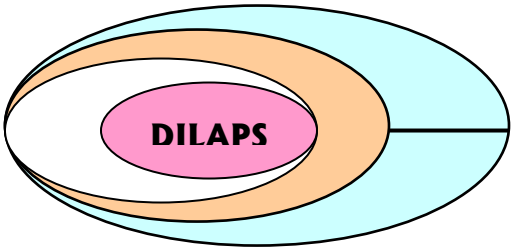
TANZANIA'S EXPERIENCE WITH LAND ADMINISTRATION AND LAND POLICY REFORMS IN A HISTORICAL SETTING



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INTRODUCTION:

Land Policy reform has been gaining prominence in developing countries of late. This is not an accident. Reforms are being given due weight in the drive for poverty reduction strategies and because any further neglect thereof allows untold conflicts and disputes to surface where calm seemed to prevail. Land is the space for all human activities and it is because of this fact that responsible governments, the world over, desire to ensure good custody of land through grant and guarantee of land rights. Land Policy Reform is a mechanism aimed at supporting good governance and paving way towards secure investments in food production, housing, infrastructure development and environmental protection, among other benefits. However, sustainable land policy reforms are built against the backdrop of sound political, economic, legal, institutional and technological frameworks that are pivotal to guaranteeing land tenure rights. In this regard therefore, a good land administration system is an essential component of any democratic Government. It supports land development in the broadest sense as a part of socio-economic development that stands firmly on good governance principles. Further, land administration enables the state to broaden its revenue base through equitable taxation and levies at the same time.

Major world organizations (e.g. the World Bank, the European Union, Donor Agencies, etc) concerned with economic and human development have, in view of the overwhelming advantages recently worked out, issued guidelines and involved themselves in assisting in Land policy reforms particularly, in the developing World. About a year ago, the African Union (AU) also announced its intention and resolve to work on land policy reform guidelines for countries of Africa. This is understandable as the economies and peoples of all countries in Africa, especially those of sub Saharan Africa, would benefit immensely from such guidelines. It is important to note however, that although land issues have a universal nature, there is no single or simple prescription for reforms that suit all countries. In fact, it would be possible to have several prescriptions even within a single country due to the diversity of relations with land prevailing within ethnic and regional groupings. This fact points therefore to the difficulty facing the AU in this endeavour and the extent to which the product of their work could have meaning, or otherwise to individual African countries.

A general view of production modes in African countries shows that many are more rural and agrarian than are urbanized and industrial. This means that the majority of nationals in these countries earn their livelihood directly from the land as producers or labourers. In this regard, issues of land access, land rights and land

tenure are of prime importance to the lives of the majority of people and the economy at large. Much care is needed in molding policy options since land issues are issues of the majority population in communities.

One needs to note further that various African countries, as free nations, differ in their stage of development with regard to addressing issues of land access and distribution. A few such stages are worthy of note: Firstly, at one end of one spectrum would be countries in which communities some are yet to settle permanently on the land and simply put, have not developed firm land ownership relations. In some such incidences governments do not have policies geared at land distribution within legal frameworks. Secondly, there are countries that have been encumbered with internal conflicts, including full-scale war, being fought on the very land needed for production and economic development, whilst some are far from reaching consensus on land policy, let alone land laws. Lastly, at the other end of the spectrum would be countries that have populist land policies, and laws and are at stages of building strategies for a land dispensations that recognize and uphold land rights, security of tenure and enabled land markets.

Land policy reform issues in different countries are quite diverse in nature. For example: (i) issues of concern to countries upholding some role of tribal chiefs in local government would not work where chiefs have no part to play in land matters, (ii) issues concerning post-colonial conflicts between former settlers and natives would be specific to such situations and probably differ from issues in countries that had no settlers economy or where the settler legacy has been absorbed; and (iii) issues that evolve as a consequence of complexities in social relations that are again, specifics of countries or even ethnicities. Whatever issues constitute a priority and whatever their gravity on the socio-political agenda, one thing is clear and that is that guidelines to land policy reform ought to take a very careful analysis of prevalent and emerging issues prior to their being internalized. Also, the parameters of their application should be made explicit.

Tanzania may have something to offer in a way of experience since it has had a rugged path in land policy reforms over the past century. Several unique experiences in land tenure and policy, and hence in land administration, standing out conspicuously include the fact that Tanzania is one country: (i) that abolished the powers of Chiefs, among other things, over land within two years of independence. This act that was initially greeted with suspicion and had temporarily left a void in local land administration, but soon people got used to not having royal blood among them and getting leaders by the ballot. (ii) that abrogated on customary tenure and almost extinguished it in law, but not all could be subdued and has made a come back with a bang as a shining beacon for other countries to learn from. (iii) that tried with several band-aid solutions to make the colonial policies and laws palatable to national aspirations, without success, until it learnt the hard way to ask the people in a participatory way to define their own land tenure policy, and save the day. However, until this stage some untold experiments had been done on people's land relations, enough to stifle land development and degrade the landscape with such a damage that could take long to reverse. And (iv) in which consensus on a land policy was prolonged, as was the development of new legislation and repealing the old land laws. Equally, many years past before a strategic

plan was put in place. But, at least on the record now Tanzania has a careful and systematic process of redefining people's relationships with the land that cherishes customary rights with elements of freehold tenure and legal framework to address grievances.

On the historical record stand several historical milestones including: (i) the fact that the Berlin conference of 1884 and subsequent processes in Europe's "scramble for colonies" interrupted the free development of land tenure in Africa; (ii) adventurous European and Asian tribes emigrating and roaming parts of the continent prior to colonialism found their fate sometimes alongside with the indigenous tribes of the continent; (iii) local customs and traditions were often contradictory to those of adversaries on their way, within the general rule of thumb of "the winner takes all"; and (iv) colonial regimes halted free movements of people across the continent. It is unimaginable as to whither way self-advancement would have propelled people's relations with the land in various communities. Perhaps, the development of socio-economic formations would have wholly defined tenure issues or clan, ethnic and tribal conflicts would have taken hold as a part of historical dynamics, if uninterrupted by foreign guns and battles. History tells us that conflicts that were pacified at some point when subjugated powers succumbed to the victors, seems to have been resuscitated at independence upon the rise to the throne of the under dog in wholesale takeovers of policies of former enemies. Today, in many African countries, meaningful land policy reforms are being demanded by the people rather than designed by those in power. This is a new and progressive development.

Whatever the historical setting, the role of the land policy reform guideline development, as proposed by the African Union, would be that of providing leads on policy options to the African governments of the day and facilitate initiatives to engage the people in meaningful policy reforms for the benefit of all so as to guide land administration in taking up its proper place for development and reduction of poverty.

In a nutshell, land tenure is an important aspect of human life. The value of land has widely been acknowledged by all and with this awareness issues have emerged that are not easy to reconcile, even within a country or geographical regions thereof. The result of awareness in the value of land has many advantages for land tenure but has also unfortunately, fueled a rise in explosive conflicts such as those occurring in Zimbabwe and other less explosive such as the lack of consensus on land policy and land administration approaches in many African countries. This paper discusses six key issues in a land reform agenda for Africa by tracing human relations with land in Africa using Tanzania's experience. The author hopes to make a contribution to focal issues in land policy reforms that may constitute guidelines to those wishing to learn from neighbours' experiences. The six highlighted issues in this attempt are: (i) historical land tenure developments; (ii) pressure, both internal and external, brought to bear on land policy makers; (iii) the cardinal role of customary tenure in a non-industrialised economy; (iv) gender issues in search for equitable access to land and land rights; (v) titling in rural lands and the importance of a well crafted physical adjudication process; and (vi) an informed position of land-use conflicts and land tenure disputes with regard to tenure security enhancement.

1. SOME LAND TENURE LESSONS FROM AFRICAN HISTORY

Ghana, the first of African Countries into self-governance recently celebrated 50 years of independence as a nation free from the yoke of colonial rule. The celebration was more for regaining freedom to self determination than from interruption of those freedoms. It is well known that there have been people living in those environs for thousands of years as free people in a natural setting. Their freedom was without boundaries and it propelled movements across that continent, some of whom have migrated as far south as the Congo basin. The legacy of the Ghanains with the land is unique in its own way as is that of other peoples who are indigenous to the continent of Africa. The Shona people of Zimbabwe, for example, interpret the name Tanganyika (*tanga nyika*) as "first country" and many believe that Tanzania is their country of origin. If this is true then the fact that there are not a Shona people occupying present day Tanzania makes one eager to learn more about their relations with the land and why they had to abandon it at some point in time in their history. This section examines Africa's historical lessons to land tenure with details from Tanzania's recent past.

The background on historical land tenure issues in the African context, is sought by examining historical facts covering several time periods. The first will start in 1500 and go to 1895, a period that saw the emergence of pockets of feudalism before the beginning of colonial adventures on the continent of Africa. The short study shall therefore examine attitudes to land prevailing among Africans shortly before the dawn of colonialism.

The colonial era that followed immediately after this period shall be divided into two phases, namely; the German and British periods. This era will be highlighted because of the manner in which land tenure was institutionalized in policies, ordinances and land administration decrees and statements in colonies, many of which are still honoured today in various countries. Although shortest of them all, the post-colonial era is better understood by examining several segments thereof in Tanzania, namely; the early post independence, the Ujamaa and subsequent land security rejuvenation periods - period of involving grassroots consultations in shaping land policy, laws and strategies.

The Years 1500 – 1895 Are Known for Loose Attachments to Land:

It is known from history that in the years preceding colonial interventions in Africa, land constituted the major means of production, as it is today but unlike these times, land was vested in groups such as family or clan - the head of which was responsible for the land on behalf of all kin. Many Historians believe that whenever a new group of kinsmen arrived at an area, they often made a pretence that they too had ancestry dating back to the settling of the land and there were no counter claims as they settled on unoccupied land, themselves being on transit, fueled by external forces such as hunger, fierce wild animals, drought, disease, loss of clan elders, etc. Of particular note is the historical revelation that land did not feature as a property and its value was insignificant as there was more land wherever the next migration would propel them to go (Rodney, 1974).

The historian Cliffe (1982) states in his works that many parts of Africa, in this period, had in common the dependence on

family-based, small-scale agriculture. They probably also shared the common guarantee that no family was denied access to land, the means of livelihood. But the fact that land was not everywhere a "property," meant that land rights were vested in the extended family and not the individual. We get the vestment concept from these early years in African history. A "pastoral," mode of production, not based on crop husbandry, should also be recognized as dominant or at least present in several areas of Africa, which were wholly or largely dependent on livestock. The difference in production relations between farming and herding communities lies not merely in the fact that they revolve around domesticated animals, rather than land as the basic means of production. In clear terms, *pastoral clans and tribes had a greater attachment to the land than agricultural clans and tribes*. Yet because of their nomadic nature in search of pasture, water and pest-free environment, they never claimed ownership of the land. Once emigrated the herders never came back to settle on the same land. Walter Rodney, writing on land ownership insisted that "the notion of ownership, even though hedged about with complex kin and other relationships that provided for redistribution, existed on many possessions, but land was never owned."

It was only towards the end of the 18th century that great feudal states emerged in Africa. In the West, the states of Dahomey and Asante became prominent. In Central, Eastern and Southern Africa arose feudal states in Ethiopia, Great Lakes Region and the Zulu from the south of the continent. These developments in Africa from 1500-1895 meant that some African social collectives had become more capable of defending the interest of their members, as opposed to the interest of people outside the given community. Thus the inhabitants and rulers of these states became involved in clashes with neighbouring states. Any ruling class "immediately sought to take control of the land, but in accordance with settled African customs, they later tried to project themselves as the original owners of the land, rather than usurpers" of it. It is however noted that at no stage in the independent history of these states did land become purely a personal possession of the chief or king, etc, to be monopolized by a given class, as under European feudalism.

Colonial Impositions bring about a new and foreign order:

The sealing of borders around territories, through the Berlin Conference decrees and provisions of 1884, and the introduction of internal administrative boundaries including the appointment of chiefs by the colonial governments, where none existed, meant that the colonial powers stopped large-scale migrations and nomadic practices in many African countries. In this regard, only small-scale migration of herders and some of farmers, which were engineered as Government programs, continued. Historians agree that at the inception of colonialism land ownership concerns overrode mere land control. The colonial Governments introduce the ownership concept to settlers but was denied of the native populations, save for ad hoc powers granted to chiefs and clan elders, as it can be clearly seen in examining Tanzania's experience.

Traditional land holding in 19th Century Tanganyika was based on customary laws of various ethnic groups. Land was communally owned and chiefs, headmen and elders had the powers to administer lands in trust for the communities. Such a situation continued throughout the colonial era, though largely constrained by German and later, by British colonial rules.

German Decrees the Rights of Occupancy Concept in Tanganyika:
Germany issued the Imperial Decree of November 1895, which declared that all land in *Deustch Ost Afrika*, whether occupied or not, was to be regarded as "not owned". This is seen to be much of a show of authority over existing clan and tribal rulers as it was over land. All that followed with regard to land policy thereafter was to reveal the essence of domination and subjugation. The lands were to be vested in the Empire as crown lands. In total disregard of any existing land dispensation, the decree introduced the concept of a right of occupancy as distinctly different from ownership of land. On one hand, statutes introduced ownership, as a concept that required evidence and could be proved only by documentary evidence. Land Occupation also became a concept with nothing in common with ownership. Occupation of land was to be recognised if the land was under cultivation and was used through dwellings that were erected on it.

In practice, only settlers or immigrants could provide documentary evidence and thus enjoyed granted rights of occupancy and state guarantees of tenure security. Settlers also therefore enjoyed other pertinent legal rights including the right to sell or lease-out their lands. On the other hand, the indigenous people were left with permissive rights of occupancy on the lands that now belonged to the imperial state. By the end of the German era in 1914, some 1.3 million acres of fertile lands in the northern highlands and the coast Districts had been alienated from customary ownership and use to settler interests.

The British Statutes Legislated the Concept of Public Lands:
Continuing the disregard for the interests of the native people of Tanganyika, as were the Germans, British land tenure policy was shaped by two major factors. The first is Tanganyika's international legal status as a mandated territory of the League of Nations, now the United Nations that conferred upon it the status of a "trust territory". The second factor was British colonial policy for Tanganyika irrespective of the UN mandate. British policy was developed so that Tanganyika was to be a source of raw materials for industries in Britain. It is not difficult for one to see reasons why Tanganyika was transformed into plantations and encouraged peasant farming to produce cheap raw materials for overseas markets. Article 8 of UN Trusteeship Agreement required Britain to "take into consideration native laws and customs" and to "respect the rights and safeguard the interests of both present and future of the native population''. As it turned, out this agreement was not respected. In 1923, the British passed the Land Ordinance (CAP 113), which did not consider the UN requirement as a specific article except in the preamble.

The legacy of the Land Ordinance enacted by the British was the following: (i) all lands, whether occupied or unoccupied, were declared to be public lands, except for the title or interest to land, which had been lawfully acquired before the ordinance (Section 3) came into force; (ii) all public lands were vested in the Governor to be held for use and common benefits of "the natives"; (iii) no title to the occupation and use of any public lands would be valid without the consent of the Governor (Section 4); (iv) a new land tenure system, i.e., the right of occupancy was legally introduced to be granted by the Governor.

In 1928, the Land Ordinance was amended to give legal recognition to: (i) customary ownership; (ii) right of occupancy (iii) a title of a native or a native community lawfully using or occupying land in accordance with native law and custom (Section 2). However, deemed rights were not categorically stated to have the same security as granted rights in the law and were governed more by administrative policy and practice. Under British rule 3.5 million acres were alienated from native lands towards settler interests.

Land Tenure in the Early Post-Independence Period in Tanganyika:
The national Government in Tanganyika inherited the colonial laws and policy on land at independence. The new dispensation continued to vest land in the state as the ultimate landowner, without any significant modification (except the changes in the title of ultimate owner, or the radical titles, from the Governor to the President). The role of Chiefs and Clan Elders on land that had somewhat been spared from colonial intervention was farther substantially diminished with changes in governance when in 1963 executive powers of Chiefs and Chiefdoms, were abolished. The Chiefs rule, that had hitherto been a part of local government machinery, lost grip of land administration to their erstwhile subjects. Since 1963, elected village councils replaced chiefs, headmen and elders who have henceforth been responsible for administering village lands.

In a period of 35 years of independence, the Tanzania Government introduced only marginal reforms and amendments to the inherited Land Ordinance and supporting legislation. Some legal reforms were introduced in 1963 when Freehold Titles were converted to Government Leaseholds. The effect of these changes was to reduce interest in land from being perpetual to a definite period with a maximum term of 99 years. Further, in 1965 the Rural Farmlands (Acquisition and Regnant) Act was passed enfranchising the Nyarubanja tenants to do away with feudal tenure in northeast Tanzania. The Act was amended in 1968 to include all types of customary tenants including, feudal tenancies in Pare, Moshi and Tukuyu Districts in 1969. Government leaseholds were also converted into rights of occupancy in 1969 and land rent and development conditions, similar to those pertaining to a right of occupancy, were attached to all leases. It is acknowledged that these were primarily legal reforms and neither land reforms nor land rights reforms in perspective.

Land rights reforms could have been directed at granting and guaranteeing landed property rights mindful of the fact that land is a limited resource. In this regard land rights that are monopolistic by nature have to be secured by the Government if the owner is to enjoy them, without encumbrances, and enable economic growth and poverty reduction. Tenure security includes legal restrictions on access and against trespass and other forms of violations from non-rights holders. However, it also means that legal mechanisms for access to shelter and landed recreation facilities, by non-rights holders, have to be put in place through land use agreements, way leaves, public rights, etc.

The Ujamaa Period and the Land Policy Reforms Question:
The Villages and Ujamaa Villages Act No. 21 was passed by parliament in 1975 giving powers to Village Governments to acquire and plan land within their boundaries. Ujamaa villages were off-springs of the villagisation programme that created

nucleated settlements in many parts of the country. In the implementation of this programme, people were removed, sometimes forcibly, from their isolated homesteads and were brought together in designated settlements, mostly along roads. There, each family was given a piece of land for housing construction. Land for communal services, such as schools and pasture was also provided. The programme was carried out rather hurriedly and in many instances in an *ad hoc* manner. The question of possessory rights to land was not a part of the legislation. By 1979 there were about 15 million people living in 8,300 Registered Ujamaa and Development Villages on mainland Tanzania with a population of 250-500 families or 1,500 - 7,500 people per village, displaced from ancestral lands. (SPILL, 2005).

Summary of Century-old Relations with the Land in Tanzania:

In Summary, Africa's and Tanzania's historical experience points to the fact that land control by communities was more of concern than land ownership in the years before the advent of colonialism. There being abundant land for everybody's needs, the issues of land-use and production for each homestead were given priority over ownership. Also history reveals that community leadership in whose hands land was vested guaranteed access. Land tenure security was therefore, not individualised but was provided in a collective way through clan and tribal leadership.

Colonial history on the subject of land access and tenure is seen in terms of conflicting interest between occupiers and natives. The setting and fixing of administrative boundaries by these powers forced many a people to settle dawn, and respond to the wishes of the colonial masters. Only occasionally, where it suited them, was customary land tenure allowed but also under the strong and watchful eye of decrees and legal statutes. Foreign concepts were also included to govern colonial interests including concepts of Right of Occupancy and Public Land. Ownership of land and occupation thereof were made distinctly different concepts for the native peoples of Tanganyika contrary to their norms.

At independence most countries in Africa, and Tanzania in particular, inherited the colonial laws and policies that had been in force on the land question. These continued to vest land in the state as the ultimate landowner, without any significant modification, upholding the new order such as the leasehold systems where these existed. Land tenure reforms were rare. Legal reforms were introduced to conform with the politics of the day but, were largely cosmetic and often of a trial and error type. Again, the reforms worked towards upholding colonial arrangements and often diminishing influence of customs and traditions of local people.

Factors shaping Land Policy have therefore a historical context but history is neither homogeneous nor free from conflict. Consequently, broadly agreeable and acceptable land policies within jurisdictions are rare and where possible are short lived. A localized historical study of each scenario is important if land policy reform policy is to have a national significance. Historical developments studies ought to establish land tenure forms operating within key time frames in the localities and what should rightfully be claimable or otherwise at various epochs of time.

2. ISSUES OF ACCOMMODATING CONFLICTING POLICY OPTIONS

There were obvious reactions to the new concepts introduced by the colonialists including the very concept of centralised government, let alone changing modes of production. In his various studies Cliffe (1982) shows that colonial governments were firstly, ***insensitive*** to the fact that friction could arise, as it often occurred in the Kikuyu land case, between customary interests also such as between clans and between tribes so as to inhibit land-use (Cliffe, 1982). Secondly, they were also insensitive to what the money-economy they had unleashed in the colonies would do in accelerating production, and hence compel the peasant farmers to want to grab larger chunks of land at the homestead, clan and tribal leadership levels. Other studies particularly by Ndlela, (1981) and Rodney (1974) argue that the wishes of the colonial governments were focused on law and order that were cemented in government policies and legislation over land, but taking advantage of the ignorance of tribal peoples regarding the nature and purpose of European rulers whose interests were at most mysterious to the people. Such is the environment taken over by the post-independence national governments. It is no wonder that attitudes of dissatisfaction were commonplace. Land reforms and people centred policies should therefore be introduced in countries that were subjected to colonial rule, including Tanganyika so as to reverse the tide.

Land Tenure Security and the Land Market (Local vs. Foreign Investment):

Recently, the central issue in land policy reform has been on how Governments ought to address themselves to the issue of the apparent tension between, on the one hand, freedom to deal with the land in the market and, on the other, protection of occupiers and users of land. Talking from the legal point of view, Fimbo, (2004) identifies these as two sets of pressures operating on policy makers in the process of land law reform processes. Firstly, there is internal pressure, which point in the direction of desiring to strengthen the security of tenure of those, mostly nationals, earning a living out of the land. Secondly, there is also an external pressure, which point in the direction of facilitating the operation of a market in land. The latter pressure seeks to open the way for large-scale foreign investment particularly on village lands. Government seems receptive to both pressures duty bound to mediate between the two often non-complementary forces, represented on one hand by customary landowners and civil society organisations and by the private sector and national development partners on the other. Donors, led by the World Bank emphasize legal institutions and their role in the creation and operation of a market economy and practices of "good governance." The market economy is seen as the key to social and economic regeneration.

It can be recalled that there was an unprecedented high level of involvement of the civil society in Tanzania in the developments that lead to and culminated in the national land policy (NLP) of 1995. Such a partnership continued after the NLP with civil society organizations leading the way and often side in arms with the lands sector Ministry in Government, in advocacy programs in order to facilitate the operationalisation of the new Village Land Act No. 5 of 1999. The concept of village land with own legislation that recognized a form of freehold tenure (customary tenure) has received great acclaim as a triumph in the management of village lands. It is acknowledged to be the solution that the colonial empires failed to develop when imposing administrative boundaries and imposing their laws in the colonies.

Pressure on Village Land-Use and Local Advocacy:

However, shortly after the passing of the new land laws, an amendment to the land Act No. 4 of 1999 was hurried through parliament by Bankers seen to represent market interests. The Gender Land Taskforce advocates, of over ten NGO's and CBOs, reports that the amendment did not adhere to the consultative processes used in the run-up to the enactment of the new land laws. In so doing the amendment reversed many of the achievements of the NLP and new land laws with regard to common ownership, undeveloped (bare) land and notices with regard to mortgages, among others. The amendment is by far seen to favour the lenders in a mortgage and the civil society organisations have called for a re-examination of these clauses.

A sample of villagers who participated in a series of meetings on the fundamental principles of the NLP in context designing a strategic plan for the implementation of the land laws (SPILL) in 2004, wanted the Government to re-distribute land in such a way that each family received enough to assist in the reduction of income poverty. It was emphasised that this issue be given greater emphasis even if it meant for the Government to resettle people from their current homes in search of larger acreages for economical viability.

Poverty Reduction and Donor Pressure for Investment on Land:

At nearly the same time as the first amendments to the Land Act No.4 of 1999 were going through parliament, the donor community was pursuing other objectives towards a strategy that could open up the agricultural sector to investors. The lands sector Ministry in Government was called upon under the poverty reduction strategy (PRS) and the agricultural sector development strategy (ASDS) and programme (ASDP) to design a strategy for the implementation of the new land laws.

The Preparation of a Strategic Plan for the Implementation of the Land Acts was a required Government action by March 2005 under the Performance Assessment Framework (PAF) for Poverty Reduction Budget Support (PRBS) and Poverty Reduction Support Credit (PRSC 3) from donors including, the World Bank and European Commission (EC). Many a government programmes therefore depended on it. The strategic plan for the implementation of the land laws was therefore drawn up and has since received funding from the World Bank and European Union.

At the same time as SPILL was being developed, the government of Tanzania approved the National Strategy for Growth and Reduction of Poverty (NSGRP) in early February 2005. The NSGRP or MKUKUTA is a continuation of poverty reduction strategy, also known as PRSII, but much broader and responds also to the achievement of the millennium development goals (MDGs) in Tanzania.

The Government has emphasised that it recognizes that the achievement of MKUKUTA presents an overwhelming yet necessary challenge that must be met if the people of Tanzania are to achieve their development aspirations. To meet MKUKUTA's operational targets, the financing plan is being based on an assessment of sectoral needs and the cost of interventions for achieving the needs. Any financing gap is unlikely to be met by current projected resources from domestic mobilization and ODA. Additional resources required for NSGRP would be mobilized, from development partners

through international and local advocacy for increasing international financial assistance for the MKUKUTA/MDG-related investments.

The Lands sector has been identified as a key sector in the success of this strategy and because of this endeavour the lands sector is receiving much more attention than it has ever received. In particular, a land bank is being created to facilitate foreign investment through the Tanzania Investment Centre, TIC. Needless to say that land parcels for the land bank come out of village lands. As more land is alienated one is likely to see changing attitudes also.

In summary, both internal and external pressures operate on policy-making processes. Internal pressure presents itself as a local quest for equitable distribution and tenure security guarantees for poverty reduction. External pressure include markets forces, trade, globalization, aid management, etc. These pressures could create tension and non-ending debates at all levels and could influence policy either way, as often it is not easy to strike a balance between them

3. ISSUES SORROUNDING CUSTOMARY LAND TENURE:

The historical revelations made earlier regarding the attitude of family, clan and tribal elders to land tenure is significant in that it enables discussion on the start of customary tenure dispensations in various territories including Tanzania. Clearly, the start of customary tenure in some areas should be tagged to the period of permanent occupancy of the land. To some it could be as late the time of conquest over neighbouring tribes that established control over new lands. But to most people customary tenure commences at the start of occupation of lands and within bounds of the same land on which they had lived up to the time of colonialism, i.e., the onset of colonialism is the landmark. However, in discussions over land policy reform interactions, this date is neither significant nor important. More important are tribal land displacements accruing thereafter which could lead to claims in the name of ancestral lands as discussed earlier under historical development.

Displacements from Ancestral Lands:
Customary tenure, upheld through tribal traditions, assured that economic interests of each member of the clan were preserved. When properly considered, this principle can still guide policy on employment and poverty reduction at national level particularly, in agrarian economies. It must be recalled here, that colonial interventions that declared all land as “not owned” left many natives labelled as trespassers on their ancestral lands. This colonial policy resulted in many lands poorly managed (deforested, eroded, and derelict) and refuelled migrations both voluntary and forced. The benefactors of the policy can point to land developments in the interest of “the economy” as an advantage worthy the course. But it is development at the cost of many native peoples in turn being displaced from settled lands to start life a new.

In Tanzania, development activities that fuelled displacements of natives from their lands by this colonial policy include: (i) development of sisal, tea, coffee estates; (ii) development for way leave to pave way to various forms of infrastructure; (iii) the development of Towns; (iv) development of ujamaa villages, etc.

With regard to displacements caused in implementing ujamaa village policies, the law now makes the process irreversible as

per section 15(1) of the Village Land Act No. 5 of 1999. All former owners of customary land rights on these lands cannot claim or have such rights converted under current dispensations. This does not mean that affected peoples are satisfied with the clause. In a land issues meeting in Kiagata, Musoma District, in 2004, delegates herd of claims and counter claims of property including graveyards that authorities had refused to return to families affected by displacements during villagisation. Ill informed village officials often enforce the quoted section instead of applying simple common sense and logic. One affected lady thought the decisions were ridiculous in the least and would not avert further conflict.

Tempering with Customary Tenure in Ujamaa Villages in Tanzania:

We explore the scenario in Tanzania about a decade into independence as reported by Professor G. M. Fimbo. The Tanzania Government economic planning blue print at the time was the Five-year plans. The first Five Year Development Plan sought to achieve rural transformation through village settlement schemes under the so called Transformation Approach recommended by the World Bank Mission in 1960. The view of the government was that there were two cardinal problems of peasant production, namely, land tenure and agricultural underdevelopment. It felt that the solution to these problems lay in the transformation approach whose stated goal according to Fimbo was *"the introduction of technical, social and legal systems which allow the exercise of modern agricultural techniques based on relatively high productivity and which consequently justify considerable investment in capital."* The focus of this approach was towards regrouping or resettling of peasants in new lands through capital-intensive new settlements, which were supervised by government officials.

Village settlements were governed by the Villages and Ujamaa Villages (Registration, Designation and Administration) Act No.21 of 1975. Fimbo (2004) analyses the situation further that the said Act, did not contain any provisions on land tenure. The obvious question would be that how would anyone moving into a village acquire land and how would the same dispose of land wherever s/he is coming from? In practice, the village council of the ujamaa village government was obliged to *"take such measures as may be necessary to acquire rights of occupancy in respect of land within the limits of the village and no other person should have any right, title or interest in or over any land within such limits"* . Such provisions were included in 'Directives' made under Act No. 21 of 1975 and published in the Government Gazette as G.N. No. 168. It was intended that anyone living in a village would not receive title to land. In other words, customary tenure would cease to exist. The whole essence of land rights in village lands and corresponding benefits would be meaningless, thus opening up to chaos and poor custody of land.

Resurgence of Customary Tenure in Rural Tanzania:

The Regulation of Land Tenure (Established Villages) Act, No. 22 of 1992 was instrumental in the relocation of peasants during Operation Vijiji without compensation and hence a cause of land tenure confusion and numerous disputes in Tanzania. The clauses were held to be unconstitutional and struck out of the statute book by the Court of Appeal of Tanzania at the instance of two peasants in Attorney-General Vs. Akonaay and Lohay.

The 1992 Shivji Commission recommended two forms of tenure, that is to say, the right

of occupancy and "customary rights." On the relationship between the two it stated that (Fimbo, 2004); "The land tenure system is based on multiple land regimes all existing side by side and none of which should be considered superior to the other and interests under each of them shall enjoy equal security of tenure under the law." This recommendation has found way into the Village Land Act No.5 of 1999, which divides village land into communal land and land which may be occupied or used by an individual or family or group of persons under customary law. The latter can be issued with a certificate of customary rights of occupancy (CCRO) in the name of the landholder.

Customary tenure does not apply to village land only; it also applies to general land, reserved land as well as urban land and peri-urban areas. Fimbo reports that in an earlier case whose decision was delivered on 21st June 1985 the same judge had affirmed the decision of the trial judge that a holder of land under customary tenure can only be evicted or dispossessed under the provisions of the Land Acquisition Act, No 47 of 1967.

Implementation of Customary Tenure in Tanzania's Context:

Fimbo (2004) argues further that under the Village Land Act: (i) a villager may freely assign his customary right of occupancy to another villager or group of villagers upon notifying the village council, on a prescribed form, of the proposed assignment. An assignment of a customary right of occupancy to a person or group of persons that are "not ordinarily resident" in the village, must be approved by the village council. He argues further that the provisions are significant in two respects. Firstly, they limit the discretion of public officials thereby reducing opportunities for corruption. Secondly, relaxation of requirement of approval for dispositions tends to facilitate development of a market in land.

The Village Land Act does not contain provision for revocation of deemed right of occupancy or customary right of occupancy by the village council. It employs a different terminology, that is to say, *deprivation of land under customary right of occupancy*. This sanction can be invoked only if the relevant customary law so provides. The condition precedent is breach of a condition imposed under and in accordance with customary law. The necessary steps are as follows: (i) the village council issues a warning to the occupier advising him that he is breach of condition; (ii) the occupier makes representations; (iii) the village council determines to proceed to exercise a customary law remedy; and (iv) the Commissioner for Lands consents (ibid.).

Tenure Security and Access to Customary Land:

Fimbo (2004) argues further that Land allocated by a village council "whether made under and in pursuance of a law or contrary to or in disregard of any law" is confirmed to be held for a customary right of occupancy. These provisions have promoted the holder of customary right of occupancy from a bare licensee to a rights holder.

Under section 20-(1) of the Land Act the law provides that a non-citizen of Tanzania shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act, 1997. It is intended that land for investment purposes will be identified, gazetted and allocated to the Tanzania Investment Centre (TIC) by

way of right of occupancy. The TIC will, in turn, grant derivative rights to investors.

Fimbo (2004) elaborates that the above restriction on access relates to direct grants of rights of occupancy from the government. The Act does not restrict other forms of acquisition of land rights by non-citizens. There is no restriction on purchases from government through auctions or tenders or from the Presidential Parastatal Sector Reform Commission (PSRC) in the process of privatization of public enterprises. Further, a non-citizen may obtain a derivative right from a village council (section 32 of the Village Land Act). Nor is there any restriction placed on purchases, by non-citizens, of rights of occupancy or even customary rights of occupancy in the market place. Further, there is no restriction on purchase by non-citizens of shares in companies holding rights of occupancy. The thrust of the legislation is to enable foreign investors to access land since they are considered agents for development.

In summary, customary tenure evolves out of native use of land and as such it appears to take care of the basic human needs of shelter and food for all. Customary land rights lay at the foundation of native people as a basis for their livelihood and source of their identity. Customary tenure therefore provides and restores human fundamental dignity of belonging to some ancestral land, which should only be relinquished at will in favour of other land tenure (freehold, leasehold) systems to facilitate a multiplicity of land uses and land users. Registrable customary tenure can be correctly labeled as the corner stone of land tenure systems in sub-Saharan Africa that has a central role to play in poverty reduction in agrarian economies.

4. GENDER RIGHTS AND POVERTY REDUCTION ISSUES

Land policy reform in the modern context is about equitable land redistribution and guaranteeing land rights and tenure security to enable economic growth and poverty reduction. Land has a particularly significant role to play for securing the livelihoods of poorer rural people. More than half of population in many African countries lives below poverty line subsisting on less than US $ 1 per day and a significant part of this poor populace, live in abject poverty on less the US $ 0.75 per day. Since land is a primary means of both subsistence and income generation in rural economies, access to land, and security of land rights, are of primary concern in improving on such statistic towards the eradication of poverty.

In rural areas, land is a basic livelihood asset from which people produce food and earn a living. Access to land enables family labour to be put to productive use in farming. It is a source of food, and provides a supplementary source of livelihoods for rural workers and the urban poor. The grazing of livestock on extensive rangelands is a basic livelihood activity for pastoralists and access to pasture land. Gathering fruits, leaves and wood from common land is an important regular source of income for rural women and poor householders, as well as constituting a vital copping strategy for the wider population in times of drought and famine.

Land can be loaned, rented or sold in times of hardship and thereby provides some financial security. At the same time as a heritable asset, land is the basis for the wealth and livelihood security of future rural generations. In this regard, it is important that the lands sector must

develop policies geared at giving every adult in the rural areas legal access to land.

The contribution of land to economic growth depends upon the security of tenure, duration and the enforceability of property rights since these provide an incentive for agricultural investment and helps develop markets to rent and sell land (Mtatifikolo and Lugoe, 2006). Land markets, enable the transfer of land from less to more efficient producers, thereby increasing yields and agricultural output. Increased agricultural growth will bring benefits not only to those receiving titles directly, but also to the poor as a result of more employment, cheaper food and other trickle down effects. However, in some cases land titling may benefit few powerful private interests and create opportunities for land concentration and speculation rather than investment. Hence, the land market has to be carefully regulated to produce the desired results of poverty reduction, economic growth and development.

Women's Land Rights Victory in Tanzania:

A key aspect of the land tenure system of Tanzania as provided in the Land Act no. 4 and the Village Land Act no. 5 of 1999 is the enhancement of the right of vulnerable groups (women, children, minorities) in society (Shivji, 1997). The male dominant structure of society governs nearly 80% of the rural population including succession and inheritance in Tanzania. The problems are deep-rooted in succession or inheritance of immovable property including land by the female gender. Custom, culture and certain religious practices have combined to produce a bias against vulnerable groups.

Both Land Act No. 4 and Village Land Act No. 5 of 1999 have attempted to put into effect the above sentiments with provisions relating to repugnancy of customary law, acquisition of land rights and sales or assignments of land and mortgages. A number of critical statements against gender discrimination are provided in the Land Act no. 4, in the context of co-ownership and mortgages (see sections 85, 112, and 161 (2)), which apply to the Village Land Act as well. The latter is very specific on the rights of children in sections 20(2), 23(2) (e) (iv), 30(3) c) and 33 (1) c) and that of pastoralists in sections 29 (2) (a) (iii), 3 (1) (l), 7 (1) and 8 (8) (d). The Village Land Act provides for a representation of women (at least 25%) on the Village Council, at least 4 members of the Village Adjudication Committee and at least 3 on the Village Land Council (dispute settlement) to guard against discrimination in the access to land.

In the context of Tanzania, as an example to Africa, there has been steady progress in the contributions of the lands sector towards poverty eradication. The PRSP progress reports for 2000/01 and subsequent years have credited the lands sector with a number of accomplishments, including: (i) Streamlined procedures for land access and therefore improving the sensibility of the land tenure system; (ii) Providing a greater scope for women to own land rights, although much still had to be done to reduce the gender poverty gap and vulnerability; (iii) Setting the ground for the use of land as a productive asset and collateral in mortgage loans by commercial and micro-finance banks and other finance houses; (iv) Providing a mechanism for enhancing property rights of low income households through the provisions of the new land laws, including the possibility of tenure regularisation in informal settlements; (v) Initial popularisation of the Land Acts to enhance the legal capacity of women and other vulnerable groups and

their predicament. These accomplishments are to be enhanced by the strategic plan for the implementation of the land laws (SPILL) now under implementation.

The Gender Debates of the 1990s on Land Rights Could Achieve More:

The above provisions are a list of issues for which women and gender groups, in general, bargained for in the run-up to the national land policy and the new land laws in Tanzania. Their participation was exemplary and were given attention by all including the presidential commission on land matters, the seminars preceding the NLP and the parliamentarians. Whether or not they could have achieved more depends on the agenda carried forward by the stakeholders. The issue of women's land rights should be addressed in amore holistic and proactive way in order that the status quo with regard to marginalisation, sidelining and neglect be challenged and in order to advance appropriate proposals for policy changes.

It is widely felt that land policy reform advocates on the side of the gender question in Tanzania were more interested in reversal of legal provisions on succession and inheritance (Manji, 1998). Succession in land title and landed property, it is felt, is one aspect of women's unequal rights to land but is not everything as women's relations to land are much more complex than status relationships reflected in inheritance. More importantly are relations governed by roles of women as food producers for the home and market, i.e., as farmers and farm workers and are affected by policies on land matters. Women as full subjects on land relations should pursue issue of difficulties encountered in exercising effective control and management of land; of removing barriers to land access; and of food production hindered by inequitable distribution and re-distribution of land.

Women issues therefore transcend issues of women employment as indicator of status; advocacy in amending legal provisions in laws on inheritance or land; urban concerns and class structure. Women issues ought to recognise land as the most important and valuable of all assets particularly to rural economies (Manji, 1998). In villages land provides livelihood, an identity and a sense of belonging and, determines status. It is a vital asset for women over other sources of income, particularly for those engaged in smallholder agriculture, including employment.

Discrimination is Repugnant at Law:

Gender discrimination in land matters is repugnant at law. The concept of repugnancy has a historical origin in Tanzania and many other African Countries. The Tanganyika Order in Council, 1920 stated that customary laws were applicable to the extent that they were not repugnant to justice and morality. Fimbo (2004) adds that in the Village Land Act, a new version of repugnancy has been enacted, namely, repugnancy of customary laws to notions of equality of the sexes. Sub-section (2) of section 20 declares that a rule of customary land law is void and inoperative to the extent that "it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land". In this provision the Legislature is addressing itself to customary rules of inheritance that discriminate against daughters.

Both Land Acts contain gender-neutral provisions on acquisition of lands rights in Tanzania. Thus it is open to any man or woman, being a citizen of Tanzania, to apply for granted right of occupancy or

customary right of occupancy (Shivji, 2005). With an eye on gender equality, section 23- (3) of the Village Land Act No. 4 of 1999 provides that in determining whether to grant a customary right of occupancy, the village council shall; "have special regard in respect of the equality of all persons, such as: that an application from a woman, or group of women no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women". Sub-section (4) further provides that where an application is refused, the village council must furnish the applicant with a statement of reasons for the refusal. The significance of this provision is that the aggrieved person may wish to challenge the decision in a land court.

Another innovation in this regard relates to the concept of co-occupancy between spouses. Section 161 of the Land Act contains a rebuttable presumption that spouses will hold the land as occupiers in common in all cases where a spouse obtains land under a right of occupancy for the occupation of all spouses. In every such case the Registrar of Titles is required to register the spouses as occupiers in common. So in an appropriate case an application for a granted right of occupancy by a spouse may lead to registration of both spouses or all the spouses as occupiers in common. In addition a spouse's contribution of labour to the productivity, upkeep and improvement of land held in the name of one spouse only leads to acquisition of interest in that land by the other spouse.

In summary, Gender issues in land seek to address the rights of women to own and use land that constitutes the ultimate resource for human kind. These rights are more basic than reversal of customary arrangements over inheritance and/ or employment. Women should not lose focus of primary issues in the struggle for land access. Further gender discrimination is repugnant to justice and morality in most communities. Therefore gender sensitive legislation is to support emancipation of women towards equitable access to land and subsequent enhancement of production and higher contribution to the GDP. In this regard affirmative action, in cases of gross deprivation and neglect particularly where customary rules of inheritance and religious polarization are deeply entrenched, should not be ruled out.

5. DEMARCATING EXTENTS OF LAND RIGHTS (ADJUDICATION and PROGRESSIVE TITLING)

Land access is more than using the land. It involves land rights and the security of tenure of a well-defined land parcel. Adjudication is widely accepted to be the process of ascertaining and confirming land ownership and hence, claimed land rights. Dale and McLaughlin (1990) state that the function of adjudication is to resolve disputes and uncertainties pertaining to who owns what property. Larsson (1991) argues that adjudication conclusively ascertains and determines rights and liabilities that are necessary in order to register land parcels. It removes any vagueness in land parcel boundaries and existence of third party possessory land rights on the parcel. Adjudication is therefore a first step in land titling particularly, in village lands. The output of adjudication includes sketches and site plans and written evidence on boundaries and the location of the property.

In urban centres the method of surveying prior to titling has shown preference in many countries. It should be recorded that adjudication of rights also precedes surveying for property registration. Usually authorities identify landowners, followed

by valuation of owned property and finally compensation. This cycle of professional activities is aimed at exhausting third party interests and at freeing the land parcel(s) for cadastral surveying and titling as per urban design. All property owners in the area participate in the adjudication process to ascertain ownership and ensure that compensation is paid for all property and to the rightful owner(s) thereof.

Adjudication can be an end in itself or the start of a more thorough process of titling through cadastral surveying. A quick comparison of the two shows that the survey method has unique advantages over the adjudication method. Such as: (i) its capacity to restrict error in positioning boundary monuments within set limits; (ii) optimization of resources in the process as well as economy to the users; (iii) consistency with anticipated applications in accuracy requirements is guaranteed; (iv) independent checks introduce a quality control mechanism; and finally (v) possibilities of exact replacement of monuments should these be mutilated, destroyed of removed. Therefore, surveying method is less prone to errors, can pay for itself through the various geo-referencing products, is appropriate for the task, can be validated and can re-establish boundaries at a later date should these be destroyed or evidence otherwise lost in the process.

Adjudication in turn suffers from human problems such as death, emigration or a change in mind by witnesses to the process. Unless the adjoining land parcel owners are always in agreement, cases of shifting evidence have been reported in many areas and could cause conflicts. A repeat adjudication is in many ways a duplication of effort and could leave the stakeholders disadvantaged.

Many African countries particularly, of the Commonwealth of Nations, have historically defined parcel boundaries using the fixed boundary approach that recognizes and requires the application of surveyed boundaries. Such countries have legislated Land Survey Ordinances or similar laws that provide the framework for the application of survey methods in the rigorous demarcation of extents of land rights. However, it is not all countries that grant land rights on the basis of fixed boundaries. Many others use general boundaries.

In discussing the guaranteeing of land rights and advantages of adjudication, Dale (1976) argues that a land parcel can be "uniquely defined by describing the boundaries determined through a clear system of monumentation upon inspection on the ground thus annulling the need for a survey." This introduces the idea of monumentation if adjudication is to hold water. The author argues further that; "good monumentation and referencing system is all that is needed to establish a record of rights in land and NOT rigorous surveying of boundaries. The latter is needed where a multipurpose cadastral record-keeping system is envisaged."

The idea of good referencing also comes up in this statement qualified by the adjective "good". Indeed it should be understood as physical rather than human referencing. If this were so, adjudication would require inviolable land based reference marks calling for higher expertise and more time in adjudicating one parcel in return. But, the reference to a multipurpose system in the above statement, makes this a self defeating statement, in modern times, since cadastral systems are seen to facilitate the definition of parcels for parcel-based land information systems and spatial data infrastructures

(SDI). Spatial information is a recent idea that helps Governments and communities in the day-to-day planning of Earth-based resource management, public health and safety, land management, environmental protection, etc. It assists and affects a major part of human decision-making. Nowhere is SDI more relevant than in villages in pursuance of rural development policies and programmes. Add these facets to adjudication then the outcome is progressive titling that seeks to establish recoverable boundaries in a stepwise formation.

Survey methods have stood the test of time since the old days of land management in the Nile valley of Egypt, and whichever way one wants go to avoid it, ends being called upon to reconsider the options. It has been correctly stated again by Dale (1976) that; "the greatest protection against boundary disputes is good neighbourliness but, since this does not always happen, the next best alternative is adjudication combined with clear monumentation." The condition precedent to the latter still remains good neighbourliness and hence adjudication is still a recipe for disputes unless measures are taken to guarantee good neighbourliness including evidence of adjudicators.

Adjudication and Village Land Registration:

Fimbo argues that village land adjudication envisages that boundaries would be demarcated in the manner traditionally accepted in the village in the presence of members of the village council. However, in light of future developments adjudication should be taken as an initial step in progressive titling processes. Adjudicated boundaries could become meaningless where evidence is lost through loss of adjudication records, emigration or death of witnesses, as earlier stated.

The practice with adjudication identifies two modes namely; sporadic (initiated by land owner) and systematic (covering many parcels) adjudication. Sporadic adjudication may be voluntary initiated by an application of a land parcel owner to authorities or compulsorily initiated by the registrar of titles in mitigating disputes or otherwise. Adjudication can also be either judicial or administrative called for by the land courts or registrar of titles. It is known that in all cases, adjudication involves considerable amount of fieldwork.

The village land Act No.5 of 1999 identifies three forms of adjudication, namely: spot, village and district adjudication. Adjudication relies in the participation of local communities in the following ways: (i) a person or persons who have applied to the village council for customary rights of occupancy initiate *a spot adjudication*. The village council has power to determine that request and to order for adjudication. (ii) *Village adjudication* may be initiated by application to the village council of not less than fifty villagers or at the village council's own motion. The village council recommends to the village assembly that a process of village adjudication be applied to the whole area or a defined portion of village land available for grants of customary rights of occupancy. On approval by the village assembly, the village council must begin the process as soon as possible. (iii) *District adjudication* or *central adjudication* may be ordered by the district council where the village assembly has so determined or where a complaint is made to the district council by not less than twenty persons with land to which village adjudication is being applied that the said

adjudication is being applied improperly or unfairly.

Spot adjudication is the equivalent of sporadic adjudication whilst village and district adjudication relate to systematic adjudication. The Village Land Act categorization provides for an appeal to District authorities where village adjudication has not satisfied many a people in the village.

Local communities become involved at two stages, Firstly, persons in occupation of land under customary right of occupancy are entitled to make representations to the village council and the Commissioner on the proposed transfer. Secondly, villagers are entitled to attend a meeting of the village assembly, which may approve or refuse the recommendation for transfer made by the village council. Such village land may be transferred to general or reserved land if the village assembly has approved the transfer and upon payment of compensation.

In delineating land rights in general lands, the Land Act No. 4 of 1999 provides that certificates of occupancy shall be for land that has been surveyed. The Land Survey Ordinance (CAP 390) and the Surveyors Registration Act No 2 of 1977 are meant to regulate the way that surveys are to be done to enable the registration of land parcel within the framework of the Land Registration Ordinance (CAP 334). On the other hand, Certificates of Customary Rights of Occupancy can only be granted if "the boundaries and interests in that land are fully accepted and agreed to by all persons with an interest in that land and in respect of the boundaries of that land and land bordering that land (GoT, 1999)." In essence this is also the purpose of adjudication prior to surveying and hence that of cadastral surveying as applied in the general lands.

The method of titling through adjudication has been left to operate in village lands probably because of the assumption that everyone knows everyone else in the village, including the extents of land ownerships involved. Also it could be that adjudication is a faster way of ascertaining jurisdictions and also cheaper as, unlike surveying, it does not involve high expertise and technology with all the complications and higher expenditures involved (transport, electricity, computer processing, database creation, expensive equipment, etc). But one has to be mindful of its drawbacks as well as ways and means of making improvements.

In summary, the definition and identification, for purposes of record keeping and facilitation of land administration functions, of individual interests in land using methods that will enable recognition and guarantee of land rights including a careful scrutiny of the place for physical adjudication, fixed and/or general boundaries and maintenance and upgrading of land administration infrastructure are essential in enhancing tenure security in village lands. A modern approach to the definition of parcel boundaries for titling should be considered, as the added value is overwhelming.

6. LAND-USE CONFLICTS AND TENURE DISPUTES ISSUES

Land use conflicts and disputes over land emanate from a loose form of tenure security within the legal, institutional and operational frameworks that are overburdened in the process of guaranteeing land rights and from conflicting interests over land. The causes

of conflicts and disputes are many and some will be discussed here, following a recent study conducted in Tanzania. The value of land to individuals and their businesses and lifestyles has somehow fuelled disputes sometimes even where none should evolve. Proper land-use seeks to minimize the occurrence of conflicts and disputes and enforce tenure security. The land administration system should itself be structured in such a way as to prevent and minimise the occurrence of conflicts and disputes.

Possible Origins of Conflicts and Disputes:

Generally speaking, conflicts and disputes have many causes and origins such as: (i) population growth and changing economic circumstances that increase competition for access to land. Such competition exists in the Kilombero valley of Tanzania and also along the coastal strip that has recently seen a rapid increase of population well above natural forces, causing village populations to spiral above norms. Such conflicts should be regulated by land tenure rules that are development focused in response to shifts in social, economic and political relationships; (ii) scarcity of resources is increasing and access is reduced. At the village level resources such as communal pasture, water sources, woodlots supplying firewood or charcoal, good soils for burnt bricks, fishing ponds and rivers, are examples of communal resources. A major case in point is the Usangu valley, in Mbarali District in the Southern Western Highlands. The recent draught experienced countrywide causing dams to dry up in the last 5 years has had a big toll on livestock and pastoralists had to migrate to where water and pasture are readily available. The Usangu valley, which is a source of most southern rivers of Tanzania, has been seen as a safe haven for pastoralists at the expense of the environment and shrinkage of the ecosystem; (iii) existence of a large gap between customary and granted land rights or their derivatives, when new powerful economic interests, such as those coming from outside villages, start to invest in village lands, and where land administration machinery is unable to ensure a fair system of regulation.

Consequences of Conflicts and Disputes on the Economy:

Conflicts are not conducive to development and can lead to over-exploitation of marginal lands and degradation of the environment. Conflicts and disputes inhibit investment in housing and food production, reinforce social exclusion and poverty, undermine long term planning, and distort prices of land and services. Any land dispute infringes on the security of tenure over land in contradiction to the spirit of the national land policy and new land laws of Tanzania. Disputing forces in a democracy should have courts to hear grievancies. Recognising this fact, the Government of Tanzania has enacted the Lands Disputes Courts Act No. 2 of 2002 as an instrument to deal with all such issues. At the lower level, the new system of justice has established land councils and tribunals – village land councils, ward tribunals and District land and housing tribunals. Further the NLP has defined a set of fundamental principles as a guideline for the land administration machinery to follow, which if carefully followed should do away with most conflicts and disputes. However, old habits diehard and the approach used by land administrators, during operation vijiji and after, still linger on more that ten years after the acceptance of these instruments.

What Villagers Say Regarding Land-Use Conflicts and Disputes:

A team of experts conducting grass-roots stakeholder consultative meetings in the preparation of the strategic plan for the implementation of the land laws (SPILL) in Tanzania in 2004/5 herd testimonies of land disputes in the country. The disputes can be assembled into three clusters, namely: (i) land disputes about title, boundaries, and/or conditions of tenure for individual land parcels; (ii) land disputes of a socio-economic nature that focus on the violations in land-use and protection of a grantee's land rights against encumbrances and interferences; and (iii) land disputes that are territorial in nature and involve village and township jurisdictions over land.

The testimonies also enabled the experts to list the causative factors on more recent boundary disputes, such as the bloodied disputes in Kilosa and Loliondo and which could be propagated to the on-going saga in the Mbarali ecosystem as: (i) the absence of consultations between neighbouring villages; (ii) sparseness of boundary markers - marking of village boundaries on hill tops without other markers on-line; (iii) expansion of conservation and reserve areas without consultative considerations on the welfare and aspirations of village populations; (iv) poor record keeping; (v) fast turnover of officials in Village Governments; (vi) inclusion of environmentally sensitive areas within village boundaries; (vii) the nomadic culture of some pastoral communities; (viii) blockage of traditional cattle routes by farmers; (ix) gross disregard for the carrying capacity of the land and lastly, (x) unknown and unmarked buffer zones.

The same consultative meetings conducted across the country have identified five types of such conflicts when viewed from the **tenure** point of view. These are: (i) Conflicts between villagers living in one village and in which small scale farmers and small scale herders co-exist but both sides seem to hold on to the notion that farming must be undertaken in ones customary lands while herding is conducted in any 'empty space'. Such herding does not confine itself to those areas but occasionally (purposely or by accident) the herds stray into farms under crop. *This kind of conflict is caused, principally by pressure on land-use by people struggling to rid themselves of poverty but who still think land-use violations can be tolerated;* (ii) Conflicts between predominant farmers and predominant herders living in one village. As village governments continue to allocate more land to farmers, the herders are pushed into fewer grazing areas but with the increase of the village herd the shortage of land for farmers becomes apparent. This then leads to deliberate assaults on farming areas particularly, during or immediately after harvest – a dry season that is accompanied with shortages in pasture. *The causes in such a situation emanates from one group of land users having little or no regard for the other and largely ignorant of the provisions of the NLP and Village Land Act No. 5 of 1999; (iii)* Conflicts between farmers in predominantly farming villages and herders who uphold a nomadic culture and who seem to want to go anywhere and assume control over any good pasture regardless of existing land rights over lands along their route. These do not normally have land in the transit villages and depending on the season of arrival some would like to linger on while scouting for other villages with adequate pasture areas as a next destination. *The major causative factor here, is the passion for nomadic lifestyles;* (iv) Conflicts between herders in different villages who identify common safety valves for pasture and water or both for their

herds, with changing regimes during part of the year in favour of one village. Differences arise when one group either seeks to dominate and subsequently drive away the other by force for reasons best known to themselves of maintain inviolability of their land during regime change. *The major cause is one of enforcement of law and order; a*nd, (v) Conflicts between predominantly farming villages and predominantly pastoral neighbouring villages when the latter run out of adequate pasture and/or water for their ever increasing herds. *The main cause of this conflict is excessive cattle holdings that need to be reduced to cope with the carrying capacity of the land.*

Summarising On the Conflict and Disputes Issue:

It is reiterated that the volatile nature of land disputes between farming and herding communities in the rural areas, for example, that now constitute a firm chapter in land tenure practice in the country, will diminish only when the administration of village land will be conducted with due regard and respect of the Fundamental Principles of the NLP and new Land Laws. These conflicts will only be minimised or end where each individual recipient of land rights shall rely on his/her well determined and allocated land parcel(s) (including communal lands of the village of ones domicile) for all his/her land-use requirements and, where need arises to use extra ground, shall seek appropriate permission.

Government should guarantee security of tenure by establishing frameworks that will seek to prevent the occurrence of conflicts and disputes. This ought to start with a careful study of the nature and modes of their. It is important to design appropriate mechanisms for resolution of disputes and options for minimizing their occurrences. Such studies should be, in as much as possible, localized to the ethnicity and levels of local populations.

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