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FOCAL ISSUES IN LAND POLICY REFORM AGENDA

(Inputs Based on Tanzania's Experience)

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Abstract:

The importance of a good land policy reform agenda is to enable land owners enjoy their full rights in land tenure particularly, in an environment where such have been violated or neglected in the past. Such an agenda supports good governance, peace and harmony in neighbourhoods, and a flamboyant economy. However, considerations in setting the agenda in a given country are many and variable. This paper has identified six deemed vital for the success of LAND POLICY REFORMS as experienced in Tanzania.

Firstly, factors shaping Land Policy have a historical context but, human history is neither homogeneous nor conflict free. Consequently, broadly agreeable and acceptable land policies within jurisdictions are rare and where possible have been short lived. Secondly, both internal and external pressures operate on policy makers in land policy reform. This pressure creates tension and prolonged debates at all levels and may cause conflicts.

Thirdly, customary tenure appears to take care of the basic human needs of shelter and food for all in non-industrialised nations. It stands out therefore as the corner stone of land tenure systems in sub-Sahara Africa. Fourthly, Gender discrimination is repugnant to justice and morality in most communities. Therefore emancipation of women towards equitable access to land and subsequent enhancement of production and higher contribution of women to the GDP should be seen a key issue that it is.

Fifthly, the definition and identification of individual interests in land, using methods that will enable recognition and guarantee of land rights are essential in enhancing tenure security in village lands. Lastly, the results of localized studies on the nature and modes of occurrence of conflicts and disputes over land is important in designing appropriate mechanisms for their resolution and identifying options for minimizing their occurrences.

The author is convinced of the success of an African land policy reform agenda that takes these issues into consideration and localizes each to the specifics of its communities.

PREAMBLE:

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 supports good governance and allows investments in food production, housing, infrastructure development and environmental protection among other benefits. Tenure rights are supported by sound political, economic, legal, institutional and technological frameworks. In this regard, a sound land administration system is an essential part of Government that supports land development in the broadest sense and enables the state to broaden its revenue base at the same time.

Major organizations (e.g. the World Bank, the European Union, Donor Countries, etc) concerned with economic and human development have recently issued guidelines and involved themselves in assisting in LAND POLICY REFORMS particularly, in the developing World. About a year ago, the African Union (AU) 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. It is important to note that there is no single or simple prescription for reforms in all countries. In fact, as far as many countries are concerned 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 countries.

African countries 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. Issues of land access, land rights and land tenure are therefore of prime importance to the lives of the majority of people. Much care is here needed as it touches on issues that are a concern of the majority in communities. One other note is that African countries, as free nations, differ in the stage of development along the way of addressing land matters. A few such stages a noteworthy: (i) At the end of one spectrum would be those who are yet to settle permanently on the land and have not developed firm land ownership relations. In some such incidences governments do not have policies geared at land distribution within legal frameworks. (ii) There are countries that have internal conflicts, and some have been at war, whilst some are far from reaching consensus on land policy, let alone land laws. And, (iii) 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 land markets being governed democratically.

Issues are diverse in nature. For example: (i) it is possible that 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 a situations and probably differs from issues in countries that had no settlers

economy or where the settler legacy has been resolved; (iii) There are issues that evolve as a consequence of social relations and that are again, specific for each country or ethnicity. Whatever issues constitute a priority and whatever their gravity, one thing is clear and that is that guidelines to land policy reform ought to take a very careful analysis of issues prior to their being presented and the parameters of their application should be made explicit.

Tanzania may have something to offer in a way of experience on a number of issues since it has had a rugged path in land policy reforms. This is one country: (i) that abolished the powers of Chiefs, among other things, over land within two years of independence - an act that was initially greeted with suspicion but soon people got used to not having royal blood among them and getting leaders by the ballot. (ii) where citizens are unaware of what it is like to vest land in the presidency just to be required to ask the local chief's exclusive consent to convert his/her land to enable access to a mortgage. (iii) 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. (iv) that tried with several band-aid solutions to make the colonial policies and laws palatable, without success, until it learnt the hard way to ask the people in a participatory way to define their own land tenure policy, and saved the day. But 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 (v) in which consensus on a land policy took four years to achieve, and in it is embedded a carefully designed set of fundamental principles of the policy. Another four years were spent in developing a new legislation and subsequently repealing the key 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 a national relationship with the land that cherishes customary rights with elements of freehold tenure and legal framework to address grievances.

The free development of land policies in Africa was interrupted by the Berlin conference of 1884 and subsequent process in "Europe's scramble for colonies in Africa." There could be lessons to learn from the period prior to this interruption also. Adventurous European and Asian tribes emigrating and roaming parts of the continent found their fate sometimes alongside with the indigenous tribes. 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". Colonial regimes halted free movement of people across countries and beyond. It is unimaginable whither way self-advancement would have propelled people's relations with the land. It would perhaps have been left to socio-economic formations to define, if uninterrupted by gun battles. History tells us that the conflict that was 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 have been demanded by the people rather than designed by those in power. The role of land policy reform guidelines is seen, here, to provide leads to policy options to the governments of the day and facilitate initiatives to engage the people in policy reforms for the benefit of all.

1. INTRODUCTION:

Land tenure is an important aspect of human life. The value of land has widely been acknowledged and with this awareness come issues that are not easy to reconcile, even within a country or geographical regions thereof have come to the fore. 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 attempts to trace human relations with land in Africa by focusing on Tanzania's experience with the hope of making a contribution to focal issues in land policy reforms that may constitute guidelines to those wishing to learn from neighbours' experiences. Several issues have been highlighted as key ones in this attempt. The paper will dwell on: (i) historical land tenure system 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; (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. These are core issues to be considered in developing land policy reform guidelines and are discussed in greater detail in sections 2 to 8 ending in statements on guidelines.

2. SOME LESSONS FROM AFRICAN HISTORY

Overview: Ghana, the first of African Countries into self-governance recently celebrated 50 years of independence as a free nation, but it is well known that there have been people living in those environs for thousands of years, some of whom have migrated as far south as the Congo basin. Their legacy with the land is unique in its own way as is that of other peoples on this continent. The Shona people of Zimbabwe, for example, interpret the name Tanganyika (*tanga nyika*) as "first country" and many believe that Tanzania 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 probably set a time mark to any land claim anyone of them could have, in present day Tanzania and indeed, anywhere else on the continent of Africa. This section examines historical lessons to land tenure.

The background on historical land tenure issues in the African context, in this paper, 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 and the beginning of colonial adventures on the continent of Africa. The study shall therefore examine attitudes to land prevailing among Africans shortly before the dawn of colonialism.

The colonial era shall be divided into two phases, namely the German and British periods that sealed communities with administrative boundaries and radically

changed the course of land tenure that hitherto prevailed. This era will be highlighted because of the manner in which land tenure was institutionalized in land policies, ordinances and land administration decrees and statements in African countries, many of which are still honoured 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.

2.1. Loose Attachments to Land (1500 – 1895):

It is also known that "land (the major means of production) 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 *in Alavi and Shanin, Editors*) states 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," 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, which were wholly or largely dependent on livestock. The difference in production relations lies not merely in the fact that they revolve around cattle (or goats or camels) rather than land as the basic means of production. In clear terms, pastoral clans/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. The notion of ownership, even though hedged about with complex kin and other relationships that provided for redistribution, existed on many possessions, but "was not usually the case with land (Rodney, 1974)".

It was only towards the end of this second period 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. These developments in Africa from 1500-1885 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. Further, 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 (Ndlela, 1981). It is however noted that at no stage in the independent history of these states did land become purely a personal possession, to be monopolized by a given class, as under European feudalism.

2.2. Colonial Impositions:

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 the colonial powers stopped nomadism at a macro-scale in many countries. In this regard only small-scale migration some, which were engineered as Government programs continued. It is agreed that at this stage land ownership concerns overrode land control and the colonial Governments should have introduce the ownership concept to native as was done to settlers. Yet this was not done save for powers granted to chiefs and clan elders at an ad hoc basis.

Traditional land holding in 19th Century colonial 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 community. Such a situation continued throughout the colonial era, though largely constrained by German (1893-1916) and later, by British colonial (1917-1961) rules.

2.3.1. German Decrees – Rights of Occupancy:

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.

2.3.2. The British Statutes – 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 Organisation 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. Tanganyika was transformed into plantations and encouraged peasant farming to produce cheap raw materials. 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 commencement of the ordinance (Section 3); (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.

2.3.3. The Independence Era:

The Early Post-Independence Period: Post-Independence Government in Tanganyika inherited the colonial laws and policy on land. These continued to vest land in the state as the ultimate landowner, without any significant modification (except the change in the ultimate ownership, or the radical titles, from the Governor to the President). The role of Chiefs and Clan elders on land that was spared from colonial intervention was farther substantially diminished with changes in governance when in 1963 Chiefs and Chiefdoms, as part of local government machinery, were abolished by a Presidential order. Since 1963, elected village councils have replaced chiefs, headmen and elders who have been responsible for administering village lands.

In a period of 35 years of independence, the Tanzania Government introduced only marginal and minor reforms and amendments to the inherited Land Ordinance and supporting legislation. Some legal reforms were introduced in 1963 when the 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. The Law was extended to cover feudal tenancy in Pare, Moshi and Tukuyu districts in 1969. The Government leaseholds were converted into rights of occupancy in 1969 and land rent and development conditions, similar to those pertaining to a normal right of occupancy, were attached to all leases.

The Ujamaa Period: 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 offsprings 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 to construct a house. Land for communal services, such as schools was also provided. The programme was carried out rather hurriedly and in many instances in an *ad hoc* manner. 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).

In Summary: In Summary, Africa's historical experience points to the fact that land ownership was secondary to land control prior to colonialism. Also history reveals that land tenure security was not individualised but was provided in a collective way through clan and tribal leadership in whom the land at any given time was vested. There being abundant land for everybody's needs, the issues of land use and production for each homestead were given priority over ownership.

Colonial history on land tenure was one of domination and subjugation by foreign powers. 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 legal statutes.

At independence most countries inherited the colonial laws and policies on land. 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 largely cosmetic and often of a trial and error type, which worked on upholding colonial arrangements and often diminishing influence of customs and traditions of local people.

3. ACCOMMODATING CONFLICTING POLICY INTERESTS

Overview: Colonial governments were ***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). They were also insensitive to what the money-economy they had unleashed would do in accelerating production, and hence need for larger chucks of land at the homestead, clan and tribal leadership levels (Ndlela, 1981). The wishes of the colonial governments were cemented in government policies and

legislation over land, 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 (Rodney, 1974). Such is an example of the environment taken over by the post-independence national governments and such should be the starting point in addressing land tenure reforms in countries that were subjected to colonial rule.

3.1. Land Tenure Security and the Land Market:

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. Fimbo, (2004) identifies these as two sets of pressures operating on policy makers in the process of land law reform processes. Firstly, internal pressures which point in the direction of strengthening the security of tenure of those, mostly nationals, using the land. Secondly, external pressures which point in the direction of facilitating the operation of a market in land that opens way for large-scale local and foreign investment. Government is to mediate between the two often non-complementary forces, represented on one hand by customary landowners and civil society organisations and by 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 particularly, in Africa (ibid.).

It can be recalled that there was an unprecedented high level involvement of the private sector in Tanzania particularly, CBO, NGO, CSO in the developments that lead to and culminated in the national land policy of 1995. Such a partnership continued after the NLP with civil organizations leading the way and often side in arms with the lands sector Ministry in Government, in advocacy programs so as to facilitate the operationalisation of the new Village Land Law 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. It is acknowledged to be the solution that the colonial empires failed to develop when imposing administrative boundaries in the colonies.

3.2. Pressure on Village Land-Use:

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, 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 participating in a series of meetings on the fundamental principles of the NLP in context of poverty reduction wanted the Government to re-distribute land in such a way that each received enough to assist in the reduction of income poverty at the family level. 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 (Lugoe et al, 2005).

3.3. **Donor Pressure:**

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 pursing 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 (SPILL) 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. NSGRP of MKUKUTA is therefore a continuation of poverty reduction strategy, but much broader and responds also to the achievement of the millennium development goals (MDGs) in Tanzania.

The Government recognizes that 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 will probably be mobilized, from development partners through international and local advocacy for increasing international financial assistance for the MKUKUTA/MDG-related investments.

MKUKUTA is therefore an endeavour supported by the Millennium Project, to identify policy priorities, sequencing and linking them to sector strategies, and generating approximate estimates of resources needed to meet the targets, to develop a snap shot of a long-term strategy for achieving MDGs. The Lands sector has been identified as a key sector in the success of this strategy (Mtatifikolo and Lugoe, 2006).

4. DYNAMICS OF CUSTOMARY LAND TENURE:

Overview: 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. 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 a good 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 lead to claims in the name of ancestral lands as discussed earlier under historical development.

4.1. 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 levels 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 displacement 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.

4.2. Tempering with Customary Tenure Under Ujamaa in Tanzania:

We explore the scenario in Tanzania about a decade into independence. The Tanzania Government economic planning blue print was the Five-year plans. The first Five Year Development Plan sought to achieve rural transformation through village settlement schemes under the 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 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. This is easily stated than done.

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 Act, did not contain any provisions on land tenure. The obvious question would that how would anyone moving into a village acquire land and how would the same dispose of land wherever s/he is coming from? The practice was the following: 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 shall 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 on 22nd August 1975 as G.N. No. 168. and as stands it intended that anyone living in a village would not receive title to land. In other words, **customary tenure would cease to exist**.

4.3. Resurgence of Customary Tenure in 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. Lohay Akonaay and Joseph Lohay.

The Shivji Commission recommended two forms of tenure, that is to say, the right of occupancy and "customary rights" (Shivji, 1997). 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, 2004). 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.

4.3. Examples of Implementation of Customary Tenure in Tanzania's Context:

Fimbo (2004) argues 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.

4.3.1. Revocation of Title on Village 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.).

4.3.2. Tenure Security:

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 (ibid.) .

4.3.3. Access to Customary Land:

Here, Fimbo (2004) points to section 20-(1) of the Land Act for guidance on access by non-citizens. 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.

He 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.

5. GENDER ISSUES AND POVERTY REDUCTION

Overview: Land policy reform in the modern context is about 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.

5.1. Poverty Reduction:

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.

5.2. Women's Land Rights 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 Acts (GoT, 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)) and 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, 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.

5.3. Re-emphasis of the Gender Debate on Land 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.

5.4. 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.

6. PHYSICAL ADJUDICATION AND PROGRESSIVE TITLING

Overview: Land access is more than using the land. It involves land rights and the security of tenure of a defined land parcel. Adjudication is a process directed at tracing the extent of land parcels for which land rights have been framed particularly in village environs. In urban centres the method of surveying has shown preference in many countries.

6.1. **Survey or Adjudicate?**

A quick comparison of the two shows that the survey method has unique advantages over the adjudication method. The survey methodology is based on *the following five principles: control, consistency, economy*, *independent checks and maintenance* (Dale and McLaughlin, 1988). The authors proceed to discuss these advantages: (i) Control refers to its capacity to restrict error propagation and accumulation from exceeding set limits. (ii) Economy refers to the optimization of resources at the time of setting up the network and its subsequent maintenance in usable form, as well as economy to the users. (iii) Consistency with major anticipated applications in accuracy requirements. (iv) Independent checks introduce a quality control mechanism; and finally (v) Maintenance calls for the physical maintenance of the points marking the boundary corners and corresponding records. Accordingly, surveying method is less prone to errors, can pay for itself through the various products, is appropriate for the task, can be validated and can re-establish boundaries at a later date should these be destroyed or otherwise.

Adjudication in turn suffers from human problems such as death, emigration or a change in mind by witnesses to the process. 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 fixed boundaries. Such countries have legislated Land Survey Ordinances or similar laws that lay ground for the application of survey methods in the rigorous demarcation 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 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 system is envisaged."

The idea of good referencing also comes up in this statement. 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 quotation, makes this to be 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 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 cases on boundary disputes.

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 (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 (ibid.)". 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 evidence of adjudicators.

6.2. **Village Land Registration**:

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, etc.

The Village Land Act makes provisions for three modes of adjudication namely; spot adjudication, village adjudication and district adjudication. This classification is important in relation to participation of local communities: (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. In any of these modes of adjudication it is open to the adjudication committee to record that two or more persons or group of persons are co-occupiers and users of land.

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.

6.3. Tanzania's Experience:

In Tanzania, the Land Act No. 4 of 1999 provides that certificates of occupancy shall be for land that has been surveyed. The surveying of land is left to other statutes. 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). 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 the purpose of surveying applied in the general lands. However, the method of 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 attached thereto (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 improvement.

7. LAND-USE CONFLICTS AND TENURE DISPUTES

Overview: 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 be. Proper land-use seeks to minimize the occurrence of conflicts and disputes and enforce tenure security. It is not enough that courts should be provided, for even when these are well functional, the land administration system should itself be structured in such a way as to prevent and minimise the occurrence of conflicts and disputes.

7.1. Origins of Conflicts and Disputes – the General View:

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 causes, 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 to it 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, etc. A major case in point is the Usangu valley, in Mbarali District in the Southern Highlands. The draught experienced countrywide causing dams to dry up in the last 5 years in Tanzania had a big toll on livestock and pastoralists had to go 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.

7.2. Consequence:

Conflicts are not conducive to development but 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 and is an unfortunate mishap in terms of the spirit of the national land policy and new land laws. 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 for land administration machinery to follow, which in the eyes of many should do away with most conflicts and disputes when properly followed. 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 national instruments.

7.3. Case Study on Conflicts and Disputes:

A team of experts (Lugoe et al, 2005) 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, which are clustered into three main categories, 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.

7.3.1. Causes of Village Boundary Disputes:

The testimonies in Lugoe (2006) 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 adequate 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.

7.3.2. Types of Conflicts:

The same consultative meetings conducted across the country have identified five types of such conflicts when viewed from the **tenure** point of view (Lugoe et al, 2005). 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.* And, (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.*

In summary: It was 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 (GoT, 1995). 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) for all his/her land-use requirements and, where need arises to use extra ground, shall seek appropriate permission (Lugoe et al, 2005).

8. OTHER LAND POLICY REFORM ISSUES

The above text does not intend to portray that there are no other issues worthy of inclusion in land policy reform guidelines for African Countries. On the contrary, quite a set exists although here a selection has been made. This selection is based on the higher priority that has been placed on those discussed in the paper and as seen to the author to be fundamental to the cause. Any meaningful land policy guidelines would, in addition, also touch upon: (i) economic, financial, environmental, institutional and operational sustainability of reforms; (ii) land sub-leasing arrangements; (iii) land administration reforms; (iv) the role of land tribunals; (v) appropriateness of land administration infrastructure; (vi) institutional arrangements; (vii) mapping and land-use planning and land redistribution; and (viii) legal policy reforms.

9. CONCLUSION AND RECOMMENDED KEY GUIDELINES FOR AFRICA

There are several broad guidelines to land policy reform emanating from the discussions above. These, in summary, are as follows:

9.1. ON HISTORICAL LESSONS: Factors shaping Land Policy have a historical context and human history is neither homogeneous nor conflict free. 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.

9.2. ON DISHARMONIOUS PRESSURES: Both Internal and external pressure operate on policy making. Internal pressure is comprised of the quest for equitable distribution and tenure security guarantees for poverty reduction towards poverty alleviation. 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.

9.3. ON ROLE AND DYNAMICS OF CUSTOMARY TENURE: 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. It provides and restores human fundamental dignity of belonging to some ancestral land, which may then 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.

9.4. ON DISCRIMINATED LAND ACCESS: 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.

9.5. ON ADJUDICATION AND TITLING: 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.

9.6. ON CONFLICTS AND DISPUTES: all governments 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 occurrence of conflicts and disputes over land. 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 and Government.

9.7. OTHER: It is recommended that a deeper scrutiny of issues be made on all possible reforms specific to communities in a given country. Yet a land policy reform that does not take the issues discussed in this paper into consideration or pays a simple lip service to them would not be sustainable.

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