower risks loosing all i.e., not only the land and improvements on the land but also any savings he or she may have. Such a situation breeds corruption as the more powerful do not want to loose their property; and may attempt to take advantage of the vulnerabilities of others who try to assert their titles to land.

Moreover, most farmers own small plots of land. Banks are not ready to lend to smallholder farmers, as it is not profitable. Commonly farmers get loans through their cooperatives, mortgaging their crops and implements. But these institutions have been weakened in the new economic regime. Thus presenting the amendments as beneficial

[92] See Jael Silliman (2001) "Gender Silences in the Narmada Valley", pp. 73-76 which recounts the experiences of tribal communities facing displacements in India. Her gender analysis heightens the vulnerabilities of indigenous communities, both male and female.

to farmers is misguided. Some draw parallels with the Rent Restriction Act,[93] which was enacted to protect the poor tenant against the rich landlord but in practice affords more protection to the urban rich landlords rendering poor and old widows vulnerable to evictions.

Undeniably the Act adopts capitalism fully sinking Tanzanians into further debts and threatening to disposes them of not only their land but of their lifeline. Contrary to expectations of alleviating poverty, such a situation will entrench poverty and many fail to meet their basic needs. Zillah Eisenstein reminds neo liberalism, which we experience as transnational globalization, remains a gendered and racialized structure, which disallows equality. Inevitably, other than accentuating the race and gender dimensions it also reinforces class differentials and exclusions.[94] The effect of economic liberalization remains to be evaluated in light of its implication to local citizens. Also, whereas Tanzania is emphasizing regional integration with the possibility of people in the East Africa region to live and work in member state, this needs to be examined in light of their rights to acquire property, as it does in cases of inter marriages with nationals.

Ndonde captures the inherent contradiction in the neo liberal development approach and democracy i.e. development as economics enabled by a free market system and private investment; or development as democratic relationships between the government and its citizenry enabled by accumulation from below. The heart of people's ongoing struggles to land is not only to meet their daily sustenance but also their future needs. As long as there is a disconnect between these ideals, Tanzania will continue to experience skirmishes between different interest groups as they try to assert their right to land and its resource benefits.

[93] Act No. 17 of 1984
[94] in **Against Empire**, pp. 97-98.

IV. Lessons from the Land Advocacy Process

A. The issues and approach

Activists argue that the impetus for current land reforms was to create an enabling environment for a free market, encourage investment and privatize state companies, not to benefit the people, mainly rural dwellers whose security of tenure was tenuous, or to redress weaknesses in the land structure. Similarly, it appears that the chief motivation for retaining the radical title with the executive was to facilitate the liberal economy and investment.

Central to the land law process, observes Tenga, was debating whether statutory changes brought about by legal reforms led to sustainable improvements. He notes that donors and financial institutions earlier abandoned the modernization experiment, based on individualization, titling and registration, for evolutionary approaches, making their case suspect. The result, assert Shivji and Kapinga has been an overnight conversion of IFI consultants and do-gooder academics from the West, suddenly celebrating customary systems, organic evolution, preservation of indigenous communities and so on, a conversion that is as suspect as the earlier skepticism. (1997) They purport further that the policy and the subsequent legislation, is not inclusive of the views and interests of the masses, not only because it did not involve a broad cross section of the community, but also because it did not take on board the views expressed by civil society groups reacting to the policy and draft bill.

While the question of bottom up participation was key, and a number of stakeholders were mobilized to demonstrate the same, so was the issue of inclusion. This was reflected in how activists framed their agenda. In particular, there was unevenness in the profile of advocates and the content of advocacy. Kitunga notes that women's voices, though informed the commission's work, were left out of the case studies included in the report. One the other hand, the over representation of urban based, middle class, educated women was criticized, mostly by male academics.

Moreover, academic rhetoric was dominant to the exclusion of farmer's voices just as NGOs were overly represented from the Civil Society sector. Much energy was spent on the diverging perceptions, as advocated by the government or activists. In most cases, the concern of each group was winning converts to their position; or justifying its own position. In the end, the Land Coalition was not able to create a mass movement beyond some groups e.g. pastoralists, urban women, academia and NGOs such that her initial position and approach was compromised.

It was far from the Commission's expectation that its findings and recommendations be set in stone. In fact, the Commission proposed a national debate on land to explore the question more widely. Yet, most authors and activists use the Commission report, and to an extent the Land Policy, not only as the basis for discussion on land matters but also as a blue print for resolving land matters raising questions as to whether the discussion has moved beyond what could be to what actually is.

Linking the land question to other development concerns was not prominent in the lobbying process. For example, there were parallel movements on issues related to land like the right to food of KIHACHA; FemAct's campaign against impoverishment coined *bring Resources back to the People*; the Lawyers Environmentalist Action Team activism in the area of natural resources management; strategic litigation done by the Legal Aid Committee of the University of Dar es Salaam on dispossessions; and the work of the Land Task Force to mobilize people to demand for a national debate on land, in their totality these initiatives were not perceived as forming part of a bigger advocacy agenda. The result was a fragmented agenda ultimately emerging to distinct advocacy camps.

Moreover, the new legislation used terms that are problematic which have the potential to conflict with existing laws. Yet, such terms have largely escaped attention. For instance, the laws still talks of people of African descent while a number of provisions just make refrence to citizens or exclude citizens, who may or may not be of African descent. Likewise, it introduces the concept of "apparent age" to qualify for elections in the Village Assembly without stating the consequences of not being the age.[95] Meanwhile, the constitution is clear about the age one can participate in the electoral process and governance. It is therefore suspect that while the matter unambiguous why such language was introduced in the legislation.

B. The Advocacy Process

The advocacy process involved consultations mainly in the form of workshops, most being concentrated in pastorlaist areas and in Dar es Salaam. Perhaps the work done by the Commission earlier already provides a sound analysis of the situation in other parts of the country and among other groups. In sum, these consultations served to bring up problems build alliances but failed to identify a viable framework that offered a more egalitarian schema of land ownership through which some of the sticking points could be resolved.

Most research, at least that which now serves as authoritative particularly on gender dimension was done after the passage of the Acts. One can attribute the availability of references on the Land Policy and Land Bill as evidencing a robust CSO engagement with land advocacy prior the passage of the Bill but the paucity of literature after the passage of the Acts suggests that the momentum in following up on the act and its impact waned. In part, this may have been due to the fact that the Act did not come into operation until 2001 and was soon amended. A substantial amount of legal activity took off at this time such as with Faculty of Law providing legal assistance to cases involving massive land alienation to foreign companies e.g. Mkomazi.

At the height of activism, therefore two camps emerged- the 'feminist activists' who wanted gender to be central to the land debate but did not offer a policy direction in how the gender question can be mainstreamed in the wider issue of land reforms aside from the legal reform option; and the Land Commission stance presented by Prof.

[95] § 60(5) (d)

Shivji, which approached gender (women) as one of the categories in a wider issue of democratization of land, liberalization and marketization (Shivji 1998:87).

The tension within the Land coalition was palpable and at a certain point, the most vocal member of the Land Commission, its chair Prof. Shivji seemed to be at loggerheads with gender activists who were demanding for a heightened gender muster of the recommendations made by the Commission as well as in submissions made to the government. The GLTF feared that the concerns on women's equal rights would become too invisible if all the issues were lobbied for, whereas NALAF's position was that concessions made by the "gender group" on more general issues made the lobbying position of the whole group weaker. Some member organizations supported both the "gender focus" and the "progressive focus" and tried to avoid the emerging division.

As with any intense advocacy process tensions surfaced and climaxed at a critical time in the advocacy process, at which time, the positions seemed opposite to each other rather than providing inroads in how to balance the concerns of both camps. In retrospect, the dilemma brought to the fore the struggle between people's basic needs and strategic needs; between social exclusion and sexism. Sadly, the preoccupation at that time was on passing "judgment" about the more valid position; or against those believed to have sold out or were co-opted by financial interest or donors- rather than trying to understand each other's concerns and finding the middle ground towards protecting the tenure of the majority in Tanzania.

C. The movers

1. Gender Land Task Force

The lobby work to influence the Draft Land Bill by women's organization began in 1996 with the National Women's Forum or "Baraza la Wanawake la Taifa" (BAWATA)[96], an umbrella of women's organizations. Individual women were also speaking to the issue, in some cases as experts or as part of larger people's movements. In March 1997, the Gender Land Task Force (GLTF) was formed with a mission to advocate for gender progressive amendments to the Land Bill and raise awareness throughout the country.

The GLTF looked at 4 areas of the Land Bill/Act with regards to gender equity:

1. issue of customary law
2. titling and registration
3. representation
4. youth

[96] BAWATA was founded and headed by Prof. Anna Tibaijuka, the present UN Commissioner for Habitat. Prof. Tibaijuka's provided one of the earliest critiques to the Commission Findings as well as the Land Policy, albeit for the World Bank. However, BAWATA's activism was suspended in 1996 after the government threatened them with de-registration prompting women organizations to revise their strategy and lobby as a force against what they soon appreciated to be a hotly contested issue.

Earlier observations made by Marie Shaba and Magdalena Rwebangira spoke to the issue of guaranteeing married women rights over family land. They saw statutory law as being more "responsive" to women and therefore lobbied for matrimonial relationships to be governed by statute, not customs. The GLTF pushed for the adoption of language in the LMA in titling and registration as well as in ascertaining contribution to the land. Further, they demanded equal rights for all wives in a polygamous union but are silent on the long-term relationships qualifying under the presumption of marriage, being unregistered and not formalized. Howbeit the rights paradigm between individual women in a polygamous relationship was not explored.

Although the GLTF commends the allocation of quotas for women in decision-making bodies, it decries the unequal representation of women in most bodies dealing with land.[97]. Similarly, they called for youth participation in such bodies since they are a group adversely affected by land alienations. The GLTF analysis hints at the possibility of tribalism in the composition of land committees and land allocation. Given the high rates of migration and rising ethnic and sectarian sentiments it is indeed a concern not devoid of validity as something that will affect minorities. Furthermore, it is inescapable that migration and ethnic compositions will have an impact on customary law interpretation. Shivji's suggestion, that customary law should be organic and defined by the locality in question, not statute, is a helpful option in this respect.

2. NALAF Analysis and Recommendations

Benschop tries to make a distinction between GLTF and NALAF i.e. GLTF's main focus was on gender issues, while NALAF's lobby work was more on "progressive issues" such as the plight of the pastoralists, decentralisation, radical title of land to be vested in the people of Tanzania and freehold tenure which distinction is groundless since what advocates sought to achieve was a progressive land policy including the aspect of gender parity. In the end, only some "progressive" proposals for amendments were accepted.

D. Unexplored dimensions.

Very little is yet to be done with regards monitoring of implementation of the Land Act since it came into force such as determining the length to process and issue offers and certificates of titles.[98] This results, in part, from the delay in the legislation coming into force and almost immediately thereafter was amended while most advocacy organizations were still popularizing the 1999 legislation, a task, which according to some, is still ongoing[99].

Moreover, most activists have focused their advocacy on the legislation and its popularization. Consequently, very little work has been done to explore the

[97] They see one-third as a minimum, not as the goal.
[98] As envisaged under Paragraph 4.2.22 of the National Land Policy
[99] Discussion with Rehema Kirefu of WLAC, February2, 2005.

operational aspect of the law in practice, especially at local levels looking at institutions mandated to oversee land administration. Few studies have been done on the emerging case law related to land perhaps because before the establishment of the Land Court such cases still began in the lower courts, something that makes tracking such cases difficult. Perhaps a specialized land court and an improved information management system will facilitate this task but the relevant Ministry needs to be pressured. Sadly, most organizations involved in land advocacy are not concerned with such issues to create a sustained demand for such information. Alternatively, they could invest in research and contribute, on the one hand, to developing the area while monitoring practice, on the other, with a view to inform future campaigns.

Further, advocates can focus on monitoring how far the law as well as practice conforms to the policy framework. For example, the Land Policy envisages the issuing of permits and licenses, the holding of consultations and the creation of buffer zones[100] in facilitating land use and management especially in overlapping land use areas. Likewise, while much is done about conserving coastlines and rangelands, there are few studies about the development of wetlands as a productive landed resources or hazard lands.[101]

In case of underutilization or neglect of farm pastures the Land Policy directs such land to be restored to pastoralists[102] but it is a provision that has not been fully explored to restore land rights back to pastoral communities. Equally, the policy directs the law to recognize common property regimes under the Village Lands, and to provide pastoralist communities with the necessary infrastructures for livestock breeding increasingly made pertinent by the rampant encroachment of easements by private companies.[103]

[100] See Paragraphs 7.1.1. and 7.4.1. respectively of the Land Policy
[101] As envisaged under Paragraph 7.6.0 and 7.9.1 of the Land Policy
[102] See Paragraph 7.3.1. (iii) of the Land Policy
[103] Paragraph 7. 3.3.(ii)

Conclusion

Tanzania is largely a country of smallholders, with up to 80% of the population, including pastoralists and urban dwellers, depending on agriculture for its livelihood. Land is a key asset, and all attempts to reform land laws are bound to have strong social, political and economic connotations. (Tenga)

The Commission into Land Matters found that most Tanzanians, especially in rural areas, do not have security of tenure over land. It also established that the land regime is plagued with structural problems demanding radical interventions. The move towards a land market economy, notes Derby, necessitated a change in Tanzania's land policies as well as traditional notions about the value and ownership of land. Land is now a commodity, attracting market value. In so doing the government hoped to increase security of tenure for Tanzanians on the one hand but also encourage the productive use of land on the other.

This study reveals that the fundamental tension with regards to land i.e. land as a market commodity on the one hand and protecting the users and occupiers of land on the others, remains unresolved. This results, in part, from the fact that the Land Acts adopt recommendations made by the Land Commission, Land and Gender Activists in piece meal fashion an approach that can hardly achieve the intended objective. Further, the Land Act 1999 attempts to address major shortcomings identified in the land structure through interventions that are managerial rather than structural, an approach that falls short of adopting a radical approach to land ownership.

Land, as argued by Juma, is a multidimensional resource and cuts across disciplines, laws, culture and institutions and thus should be linked to other development interventions in a holistic and coherent manner. Hence activists and academics recognize that local investment can't be encouraged under the present land regime mainly because tenure reforms do not address inequities and injustices brought about by past land policies. Instead it gives legal backing to matters (of alienation) that are undemocratic and lack popular participation putting in doubt the desirability and legitimacy of such reforms.

Whereas more research is needed on the effect of the new legislation on local tenure current operations to alienate land from local communities especially in rural areas of Dar es Salaam suggest that tenure security is yet to be a reality for rural Tanzanians. Also the adoption of current reforms did not fully consider the amendment of other laws related to land matters causing uncertainty or conflict.

Nonetheless, the Land Policy and the Land Acts make laudable efforts to counter gender discrimination, but does in a context where discriminatory laws in social and property relations, continue to exist limiting the impact of an otherwise progressive legislation. Countering discrimination requires legislative intervention to repeal all discriminatory laws. It is equally imperative to recognize women's agency with regards land matters and incorporate the same in statutory and customary laws. Meanwhile, effort should be made in safeguarding existing rights, which are often ignored in favour of modern interpretation of property and ownership.

Likewise, the structural basis of the inequalities must be addressed- the cultural dimension of organizations and the societal dimension of gender. Men and women are the product of a biased gender system, simply providing for quotas in organs dealing with land does not guarantee that gender justice will be served. Rather, the key is in heightened awareness on gender issues, on the one hand, while re-examining the ideological basis of sexism built on preserving male dominance while denying women agency as noted by hooks, "Many women who would like to fully participate in liberation struggles (the fight against imperialism, racism, classism) are drained of their energies because they are continually confronting and coping with sexist discrimination, exploitation and oppression. Sexist oppression cannot continue to be ignored and dismissed by radical political activists". (hooks 2000:42) Likewise, participation and equity cant be realized under present or recommended structures lest they take into account a transformative culture when organizing and working, one that is not concerned with hierarchies but functional roles.

Much remains to be done towards adopting a responsive land tenurial framework. Similarly much needs to be done with respect to conduct concerted advocacy not only in what should be but in monitoring the implementation of the Act. Indeed, whether the new legislation is achieving what it intended to achieve remains an open question. Experiences on the ground with regard the application of the Land Acts and particularly on routine matters such as gazetting of directives, issuance of certificates, registration of titles, adjudication and the payment of compensation remain under researched areas and thus do not inform the content of advocacy agendas. Thus for example, during the recent Constitutional amendment debates touching on the Bill of Rights notably on proprietary rights, activists could not make a case for land becoming a constitutional category intended for Tanzanians in part because no data was available to show how Tanzanians have fared since land liberalization.

Similarly, there is need to bridge the diverse initiatives and voices concerned with the wider spectrum of land matters to provide a more holistic and comprehensive frame of analysis, on the one hand, and a more representative platform on the other. Perhaps it is opportune to form a land network or coalition concerned with shaping a collective national agenda on matters concerning land and development to inform public policy. Short of this, land activists will fail to mobilize the institutional and popular support necessary to implement a national reform agenda.

Marja Liisa reminds "international and local efforts to overcome material poverty can succeed only if they recognize the wholeness of life which binds the villager to his her tradition, to neighbours and relatives and creates communities. Land tenure systems and their reforms/ reformulations only make sense when linked to the whole question of social relations among individuals, groups of people in general and the mode of land and natural resource control. Therefore, land tenure issues cannot be treated technically: they are social and political and must engage citizens in participatory policymaking as the ultimate assertion of national independence. (Chachage, Shivji:1996a).

In activist circles, this is the impetus for linking land and democracy.

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Abbreviations

Ed.	Editor
NALAF	National Land Forum
GLTF	Gender Land Task Force
§	Section
G.N.	Government Notice
BAWATA	Baraza la Wanawake Tanzania (Tanzania Woman's Council)
LA	Land Act
VLA	Village Land Act
VC	Village Council
CSO	Civil Society Organization
NGO	Non Governmental Organization
IFI	International Financial Institution
Prof.	Professor
EASSI	The Eastern African Sub-regional Support Initiative for the Advancement of Women
No.	Number
DFID	Department of Foreign International Development
Km	Kilometer
WLAC	Women Legal Aid Center
USD	United States Dollars
Tshs	Tanzanian Shillings
HIV	Hum Virus
AIDS	Acquired Immune Deficiency Syndrome