



## **Land Tenure Reform under the Economic Liberalisation Regime: Observations from the Tanzanian Experience**

Masao Yoshida\*

### **Abstract**

The economic liberalisation of the 1990s hastened the growth of business interests in land and created new competition over natural resources. The World Bank, a promoter of liberalisation, has encouraged African governments to formulate new land policies and enact new land laws. The paper examines the process of new rush for legislating land acts, and clarify the main actors behind this move. This author utilises the observations obtained through several years of field studies undertaken in Kilimanjaro Region, as well as documentary sources, for this case study.

### **Résumé**

La libéralisation économique des années 90 a accéléré la croissance des intérêts commerciaux fonciers et créé une nouvelle forme de compétition autour des ressources naturelles. La Banque mondiale, promotrice de la libéralisation, a encouragé les gouvernements africains à formuler de nouvelles politiques foncières et à promulguer de nouvelles lois relatives à la terre. Cette communication étudie cette ruée vers la promulgation de nouvelles lois foncières et indique les principaux acteurs à la base de ce mouvement. L'auteur utilise les observations obtenues à l'issue de plusieurs années de travaux sur le terrain entrepris dans la région du Kilimanjaro ; il se sert également de sources documentaires pour mener cette étude de cas.

### **Issues in the land tenure debate**

There has been much debate regarding whether communal land tenure in Africa has seriously hindered agricultural development or not. The debate

---

\* Visiting Professor, Department of History, Makerere University, Kampala, Uganda at the time of writing. Currently Professor, Nihon-Fukushi University, Nagoya, Japan. E-mail: masaoayos@j08.itscom.net.

has also involved the actual situation of those people living under communal land tenure arrangements, and their access and security regarding land. Many special issues on land tenure by the leading international journals have been published, such as *Africa*, Vol. 63, No. 3, 1992. The debate is still going on while at the same time there is a strong pressure as a result of economic liberalisation that had led to the enactment of new land laws, bringing about radical reforms in land tenure systems in favour of individualisation and privatisation of land.

Land tenure systems are quite varied in Africa, reflecting the environmental differences which almost determined what kind of crops could be grown, as well as the past history which moulded the present social systems and the laws regarding land arose. The access and security once enjoyed by the holders of land under communal tenure have been greatly influenced by the rapid population increase, the introduction of cash crops or the commercialisation of food crops, and the government policies encouraging the commercialised crop farming or settled cattle herding. It is therefore very important that the debate count these ecological and social differences, and the existing political and economic configurations in which the problems arise.

The World Bank/IMF policy of economic liberalisation has exerted considerable influence in initiating land reform processes in many of the African countries in the 1990s. The liberalisation accelerated the growth of both domestic and international business investment in land. It has created new competition over natural resources, between large-scale farmers and small-holders, between pastoralists and cultivators, between forest keepers and lumber business interests and so on. Incidents of land-grabbing had been widely reported, and some of them caused social disturbances. The World Bank has encouraged African governments to hold workshops to help clarify problems on the issue, and to move the government to formulate new land tenure policies and possibly to enact new land laws. Similar workshops were planned in a number of countries, including Tanzania's 'Arusha Workshop on Land Policy', which was held on August 27–29, 1991.<sup>1</sup>

In the 1990s quite a number of African countries started to formulate national land policies and pass new land laws. Zambia enacted the Lands Act in 1995, Uganda in 1998, Tanzania's Land Act and the Village Land Act in 1999, and Malawi's National Land Policy in January 2002. This paper tries to examine some of the reasons for the emergence of new spates of legislation on land, and tries to show who were the main actors behind this move. The paper concentrates on the Tanzanian case, but the discussion is, I believe, applicable to many countries in Africa.

### **The World Bank's stance on land reforms**

The World Bank's stance in encouraging African governments to embark on the formulation of new land policy and new land legislation is rather cautious. Many of its staff have advocated the introduction of private land tenure and land titling as a guarantee of tenure security for farmers, often qualifying it as a long term objective (See Keck, Sharma and Feder 1994). Some stressed that it might enable the farmers to use land as collateral for acquiring credit from financial institutions, and would encourage more investment in the land to achieve higher crop yields. The Bank may never have stated such objectives in its official statements, however, its actions of promoting free enterprise, especially of free entry of foreign capital, gave a strong impetus for African governments to deal with the land tenure issues.

In Tanzania, the encouragement of foreign investment led to the enactment of the National Investment (Promotion and Protection) Act, 1990, and the establishment of the Investment Promotion Centre (IPC) under the President. This government action spurred investors to lease land on a large scale. Already in 1982, Tanzanian government had formulated its National Agricultural Policy and radically reformed the existing policy, as it advocated various modes of production in the agriculture sector. It clearly recognized the positive role of large-scale private farming. This new policy spelled out that the land allocation for agricultural development 'should be on a longer term basis (with a minimum of 33 years) in order to provide for the security of private investors' (Kiondo 1999: 48). This new land policy can be seen as a part of a package that constituted the structural adjustment programmes that the World Bank has pressed the Tanzanian government to adopt.

On the other hand, the World Bank started to soften its stance so that pro-poor measures could be adopted. The change can be seen in the *World Development Report* 1990, which was a special issue devoted to the problem of 'poverty'. Dealing with the land tenure issues, it proposed the balancing of individual and common property. It says that the 'shift toward individual land rights tends to undermine the ability of traditional systems to ensure that all members of the extended family have access to land. This feature of their land systems has helped some countries in Africa to avoid the extremes of poverty and landlessness. In such cases, encouraging individual land registration and titling may be undesirable. Where traditional systems have failed to provide clear land rights, land titles and registration are useful, small farmers have sometimes been forced to sell their individual holdings. Common-property resources should receive greater attention. They need to be better protected and better managed' (World Bank 1990: 65).

It is clear that in advocating the adoption of completely free economies as the condition of financial assistance, the World Bank had come to face the dilemma that the policies might not help alleviate the plight of the poor. Thus it started to express concern that in the case of land tenure reform there also should be provision for an adequate social safety-net for the most vulnerable sections.

### **Government bureaucrats and the process of land tenure reform**

At the beginning of the 1990s, government bureaucrats in many African countries faced various difficult questions concerning the workings of land tenure system. They had a backlog of anomalies accumulated during the prior two decades.<sup>2</sup> In Tanzania, the former policy of *Ujamaa* villages, and the later abandonment of its villagisation component, left the question of pre-villagisation customary landholding in a very ambiguous position. There were some attempts to conduct village land surveys, and in 1987 the Tanzanian government decided on the programme of surveying village boundaries, ascertaining land use in the villages, and registering the village land rights within a period of 5 years. However, even in June 1991, only 1,836 villages out of 8,471 villages on the Tanzania mainland (i.e. 22 percent) had completed the boundary survey, and only 183 villages had completed registration (i.e. 2 percent).<sup>3</sup>

Meanwhile, some villagers were allowed to return to their old plots, only to find that the land had been given to later immigrants (Chachage 1999). Some farmers whose land rights had been affected by the Village and Ujamaa Village Act of 1975 brought the case to court. In this confused situation, the Tanzanian government appointed the Presidential Commission of Inquiry into the Land Matters, headed by Professor I. Shivji, in 1991. The Commission's Report appeared in November 1992.

The Presidential Commission reported that there were too many government bodies dealing with the land matters, and that there was too much interference from different bodies. For instance there were two lines of land dispute settlement, one with the land tribunal and another with the ordinary local court. Double allocation of the same piece of land was rampant. The Commission advocated a separation of the body dealing with land cases from the executive arms, which would be answerable to the National Assembly. It also recommended that all land be divided into National Lands and Village Lands.

However, the Ministry of Lands, Housing and Urban Development at this time created a separate Committee to investigate the inconsistencies in the existing land law. It was instrumental in passing the Regulation of Land Tenure (Established Villages) Act, 1992. This Act nullified customary land

rights which were affected during villagisation. However, this law was declared unconstitutional by the High Court in 1994.

It is clear that the government bureaucracy was genuinely interested in correcting anomalies in land law brought about by the former villagisation policy. However, bureaucrats wanted to keep control of land matters under the executive arm. They could not accept the main part of the recommendation of the Presidential Commission, which argued against the intervention of the government in the alienation of land for development purposes or for investors who were approved by the Investment Promotion Centre. In this way, the government bureaucracy supported the position of the World Bank, and became the prime mover of the formulation of the National Land Policy published in 1995 (Chachage 1999).

It was also in the bureaucracy's interest that peri-urban village land could be alienated. Land markets in urban, peri-urban, and some rural areas had developed in recent years, mainly for wealthy bureaucrats and business people wishing to buy plots for residential purposes or farms (Kiondo 1999). The implementation of the land reform would not only serve the general purpose of economic development, but would also enable some officials to benefit by virtue of their positions in the state power from obtaining land for personal gain.

The National Land Policy of 1995 became the basis for the enactment of the Land Act 1999 and the Village Land Act 1999. The creation of the category of 'Village Land' was intended as a deterrent to the kind of illegal alienation of land belonging to the farmers and villagers which happened in the late 1980s. But the whole land tenure reform process has been engineered to meet the interests of the bureaucracy in alliance with politicians and indigenous business interests. Foreign business penetration was somewhat restricted by the lack of provision for freehold tenure in the Act, and by foreigners being required to obtain the approval of the village council and the Commissioner of Land when they want to acquire the leasehold of village land. However, the villagers may have weak bargaining powers, and the issue of secure land rights of the poor was not properly addressed.

### **Land in a North Pare Mountain village and emigration to new districts**

This researcher has made many visits and observed social changes in a village in the North Pare mountains in Kilimanjaro Region of Tanzania since 1991. The purpose of the research was to understand the nature of the village community, its land use, and its farmers' organisations, especially in relation

to the traditional furrow irrigation that the inhabitants had long practised, and to investigate the actual state of communal land tenure.

Although in Tanzania all the land is supposed to belong to the state, most of it is held in a communal type of tenure, often called 'the deemed right of occupancy'. Traditional tenure however has undergone transformation as a result of the state policy of Ujamaa since the 1960s. The actual outcome of this policy is that every Tanzanian village has come to have the same administrative structure. The village chairmanship is an elected position, supported by a village executive officer who is a local civil servant, and controlled by the elected village council of 15 persons, who are responsible to the Village Assembly, whose membership includes all adults, male and female. Communal land tenure continued to exist, but was modified by the new system of making the village council allocate land, and making it responsible for the first stage of arbitration when a land dispute arises. Similar local administration reforms with a bearing on communal land tenure systems can be seen in many other African countries (e.g. Zambia), and are not unique to Tanzania.

It has been observed that the individualisation of land tenure has proceeded as a result of the introduction of cash crops, and of the increasing population pressure which made the traditional bush-fallow type of agriculture difficult to practice. A lack of fallow land led to the common practice of renting land, and to the sale of land in densely populated rural areas. Despite the continuous trend towards the individualisation of land in the above sense, national statutory land law in African countries had not adapted to the reality until the 1990s.

In the mountain village in the North Pare (Mwanga District) where I have been observing the land use, renting the land was practised by 11 households out of 20 households I examined. This practice enabled small farmers to cultivate irrigated land during the dry season even if they had no occupancy rights to such land. The rent is very low, usually a pot of local brew called 'dengelua', for one year. The monetary value in this case is far less than the value of economic gains by the borrower, and no doubt it is more by way of a present in recognition that the land belongs to someone else. This practice led me to conclude that in this area communal land tenure is a reality.

However, I must hasten to add that this state of affairs can exist only when alternative lands are available for the young people who cannot expect to acquire the new lands of their own in the home village. There is no more land for further allocation except in the dry low-lying ground which belongs to other villages. In the village on the mountain where rainfall is abundant in rainy seasons, the landholding per household is already very small and cannot

support a family if further subdivided. Almost every youngster, therefore, emigrates to other areas. Some of them go to urban areas, but not a insignificant number emigrate to other rural areas in Tanzania to take up farming there. It is only because of this emigration that makes it possible to maintain the communal land tenure system I observed in the mountain village.

In this particular village, many former inhabitants and youngsters have migrated to the Morogoro Region. I was told by the villagers that a lot of people went to Man'gula in the Kilombero valley area, where land is abundant, and the government has encouraged settlers to come as the Tanzania-Zambia Railway (TAZARA) passed through this area, and development along the line was needed. However, land tenure security for the new settlers is always precarious, as the old inhabitants in the area claim that the land belongs to them.<sup>4</sup> This kind of movement of the rural population seeking new land in Tanzania (rural-rural migration) is still widely practised. The new settlers are usually strong advocates of the new land policy, which might give them better security of tenure. They have been creating multi-ethnic villages, and have promoted the individualisation of land rights. They are quite willing to register their land holding under the village certificate of occupancy.

### **Gender issues**

The relationship of women to land has been an important issue relating to land tenure reform. Under customary land tenure, women were invariably in an insecure position in comparison to men as far as land holding and land use rights were concerned. In communal systems when land is either clan land or lineage land, women are in a weak position should their husband die or if they are divorced. If this happens, the woman is usually excluded from inheriting the land she used to cultivate. It is only when she had purchased a parcel of land, or when there is no other person in the family to inherit the land, that the clan or lineage will allow her to hold onto the land. It is in this regard that the former president of Tanzania, Julius Nyerere, said that Tanzania should maintain the communal spirit of the people, but that the position of women should be changed to ensure equal rights with men (Nyerere 1970).

This new thinking has been gradually taking hold in court judgments regarding land tenure disputes, but the process has been very slow, and has depended very much on the personal views of the judges and the local villagers. In the Pare mountain area where I have been observing changes, there was one case in which a woman's appeal was accepted. In this case, a divorced woman who was denied the use of the cultivated land she used for 20 years appealed to a primary court. The husband said that this land was his borrowed land, and would like to return it to the real owner (this was later found to be a lie). She lost the case in the primary court, but later appealed to

the land tribunal. The tribunal reversed the decision, arguing that the land was borrowed but a house and farms were created on it, and the woman had worked there for 20 years. The value of the land was increased because her labour was put into it. Therefore, she was judged to have the right to occupy the land, and to keep using it.<sup>5</sup> In this case, the argument regarding the contribution of labour could lead to the reversal of the earlier judgment, but in the majority of cases the women's appeals were not likely to be heard. This kind of situation has made women strong advocates of a new land tenure law.

The new Land Act did strengthen the position of women, on paper at least. For instance, the co-ownership clause was formulated as 'family land protected by co-ownership in principle favouring both spouses'. Consent by married women in case of the disposition of land was also spelt out. Other clauses which strengthened the women's position were: 'a fair gender balance as to appointment to the National Land Advisory Council', 'prohibition of discrimination against women as regards determination of application for customary rights of occupancy', 'restriction on village councils to allow assignments that could undermine a right of a woman to occupy land under customary right of occupancy', 'to ensure that special needs of women for land are adequately met when village councils approve a disposition of a derivative right of a customary right of occupancy', 'offer first priority to wife when a husband surrender rights of occupancy', 'minimum presentation of women in the Village Adjudication Committee' and 'women's participation in dispute settlement machinery' (Havnevik and Hårsmar 1999: 101-2).

These are quite detailed protections for women's land rights, but of course the actual implementation depends on the compliance of the local population who might be support traditional male-domination. In this regard, the case of the Uganda Land Act could be mentioned. Despite the strong presentation of women's organisations to insert a co-ownership clause in the Land Act of 1998, it was not included in the final Act (Mugambwa 2002). This shows that while women might have been one of the driving forces behind new land laws, they have often been frustrated in the political arena.

### **Compromises among different forces at work**

As was discussed above, in the 1990s, quite a number of African countries started to formulate national land policies and have actually passed new land laws. It is clear that the drastic changes brought about by economic liberalisation have been responsible for this new rush towards land tenure reform. However, on closer observation, several different factors seem responsible for the final outcome. These factors have not necessarily been sprung from the same roots, and to attribute this phenomenon to a single cause, such as



pressure from the World Bank and the IMF, may lead to a misunderstanding of the cross-currents regarding the present political economy of land issues. New land laws have been the product of different lines of motivation, especially concerning the reform of the communal land tenure.

(a) One influence has been the desire to make the land tenure system uniform throughout a country, or at least to lay down different categories of land tenure that can be uniformly administered by the state. Ruling elites have felt this necessity strongly in a situation where there has been considerable confusion over land rights in law. Where court cases arising out of previous land policy have proliferated, as in Tanzania as a result of the Ujamaa Villages Act of 1975, or the Land Reform Decree, 1975 in Uganda, these ruling elite have become strong promoters of new reforms. Double allocations of the same piece of land, which often occurred, were embarrassing to governments, and compelled them to clarify the principles of the law.

(b) A second major factor has been the wish to attract foreign investment for agricultural or agro-industrial development. This is of course the direct result of the free market regime of the present international economic formation. The main actors in this move have been the World Bank and the IMF and its supporters in the so-called donor countries. Indigenous business groups have likewise played a role in the same direction. The latter see opportunities for embarking on agricultural ventures, at times in partnership with foreign firms or foreign donors. Agricultural land is one of the few resources which can be utilised with a relatively small sum of money for large and immediate gains. Under the guise of the promotion of a liberalised economy, those persons who had the authority to administer the land tenure of a specific area, tended to connive at the practice of land-grabbing by businessmen, often in collusion with politicians and bureaucrats, even when such actions were in clear breach of customary practice.

(c) Another factor has been the desire of small farmers to emigrate and open up new lands for cultivation. They are often youngsters from areas of high population density, who find a new allocation within the home village impossible. Sometimes they migrated to areas where the government encouraged the establishment of new settlements. However, 'empty lands' are often subject to claims by their first occupants. Communal land tenure cannot give newcomers strong rights where ethnic consciousness on land has politicised in recent years. These migrants expected a new land law to give them security of land tenure rapidly in areas to which they migrated. Whether a new land law would actually give them such rights was another matter, which depended very much on the configuration of the power structure in the area.

(d) Finally, there has also been the effort to empower certain strata of the population who have been denied the right to hold land under customary practices, or who have been insecure. The most obvious case is that of women who were denied land security under many traditional land tenure systems. Thus new land laws were advocated by women's groups, and especially by women members of parliament, who proposed that there should be specific written clauses giving women stronger land rights. Their efforts enjoyed some success, but have often been frustrated on the ground.

These are some of the various cross-current which have been responsible for the final outcome of government land policies. Land reform is the product of compromise at a time of ongoing economic liberalisation in African countries.

### **Concluding remarks**

The reasons behind the moves for land tenure reform leading to change in the law are many. However, there are also the forces which are opposed to change. The most obvious reason for such opposition is that communal land tenure may still provide an important safety net to poor people in the less populated areas of rural Africa. Any land reform which may be carried out must bear this important fact in mind, and must take care to preserve access to land by the rural poor as a safety net.

It is important to have a flexible approach as indigenous land tenure and traditional leaders in some communities are still legitimate. In some communities they receive much support from vulnerable groups such as women. In others traditional forms and authority may lack accountability to the community. Land sales by traditional authorities or elected councillors without consultation with villagers have been as widely documented as the lack of legitimacy of some leaders. For many women, even the traditional institutions may provide greater access, and they may be more understanding of their day-to-day problems concerning land rights than the new institutions which were supposed to be more protective. Very often, the new arrangements are slow in starting, often due to the lack of government funds. It is important that care is taken to protect the poorer sections of the community from losing the land rights they now possess.

### **Notes**

1. Tanzania, Ministry of Land, Housing and Urban Development, *Proceedings of the Arusha Workshop on Land Policy*, August 27-29, 1991.
2. In Uganda, there was a question regarding the revival of customary land tenure, abolished by President Idi Amin through the Land Reform Decree, 1975, which vested all the land in Uganda in the State. This caused many disputes. See

- Oyene, J.E., *Recent Trends in the Lango Land Tenure System*, Centre for Basic Research, Working Paper No. 36, Kampala, n.d.
3. Tanzania, *Report of the Presidential Commission of Inquiry into Land Matters* (often referred as the Shivji Report), Uppsala, Scandinavian Institute of African Studies, 1994. p. 49.
  4. Such cases were reported in Morogoro Region. For instance, Izumi, K., *Economic Liberalisation and Land Question in Tanzania*, Ph.D. dissertation, Roskilde University, 1998 (Unpublished).
  5. Information from a cartography technician in the Mwanga District office, August 1993.

## References

- Havnevik, K.J. and Hårsmar, M., 1999, *The Diversified Future: An Institutional Approach to Rural Development in Tanzania*, Department of Rural Development Studies, Swedish University of Agricultural Sciences, pp. 101-102.
- World Bank, 1990, *World Development Report 1990*, Washington D.C.: World Bank, p. 65.
- Keck, A., Sharma, N.P. and Feder, G., 1994, *Population Growth, Shifting Cultivation, and Unsustainable Agricultural Development: A Case Study in Madagascar*, World Bank Discussion Papers 234, Washington D.C.: World Bank, pp. 39-42.
- Kiondo, A.S.Z., 1999, 'Structural Adjustment and Land Reform Policy in Tanzania: A Political Interpretation of the 1992 National Agricultural Policy', in Forster, P.G. and S. Maghimbi (eds.), *Agrarian Economy, State and Society in Contemporary Tanzania*, Aldershot, Ashgate, p. 48.
- Mugambwa, J.T., 2002, *Source Book of Uganda's Land Law*, Kampala: Fountain Publishers, pp. 82-95.
- Nyerere, J.K., 1970, *Ujamaa: Essays on Socialism*, Dar es Salaam: Oxford University Press.
- Chachage, C.S.L., 1999, 'Land Issues and Tanzania's Political Economy', in Forster, P.G. and S. Maghimbi (eds.), *Agrarian Economy, State and Society in Contemporary Tanzania*, Aldershot: Ashgate.