

AZIMIO LA UHAI

[Declaration of NGOs and Interested Persons on Land]

Issued by the NATIONAL LAND FORUM

(A Coalition of NGOs and Interested Persons)

PREAMBLE

The Bill for the Land Act is expected to be presented to the National Assembly in the near future. If the Bill is enacted and the President assents, it will become law.

This law, like any other law concerning land, will have great significance to each one of us because land is the basis of life for the large majority of people in our country. The large majority of Tanzanians live in villages and depend on land for their survival. Land is our biggest resource because it is the major means of production of food and other necessities. Land is the source of our wealth and the basis of our existence. Land is also the hub around which revolve our custom, culture and traditions. For these reasons, it is clear that land is the primary basis for us to build and nourish democracy. Therefore the law which is being proposed will affect all of us individually and as a people. It will have an exceptional impact on our wealth, our resources, our culture and our political system.

It is also clear that the driving forces behind the new land law are the current policies of privatisation of our resources, liberalisation of trade, services and finance, free market and promotion and protection of foreign investments. These are the policies which are dictated by the International Financial Institutions (IFIs) and implemented by the Government which argues that there is no other alternative. As a result, the land bill is premised on the claim that land has a market value; without regard of the fact that for many Tanzanians the value of land lies in its use. Further, the land bill disregards the fact that small peasants and pastoralists are the main investors in the economy of this country.

A Bill of such exceptional significance in the life of the nation ought to be discussed and debated by all of us. So, in the exercise of their democratic rights and their commitment to the interests and rights of the large majority, a number of NGOs, media institutions and concerned individuals met at Dar es salaam from the 15th to 16th May, 1997 to debate the Bill

First, the participants expressed their deep concern at the undemocratic way in which the Bill had been prepared. It was prepared under pressure from IFIs and other donor agencies by

a foreign consultant paid from, presumably, a loan which ultimately will have to be repaid by the people of this country. The Bill was prepared without consulting the people either in its preparation or in discussing the draft. The whole exercise was done without regard to the opinions, recommendations, demands and grievances of the people which were collected with great care by the Presidential commission of Inquiry into Land Matters.

Second, the participants expressed their deep concern at the undemocratic thrust of the Bill. The Bill does not take into account the interests of the large majority of land users. The Bill takes away the basic right of the citizens to be consulted and to participate effectively in decision-making processes, either directly or through their representative organs. Under the Bill, the large majority of land users run the risk of losing their lands, that is to say, their security of tenure is threatened. The Bill endangers the very life and independence of our people. It facilitates foreigners to acquire land and the few rich and powerful within the country to appropriate the lands of the downtrodden and the disadvantaged.

Third, in effect, the Bill continues to perpetuate discrimination and inequality in respect of most the vulnerable groups, particularly women, pastoralists, hunters and gatherers, youth and the small and poor peasantry. The Bill proposes long and cumbersome bureaucratic procedures of owning and administering land and settling of land disputes.

Therefore, the participants resolved unanimously to declare and sign the **AZIMIO LA UHAI** and present it for debate and discussion by the public in a National Debate on Land. Views and recommendations emerging from this debate should then be the basis for drafting a new Land Bill. So as to facilitate, co-ordinate, disseminate and deliver the recommendations to the Government and other organs of the State, the participants agreed to form a Coalition of NGOs and Concerned Individuals to be called the **National Land Forum** (NALAF) to be known by its Kiswahili acronym **UHAI** (*Ulingo wa Kutetea Haki za Ardhi*) and elected a co-ordinating committee, the National Land Committee, to be known by its Kiswahili acronym **KATAA** (*Kamati ya Taifa ya Ardhi*)

The participants carefully analysed the Draft Bill for the Land Act. Instead of challenging specific sections of the draft bill, the participants decided to identify the main principles and approaches which form the basis of its main provisions and constitute its central thrust. The participants did so taking into account the basic principles of human rights, the foundations of true democracy, the basics of human equality and the present and future national interests.

Finally, the participants proposed the following main issues to form the basis of the National Debate on Land.

1. Radical Title or Ultimate Ownership and Control

The Bill:

~ continues to vest the radical title or the ultimate ownership and control over all lands in the President as has been the case since the early colonial period, during which time it allowed the colonialists to alienate "native" land.

The true effect of this is that:

- The ultimate owner of all lands is the President and not the people,
- In reality this means that the Executive arm of the state monopolises all control and has the ultimate decision-making power over the administration, allocation and disposition of all lands in the country,
- Which means that the executive arm, through the Ministry of Lands and its bureaucracy have the exclusive power to make all important decisions over the allocation, use and development of land without being required by law to consult people's representative organs such as the National Assembly and the Village Assemblies,
- The state monopoly of the radical title will significantly undermine democracy as a whole and transparency in government administration thus creating conditions for continued abuse of power, corruption and lack of public and open accountability.

The participants recommended that:

~ the radical title in village lands should be vested in Village Assemblies which are the most democratic organs in villages,

~ the radical title in general and reserved lands be vested in an independent Land Commission which would be accountable and responsible to the most representative organ at the national level, that is, the National Assembly,

2. Classification of Land

The Bill:

~ classifies all land in three categories: general land, village land and reserved land,

~ gives direct administrative control to the Commissioner for Lands over general land; gives ultimate powers of supervision to the Commissioner for Lands, or the Minister for Lands or the President over village and reserved lands, although the day to day administration is placed in the hands of the village councils and the relevant public bodies respectively,

~ gives the President power to transfer land from one category to another after consulting his officers and experts.

In effect, this means that:

- Officials and organs right from the village level are subordinated and accountable to the top, that is, the Ministry of Lands and the Commissioner for Lands, [*for example: in its administrative functions over land, the Village Council is not accountable to the Village Assembly but ultimately to the Commissioner for Lands*]
- Village land can be transferred to general land and allocated/sold without the villagers' consent or transferred to reserved land and then given to an investor under the excuse that the investor is in a better position to conserve it [*an actual example: thousands of hectares of village land in Rufiji Delta are about to be transferred to reserved land and be granted to a foreign company on the pretext that the investor has the ability and resources to conserve the mangroves, but actually as an excuse to alienate village land*]

The participants recommended that:

~ there should be horizontal accountability so that at every level administrators are accountable to representative organs of the people,

~ there should be no legal authority to transfer land from one category to another without consultation and consent of the most representative organs like the Village Assembly which includes all villagers.

3. The Authority of Administrators

The Bill declares the Commissioner for Lands to be the sole authority and gives him ultimate and final powers of intervention and making decisions on:

~ all matters to do with the administration of land.

- ~ allocation of land,
- ~ adjudication, titling and registration of certificates, even in villages,
- ~ the power to take away the administration of village lands from the village council should he think that the latter has failed to do its duty,
- ~ dispute-settlement machinery.

This means that:

- The land administration and procedures are undemocratic and lack openness which could create conditions for corruption and breach of landrights of the majority,
- The procedures undermine and sideline representative organs such as village assemblies and by-pass ward, district and regional levels,
- The procedures are not sufficiently transparent; rather they are bureaucratic, expensive and likely to cause inordinate delays in the administration of land.

The participants recommended that:

~ the administration of land should be placed under representative organs of land users at all levels in which,

~ in the administration of village land, the village council and central government officers should be accountable to the village assembly,

~ elected organs of landusers should be consulted and be involved in planning, surveying and supervision of general and reserved lands,

~allocation, adjudication, titling and registration of land should be done by experts who are directly accountable to the elected organs of landusers,

~ dispute-settlement machinery should involve elected bodies which are directly accountable to the people,

~ wherever it is feasible, government officers should be advisers to elected bodies rather than ultimate decision-makers.

~ the law should provide for proportional and effective representation of women, the youth and other vulnerable groups in all the organs proposed above.

4. ACCOUNTABILITY

Although the Bill claims to have established open and transparent procedures, in reality the procedures are:

~ very bureaucratic,

~ top-down, undemocratic and likely to be very expensive in implementation.

This means that:

- The Government will have to spend a lot of tax-payers' money to effect the procedures suggested,
-
- People and officers at lower levels do not have sufficient discretion to make decisions,
-
- The centres of decision making on matters of land will be distant and very expensive to reach for the majority,
- The procedures are, besides, impractical and likely to breed inefficiency.

The participants recommended that:

~ the procedures should be open, transparent, equitable, and relatively less expensive and generally accountability should be built into them,

~ people themselves should be involved at all levels in the administration of land through organs which at lower levels are elected and there is consultation, particularly of vulnerable groups including women and youth and at national level representative organs should be involved.

5. Acquisition of Land by Foreigners

The Bill:

~ is biased in favour of foreigners in the acquisition, ownership and use of land.

This means that:

- Citizens will have to compete with foreigners to acquire land when the large majority are too poor to do so,

- Foreigners will be in a position to acquire land as they wish and particularly to exploit natural resources as they like to the detriment of the ecology and environment.

The participants recommended that:

~ land should be inalienable to foreigners,

~ foreigners should be given land on condition that they do not own it, cannot transfer it and that exploitation of resources should be strictly controlled so that it is not harmful to the environment.

6. Grabbing of Village Land

Although the Bill claims to protect village land, it establishes procedures and has provisions which:

~ give the President power to transfer village land to the general or reserved lands,

~ enable companies and parastatals to get rights of occupancy and customary certificates of ownership on village lands, in which case it is the Commissioner for Lands who has ultimate power of supervision over it rather than village organs,

~ enable outsiders to be granted village land so long as they have shown intention to reside and or invest in the village,

~ enables and allows village government and villagers with certificates to give derivative rights to outsiders.

This means that:

- There is a possibility of village lands belonging to poor villagers and pastoralists being acquired by outsiders,
- It will create apprehension and insecurity of tenure on the part of small peasants thus disrupting their livelihoods and production.

The participants recommended:

~ there should be a legal ban on the alienation of village lands to outsiders, be it companies or individuals without full and effective consultation of the whole village community through their most representative organs in which women and youth are fully involved,

~ there should be instituted mechanisms through which villagers will be fully informed of the options available for them and present and future consequences of certain decisions before they are made.

7. Adjudication, Titling and Registration

The Bill:

~ places particular emphasis on the adjudication of rights and titling and registration process,

~ does not clearly spell out the limits of ownership rights given by the certificates,

~ does not clearly spell out how will the system of titling and registration protect the interests of vulnerable groups such as women and children in family lands.

This means that:

- The owners of certificates will be in a position of disposing off land through sale or otherwise without regard to the interests of and consultation with their families (that means all grown-ups in the family) ,
- Will enable small peasants and pastoralists to sell off their lands when in distress leaving them landless and destitute,
- Will make it possible for the clever and the powerful who can master and manipulate bureaucratic procedures to get certificates in their favour thereby appropriating the land of the poor and the ignorant.

The participants recommended:

~ all village land should be held collectively through the Village Assembly,

~ the Village Assembly may allocate land and respective title deeds to families, deriving from the Village Assembly title,

~ the title so given to families should prohibit the selling, subletting or mortgaging for purposes of obtaining credits or loans or disposing of the same in any manner whatsoever, without the consent of all (adult) members of the respective family and the Village Assembly

8. Gender Equality and Land Rights

Although the Bill claims to embed gender equality, its procedures in reality:

~ discriminate against the female gender in particular among small peasants and pastoral communities on the issue of ownership and control over land,

~ enable male owners with certificates to sell off their land or use it as a collateral without consulting all adult family members, be they male or female,

~ do not give equal participatory rights to women in important decision-making processes over land,

~ do not give equal and effective participation to women in the dispute-settlement machinery.

This means that:

- The bias and discrimination against women continues under the new law,
- Women are deprived of their rightful place and role in controlling the processes and fruits of production,
- Women are deprived of their rightful place in the dispute-settlement machinery and yet it is the women who are usually the ultimate victims of land disputes.

The participants recommended that:

~the administration of land should involve a full and effective participation of women,

~the dispute-settlement machinery should fully and effectively involve women,

~ law should entrench women's rights to own and control land without harassment and insecurity,

~ that ownership certificates of family land should include the names of both spouses and that land should not be transferable without the consent of both of them.

9. Dispute settlement Machinery

Even though the Bill claims to provide for an efficient and equitable machinery for settling land disputes, the truth is that:

~ the Bill stipulates three stages of dispute-settlement, that is, the primary court, the district court and the land division of the High Court.

The proposed machinery of settling land disputes is not significantly different from the existing one in which the large majority of people have lost confidence because:

- Its decisions are frequently against the weak and the downtrodden
- It takes very long and is inefficient,
- Does not hold the hearing in places where the disputed land is situated, conducts its proceedings in a language not comprehensible to the large majority,
- Is an expensive affair and therefore inaccessible to the large majority,
- Breeds corruption and nepotism.

The participants recommended that the dispute-settlement machinery and procedures should be efficient, legitimate and equitable in which people can have faith and therefore recommended that:

~ land disputes should be heard and determined by Elders Council which should have a effective and proportional women participation; its members should be elected and recallable by villagers should they lose confidence in them and that the members should have a definite tenure,

~ there should be circuit courts which should sit and hear cases in the area of dispute,

~ there should be a special land division of the High Court and the Court of Appeal to hear land matters and which will make their decisions in consultation with the elders from the areas of dispute,

~ there should be free legal aid provided by the government in land cases in the higher courts to those who cannot afford to hire counsel.

Following the analysis of the Bill and the consensus on recommendations, the participants agreed to disseminate the declaration widely to facilitate a larger debate involving more NGOs and other organs as well as the public at large and collect signatures of all those who agree with the declaration and eventually submit the same to the National Assembly and honourable members of parliament before the Bill is presented to the Parliament. The aim is to ensure that the final Land

Act which is eventually enacted would have taken into account the views and interests of the large majority and is protective of their landrights.

Declared at Dar es Salaam this 15th day of May, 1997, by:

<u>Name</u>	<u>Affiliation</u>
1. Rugatiri D. K. Mekacha (Chair)	HAKIARDHI
2. Bahroon Said Amin (Secretary)	HAKIARDHI
3. Mary L Labdaki	ILARAMATAK LORKONEREI
4. Tundu A. Lissu	Arusha (personal)
5. Chachage S. L. Chachage (personal)	University of Dar es Salaam
6. Marjorie Mbilinyi (personal)	University of Dar es Salaam
7. Evarist Mwitumba	The Guardian
8. Ng'wanza Kamata	UDASA
9. Nizar Visram	Dar es Salaam (personal)
10. Ichikael Maro	TAMWA
11. Edda Sanga (personal)	Radio Tanzania Dar es Salaam
12. Salma Maoulid	SAHIBA (personal)
13. Issa G. Shivji	HAKIARDHI
14. Bertha Koda	HAKIARDHI
15. Joseph Saning'o	PINGOS
16. Chief Edward Mbarnoti	PINGOS
17. Sherbanu Kassim	WRDP
18. Demere Kitunga	Mtandao wa Jinsia Tanzania (TGNP)
19. Revocatus Makaranga	Habari Corporation
20. Magdalena K. Rwebangira	TAWLA
21. Bernadetta S. Kinyenje	MAJIRA
22. Frederick J. Kaijage (personal)	University of Dar es Salaam
23. Wilbert B. L. Kapinga	HAKIARDHI
24. Zackary Mzary	HEKO Publishers
25. Francis Ole Ikayo	INYUAT-e-MAA
26. Augustine D. Maragu	KIPOC-BARBAIG
27. Moringe L. Parkipuny	AIGWANAK TRUST
28. Ibrahim H. Juma (personal)	University of Dar es Salaam