LIFT THE WHIP
Palaver: The Land Bills

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The two Land bills are before Parliament for a second reading and eventual passing. The Land bills have aroused intense interest. Various interest groups and the general public have raised a number of fundamental issues, which have either not been addressed by the bills, or addressed in a manner that threatens the land rights of the large majority of peasant and pastoral communities. And within these communities the bills make little, if any, real difference to the rights of the most vulnerable groups – women and youth.

From whatever point of view one looks at it, the proposed bills have a lot of problems. Its basic problem is that it does not answer the basic problems and grievances raised by the large majority of land users over the last ten or fifteen years. These problems are known. They are documented in the two-volume report of the Land Commission and some 23 volumes of its transcribed evidence. Let me very briefly mention only six of such problems.

1. **Villagisation**: Problems of land tenure arising from villagisation has two limbs. One, the fate and security in law of those who were resettled and allocated land during villagisation. Two, the grievances of those whose land was taken away arbitrarily and without any recompense. It is the latter group who have been going to courts, winning cases and evicting current occupiers in their hundreds giving rise to a near violent situation in such places as Karatu, Hanang, Babati, etc.

The bills try to validate (legalise) the allocations during villagisation. But so long as it is not entrenched in the Constitution, the validation can be challenged in courts on ground of unconstitutionality. As for the second limb, the bills are totally silent. Behaving ostrich-like and not addressing the problem of abuses committed during villagisation will not make the problem go away.

2. **Land-Grabbing:** There is the problem of large-scale land alienation (or land grabbing) done during the 1980s and 1990s, which the villagers have never accepted. This problem is all over the country but particularly acute in the Arusha region in such places like Lolkisale, Monduli, Simanjiro, Kiteto, etc. The 381,000 acres alienated to Steyn in 1979 immediately come to mind. There is also the case of Tanganyika Cattle Company, which was allocated some 25,000 acres in Kiteto district. Villagers have never accepted these alienation.

The bills do not address these problems and how to resolve them. At best, it appears, the bills confirm these allocations (called non-village organisations in the bills) and take away the land so allocated from the management and administration of the village council and place them directly under the Commissioner for Lands.

3. **Village titling:** The other set of problems has to do with village titling. Sometime in the middle of 1980s, as a result of CCM directive, the Ministry of Lands embarked on surveying, registering and titling of village land. Although the original intention of CCM under

Mwalimu was perhaps to protect village land, the project itself was flawed. First, it was unpractical to survey and register some 8,500 villages. Second, the Ministry planners took the opportunity to circumscribe the boundaries of village land so as to merge village land into non-village land under their direct control. Third, the process gave rise to many boundary problems, which to this day remain unresolved. Fourth, granting rights of occupancy for 99 years to village councils, which is what was being done, amounted to making double allocation. In effect, customary rights of villagers were being expropriated through the back door.

Fifth, no one had given thought as to what kind of rights would the villagers hold from the village council's main title.

The Land Commission recommended that the whole project was misconceived and should be abandoned. Eventually, it seems, it was abandoned but meanwhile some 10 per cent of villages have been granted titles. The Land Commission had made recommendations on how to convert this to titles under the new tenure system recommended by it. The Land bills have made no transitional or conversion provisions. What will happen to the titles vested in village councils once the new bills become Acts and have force of law?

The system of adjudication, titling and granting of certificates of customary rights stipulated in the bills is unpractical. It is likely to result in a chaotic situation at best, and loss of land rights of indigenous people, particularly weaker members of the village community, at worse. That is the lesson, which has to be learnt from the Kenyan experience, which embarked on a similar process some 40 years ago.

4. **Dispute Settlement:** One of the common grievances of villagers is that there is no known, efficient and legitimate process of settling their land disputes. They wanted a machinery which would be accessible, participatory and in which they would have faith. The bills provide for a dispute-settlement machinery in two sections, which make no practical, political or legal sense.

Mediation councils provided for in the bills at the village level have no mandatory jurisdiction. The lowest rung seems to be the Ward Tribunals. Ward Tribunals were established in 1986 and have not worked in many regions. The bills do not say what the composition of the District Land Courts, the other rung in the hierarchy, will be. Even technically, the bills are seriously flawed on this.

As for boundary disputes, one of the core land disputes in rural areas, the Minister has sole powers to resolve them through mediation and ad hoc commissions of inquiry. Among other things, the rural folks are thus denied the benefit of separation of power principle in resolving their disputes.

5. **Definition**: The definition of 'general land' in the bills is highly suspicious. The bill for the Land Act says 'general land' is all land, which is not reserved land and village land "*including unoccupied and unused village land*". These last words do not appear in the definition of general land given in the bill for the Village Land Act. Besides there being obvious conflict between the two bills, the inclusion of those words in the Land Act cannot be

innocent. It would be one of the ways, which has often been used by planners in the past, to expropriate village land under the guise that it is unused or unoccupied.

6. **Radical title:** Finally, the most fundamental question of the vesting of radical title in the President remains totally unaddressed. This is a colonial fiction by which the conqueror expropriated the property of the conquered. The colonial state declared all lands 'public lands' vested in the Governor. After independence, we replaced the 'Governor' with the 'President'. Under the bills, we call the President a 'trustee' of all lands. In essence, there is no difference whether the property/land owner is a despotic colonial Governor or an elected President or a fatherly trustee.

A political sovereign has no business to own land. The Government must of course regulate the ownership, use and distribution of land. But regulatory powers can be exercised without vesting of the radical title in the state.

Incidentally, the notion of 'public lands' is not '*ardhi ya umma*' as politicians are fond of translating. 'Public lands' in colonial parlance and post-colonial practice simply means that the land is under the control and management of 'public administration', that is to say, the state, meaning bureaucrats.

People need to be given their land back. Let land be vested in their own organs such as village assemblies – which would truly mean *ardhi ya umma* - and let the people enjoy full rights of use, control and management over their lands. Public administration should do what it is meant to do: advise and give technical assistance to the people as "obedient servants", not control, manage and lord over people's lands.

In different ways, given these problems, honourable members of parliament from both camps are also very disappointed and unhappy with the bills. In private, they say so but in public they support their party and the Government.

The multi-party system and the English traditions inherited by us, require members of parliament to support their parties in parliament. It is the function of the Chief Whip of the parties to keep their members of parliament in line, so to speak. This is generally true. But I humbly submit that the land bills are not just another piece of legislation. They are fundamental. People on all sides feel strongly about them. Members of parliament have a right to say exactly what they feel about these bills. Their constituents, voters, have a right to hear the views of their representatives without hindrance. Eventually they have a right to know how their representatives voted in regard to these historic bills.

The traditions we have inherited also include a tradition that on very important pieces of legislation, about which the public and their representatives feel strongly, members are allowed to vote according to their conscience. In other words, the party whip is lifted. If there has been any piece of legislation since we entered the multi-party era on which the party whip should be lifted, then this is it.

Let the opposition and the ruling party, both camps, let their members (including the front-benchers!) vote according to their conscience. Lift the whip. Let the voting be by roll call, not the mass rally type 'yeah' and 'nay'. We are entitled to know how our MPs voted on

this important issue so that we may hold them responsible, either way, in the year 2000. The posterity is entitled to know what our leaders did with our land.