

**THE TANZANIAN LAND ACTS, 1999:
AN ANALYSIS OF THE ANALYSES**

**Robin Palmer
Land Policy Adviser, Africa
Oxfam GB**

March 1999

Introduction

On 11 February 1999 the Tanzanian Parliament passed **The Land Act, 1999** and **The Village Land Act, 1999**.

The first deals with general land, including urban areas and private estates outside the customary sector, and is fairly complex; the second deals with village lands and is generally more straightforward. At one stage of the drafting process, the two bills were combined. They were later divided into two for greater digestibility, but they form part of a whole and should be seen and interpreted together.

Among those interpreting the Acts in recent articles are **Issa Shivji**, **Liz Wily** and the **Ministry of Lands**, in the form of Stella Longway, the Commissioner of Lands, and Fidelis Mutakyamilwa, Legal Officer, Land Development Services in the Ministry. Their articles are listed in an appendix at the end.

Issa has written two submissions to a parliamentary committee, a workshop address and a newspaper article; Liz a presentation to district officials and an analysis for donors; the Ministry a paper for a DFID workshop on land tenure in sub-Saharan Africa. All are in effect **analyses of the new Acts**, though both Liz (whose papers were written last November) and Issa acknowledge that because there were **changes** in the Acts **at the last minute**, their comments will need to be revised to take account of this. What they have written are thus only **preliminary assessments**.

Because of that, I have just attempted here to **sketch the highlights** rather than go into any great detail.

It is important to be aware that the new Acts **will not come into force until they have been translated into Kiswahili and gazetted**. In view of the facts that, taken together, they are very long and extremely complex, the meaning is unclear in some places, and they will therefore not be easy to translate, this could **take a considerable period of time**.

Liz Wily stresses that the two laws will provide what is in effect a body of new basic land law for mainland Tanzania with a new regime for the holding of rights in land and for controlling and managing land tenure. **Eleven existing laws will be repealed by the Acts and six others amended**.

She notes with approval that 'provision is made for the law to be **under constant review** and that **amendments are routinely anticipated**.'

Engaging with the Ministry?

It is interesting to note the different approaches of Liz and Issa. Liz has regularly engaged with the Ministry of Lands, she wrote a paper for district officials in Arusha Region, and at the DFID workshop at Sunningdale was often locked in discussion with Stella Longway and Fidelis Mutakyamilwa. Issa, by contrast, has studiously avoided contact, doubtless fearing cooption or manipulation. He did, however, as the Bills finally came before Parliament, lobby a parliamentary committee. According to the paper by Longway and Mutakyamilwa, prior to the Bills coming before Parliament the Ministry 'did not have any formal interaction with Hakiardhi' (Issa's research institute), only indirectly through the Gender Land Task Force.

A real national debate?

Liz and Issa also differ on whether there has been a genuine national debate on land, with Issa, surprisingly, being the more positive. In his most recent paper, he acknowledges that 'there has been considerable public debate'; in an earlier paper he says 'there has been some debate.' Liz comments however that 'most of the debate has derived from a limited source - mainly urban and academic persons.' She points out that as yet there has been no attempt to publish, translate or disseminate widely either the Acts or the 1995 National Land Policy, nor has there been any attempt at consultation on the content of the Policy or the new laws. For her, 'the outstanding weakness of the proposed legislation, is not its substance or even form but the fact that it has reached final draft without the benefit of input from ordinary citizens from all over the country. This poses problems not only for thrust and content, but for its workability, and legitimacy.' Through inadequate consultation, she says, the Tanzanian Government has placed itself in the unenviable position of still needing to secure national support to implement what she believes are basically good laws.

Lessons for civil society?

Issa seems to acknowledge that the particular struggle over the Acts has come to an end, and that things went rather better than might have been anticipated. He concludes his most recent paper from a workshop at Morogoro:

The great value of the debate and NGO activism behind the Land Acts lies not so much in getting the law that they advocated but rather in bringing the land question on the public agenda. In this, I believe, for the first time civil society has scored a reasonable victory. It is a victory of the Cause and a legitimate cause for celebration. The politicians did not have a field day. At every step, they had to justify and answer even if most of the time they did not convince anybody, not even themselves. But I am sure they have learnt a good lesson in good governance, to use the jargon. The activists of the civil society have also learnt a lesson on 'how to pressurise your rulers without being manipulated'. In this sense, therefore, there is a cause for celebration.

Good laws?

Liz believes that the two laws are 'basically sound' and that if the weaknesses she noted in her November papers were addressed (and she certainly lobbied long and hard for this), they would enter the category of 'very good' laws. At Sunningdale, she argued that it was the best land law passed in Africa in terms of 'vesting authority and control over land at the local level.'

Who benefits?

There is a conflict of views, with Issa is far more pessimistic: 'it is difficult to see how the large majority of land users in this country, that is peasants, pastoralists and middle level rural entrepreneurs, stand to benefit.' Liz, on the other hand, sees real gains for women

(co-occupancy), pastoralists (equal rights with agriculturalists) and dependents (their needs must be considered before an owner sells or leases). She believes ‘abundant attention was given to the rights to institutionally weaker sectors of society’ and that ‘the spirit of the new laws is singularly Tanzanian and builds upon Tanzanian realities in a highly significant way.’

Genuine decentralisation?

Issa and Liz also differ sharply on the degree of decentralisation implicit in the new Acts. While Issa asserts that too much control has been retained at the centre, specifically in the hands of the Commissioner of Lands, Liz believes there has been a radical change and that ‘once vested at the periphery, powers will not be readily surrendered, and will consolidate and mature over time.’ For Issa:

The most striking feature of the two bills is the enormous powers over the ownership, control and management of village land placed in the hands of the Ministry, and through the Ministry, the Commissioner. The Commissioner has even greater powers over reserved and general land. The role of more elective bodies, like the local authorities, and more representative and open bodies, like the village assembly, has been virtually done away. Village council manages village land more as an agent of the Commissioner rather than as an organ of the village accountable to the village assembly

Liz counters:

It is true that the Commissioner of Lands has a lot of power, but it not true that ‘the village councils are agents’ of the Commissioner, or that administration of village land will be a ‘top-down process which can not be managed at the village level’. The whole point of The Village Land Act is for devolved land administration, by the village, at the village, for the village. The village in Tanzania has existed for a quarter of a century as the social, spatial and legal institutional foundation of Tanzanian society. The outstanding difference of the Tanzanian Bills with other new land laws [in Africa] is the vesting of (most) control over land tenure administration at the grassroots in the hands of the ‘governments’ (village councils) elected by the members of each registered village community.

The Village Land Act, Liz says:

sets out how each village may declare its village land. This does not have to be surveyed. The critical criterion is simply agreement with neighbours. It provides for registration of village land at the village level. The most important feature is that this will be generally undertaken at the village level by villages.

The decentralisation of land registration to the local level is a good example of strategic soundness. Lodging registers at the local level will also enhance the accountability for their being kept up and kept properly. Accessibility by ordinary villagers will also be greatly enhanced.

Customary land rights?

For Liz:

The law visibly protects existing rights in land. It does this through removing inequalities between statutory and customary rights. They are made fully equal in the eyes of the law. The bills allow for traditional ways of holding land to be recognised and supported fully in the law and for the fundamental operational base of customary land law and tenure to continue - community assent and direction - through embedding local level authority and management of village land in the hands of villagers (the elected village council).

The National Land Policy (1995)

According to Liz, the new laws need to be seen in perspective. They do not depart from the 1995 National Land Policy in significant ways, but iron out many of the ambiguities and

inconsistencies of the Policy, which is already in force. In most respects the laws ‘improve’ the Policy, and Liz believes it has taken some time for critics to absorb this and the fact that in a significant way they ‘re-introduce some of the [Shivji Presidential Land] Commission’s concepts.’

Dispute mechanisms?

Issa and Liz are agreed that the new Acts are very weak on mechanisms for settling disputes. Liz believes the Government should have adopted the Shivji Commission’s strategy in its entirety and that as the law stands, ‘there is little to suggest that resolution of disputes will become speedier or fairer.’

New structures?

In direct contrast to Uganda, where the Land Act (1998) envisages the establishment of 45 entirely new District Land Boards and 9,000 parish level land committees, no new land management institutions will need to be established in Tanzania.

Radical title?

Issa has always been strongly critical of both the National Land Policy and now the Acts for vesting radical title in the President, while for Liz this is a far less important issue than where control over land tenure matters is actually vested and the degree of accountability surrounding it.

A land market?

For Issa, the Acts will usher in a land market, which could well result in poorer people in villages losing their lands, while for Liz:

the new laws do provide for a market in land but one that is by no means free. Constraints are imposed from three directions: definition as to who may acquire rights in land; what kind of property may be freely bought and sold; and especially the means through which transactions are undertaken.

Unjustified fears?

Liz believes that

Fears that land will be ‘taken by foreigners’, that the state will use the issue of Certificates of Village Land to return as much possible land as they can under their own aegis as general land, fears that rampant appropriation of property is going to take place, that women are going to be deprived of rights, are all thoroughly unjustified fears.

The next steps?

The Ministry in its paper agrees with Liz that ‘the enactment of the new land laws marks the start (not the end) of a long process of land tenure reform which will take place for several decades to come.’

The Ministry also agrees with Liz on the need for the production of a simplified English version of the law; preparation of an explanatory text for each clause; and preparation of information sheets targeted at different sectors dealing with a wide range of subjects under the law, such as ‘how to use the law’ and ‘how does the land law affect me’.

The Ministry has already formed one Committee for Immediate Action and another for Long Term Action. It recognises the need for special attention to be paid to women to enable them

to recognise their rights under the new laws and to change the attitude of men, as custodians of tradition and custom at the village level.

The whole exercise calls for special expertise and funding. ‘We need to share experiences with various experts from various countries. It is our sincere hope that this interaction will not end in the hall [at Sunningdale] but rather that it will be the beginning of the consultative network in land tenure policy reforms.’

Donor support?

Finally, Liz says ‘It is likely that the Government of Tanzania will both need and deserve donor support for all or most of the above activities.’

What lessons for Oxfam?

- Lawyers never agree and it’s helpful and instructive that they don’t!
- There were clearly tactical arguments both for and against engaging with the Ministry in the past; neither was necessarily ‘wrong’.
- Issa’s conclusion that Tanzanian civil society has learned some lessons and enjoyed a modest victory is something to reflect on - together with Liz’s caution that the debate was limited in scope.
- A new phase is clearly beginning, even though it will take time for the Acts to be translated and to come into force.
- Looking forward, I would advise Oxfam in Tanzania to examine practical ways in which it can help the communities it works with to establish their rights under the new laws and generally help consolidate the process of village democracy.
- I would also advise Oxfam to take up the Ministry’s challenge to engage with it generally and specifically to help women assert their rights.
- Finally, Oxfam should lobby donors to support the kind of information dissemination and awareness raising work listed above.

APPENDIX

ARTICLES ON THE TANZANIAN LAND ACTS, 1999

1. BY ISSA SHIVJI

‘The Land Acts 1999: a Cause for Celebration or a Celebration of a Cause?’,
Keynote Address to the Workshop on Land held at Morogoro, 19-20 February 1999.

‘Lift the Whip’,
The African, 6 February 1999.

‘Protection of Peasant and Pastoral Rights in Land: A Brief Review of the bills for the Land Act, 1998 and the Village Land Act, 1998’,

Paper presented to the Parliamentary Committee for Finance and Economic Affairs on the Bills for the Land Act and the Village Land Act, Dodoma, 26-28 January 1999.

‘Land as a Constitutional Category’,

Paper presented to the Parliamentary Committee for Finance and Economic Affairs on the Bills for the Land Act and the Village Land Act, Dodoma, 26-28 January 1999.

2. BY LIZ WILY

‘The Village, Villagers and the Village Land Bill’,

Paper prepared for the Land Management and Natural Resources Programme, Arusha Region, November 1998.

‘An Executive Summary of “A Review of Planned Land Legislation in Tanzania”’, November 1998.

3. BY THE MINISTRY OF LANDS

Stella Longway (Commissioner of Lands) and Fidelis Mutakyamilwa (Legal Officer, Land Development Services, Ministry of Lands)

‘Legal Land Reforms against Gender Discrimination’,

DFID Workshop on Land Tenure, Poverty and Sustainable Development in sub-Saharan Africa, Sunningdale, 16-19 February 1999).