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A CENTURY OF GOVERNMENT REGULATED LAND ACCESS IN TANZANIA

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By

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Foreword:

Land has been, is and will continue to be, the human habitat on planet Earth. It is a resource that cannot be expanded as human population, the users, do and should therefore be managed with utmost care and as a communal resource. A starting point in national land management policy is focusing on equitable land distribution, and the regulation of such distribution and use. Regulation starts with a framework that consists of agreeable customs, policies, laws and other forms of statutes that establish and provide for land administration, financing, revenue collection, etc by established government structures. Land Regulation is as old as human communities. In Africa, and Tanzania in particular, communities are diverse in their relationships with land. These relationships have been subjected to involuntary interference for over a century brewing, in the process, many untold land use conflicts. Conflicts emanate therefore, from circumstances that are deep rooted in history when evaluated against current day vision of economic growth, good governance and freedom from poverty.

This discussion paper presents land tenure and land access issues in a historical setting for mainland Tanzania. It reveals the dynamics of the regulatory framework for over a century starting shortly prior to colonial interventions, to the present day. It traces major policies, laws and regulations experienced and their impact on land use. It notes, with concern, the frameworks that led to people's displacements from ancestral lands at various times during and after colonial rule. It further reviews marginalization in incomes and redress to poverty, as a result of encumbered land utilization policies. As urban centre started to attract large populations, propelled by rural to urban migrations, at independence, land started to play an even more crucial role in the management of towns and cities. An enabling regulatory framework in urban centre is desirable as it could unlock the potential for growth in urban economies. On the contrary, weak frameworks are not desirable as could continue to create slums and communities would suffer from its ills.

The paper is written with the sole purpose of guiding discussion on land policy and land administration in both rural and urban areas of Africa using Tanzania's historical land regulatory framework as a case study. It is the view of the author that there is much to be learnt from the dynamics of land administration policy in Tanzania in order to avoid undesirable experiences. Careful analysis should always be given to the implication of the various policies that touch on land matters. Tanzania has adversely been affected by colonialism, untried socialist politics, experimental policies on rural development, policies on false decentralization, focus on massive programmed in spite of weak capacity and dismal budgets and unchecked rural-urban migrations.

A CENTURY OF GOVERNMENT REGULATED LAND ACCESS IN TANZANIA

1. Introduction:

1.1. Land Policies determine the mode of land tenure systems for communities and individual land users. There may not be much choice in the systems at hand, but which ever selected, land policy options should be long term in focus as landed properties are durable in nature and of slow returns. Well-known tenure systems are either of a fixed term or perpetual and could be statutory or customary. Within each of these are varieties or modifications that focus on circumstances and, when critically considered, each country ends up with a land tenure system that is unlike any other. In other words, each country has a land tenure system that is peculiar and unique to itself. Similarly, policies are seen as different from each other or multiplicities of basic systems and so is the mechanism established to administer land.

1.2. In this paper a Land administration system shall be understood to be the set of structures and institutions, which: implement policies on land by granting and guaranteeing land rights, resolving conflicts, delivering title deeds, managing land information systems, etc. Land administration is one that provides a mechanism to support the development of land through the regulation of land and property development; use and conservation of land; gathering revenues from the land through sales, leases, and taxation; and resolving territorial disputes and conflicts on ownership and use of the land. The paper will concentrate on policies settings for institutional interventions that have been put into effect since pre-colonial times.

2. **A Glance at the Pre-Colonial Land Policy** (transitional):

1.1. 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.

1.2. There being abundant land for everybody's needs, the issues of land-use and production for each homestead were given priority over ownership[1].

1.3. 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.

1.4. Historians agree that at their inception colonial Governments succeeded through territorial rule to introduce the ownership concept at the peril of well-cherished land control. Land ownership was the goal in colonial policies so as to accommodate settlers from abroad and their interests.

[1] …. if we consider systems of land tenure as clusters of rights over land and its products, the traditional systems of land tenure are almost universally characterized by (a) the right of every individual to the productive use of some land in virtue of his citizenship in a given socio-cultural group, (b) the overlapping of rights in land and its products among individuals and groups which manifests itself in (c) rigid prohibition against individual alienation of land over which a person has specific but never absolute rights (J. Rweyemamu, 1973).

3. German Decreed the Right of Occupancy Concept in Tanganyika:

3.1. As a part of early land policy, the Germans 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". The lands were to be vested in the Empire as crown lands as a consequence of the declared policy and in total disregard of any existing land dispensation. The crown was to pick and choose who in the territories was to have legal access to land[2].

3.2. The decree introduced the concept of a right of occupancy concept or a lease arrangement from the Crown, as distinctly different from ownership of land. In regulating this decree, statutes were enacted that introduced ownership, as a concept that could be proved only by documentary evidence issued by the state[3].

3.3. Land Occupation became a concept that had nothing in common with ownership. Occupation of land was to be recognised if the land was under cultivation and was put under use through dwellings that were erected on it.

3.4. Indigenous Tanganyikans were left with permissive rights of occupancy on the lands that now belonged to the imperial state. In this way ancestral lands were alienated from the indigenous peoples of Tanganyika to foreigners. The record shows that 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 and ownership.

4. The British Legislated the Concept of Public Lands:

4.1. British land tenure policy was supposed 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.

4.2. British policy was developed so that Tanganyika was to be a source of raw materials for industries in Britain. The policy therefore focused on transforming rural Tanganyika into plantations, and encouraged peasant farming to produce cheap raw materials for overseas markets.

4.3. 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, Her Majesty's Government in Britain did not respect this agreement[4].

[2] The issue that plagued the German administration was one of means; that is whether they should encourage settler plantations or African smallholder production. The problem was finally resolved after the arrival of German settlers (by 1912 there were 758) who wanted to establish plantations. This event necessitated the alienation of community land and the recruitment of African labour to man the plantations. By 1913, 542,124 hectares had been alienated through the eviction of indigenous citizens from their best lands; reserves being created for those evicted (J. Rweyemamu, 1973).

[3] 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.

[4] 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.

4.4. The legacy of the Land Ordinance (CAP 113) on land access and land tenure was that: (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 and could only be granted by the Governor.

4.5. Still under British rule, in 1928, the Land Ordinance was amended to give legal recognition to: (i) customary ownership; (ii) right of occupancy; and (iii) a title of a native or a native community lawfully using or occupying land in accordance with native law and custom (Section 2). 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.

4.6. Land alienation from natives[5] continued under British rule and land policy . Under British rule 3.5 million acres were alienated from native lands towards settler interests and ownership[6]. Chiefs lost grip of land administration to the Central Government outside customary arrangement.

5. Modes of Land Reform Following National Independence:

5.1. The national Government in Tanganyika inherited the colonial laws and policy on land at independence[7]. 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).

5.2. The role of Chiefs[8] 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.

[5] At Independence … More than 90 per cent of the population lived off the land; about 80 per cent of non-food consumer goods were imported and an equal percentage of food stuffs did not enter the market economy. …….. The dominance of foreign interests was pervasive throughout the entire fabric of the Tanzanian society. In 1964, for example, only 4 per cent of the total sisal production, which was then the most important source of export earnings, came from African-owned farms (JASPA/ILO, 1978).

[6] Systematic European colonization, both German (1884-1918) and British (1919-61) is characterized by the following elements: (a) the establishment of the plantation system, (b) the introduction of metropolitan-oriented cash crops to the African peasantry, with a consequent class formation resulting therefrom, (c) the financial and other infrastructure which was to serve the production structure thus introduced and (d) the establishment of the basic institutions of foreign trade with the metropolis (J. Rweyemamu, 1973).

[7] JASPA/ILO assessment of the situation in 1978 stated: "The post-independence Government economic policies were, by and large, conventional and, except in the field of education and training, they were hardly designed to disengage the Tanzanian Economy from the matrix of relationships that constrained it.

[8] European colonization by systematically reinforcing and even creating artificial chiefs through the system of indirect rule, created an auxiliary class of privileged people that exploited the peasants. Depending on the level of material forces, it is these 'leaders', authentic or artificial, who have been the principal beneficiaries, taking the best land which they exploit with local serf or migrant paid labour (J. Rweyemamu, 1973).

5.3. Some legal reforms were introduced in 1963 when Freehold Titles were converted to Government Leaseholds. 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. 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.

5.4. In 1965 the Rural Farmlands (Acquisition and Regnant) Act was passed 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.

5.5. 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 the influence of customs and traditions of local people on land tenure[9].

6. Land Policy under Ujamaa[10] Policy:

6.1. 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. 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.

6.2. By 1979 there were about 15 million people living in 8,300 Registered Ujamaa and Development Villages[11] on mainland Tanzania with a population of 250-500 families or 1,500 - 7,500 people per village, displaced from ancestral lands.

[9] After Independence, the Government passed legislation assuming ownership of all land in Tanzania. From a legal standpoint, users of land were henceforth to be granted rights of occupancy, but not the right to sell or rent it. Presumably this policy was designed to avoid the danger of the growth of concentrations of land ownership accompanied by increased landlessness. In practice, however, all the land except for the relatively small fraction which had been formerly alienated to estate holdings continued to be held and used by individual peasants in accordance with various customsary systems or modified versions of them. In areas where cash crop production had prevailed for some time and land had become scarce, a virtual private freehold system of land tenure with rentals and free sales emerged despite the law (A. Seidman, 1972).

[10] A national brand of socialism as per First President J. K. Nyerere's philosophy that formed the basis of politics in Tanzania for over 20 years from 1967.

[11] Perhaps the most fundamental institutional change, which has taken place in Tanzania … is the villagisation programme and the creation of ujamaa villages. The number of villages is reported to have risen from 5,008 in 1974 to 6,944 in 1975 and then jumped to 7,658 in 1976.

6.3. 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.

7. The Villagisation Programme and Land Tenure Policy:

7.1. The first Five Year Development Plan sought to achieve rural transformation through village settlement schemes under the so-called Transformation Approach[12] recommended by the World Bank Mission in 1960, whose goal 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.

7.2. Village settlements were governed by the Villages and Ujamaa Villages (Registration, Designation and Administration) Act No.21 of 1975. The Act, did not contain any provisions on land tenure and the question of possessory rights[13] to land was not a part of the programme. Under the Act 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" .

7.3. Under Directives 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.

7.4. 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. This continued until 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[14].

The population in these villages rose even more dramatically, from 2,560,472 in 1974, to 9,140,229 in 1975 and to 13, 067, 220 in 1976 (ibid).

[12] President J. K. Nyerere admitted later in his speech "To Plan is to Choose" that "The other aspect of the First Plan, which proved to be mistaken was our emphasis on what we called transformation approach – the opening of new Government financed settlement schemes of a highly mechanized nature. There is no need for me to discuss this now; I did so when we recognized that this policy was too expensive in money and mistaken in its estimates of economic and psychological results. All the settlement schemes which were started and which still survive will now be converted into ujamaa villages."

[13] In the early years (of the villagisation movement), the emphasis was on communal production, the sharing of proceeds, and the voluntary nature of the programme. From 1969 onwards, this selective approach was replaced by a frontal one, and to exhortation was added an element of inducement through provision by the Government of transportation, materials, machinery, food, funds, etc. In the last few years (mid-1970s) emphasis has shifted away from communal production to block farming (in which peasants cultivate their own plots within the overall block of land allocated to the village) and on individual holdings within a village framework (JASPA/ILO, 1978).

[14] As per G. M. Fimbo, "In 1992 the Regulation of Land Tenure (Established Villages) Act, No. 22 of 1992 provided for extinction of customary tenure without compensation and ousted the jurisdiction of courts.

7.5. The effects of villagisation on land tenure were the following:

- Relocation[15] of scattered households into more compact residential Villages, with a purpose of providing common social services. Such movements alienated people from ancestral lands.
- In some places villagisation caused land degradation and environmental damage[16]. Peasant agriculture and agricultural production deteriorated, largely due to tenure insecurity and also due to farmland being far away from the homesteads.
- Substantive changes in the distribution of land out-of-owner consent occurred among groups and individuals. Many individuals lost their homes and lands in the process without receiving compensation.
- Replacement of customary land allocation authorities by elected village councils, without a consented instrument for such a change.

8. The National Land Policy (NLP) of 1995:

8.1. The **NLP** of 1995 was formulated to address land tenure issues brought about by changing conditions of land use over time and safeguard the security of tenure. Top on the list of these changing conditions are: (i) A higher demand for grazing land; (ii) An expanded urbanisation that places higher demand on land for settlements, industries and commerce including the expanding land markets; (iii) The need for higher investment in land development and modernisation of agriculture and; (iv) Environmental conservation.

8.2. Consequently, some of the overall aims of the NLP are: (i) To streamline land delivery and enhance the security of Tanzania's Land Tenure System; (ii) To encourage optimal use of land and its resources; and (iii) To facilitate a broad-based socio-economic development without overburdening, and hence threaten, the national ecological balance.

8.3. The preface to the National Land Policy document drawn up by the then Minister responsible for Lands agrees that land problems extend much further than individual claims to tenure rights. They involve other 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.

Almost immediately these sections were held to be unconstitutional and struck out of the statute book by the Court of Appeal of Tanzania at the instance of two brave peasants in ATTORNEY-GENERAL V. LOHAY AKONAAY AND JOSEPH LOHAY.

[15] In a socialist Tanzania, our agricultural organization would be predominantly that of co-operative living and working for the good of all. This means that most of our farming would be done by groups of people who live as a community and work as a community. They would live together as a village; they would farm together; market together; and undertake the provision of local services and small local requirements as a community (J.Nyerere, 1968).

[16] Several errors were made during the process of villagisation. Some villages are badly located from the point of view of water supply, soil conditions, etc., while some have rather large populations which could pose economic as well as social problems. In all villages there is the risk that the change from shifting to permanent cultivation may lead to soil deterioration and erosion caused by overgrazing (JASPA/ILO, 1978).

8.4. The new NLP therefore reiterates and retains the four central land tenure tenets in a modified form that land is publicly owned and vested in the president as a trustee on behalf of the citizens; speculation in land will be controlled; rights of occupancy whether statutory or customary are and will continue to be the only recognised types of land tenure; and rights and title to land under any consolidated or new land laws will continue to be based mainly on use and occupation"

8.5. Under this system therefore, the land is "not owned" but is vested in the Presidency[17] and availed to users through a mechanism that is centred in the Minister responsible for Lands, Commissioner of Lands and the land administration system revolving around that office. In this system, the land user briefly owns the land rights and developments made to the land. Land rights can either be granted or deemed to have been granted and certificates are issued and registered to prove the identity of the rights owner.

8.6. The effectiveness of the NLP and legislation emanating out of this policy hinges on the effectiveness of the land administration system in the country. The NLP and the new land laws (Land Act No.4 and Village Land Act No. 5 both of 1999)[18] have a set of 15 fundamental principles that " … *all persons exercising powers are to have regard to* … (GoT, 1995)." On the face of it, the set is a brilliant framework for land administration[19] and is reproduced in section 16 of this paper.

9. The New Land Laws and Village Land Access:

9.1. The Village Land Act No.5 of 1999, now governs land tenure and access in villages. It divides village land into communal, vacant and customary land. Only Customary land can be issued with a certificate of customary rights of occupancy (CCRO) in the name of the landholder.

9.2. 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.

9.3. 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

[17] Tanzania's land policy is based on the "Rights of Occupancy System". Individuals do not own the land but the rights to use that land. All land is vested in the President and "leased" to land users for renewable terms of 33, 66, or 99 years under development conditions. Land rights are supposed to be guaranteed by the state, for the term of tenure and a Certificate of Occupancy is issued for general (urban) lands and Certificate of Customary Right Occupancy for Village Land under Customary Tenure to certify the ownership.

[18] The new land laws are supported by other sector laws namely: The land Disputes Courts Act (Act No. 2 of 2002); The Land Use Planning Act of 2007; The Urban Planning Act of 2007; The Land Registration Ordinance (Cap 334); The Land Survey Ordinance (Cap 390); The Professional Surveyors Registration Act of 1977; and corresponding subsidiary legislations and regulations.

[19] Experience of the past 12 years since the Fundamental Principles were adopted seem to show, unfortunately, that either many land administrators do not apply these principles in their dealings with the public or find it hard to break the old mindset on land administration and adopt the new dispensation.

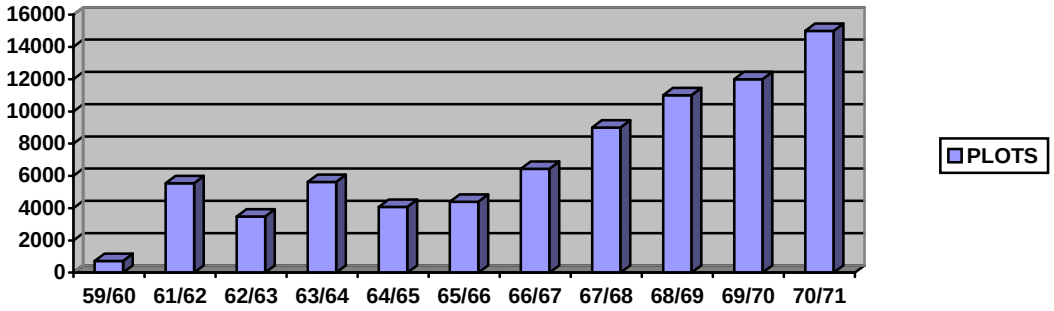
identified, gazetted and allocated to the Tanzania Investment Centre (TIC) by way of right of occupancy. The TIC will, in turn, grant derivative rights to investors.

9.4. 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.

9.5. 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.

10. Urban Land Access[20] - A Decade into Independence:

10.1. Land access in urban centres is operationalised by the plot allocation and titling system[21]. Plot numbers given in the annual reports of the Survey Division for the 1959/60 –1970/71 years were recently assembled and charted as seen hereunder.



Trend in Output of Urban Plots in the 1960s

10.2. The chart indicates the supply or outputs in planned and surveyed urban plots. The graph is seen to be rising with time from 720 plots in 1959 to 3,493 plots in 1963 and higher in subsequent years.

10.3. Assessment of the annual divisional reports shows that the country witnessed an exponential growth in plot production, from 12,000 plots in 1969 to 15,000 in 1972 when it reached a three-decade supremum[22] (MLHSD, 1959-1967). The figure of 15,000 urban

[20] Tanzania has been experiencing a rapid rate of urbanization of up to 8% per annum. The urban population has increased from 5% in 1967 to about 13.2% in 1978. In 1988 the urban population was 18% and in 2002 the urban population was 23% (Census, 2002).

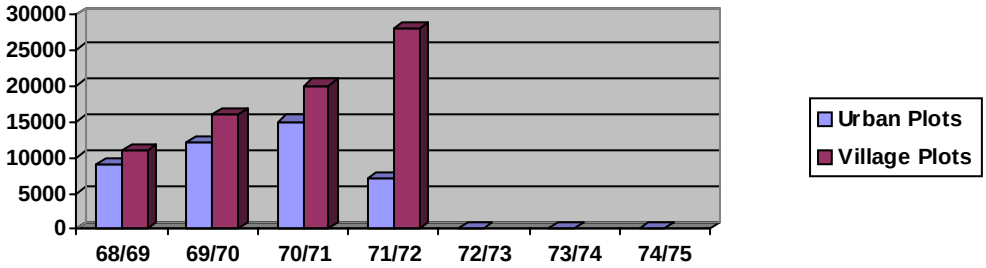
[21] It is worthy of note that Section 22 (c) of the Land Act No.4 of 1999 sets as a condition that: *"a granted right of occupancy shall be of land that has been surveyed."* Further, section 22 (d) continues that; *"a granted right of occupancy shall be required to be registered under the Land Registration Ordinance, ..."* In turn section 88 (i) of the Land Registration Ordinance reiterates the provision of section 22 (c) of the Land Act stating that; *"no estate shall be registered .... and no parcel shall be divided on a disposition, transmission or mutation except in accordance with an approved survey plan."* In short, no survey, no grant and registration of a right of occupancy.

[22] The decision to give top priority to rural development does not only affect what is done in rural areas; it also has implications for every other aspect of the Development Plan. Thus for example it means that there

plots output, attained in 1970/71, remained the highest output in nearly thirty years in spite of technological backwardness, inferior skills and lower capacity levels of that era.

11. Supply of Urban Plots under "[23]*Madaraka Mikoani*"Policy:

11.1. The production of urban plots grew in late 1960s and early 1970s alongside demarcations of plots in Ujamaa villages, as can be seen in Figure below.



Growth in Urban and Village Plots (1968 Onwards)

11.2. However, the number of urban plots produced during the time decreased sharply, perhaps pointing to shifted emphasis in favour of more demarcations in Ujamaa villages and at the expense of urban plots[24].

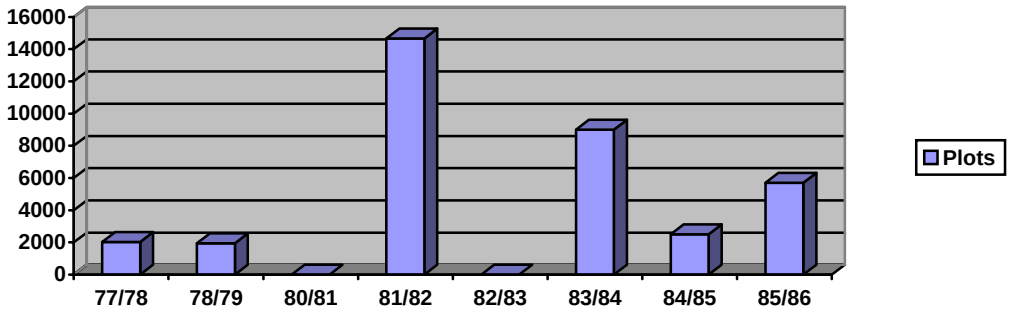
11.3. The production of urban plots nearly came to a halt starting 1972/73, with a national average annual output of 2,000 plots only for the over 100 towns of Tanzania. The stoppage is believed to have given impetus to the growth of squatters in Tanzania's urban centres. Today, between 40% and 70% of Tanzania's urban population in the main urban centres live in unplanned settlements. In Dar Es Salaam City it is estimated that the figure is as high as 70% of its population.

11.4. The gloomy scenario with urban plot production in the late 1970s continued into the 1980s as is provided in the chart below. The chart reflects an average annual production of 4480 plots equivalent with the 1965/66 output – about two decades earlier.

is less money and less manpower, which can be devoted to improving conditions in the urban areas J. K. Nyerere in Freedom and Development (1974).

[23] Literary meaning "Regional Responsible Government" - A brand of "decentralisation" of the central Government functions to the Regions and Districts in Total absence of Local Government machinery as known today.

[24] . In this Second Plan period it is therefore necessary to put a limit of Shs. 250 million on urban infrastructure expenditure – that is on the provision of roads, sewerage, lighting, etc. … it is quite obvious that very little new development will be possible unless there is a great increase in the amount of self-help work done in towns (J. K. Nyerere, 1974).



Trend in Output of Urban Plots from 1977/78 – 1985/86

11.5. The plot production numbers decreased at a time when more Government surveyors were available than ever before to undertake the works.

12. Implications of the "Madaraka Mikoani" Policy Changes:

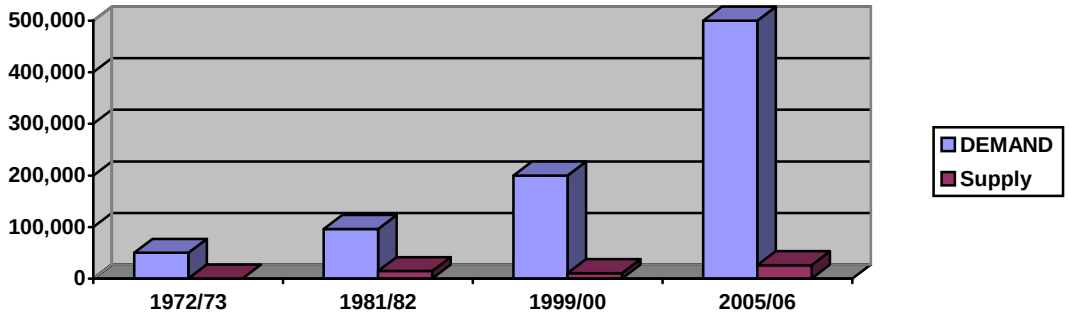
12.1. In 1972 Government administration machinery was "decentralised" to the Regions as a result of the *Madaraka Mikoani* Policy. All land delivery activities were brought under the District and Regional Development Directors, DDD/RDD except the issuance of Title Deeds. It is recalled that Local Government Authorities were abolished under this policy removing checks and balances on the "decentralisation" process.

12.2. The Ministry of Lands left all plot surveys in the hands of regional staff[25] who were also dealing with urban and village plots with more emphasis on the latter. There was no budget item for surveys at the sector Ministry.

12.3. As demarcation of village lots went up, that of urban plots went down and before long many towns could not satisfy even 10% of the demand as the Figure below shows. Diminished total output nationally, continued well throughout the 1980s and 1990s until the commencement of the 20,000 Plots project in 2002, three decades later.

12.4. With the problem growing worse in townships and Dar Es Salaam City in particular, Government sought World Bank assistance and embarked on the Sites and Services Schemes (SSS)[26] as a remedy. But even these remedial programmes could not turn the tide under a policy that seriously affected budgeting.

[25] The important thing is that the work (of transformation to ujamaa-village based communities) should begin. For this it is no use waiting for the Ministry of Lands, Settlement and Water Development to send out its officers to lay out villages, to explain, and so on (J. K. Nyerere in Freedom and Socialism, 1968).
[26] Where house purchase is involved, there will be a new development – 'sites and services facility' – which will mean that only the very basic work will be done by the National Housing Corporation, and the rest will be left for the owner to do as and when he can add to his house in accordance with approved plans (J. K. Nyerere, 1968).



Supply and Accumulated Demand of Plots at Different Epochs Compared

12.5. As history would have it the Ministry of Lands, and SMD in particular, would be forced to suspend most of its activities and its products would not be made available for physical planning and land delivery in towns for many years to come for lack of a development budget (GoT, 2001). Suspending other activities meant adding insult to injury as production of urban plots had already stalled.

13. Government Remedial Supply of Urban Land:

13.1. The Government of Tanzania started financing land development projects just after attaining independence in 1961. Access to decent housing was a political priority issue of the newly independent nation. Hence, the focus was on provision of residential plots in urban areas.

13.2. The following approaches were used at different times to address the issues starting immediately after independence:

- Government started off by providing plots urgently and timely in order to avoid delays in urban development (1961 – 1972).

13.3. The problem of urbanisation overwhelmed Government efforts at coping with the housing situation[27] as early as mid 1970s[28] and squatters started growing in most urban areas. Government's response was as follows:

- Initiating the squatter clearance programs and later squatter upgrading as a means of introducing services.
- Sites and services scheme (SSS) was launched under financial assistance of the World Bank, and the National Housing Corporation (NHC) was established. These were seen as moves aimed at addressing land and housing availability for those living in squatters.

[27] This need for self-reliance and frugality is reflected also in the new plans for houses to be built with Government or parastatal loans. Further steps will be made to build decent houses at a still lower cost for renting purposes (ibid)

[28] A variety of sources have placed the urban population growth rate at between 6 and 9 per cent per annum. The best estimate for Dar Es Salaam indicates a growth rate of 6.8 per cent per annum between 1967 and 1975. … If the rate of natural increase in urban areas is assumed at a low rate of about 2.5 per cent per annum then this means that the urban population was growing between 3.5 and 6.5 per cent per annum due to migration (JASPA/ILO, 1978).

- The housing finance approach was also attempted by establishing the Tanzania Housing Bank (THB) to provide cheap loans to the low-income earners. THB died as a result of mismanagement and misguided policies in 1995.

13.4. Urbanisation continued unabated as life in the villages became harder with people seeking employment[29] in the towns but with the supply of urban plots and housing remaining far below demand. Further Government Efforts included:

- The Growth Centre Policy[30] was launched during the Second Five Year Development Plan that included nine major urban centres. The aim was to reduce the pressure on Dar Es Salaam by setting up Growth Centres.
- In 1978 the government initiated the planning and survey of more residential plots in Tabata, Mbagala, Kinyerezi and Mbezi areas of Dar Es Salaam City. There were no thorough studies on the demand for plots for particular land use in a given location. For example industrial sites at Kitunda, also in Dar Es Salaam, were never developed as was intended.

13.5. There were no targeted efforts at supplying urban plots in the 1980s besides those provided to public corporations. The urban centres sprawled by large proportions into village lands[31] and more squatters evolved.

13.6. In more recent years, Government has attempted to address itself to urban land delivery and land use problems through the 20,000 Plots Project in order to confront problem of scarcity of urban lands in Tanzania's cities. The project also addressed itself to implementing the sectoral poverty reduction and the anticorruption strategies.

13.7. Within a year this new project had created 21,800 plots, in addition to other sources, to a total of 25,865 plots, created at a cost recovery policy.

13.8. This momentum quickly died down such that the 20,000 plots project's output is now not commensurate with the demand. The annual average output of the 20,000 Plots project in its lifetime is approximately 6,000 plots per year, which is but a 1967 record and far below national demand.

[29] But despite our shortage of money we have decided to make a special effort in order to expand certain of our towns. We have made this decision for two reasons. Firstly, people are attracted away from the villages in search of work and other services which are available in the towns, and at preset the great attraction is Dar Es Salaam itself. As a result there are now in this city many people who came to look for work, but who cannot find any and many others who have no houses to live in. It would be better to spread to other parts of the country the attraction which is now concentrated in one place (J. K. Nyerere, 1968).

[30] It is therefore Government's intention to try and build up 10 urban growth centres by diverting suitable new factories and employment opportunities to selected towns. The aim is to help each of these growth centres reach the point where it is in itself an attraction to industry without special Government Intervention – to plan is to choose (ibid.).

[31] The general availability of land in the vicinity of urban areas has enabled home ownership rates to be high and rising, while rent has remained low. Housing is poor but improving, and there are very few of the makeshift temporary dwellings one generally associates with squatter areas. Most striking of all, …, is the mushrooming of small workshops making everything from furniture to soap, from shoes to cutlery, from clothes to utensils (JASPA/ILO, 1978).

14. Land for Investors - Land Banking

14.1. The context of a land bank is covered in the Tanzania Investment Centre (TIC) Act No.26 of 1997 that includes the whole concept of derivative rights and granting such rights to investors.

14.2. This is a crucial time in land delivery to address policies of poverty reduction and economic growth, mindful of the fact that: (i) despite achievements in national land policy and legal reforms of 1995 to date, there still remain serious difficulties in accessing land in all categories of investment; (ii) procedures of obtaining land in the villages are cumbersome; and the demand is very high.

14.3. The demand for land for investment can be assessed from the total number of applications for land lodged with the Tanzania Investment Centre. On the average TIC registers 270 applications annually on a backlog of over 4,200.

14.3. The list of applications for land parcels at TIC, as judged by the number of acreages, suggests that land is needed mostly for agriculture, livestock development, hotel construction, tourism, manufacturing, processing plants, commercial buildings and apartments.

14.4. The amount of foreign direct investment (FDI) in the applications ranks as follows: Manufacturing 21 %, Commercial buildings 10 % Agriculture and livestock; construction; tourism; and transport about 9 % of total investment capital each.

15. The Role of Government in Land Administration:

15.1. Government has the leading role in land administration and non-Governmental and professional institutions are only its close partners. The reasons for the government's key role include: Firstly, that land and property rights are of central importance in governance and good governance dictates that an important resource such as land must be administered as a collective asset and be managed under the premise that as population grows the territorial jurisdiction remains the same, as land cannot be created.

15.2. Secondly, land administration is a public good as lives and the economy depend on it and as a collective asset that it is, land administration is a public expenditure that must be budgeted for by the national treasury, and where necessary, to be supplemented by user fees and donations, with government being the collecting and disbursement channel.

15.3. 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 rights[32] of vulnerable groups (women, children, minorities) in society.

15.4. Both Land Act No. 4 and Village Land Act No. 5 of 1999 have attempted to put into effect the above statements with provisions relating to repugnancy of customary law, acquisition of land rights and sales or assignments of land and mortgages.

[32] A number of critical statements against gender discrimination are provided in the new Land Acts, in the context of co-ownership and mortgages (see sections 85, 112, and 161 (2)). The Village Land Act 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).

15.5. 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.

15.6. Both Land Acts contain gender-neutral provisions[33] on acquisition of land 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.

15.7. Another innovation in this regard relates to the concept of co-occupancy between spouses. Section 161 of the Land Act contains a 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.

15.8. 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.

16. Fundamental Principles of the National Land Policy and Land Laws:

16.1. There are fifteen Fundamental Principles of the National Land Policy, which appear as sections 3 (1) and 3 (2) of Part II of the Land Act No.4 and Village Land Act No. 5 of 1999.

16.2. As stated in section 8.6 above, the NLP and new land laws expect that all persons exercising powers are to have regard to the fundamental principles of the policy and laws. This means that land administration in Tanzania will be guided by the following fifteen statements:

(a) To recognize that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
(b) To ensure that existing rights in and recognised long standing occupation or use of land are clarified and secured by the law;
(c) To facilitate an equitable distribution of and access to land by all citizen;
(d) To regulate the amount of land that any one person or corporate body may occupy or use:

[33] With an eye on gender equality, section 23-(3) of the Village Land Act 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.

(e) To ensure that land is used productively and that any such use complies with the principles of sustainable development:

(f) To take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest,

(g) To pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act; provided that in assessing compensation land acquired in the manner provided for in this Act, the concept of opportunity shall be based on the following: -
(i) market value of the real property; (ii)disturbance allowance; (iii)transport allowance; (iv)loss of profits or accommodation; cost of acquiring or getting the subject land; (v) any other cost, loss or a capital expenditure incurred to the development of the subject land: and interest at market rate will be charged.

(h) To provide for an efficient, effective, economical and transparent system of land administration

(i) To enable all citizens to participate in decision making on matters connected with their occupation or use of land

(j) To facilitate the operation of a market in land;

(k) To regulate the operation a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;

(l) To set out rules of land law accessibly and in a manner which can be readily understood by all citizen;

(m) To establish an independent, expeditions and just system for the adjudication of land disputes which will hear and determine cases without undue delay;

(n) To encourage the dissemination of information about land administration and land law as provided for by this Act through programmes of public awareness and adult education, using all forms of media.

(o) The right of every woman to acquire, hold, use, deal with, land shall to the same extent and subject to the same restrictions be treated as a right of any adult man.

17. The Strategic Plan for the Implementation of the Land Laws (SPILL)

17.1. The logical sequence in the regulatory framework involves policy setting, legislation, strategy and implementation programmes. The land regulatory mechanism in Tanzania has reached the strategic planning stage with the adoption of SPILL in 2005.

17.2. The New Land Laws, provide for a broad classification of land into three categories namely; general, village and reserve lands. Over the period of tenure history in Tanzania, much emphasis has been placed on general and reserve land. Village land has received very little attention in spite of the fact that over 80% of the population lives and operates in villages. Of late, the lack of due attention with regard to tenure security in village lands has tempted many violators to act in contravention of the law. It is therefore appropriate that the plan of action in SPILL has considered mainstreaming village land tenure as a top priority.

17.3. In order to fulfil its obligations to the users and the economy a land administration system should adhere to three cardinal principles namely; efficiency, effectiveness and economic sustainability. SPILL has been built on the basis of the three principles in the following ways:

17.4. Efficiency could be attained by: (i) Introducing simple procedures, which can easily computerise. Simplifying procedures is a continuous work, which is dependent on the attitude and preparedness of the staff; (ii) Providing a broad training to staff to enable especially the staff at district and village levels to attend to a cross-section of issues and duties; (iii) Introducing modern technology. The developed countries are all the time introducing modern technology. Although the officers are well trained 8-10 days per staff member per year are set aside for training purposes; (iv) Co-operate with other authorities.

17.5. Effectiveness is attainable by decentralising, as much as possible, the functions and activities of the lands sector Ministry. Some duties cannot be decentralized, like the production of the national topographical and framework land-use maps. Large scale maps at 1:1,000-1:5,000 for instance could be dealt with in zones. Municipalities should aim at managing the small scale mapping on their own. But the decentralization must be done step-by-step starting with the most urgent areas.

17.6. Economical sustainability of land administration starts with recognition that land has value and land administration should bear its own costs. Initial big investments for buildings, modern equipment and training can probably be provided in partnership with donors. But to run the administration and maintain buildings, equipment and continuously improve the systems have to be financed by fees and taxes or rents from the land. An investment plan has been designed for SPILL.

17.6. The strategy, SPILL has identified the following nine Key Result Areas, KRAs that are further decomposed, with input from field Consultation meetings, into Strategic principles and Strategic Objectives: (i) Land Tenure, Access and Land Rights; (ii) Tenure Security, Law and Order, Justice; (iii) Performance of the Land Administration Infrastructure; (iv) Capacity Building; (v) Land Administration Finance, Resource Mobilization and Financial Management; (vi) Land as a Resource, Land Markets, and Public-Private Sector Operations; (vii) Land Management, The Environment and Community-Based Participatory Decision Making and Facilitation; (viii) Performance Monitoring, Regulation, Supervision and Evaluation; and (ix) Public Education, Awareness Creation & Enhancement.

18. SUMMARY

18.1. Land policies could be judged by the way they give support to development and progress in general. In Tanzania land policies over the past century can be viewed in context of several historical phases namely: (i) the free development of customary tenure guided by the lives and relationships of the people on and with the land, without foreign intervention; (ii) the colonial phase in two parts - the German and the British era that focused on statutory instruments and prioritising foreign interests; (iii) the Independence Era that lasted a few years as a decade of legal reforms that attempted to put a national face on colonial legal instruments; (iv) the ujamaa socialism and villagisation era as a long period of experimentation with untried political philosophies and Government policies whose long-term adverse repercussions on land use were not known; and (v) the post-villagisation era that ushered in the new land policy and land laws as well as a strategic plan for the implementation of the new land laws.

18.2. Customary tenure evolved from within whereas the statutory tenure was imposed on Tanzania, then Tanganyika. Customary land rights stand at the foundation of native people's basic modes of livelihood and identity. In modern times it restores human fundamental dignity of belonging to some ancestral land, which should only be relinquished at will and in favour of other land tenure (freehold, leasehold) systems to facilitate a multiplicity of land uses and land users. In Tanzania, customary tenure has seen its ups and downs at the hands of politics before and after independence but has survived it all.

18.3. Colonial history on the subject of land access and tenure is seen in terms of conflicting interest between occupiers and natives including: (i) the setting and fixing of administrative boundaries by these powers; (ii) forcing many a people to settle down in response to the wishes of the colony; and (iii) *ad hoc* displacements and resettlements. Under foreign influence, customary tenure was only allowed occasionally, and under the strong and watchful eye of decrees and legal statutes, when it suited the colonial Government.

18.4. At independence many African Countries, including Tanzania, wilfully inherited the colonial laws and policies that had been in force on the land question and, by the same token, inherited the land tenure and land administration systems left behind. The effects of villagisation on land tenure were the following: (i) Relocation of scattered households into more compact residential Villages, with a purpose of providing common social services. Yet, in some places it caused land degradation and environmental damage. Such movements alienated people from ancestral lands; (ii) Peasant agriculture and agricultural production suffered, largely due to tenure insecurity and also due to farmland being far away from the homesteads; (iii) Substantive changes in the distribution of land out-of-owner consent occurred among groups and individuals. Many individuals lost their homes and lands in the process without receiving compensation; (iv) Replacement of customary land allocation authorities by elected village councils, without a consented instrument for such a change.

18.5. The absence of a comprehensive post-colonial land policy coupled with the ill-effects of the villagisation programme, now irreversible under the new land laws, down-graded the security of tenure and opened the door for the proliferation of land conflicts and disputes. In response, the Government appointed the Presidential Commission on Land Matters to gather views countrywide on the general direction the country ought to take with regard to land tenure and land use, both in rural and urban areas. Results of this commission led to a set of fifteen Fundamental Principles providing a framework for the national land policy that was passed by Parliament in 1995. The enactment of the Land Act no. 4 and Village Land Act no.5 of 1999 followed shortly after the adoption of the NLP document. As per NLP, Tanzania has continued to operate the Right of Occupancy land tenure system that vests land in the President as the ultimate landowner.

19. Points of Discussion:

In the discussion the following questions could be highlighted.

1. Colonialism changed people's relationship with land forcibly and introduced concepts that were alien to them. Does this mean that countries that evolved from colonial rule should reverse the tide and go back to pre-colonial times for a fresh start?

2. The national government, after independence, continued the same policies and frameworks of the colonial government save for abrogating perpetual (freehold) land tenure. At the time lifestyles of most people had changed including, introduction of a money economy that demanded individualized titles and larger land holdings as well as consideration of natural urbanization trends. What implications do these have on today's policies?

3. Land Policies at independence were not focused on equitably distributing land and hence lead to conflicts both in rural and urban areas and to the development of slums. What solutions should we envisage to come to the rescue of the situation when focusing on land use for poverty reduction and economic growth in this decade?

4. The villagisation policy attempted to do away with customary land rights but failed. Aspects of legislation enacted to enable the villagisation programme and policy were declared unconstitutional by the Courts. However, the national land policy that was formulated in a participatory way and passed by Parliament shortly thereafter upheld the same tenets of the land tenure system adopted from the colonial Government at independence. What should we say about the NLP in context of the Colonial Legacy? Are policies and legislation different in substance as part of the regulatory framework? Which one should have primacy over the other?

5. The fundamental principles of the 1995 national land policy are also fundamental to the new land laws as guiding principles in land administration. How should these principles be received by stakeholders, in their daily activities, and in demanding their land rights when compared to the land laws?

6. Urbanisation continues unabated in Tanzania but urban land access and housing seriously lags behind, causing an urban problem that touches all sectors of society and the economy. All hope for change, in recent years, has been on the effectiveness of the 20,000 Plots Project. But, the steam in the 20,000 plots project is fading, meaning that urban land scarcity will probably continue to be part of urban development for the foreseeable future. What should be the solution to urban land scarcity in Tanzania that effectively started after 1972?

THE END

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