

Land Issues and the Democratisation Process in Tanzania: A Review of the Report of the Presidential Commission of Inquiry

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Abstract

This article is a critical review of the Report of the Presidential Commission of Inquiry into Land Issues in Tanzania (otherwise known as the Shivji Report (URT, 1994)). The review provides a global perspective within which the process of the compilation of the report as well as its contents may be assessed. An assessment of the *ujamaa* period in Tanzania's socio-economic history is also offered as part of the global perspective. Also discussed are issues of gender inequality and the role of the World Bank, and how these impinge on discourses on land issues in Tanzania.

Introduction and Context

For native Americans, land defines who they are, shapes their histories and their culture, and is their tie to the past and the future. Their land also contain wealth.

Statement of Native Americans in their fight for land rights.

For the small holder in Tanzania and elsewhere, land is much more than simply a factor in economic production. It is his/her lifeline. One would risk loss of one's land if there was a potential alternative means of livelihood, for example on the labour market. That hardly exists. Therefore, in the rural areas, loss of land means virtual marginalisation and eventual destitution.

Statement of the Presidential land Commission.

The above statements underscore the conceptual outlook of Africans and Native Americans with respect to land and land use. In both cases these peoples viewed land as a connection between humans and nature. Human beings were taught that they were guardians of the land and the animals, and a whole cosmology

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developed to concentrate the minds of the peoples on how to preserve the environment. Just as now it was reprehensible to sell other humans, so it was reprehensible to sell land. The value systems of the African and the Native American was severely affected by the transatlantic slave trade, and the subsequent rise of capitalism. Commodification of all spheres of human existence took place in Europe after the 18th century, and there has been an attempt to generalise this form of social organisation. After the era of monopoly and the rise of modern imperialism, when capitalism became a global system, there was the view that the ideas and practices of Europe were equal to progress, and hence the attempt to export the models of production and property relations. The relationship between commodity production and progress has been presented as one of the cornerstones of present-day civilisation.

In Africa, in general, there has been resistance to the commodification of land. The idea of private property became interwoven with the philosophical traditions of Western Europe where capitalism was equal to democracy, and the market was equal to rationality. In the 18th century, John Locke had refined the ideas of individualism and private property. Since then the place of ground rent has been central to the transformations of the mode of accumulation of capitalism. From the era of mercantilism to industrialisation, and from monopoly to the present period of just in time (lean) production, private ownership and social production has been a fundamental contradiction of human existence.

When John Locke was writing his treatise on government, Africans were considered sub-human, and therefore did not have the rights to property. In the Western world, Africans were held as slaves (Rodney, 1972; Anderson, 1995) and there had to be major struggles for the descendants of Africa to achieve the basic democratic rights such as the freedom of assembly, right to industrial arbitration, right to the franchise, and the right to education. The wealth accumulated from the *black holocaust* enriched Europe and the capitalist class internationally, in the same proportion that Africa was underdeveloped (Rodney, 1972; Anderson 1995). It is now fashionable to repudiate the theories of underdevelopment, but in the period of the debates on recolonisation, it is timely to reassert the fact that it was the state of underdevelopment that facilitated the conquest of Africa. Conquest and the partitioning of the continent was formalised by the conference of Berlin. Germany was the first colonial power in Tanganyika, and the force and violence of their colonial policies has led the more thoughtful of historians to document the contradictions of *development for exploitation* (Koponen, 1994). In Southern Africa, where partitioning was

accompanied by the implantation of settlers, land alienation from African farmers was one of the central features of imperial rule. This form of social relationship was based on conquest, and Africans had no democratic rights.

Cheik Anta Diop has argued that there are two forms of states: those borne out of consensus, and those which were formed out of conquest. Present-day forms of democracy in Europe are predicated on the "consensus" of rational individuals operating in the market. This involves the participation of citizens in the political life of the society. The complete separation of producers from their means of subsistence, and the need for the working population to sell their labour power to survive, ensured that there was competition in the market place. The concepts of democratic elections and voting were developed as instruments to mediate the political struggles in these societies. Notwithstanding this separation between economic management (which was dictatorial) and political management (which was based on elections), the working people had to wage major battles for the right to exercise the franchise. Africans (especially in the USA), the suffragettes, environmentalists, feminists and other social forces have deepened the concept of democracy far beyond the horizons of the thinkers of liberal democracy.

While Europe was fighting for democracy during the twentieth century, all countries in Africa (with the exception of Ethiopia and Liberia) were under colonial rule. In many countries Africans were dispossessed of their land. Algeria, Kenya, Zimbabwe, Namibia and South Africa were the outstanding examples of this dispossession (Moyo, 1995). The Maji Maji revolt in Tanganyika, along with the fact that the society changed colonial masters after World War I, impeded the plans for large scale alienation of land. By independence in 1961, less than one per cent of the land had been alienated by the settlers. Yet, despite their numerical weakness, the settler elements of the colonial society enjoyed the political support of the colonial authorities in their coercive demand for labourers, and access to other resources for this form of agricultural production. The traditions of resistance among the Tanzanian poor enabled the nationalist party, TANU, to mobilise for independence, drawing on the strengths of the rural communities.

The struggle for national independence in Africa incorporated a form of democratic struggle which can be distinguished from the imperial democracy which has been critiqued by Wamba-dia-Wamba and other scholars.

Imperial democrats have been responsible, in many ways, for entertaining authoritarianism in many parts of the world—sometimes in the name of democracy. A democracy erected on the basis of colonial conquests and

entertaining in its midst native people in reservations, aborigines, etc., must be critiqued from the point of the view of the victims. People without rights in these democracies constitute a radical witness to the limitations of those democracies (Wamba-dia-Wamba, 1996).

Tanzania has been in the forefront of major struggles by Africans to regain national sovereignty. As the base of the liberation committee of the Organisation of African Unity, the Tanzanian people supported the democratic right of self-determination of the African peoples. In the process the people were demonstrating that they were not helpless victims of international capitalism, but active agents in their own liberation. It was in this context that the political leadership sought to develop the ideas and political forms which could give meaning to the Tanzanian form of self-determination. Despite its limitations, the populism of the nationalist party formed a foundation on which other forms of democratic participation could be elaborated. One-party democracy as a form legitimising the system was articulated and given intellectual substance by the then nationalist leader, Julius Nyerere.

In the first years of uhuru, the nationalist leadership sought to draw positive lessons from the egalitarian nature of the pre-colonial societies, despite the patriarchal and gender biases which were embedded in these relations. The avowed egalitarianism of the party did not interrogate the power which was wielded in the village community by men, and the subordination of women in the name of "tradition". Because the nationalist movement was the echo of the male voice in the society, it could present itself as retaining egalitarian ties and communal practices. This self-image was consistent with the contradiction which had emerged between the colonial state and the emergent African leadership. Because of the low level of social differentiation in the village community, it was at that time possible to present a united front against the entrenched settler and Indian commercial elements. The result was an experimentation with the idea of establishing *ujamaa villages* (Frehold, 1979). In the process more than 80 per cent of the Tanzanian society was organised into village communities, with over 8367 registered villages.

The nature of the integration of the Tanzanian economy into the international system, with its agriculture dependent on the hoe and unpaid female labour, could not lead to the development of the productive forces, regardless of *ujamaa*. There were radical initiatives in the form of the Arusha Declaration, along with the nationalisation of the settler farms and the villagisation process. However, the whole thrust of the Arusha Declaration did not emerge from consultations with the poor and the leadership. It did not seek to use the

knowledge of science and agriculture which has been dormant in the heads of the people, especially the rural women. Education for self-reliance as one of the cornerstones of *ujamaa* incorporated a school tradition which was imported from Europe. More importantly, *ujamaa* as an all-class idea did not interrogate the fact that the bulk of the work in the rural areas was done by women, while they had little control over the decision-making process in the villages.

This presented the society with a contradiction. The social and political lives of the majority of the people depended on agriculture and natural resources for their social reproduction, while the government was tied to the export of cash crops for the reproduction of the bureaucracy. Productivity was low, and the majority of the society eked out a low level of existence with the power relations in the society favouring a small elite in the urban areas. This elite used the resources of the bureaucracy to build up their resources so that while they were supporting ideas of egalitarianism, they were also enriching themselves. With the support of external forces which were uncomfortable with the ideas of African socialism—or any form of socialism—this emergent class accumulated, but were stifled by the fact that the main dynamic behind the society laid in the anti-colonial struggle in Africa. The growth of this stratum in the society and their search for levers of influence and power provided the space for the decomposition of the ideas of *ujamaa*, and the recomposition of the ideas of capitalism and exploitation as the basis of development.

It was in this context of the decomposition of the ideas of *ujamaa* and a deligitimisation of the ideas of African liberation that there were pressures on the allocation of land, with tussles between the emerging social forces and the ordinary Tanzanian. This resulted in tensions between different sections of the bureaucracy, particularly local governments and the Ministry of Lands, as to their respective powers. In practice the Ministry of Lands managed, administered, and allocated land on behalf of the President, but in the era of liberalisation, the economic, ideological and political struggles over land demanded that there be a clear policy on land tenure and land use in Tanzania. The arbitrariness of the allocation of land of those forces which were emerging created insecurity for the vast majority of the population, especially the poor peasants and pastoralists.

It was in this context that in 1991 the President of Tanzania announced the formation of a land commission with the following terms of reference:

1. To hear complaints from the general public concerning land and plots in the rural areas and urban centres, and to make recommendations for solutions thereof.

2. To identify basic causes of land disputes and to propose remedial measures for solving the same and to recommend ways and means, including the establishment of machinery and procedures, for settling land disputes.
3. To review matters of policy/land laws, currently in force concerning allocation of land, land tenure, land use and land development and recommend changes thereto wherever necessary.
4. To analyse the functions, jurisdiction and organisational structures of institutions involved in land matters, its allocation and development, and in the settlement of land disputes with a view to identifying any deficiencies and problems of overlapping of powers and to recommend clear demarcation of the jurisdiction of the existing organs.
5. To look into any other matters and issues connected with land which the Commission deems fit for investigation.

The breadth of the mandate covered contentious issue in the society, and at the end of the sitting the Presidential Land Commission (hereinafter referred to as the Commission) came up with two major recommendations.

1. Village land shall be vested in the Village Assembly, the democratically elected body of the village, and
2. National lands, shall be vested in the Board of Land Commissioners to be held in trust for the benefit and use of the people (Chapter 5).

These central recommendations reinforced the position of the centrality of the villages in the lives of the people, and demanded a form of democratic governance in the village assemblies which could have profound implications for the forms of democracy to be developed in Africa. In response, the World Bank and other international consultants sought to hastily develop a land bill which would undermine the recommendations of the Commission, and strengthen the social forces which wanted to see the alienation of land to the point where there was a class of landless labourers. This review seeks to highlight the importance of the recommendations of the Commission, underlying the need to link the issues of democratic access to land to democratic access to water resources; and the importance of a gendered perspective on land in a society where the majority of the producers are locked in traditions which reinforce their exploitation and marginalisation. The important departure of the Commission has stirred an

important debate from the intellectuals and consultants of the World Bank and others who believe that the individualisation of land tenure will be the way for the future.

The language of commodity associations, farmer's unions, and the market for agricultural goods has been the discourse on land reform in Africa. Generalised resistance to the capitalist form in the rural areas has led some commentators to speak of the "uncaptured" peasantry. The dream is to have the form of labour tenant relations which threw Southern Africa into the war of national liberation. Settler land ownership and labour tenancy with privileged access to seeds, water and energy has been at the crux of the African liberation struggle in Zimbabwe and South Africa. Yet, in spite of the contradictions embedded in this form of land ownership, there are now new schemes of Afrikaner farmers from South Africa seeking to establish this form of land ownership and agricultural production in other parts of Africa. This is the thrust of a policy agenda now being formulated with the active support of the European Union. Initiatives for a Southern Africa regional agribusiness forum seek to reinforce the idea of individualisation, titling and registration as the basis for a dynamic land market which would support a dynamic capitalist society.

This is the social context in which we review the Report of the Commission. In Tanzania, the ideas of *ujamaa* had taken deep roots, and despite the turn to liberalisation in the 1990s, there were elements who wanted to sow the seeds for a different path, based on the democratisation of social relations in the villages and the vesting of real powers at the grassroots. This is the basic thrust of the Commission's report. This report has called for a national land policy, and the components of this policy are sources of heated debates. In an effort to broaden the debate to reach the ordinary Tanzanian, a Kiswahili version of the Commission's findings, *Ardhi Ni Uhai*, has been produced by Georgios Hadjivayanis. The very act of ensuring the production of the report in a language accessible to over 80 per cent of the people outlined the intention of the Commissioners.

This review seeks to underline some of the democratic issues of the Report, stressing that its recommendations simply provide an important starting point for reconstruction which is based on the skills and ideas of the working poor. There have been many criticisms of the Report, and some women have pointed to the limitations of the chapter on gender inequality. Intellectuals and consultants of the international financial institutions have also studied the Report, and are pressing for a new land bill in the society. This review contributes to the larger debate on land and democracy in Tanzania.

The Commission's Work as an Exercise in Democratic Consultation

The social composition of the Commission mirrored the structure of the society. All of the members were Tanzanians, a reflection of the fact that during the *ujamaa* years the society had trained a cadre of technical experts who could hold their own in any international gathering. The Chairperson of the Commission was Issa Shivji, a professor of law at the University of Dar es Salaam.

The Commission set itself the task of developing a new form of democratic discourse in the society. In the process, the Commission worked out a rigorous itinerary for visiting regions and holding public hearings at the district and village levels. It created a form of *assemblies of the people* which had been theorised in the past but never put into practice in societies where the act of voting every five years mocked the idea of democracy. In the process of holding 277 public meetings in 145 villages and 132 urban centres, the Commission was giving meaning to its recommendation that the decisions at the grassroots be made in consultations with the ordinary person. The Commission, therefore, reversed the old colonial method of investigating social issues where the study of the law and the examination of expert witnesses took precedence over the views of the producers.

The Commission attempted to meet all sectors of the community: experts, government officers, as well as individuals of the relevant institutions. In logging over 300 working days on regional tours, however, the Commission was hoping to establish a new tradition where the views of the ordinary Tanzanian became as important as those of legal experts or government officers. In his preface to the report, Shivji admitted that the ultimate source of the major ideas were inspired by the ordinary *wananchi*.

What we did was to systematise, articulate and present in a coherent manner what we had gathered from the people in the language of their daily experience and practical wisdom. Whatever is good and meritorious in our report, therefore, is rooted not in some grand theory but in the great wisdom of the people.

The work of the Commission was a sterling lesson of democracy in action. It was not insignificant, therefore, that one of the contributions of this land commission was a pointer to the possibilities of greater participation by the ordinary Tanzanians in decisions of matters affecting their lives.

The Commission and its work can be compared with the work of a previous major commission in East Africa in the early fifties as a response to the struggles of the land and freedom army in Kenya. That commission, the East African Royal Commission, was hastily called in order to defuse the militant call for the return of the land to the Kenyan people. In essence, the East African Royal Commission's report, following an earlier report by D.F. Corfield on the origins of the Mau Mau, was an exercise in political pacification. The findings of the East Africa Royal Commission (1953-1955) had considered the forms of land ownership which could lay the foundation for the progressive African yeoman farmer separated from the "tribal system of land tenure". Using the language of efficiency, that Report made a case for the individualisation of land tenure in East Africa. It was in Kenya where the recommendations, with respect to capitalist agriculture, were pursued with the social consequences of the nature of present day Kenyan society.

In its capacity to influence future government policy on land tenure and land law in Tanzania, the Tanzania Presidential Commission findings are significant. The Report itself is divided in two volumes: Volume 1 contains recommendations on land policy and land tenure structure; and in Volume 2 there are recommendations for the possible resolution of existing land conflicts.

Part 1 of the first volume covered the evidence presented along with a historical overview of the particularity of Tanganyikan society, the allocation of land, demarcation and the impact of the policies of *ujamaa*. One can grasp from the outline that while there were "problems of villagisation", the guiding principle in the society was to provide "land to the tiller". However, the various issues relating to land use, urbanisation, land disputes and the issue of individualisation, titling and registration required a clear policy, much as the state was making some efforts to give direction to the different forms of customary use and existing regulations.

The Land Use Ordinance passed by the colonial state in 1923 had been the guiding principle used to consolidate the early efforts of the Germans to exploit human resources, land, and minerals. Juhani Kuponen (1994) outlines the force and coercion which lay behind the banal legislation of the Germans in designating colonial authority over the disposal of land. Though there has been vacillation between whether there should be settler agriculture or small scale peasant cultivation, resistance of the poor shifted the balance in favour of the colonial trade economy, viz., where the peasant planted cash crops and the exploitation was effected via the circulation process. The peasants were left to cultivate the land, but the policy was to give the colonial state the right to

alienate land either by sale or lease. This legal position of the German colonial government introduced a new concept of buying and selling land into the society.

The British, who were the colonial masters after World War I, continued the German tradition of alienating land, but set down a legal basis for alienation in the 1923 Land Ordinance. Under this ordinance, the ultimate ownership of all land was vested in the colonial state, with the governor having the right to dispose of land in accordance with the demands of British "entrepreneurs".

Eventually in 1928, the Ordinance was amended to give customary law titles a statutory recognition. The definition of the right of occupancy was extended to include for the first time, the title of a native or a native community lawfully using or occupying land in accordance with native law and custom. Since that time customary law titles have come to be called 'deemed rights of occupancy' (pp 11).

This declaration was to be a source of limited protection for Tanzanian villagers by then. Thus while the ordinance vested the "radical title in the state so as to allow it to control land", giving the governor power to dispose of land at will, the social and economic situation at that historical moment did not force the issue of granting customary rights legal tenure. The issue of individual titling came to the forefront after the war in Kenya, and was endorsed by Government paper No. 6 of 1958 entitled "Review and Land Tenure Policy". After the second world war, the British government had the dream of creating large scale agricultural projects in Tanzania. Colonial administrators proposed to introduce a "form of tenure which is individual, exclusive, secure, unlimited in time and negotiable." At that time the proposals of the British were firmly opposed by the nationalist movement, and thus the proposals were never translated into law.

Since the 1990s, however, there has been a social base for the individualisation of land tenure, and it is in this context that the World Bank has made an alliance with the local forces calling for individualisation, registration, and titling. In pointing out some of the major obstacles, the Commission cited the absence of technical competence for establishing land rights revolving around specific boundaries of a parcel or portion of land. Foreign consultants have been paid to draft a bill to strengthen supporters of the World Bank within and outside the government who were acting with haste for the enactment of a land bill. In the context of this review, however, the main thrust is to underscore the problems, not only with respect to the gendered nature of the positions of the numerous authorities, but the fact that the discussion of the Land Bill is being

undertaken outside of a larger debate on the nature of transforming agricultural production in Tanzania.

The Decomposition of the Ideas of *Ujamaa*

One of the most important aspects of the post-colonial Tanzanian society has been the attempts by the state to enfranchise the customary tenants. Though there has been no explicit land tenure policy, the independent government attempted to guarantee protection to the tillers of the soil in three areas related to: freehold tenure; the semi-feudal tenure called *Nyarubanja*; and landlord-tenant relationships. The post-independence government inherited the powers of the British governor, including the powers of the 1923 ordinance over land. The most significant amendment of the Land Ordinance was to replace the term "Governor", wherever it appeared with the term "President". One positive aspect of this inheritance was that the President did not represent a landed aristocracy, and as such the fact that the lands of Tanzania were declared public lands did not privilege an aspiring class. In fact, in the aftermath of the East African Royal Commission Report in 1958, when the colonial administration had issued Government Paper No. 4 proposing a move towards the freehold system and abolishing the customary land tenure, Julius Nyerere had argued against the proposal.

In a powerful article called *Mali ya Taifa* (Wealth of the Nation), Nyerere argued against the freehold system both on philosophical and equity grounds, and on the fears of landlessness and social upheavals such a system might generate. The Commission quoted extensively from that article, and in philosophical terms the arguments are as valid today as they were in 1958.

If people are given land to use as their property, then they might have the right to sell it. It will not be difficult to predict who, in fifty years time will be the landlords and who will be the tenants. In a country such as this, where, generally speaking, the Africans are poor and the foreigners are rich, it is quite possible that, within eighty or a hundred years, if the poor African were allowed to sell his land, all the land in Tanganyika would belong to wealthy immigrants, and the local people would be tenants. But even if there were no rich foreigners in this country, there would emerge rich and clever Tanganyikans. If we allow land to be sold like a robe, within a short period there would only be a few Africans possessing land in Tanganyika and all others would be tenants.

If two groups emerge—a small group of landlords and a large group of tenants—we would be faced with a problem which has created antagonisms

among peoples and led to bloodshed in many countries of the world. Our forefathers saved themselves from this danger by refusing to distribute land on freehold basis (p. 114).

This position of the leader and the party guided the philosophy behind the one-party democracy, and the acquisition of political independence in Tanganyika.

The political direction of the Tanzanian society changed significantly in the aftermath of the Zanzibar revolution, and the launching of the armed struggle in Mozambique in 1964. By 1967 the political leadership had articulated the Arusha Declaration, with far-reaching consequences for the independence of Tanzania. The positive and negative results of the Arusha Declaration has been the subject of numerous commentaries, conferences and books, but what needs to be underlined in this review is the then commitment to protect the basic rights of the poor in the society. Nationalisation of land and villagisation were two of the important policies with respect to land use in Tanzania. Villagisation led to the resettlement of 70 percent of the rural people of Tanzania, and in many cases brute force was used to move the people. Forced villagisation was given legal sanctity by the Rural Lands Act of 1973, which gave the state control over village lands and the right to declare any part of Tanzania a specified area.

The Commission rightly used the question of the Arusha Declaration and villagisation as the major rupture in the development of the politics of Tanzania. The major problem in the villagisation exercise was the use of force and the unplanned nature of settlements. Hence, though *ujamaa* and villagisation was supposed to be a progressive departure from the colonial forms of agricultural production, the Commission underscored the fact that there were two major issues with the effecting of the villagisation policy.

- (a) The top-down approach to land tenure reform and land administration apparent in the pre-Arusha attempts at village settlements and range development persisted in post-Arusha programmes of villagisation and village titling; and
- (b) Attempts at abolishing diverse customary land tenure and applying uniform, centralised statutory tenure have continued in different forms in spite of the earlier failures.

The point here is that the thrust for communal land ownership could not lead to better agricultural production without the means of production required to improve the conditions of productivity on the land. Moreover, the whole thrust

of *ujamaa* did not address the issue of who commanded the labour power of women and children in the villages. The relations between men and women were of crucial importance in a situation where the dominant instrument of labour was human energy, and female labour was central to the survival of the society in the process of social reproduction.

In essence, there was a recognition of the centrality of female labour, and the legitimacy for clustered villages was predicated on the fact that clustered living would give greater accessibility to social services, and to the limited infrastructure in the society. It was the official view that collective villages would increase production, but there was little regard for the existing land tenure systems and the culture and customs in which they were rooted. Hence, in the words of the Commission, there was:

... Lack of clarity of villagisation as a reform of the land tenure on rural lands. Hence there was virtual absence of a systematically worked out tenure system in the relocated villages which could have provided it with necessary certainty and security in law.

In the absence of legal security of tenure, land problems in villages after villages increased manifold and village lands became the subject of arbitrary encroachment, invasion and alienation in favour of outside individuals and institutions (including government) against the interest and wishes of the villagers.

This was the crux of the decomposition of the ideals of egalitarianism. Finding space in the lack of a systematically worked out system, those social forces inside and outside the society which were opposed to socialism worked to undermine the system as a whole. The Commission rightly pointed out that the management of village lands was in practice vested in the village councils, which felt responsible and accountable to district authorities and the organs of central government rather than their village assemblies. Village assemblies had virtually no control over village lands, and no say over their leaders in land matters. This led to many abuses and malpractices on the allocation, alienation and use of village lands.

In effect, the malpractices reinforced the growing class differentiation, and undermined whatever elementary forms of participation that existed in the village assemblies. The proliferation of land claims which came from the confusion and malpractices of villagisation created the conditions which necessitated the establishing of the Commission. The land claims by divergent forces led to a record number of law suits in the courts, and a lack of clarity in

the nineties when the government began to move away from the principles of socialism and self-reliance. It is important to quote the Commission here.

Ad hoc and other measures to resolve land claims, such as the attempts to extinguish customary law rights, have been unsatisfactory. Their legal validity is doubtful in that they are *price facie* burdened with the legal deficiencies and lack of social legitimacy grounded in culture and custom.

In this state of confusion the government gestured toward the idea of village titling but without the financial means to carry out the exercise. The original problems of force and coercion was compounded by legal and procedural problems in seeking how to resolve the question of land tenure regime in the country.

It was in recognition that the Tanzanian population was still overwhelmingly rural that the Commission sought to make its main recommendation that land should be vested in the village. But this suggestion was backed up by the call for democratic participation of the people at the village level. After examining the evidence, the Commission drew the conclusion that a considerable number of land problems and disputes can be directly traced to the non-participation of villagers in the administration of village lands. The villagers attributed the problems to the absence of democracy at the village level.

Land titling or Democratisation

The problems associated with villagisation, settlements on alienated land, and urbanisation were compounded by the ideology of private property and individual accumulation which arose in the period of the process of liberalisation (Campbell, 1991). The opening up for the economy and the shift in terms of resources allocation away from social services had a profound impact on the producers, especially the rural women. With liberalisation, both legal and illegal practices had an impact on land held under customary and village based tenure, especially in the urban areas.

There were public officials in the bureaucracy and in the parastatals who were turning public property into private property, and organised to grab land for themselves and their allies locally and internationally. In the chapter on Land Disputes, the Commission outlined the numerous and varied forms of disputes which arose, highlighting the fact that in one region there were one thousand complaints. In the area of disputes, Arusha Region stood out both in respect to fact that the dispute settling machinery was inaccessible to the majority, and the

fact that there were long delays in the settlement of disputes. It was not insignificant that this region became a political base for the opposition to the government of the ruling party in 1995.

The festering of land disputes gave succour to those who were undemocratic, while the society needed a policy which gave due consideration to the interests of the producers, especially the women. It is on the question of how to give security to all in the society where the issue of individualisation, titling and registration received a rigorous analysis by the Commission. This aspect of "land reform" is so prevalent in Africa that it is important to underline the approach of the Commission in analysing this issue, which led to their conclusion that land should be vested in village assemblies.

The idea of individualisation is foreign to Tanzania. The Commission, in its analysis, first outline the idea of individualisation, titling and registration:

Individualisation, titling and registration (for short ITR) refers to a system of land tenure based on individual land ownership guaranteed by the state. Titling and registration is the process by which such ownership is recorded on one hand, and which record is held out to the public as reflecting the true state of ownership on a parcel of land, on the other. Once the title is issued and registered, it is said to be indefensible, meaning that it cannot be forfeited on grounds of claims of, *inter alia*, rival ownership (with a few exceptions such as forged titles).

The Commission went on to show that in the context of a land tenure structure like that of Tanzania, what is implied by the advocacy of ITR are usually three major changes: individualisation of land ownership, withdrawal of largely rural and periurban lands from the domain of customary law and placing them exclusively under the statutory/English law of real property; and the creation of free land markets, *i.e.*, making land a marketable commodity, more or less without restrictions.

The plan for the creation of land markets is one of the most pressing goals of the World Bank in Africa. Through intellectual centres and think-tanks, there have been a bevy of studies which deal with the matters of "creating market forces" and "providing incentives for entrepreneurs". The main point of the thinkers of the World Bank has been that indigenous land rights systems have been a constraint on development. A Kenyan sociologist in the World Bank has been one of the foremost exponents of the need for individualisation so that African farmers can use their title as collateral (Migot-Adholla, *et. al.* 1991).

In looking at ITR, the Commission went back to the powerful 1958 arguments of Julius Nyerere, citing the process of class differentiation which has

taken place, and the emerging classes of landlords and tenants. In closely studying the literature on ITR and the result in Africa, the Commission also looked at the experience of Kenya since the days of the East Africa Royal Commission. The Tanzania Commission actually carried out a sitting in Kenya in order to get a first hand account of the effects of individualisation of land tenure, and its relationship to the landlessness and deprivation in Kenya. In a situation where Kenya has moved from the success story in Africa to one where basic human rights are violated by an undemocratic regime, the lessons of land reform in that society were relevant and sobering. It was this kind of investigation which showed that ITR was negative in Africa, along with the major rethinking in academic literature on ITR which led the Commission to reject this as a solution to the land tenure regime in Tanzania.

The academic literature and practical experience on the ground all over the continent showed that ITR has created more problems that it has solved.

This is especially applicable to women, pastoralists and other groups who have traditionally enjoyed subsidiary or usufruct rights to land. In fact, one outcome in many LDC where ITR has been effectively implemented is that it creates a rural or "asset-less" class in the rank of the ultra poor. Experiences in Kenya, Senegal and the Ivory Coast reveal that land registration constitutes a mechanism for the transfer of assets from the poor to the educated, economic and political elite (Plateau, 1995).

This kind of evidence on the negative effects of ITR made the World Bank and their experts retreat, even though the objective of foreign capital is to create landless peasants completely separated from their means of subsistence, by saying that "the issue is not whether ITR should be resisted, but that it should be allowed to evolve rather than be accelerated by compulsory policies which are most likely to end up doing more harm than good".

The issue of security of tenure, whether for the individual or for the community, is a matter of urgency in Tanzania, especially for those who want to use the land as a means of accumulation. There were two forces calling for security of tenure: firstly, the small holder poor peasant and pastoralists; and secondly the well-to-do, especially from the urban areas. In the submission before the Commission, the poor peasants showed that it was important to disentangle two senses in which the term security of tenure is used. First, it refers to security against risk of loss of land. Secondly, it refers to security of investments, in and on land. The Commission argued that,

Villagers fear loss of their land—their means of livelihood—through various means and mechanism. Alienation of land to outsiders, government acquisition of village lands, expansion of urban boundaries and boundaries of reserve lands engulfing village lands, etc., are some of the examples we received in evidence causing insecurity. Titling itself does not necessarily provide security against risks of loss of land of the smallholders. As a matter of fact, given the negotiability of titles, titling further facilitates loss of land by smallholders, as the Kenyan example amply demonstrates (pp. 118).

The Commission then went on to discuss the cultural reasons militating against the land alienating effects of ITR. It was the whole question of African cultural values which guided the recommendation of the new land tenure policies. According to the Commission, the following were the guiding principles:

1. While taking custom as the base and a point of departure, to devise a broad policy, legal and structural framework which will facilitate this organic evolution from below. In short, to borrow Mwalimu Nyerere's perceptive phrase, to modernise tradition, as opposed to imposing modernisation on tradition.
2. To democratise land tenure control and administration by locating control over land at the level of village assemblies, elected local committees, and the national parliament.
3. On the economic level, to facilitate accumulation from below by releasing organic social forces from within the smallholder community, mainly rural, but also urban.
4. Security and safety of land rights first should be the underlying tenurial principle as crystallised from the evidence from the people.

For the village communities and neighbourhoods, security of tenure precedes planning of land usage while, for the individual user, security is contingent on use (pp. 122).

These conclusions were to be an important departure in the legal and social history of Tanzania. The issue of the Commission was to deal with the outstanding issues which arose from taking the village community and the village assembly as the base. This was manifested in the discussion after the release of the Commission's report on the issue of gender inequality and the problems of female succession.

The Gender perspective on the Land Question.

The Commission report brought out into the open one of the most contentious, and potentially one of the most liberating issue for the African continent, that is, the issue of the transformation of gender relations. During the struggle against colonial rule, one of the issues which had been silenced in the call for *umoja, uhuru na kazi* was the subordination of women. In the slogan it was not pointed out that the *kazi* in the society was carried out mostly by women. However, in the past ten years, the feminist movement—internationally and in Africa—has begun to break the silence. In Tanzania, there have been numerous centres for gender training, and they have forcefully articulated the fact that,

gender differentials can be seen in the social and economic inequalities which we see everyday; the gender division of labour, the general division of access to resources and unequal power relations between men and women. Gender analysis can be used as a tool to uncover basic inequalities on all levels. Gender often intersects with other axes of differentiation such as age, class, religion ethnic group, and race as a crucial variable in the human situation (Mbilinyi, 1993).

One of the principal criticisms of the Commission has been that it simply stated the reality of gender inequalities without delving into the issue of the control of land and its produce by women. In the chapter on gender inequalities, the Commission stated that there were three issues that needed more attention.

1. Gender inequalities and biases against women under customary tenure render land inaccessible to women both in terms of ownership and control.
2. The laws on inheritance embedded in customs work against the interests of widows and daughters; and
3. The traditional male domination result in major decisions on land being taken by men.

One critic who has taken the Commission to task on the matter, pointed to the underdeveloped understanding of the Commission in its attempt to take account of these problems. The vesting of the radical title in the village assembly was to be the expedient to render clan land unnecessary. This is what the Commission recommended:

As to the allocation of land within the village land tenure committees, women members of the village shall have equal right to allocation of land.

The Commission in its recommendation understood that one cannot simply legislate against tradition so it emphasised the need for a minimum percentage of female presence in the village institutions.

These recommendations of the Commission were severely critiqued by Magdalene Rwebangira who argued that, calling for equality is not enough, stating that, "when custom, or religious beliefs contradict fundamental human rights, the latter should prevail" (Rwebangira, 1995).

World Bank consultants have long realised that the discourse on gender and development can be a tool for the support of capitalist relations while seemingly championing the rights of women. In this enterprise the discussion on inheritance, while being a legitimate claim for women who are disinherited, has become another vehicle for the long term goal of the World Bank to introduce individualisation, registration and tenure in the society. The big push for studies on inheritance all over Southern Africa has this long term goal in view.

Marjorie Mbilinyi has critiqued the women in development theories which have been the inspiration behind the present legal studies and workshops on inheritance. She has argued that:

Women in development programmes tend to concentrate at the level of immediate causes, and provide welfarism services which may help reduce women's work in the short run, for example, but do not empower the people to create a long term solution. WID characterises the approach adopted in most women projects supported by women focal points in government and donor agencies, and in many non-governmental and community based organisations. (Mbilinyi, 1993 (b)).

The crucial point in the critique of the World Bank position of empowering women at the grassroots and to ensure that they inherit land is that the concentration is to empower women within the confines of the present structures of agricultural production. It is in this sense that the more perceptive see the issue of women's access to land not only in respect to the short term needs of inheritance, but in the talk of democratisation of society and the development of a gendered perspective of power relations which would change the conditions of both men and women in the society.

Experience elsewhere in Southern Africa has pointed to the fact that most of the legislative changes in favour of women appear in practice to favour largely urban, middle and upper class women, given that the enforceability and applicability of these legal norms has more empirical and practical relevance among such classes of women. Sam Moyo, in outlining how the struggle for

inheritance in Zimbabwe has favoured the middle and upper classes of women, drew attention to how this call could overshadow the call for more fundamental changes in the power relations in the society:

The call for land titles in Communal and Resettlements Areas to be registered in the names of both husband and wife, for example, focuses on atomisation of land tenure towards individuals within families, rather than challenging wider rural power bases and institutional aspects such as chieftaincy, lobola, and local council control and administration. Equally, the collaboration of some middle class and elite wives in promoting the existing conservative land reform policy, and the benefits of black elite families in procuring large farm estates at the expense of the rural and urban poor, reflects a co-optation dilemma confronting the women's struggle for land. Conservative elite females, by promoting the conservative policies and political party ideologies, contribute to the slow movement towards security, an egalitarian and gendered land reform process (Moyo, 1995).

Moyo went on to argue that the main challenge is to broaden the analytic and policy basis of current calls for both land reform and women's rights to land in order to realise a more equitable, gender fair, agrarian program. He reinforced the call that it is essential to promote a wide economic rational, for land reform based on the search for broadly based economic and social transformation.

Conservation and the Environment.

The call for social transformation in all of Africa is a recognition that the issue of transformation of social relations and changed patterns of land use are key to the agrarian question. The Land Commission opened up the issue of conservation, environment and habitat by pushing further the call for democratic participation by the poor in matters of conservation. The Commission underscored the fact that the growth and transformation of concern for the conservation of nature, concern for the pollution of the environment, culminating in the concern for the paucity, or inadequacy, of human living capacities, is an organic development which has its origins in the admiration of nature and the natural, and respect for life as a divine right.

This position on conservation and the environment that sought to rise above the crude materialism of the West, and to bring back the land, represents a link between those who are deceased, those who are alive, and those not yet born. In that sense, land in Africa represents spiritual values and a whole host of other

non-material values. Land for the people includes both market and non-market forces and values, including agricultural uses, biotechnological resources, energy resources, building materials, medicines, water-related resources, and others.

Though the Commission left issues of conservation and the environment to the end of their report, the whole discussion pointed to how much more the ordinary Tanzanian had to be drawn into the process of consultation and decision making. Questions of water, forests, pastoralists, the Petroleum Act, the Mining Act—all these are questions that need thorough examination. In raising the questions, the Commission also pointed to the crucial requirement of the democratisation of information in the society. Such a democratisation process would inform the national land policy of Tanzania.

Conclusion

The Presidential Commission of Inquiry into land matters came forty year after the East African Royal Commission(EARC). This Commission was different both in form and content from the latter, and it observed the effects of the privatisation and individualisation of land in Kenya recommended by the EARC.

There was also the realisation that the haphazard policies in villagisation and the confused urbanisation policies would not lead to social peace in the society. It was the reality of both the undemocratic results of the Royal Commission Report, along with the dead end of villagisation, which informed the report.

The finding that land should be vested in the hands of the producers brought back the old line of land to the tiller. However, there was also the recognition that the ownership and control of land by the poor was not enough; that there has to be changes in agricultural techniques and the choice of crops. Significantly, the Commission pointed to the inequalities based on class and gender in the rural areas. There was the call for a thorough discussion of the findings of the Commission by the society.

The imperial democrats who consume more than two-thirds of the worlds' resources are uncomfortable with the findings of the Commission, and the suggestions for village assemblies making decisions at the grassroots. This form of popular democracy has the potential of opening up the imagination and skills of the people. This form of democracy could provide the counterweight to the bloated bureaucracy, and those who go to the people once every five years for their votes. The democratic recommendations of the Commission is a recognition that power does not lie in the administrative organs but in the

people. This reality has led to a rush of meetings and employment of consultants to divert attention from the report of the Commission. Specialists from Europe have been brought in to draft a land bill in Tanzania in a way which would allow market forces to dictate the land tenure regime in the country.

These specialists are aware that the expansion of market forces could further marginalise the poor—and women—further reinforcing current inequities and distortions in land allocation and alienation. In a smug fashion, the World Bank has argued that "individualisation is growing and is the way for the future". Though they argue that in the long term this process would take its "natural course", the army of consultants and experts deployed in the society is meant to ensure that individualisation is backed up by the force of law.

The haste is itself a manifestation of the reality that despite the implementation of liberalisation, the conditions of the poor have worsened. In less than ten years the poor can make comparisons in access to water, the quality of schools, and cost of health care. Poverty alleviation programmes are orchestrated to divert the attention of the academic community from the fact that the conditions of structural adjustment are not neutral, but reinforce the exploitation of the people. The Commission understood the alternatives in the society. In making the call for direct democracy, the Commission understood that it was very likely that the assemblies would be controlled by the male to the prejudice of the female gender. But the Commission underlined the fact that,

the oppression of the women is age-old and cannot be done away with through a tenurial policy by the stroke of the pen. Yet, here too our provision for a minimum presence of women built into the mandatory quorum does make some inroad and facilitate those tendencies and forces already present in our society struggling for gender equality.

The concept of equality was one reminder that the Commissioners themselves were operating in the context of the liberal concept of liberty and equality, and the concept of equality has never benefited Africa. Despite its limitations, the objective of the Commission was to shift power relations in favour of the redistribution of wealth at all levels. Essentially, the report of the Commission opened up the whole issue of the transformation of the labour process, and the transformation of gender relations as an integral part of the struggle for democracy in Tanzania. Tanzania is a large country with surplus land, and at the moment the society is relatively underpopulated. A democratic society could unleash the vast potential in wealth which lie beneath the soil. Despite its

limitations, *ujamaa* had promised wealth to the poor by arguing that the people had been "exploited a great deal", "disregarded a great deal" and that they now needed a "revolution". At that moment, the discourse silenced the majority, especially women. At this historical moment the voices of women are being heard.

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