

PN-ACA-799



**Land Policy In Tanzania:
Issues for Policy Consideration**

University of Dar es Salaam (Land Tenure Study Group)

Center for International Development and Environment
World Resources Institute
1709 New York Avenue, NW, Suite 700
Washington, DC 20006

1995

1

This discussion paper is prepared by Center staff and collaborators. WRI takes responsibility for choosing the topic and guaranteeing authors and researchers freedom of inquiry. Unless otherwise stated, all the interpretations and findings are those of the authors.

ACKNOWLEDGEMENTS

The Land Tenure Study Group is a multi-disciplinary team of researchers at the University of Dar es Salaam convened to analyses and research upon the present land tenure crisis in Tanzania. Membership in the group is voluntary and open. Currently the group has 5 members including 2 lawyers, 1 historian, 1 economist and 1 cooperative expert. The group is co-chaired by Prof. Anna Tibaijuka of the Economic Research Bureau, and Prof. Frederick Kaijage of the Department of History.

Given the dynamic nature of land tenure issues in Tanzania under the present transitional socio-economic policies, there is need to undertake continuous multi-disciplinary research on the subject. Presently, the LTG is reviewing and building upon the work of the Presidential Land Commission chaired by Prof. Issa Shivji which submitted its recommendations two years ago. The ultimate objective is to give recommendations to Government on how to diffuse current land tenure tensions, and to formulate land policy strategies for the future.

The LTG operates on the principle of collaboration with Government authorities and donor agencies. In this regard it wishes to thank the Chairman and all Organizers of this historic Conference for availing it an opportunity to present its research findings.

The report being presented represents its first study on
"Aspects of Land Tenure in Tanzania with Special Reference to the Regulation of Land Tenure (Established Villages) Act, 1992: Implications for Peasant Land Tenure Security and Natural Resource Management".

The present paper is an abstract from that research report. In the course of its research, the group has benefitted from comments received from Prof. Issa Shivji, Dr. Christian Mukoyogo and Dr. Ringo Tenga, all of the Faculty of Law on the legal aspects raised in the initial draft of the above research report. Dr. Lars Erik Birgegård, then at the International Rural Development Centre (IRDC), Uppsala also provided valuable comments.

The Group would also like to thank the Forest Trees and People Programme at the IRDC, Swedish University of Agricultural Sciences, Uppsala, the IIED of London and the World Resource Institute (WRI) in Washington D.C. However, the LTG is responsible for all views, errors and omissions that may arise in this paper.

LAND POLICY IN TANZANIA: ISSUES FOR POLICY CONSIDERATION

I INTRODUCTION

Tanzania's land policy has been in a state of crisis for quite some time. In 1991 the Government appointed a Presidential Commission of Inquiry into Land Matters (hereafter the Land Commission) as a prelude to a revamping of the country's land policy. The Commission's findings indicate that matters pertaining to the allocation, use, tenure, and administration of land are indeed in a state of confusion, and that the existing land law is in need of a drastic review¹. Now that the Land Commission's Report is available, Government is in the process of formulating a new land policy the central focus of which will be land use and land tenure. A Second Draft policy issued by the Ministry of Lands, Housing and Urban Development has been in circulation since May, 1993.

A recent study by the Land Tenure Study Group which is based on an analysis of the controversial Regulation of Land Tenure (Established Villages) Act, 1992 (hereafter the 1992 Land Act), has revealed that problems relating to customary tenure are multifarious and complex. Indeed, the current legal wrangle regarding the constitutionality of the 1992 Land Act is eloquent testimony to this complexity.

Since access to and use of land has been and still is the key to the means of survival for the majority of people in Tanzania, land tenure touches on all aspects of rural life, and is at the centre of politics and the development process. The state and politicians want to maintain their influence on land as a way of controlling and wielding political power. Development agents consider land tenure a crucial factor in the modernization of agriculture and attainment of economic efficiency. Lately, environmental considerations have also necessitated a review of land tenure as a means to attain sustainable natural resource management. In view of the centrality of land as the country's development resource, it is important that the policy that is eventually adopted is the right one. In fact, we feel that if the government didn't

¹URT, (1994); "The Presidential Commission of Inquiry into Land Matters, Volume I: Land Policy and Land Tenure Structure", Published by the Ministry of Lands, Housing and Urban Development Government of the United Republic of Tanzania, in cooperation with The Scandinavian Institute of African Studies, Uppsala, Sweden.

get the policy right this time around, the damage to the country's development objectives would probably be irreparable.

2 Objectives of the Paper

From the above, the broad objective of the paper is to put forward some recommendations, which, if accepted would, in our opinion, contribute to the evolution of a land tenure policy that will be deemed appropriate for Tanzania and which will accord with the country's priorities. The paper has two specific objectives.

First, it attempts to bring to the attention of the land policy drafters, the essential features of the land tenure regime in Tanzania, as a basis for a clear understanding of the root cause of the present crisis in land tenure and hence strategies for its reform (Section II).

Secondly, it makes a brief review of the recommendations of the Land Commission in order to assess their efficacy in addressing the problems of Land Tenure in Tanzania. In the course of this process our own policy recommendations are presented (Section III).

II ANALYTICAL FRAMEWORK

The starting point in analyzing an appropriate land tenure regime in Tanzania for the purpose of policy reform is to revisit its essential features or underlying principles. As summarized by Professors James and Fimbo (19??), and more recently by Tenga, (1993)² they include:

- i) All land belongs to the state.
- ii) There are dual ownership rights granted by the state.

²Tenga Ringo, (1993); "Notes on a Report Entitled : The Implications of the Regulation of Land Tenure (Established Villages) Act, 1992 for Peasant Land Tenure Security and Natural Resources Management and Conservation" by the Land Tenure Study Group. June, 1993.

- iii) Land rights and titles are based on use.
- iv) Commoditization and speculation in land are proscribed; transfer of land from natives to non-natives (including companies) is virtually forbidden.
- v) Uncultivated land and (most common properties) remain public land under the direct management of government and its representatives at lower levels of administration, including District and Village Councils.
- vi) Women have inferior land rights.
- vii) Interventionist and paternalistic role of the state in land tenure matters, which has tended to lead to excessive administrative discretion, and at times arbitrariness.

Below, we discuss each of the characteristic features in terms of guiding principles, which, in our opinion should be adopted as basis for reforming the land tenure regime in Tanzania. The presentation tries to point out the strengths and weaknesses of each feature, and the justification for the position taken by the Land Tenure Study group to rectify the situation.

Principle 1: Vesting all land in the Head of State. The Executive has the Radical Title.

On 26th November 1885, one year after the colonization of Tanganyika, the German administration promulgated an Imperial Decree to the effect that all land whether occupied or not - was to be treated as crown land and vested in the empire. A proviso exempted ownership claims which private persons could prove. In 1896 a circular was issued making a distinction between ownership claims with documentary evidence, and rights of occupation by the fact of cultivation and possession by chiefs and native communities. Since then things have never changed. In 1923 the British Governor took over the Radical Title from the Germans, and was to hand it over to the the President of the nationalist Government at independence in 1961.

The Land Commission has argued that the Radical title is a colonial creation and should be done away with. In their analysis, the radical title was created with the deceleration of all lands of the country as public lands vesting them in the Governor (colonial state). In his comments to the Draft report issued by the Land Tenure Study Group, Prof. Shivji has clarified that

"this was the invader's way of merging his political sovereignty with property ownership"³.

However, other informed legal opinion at the University of Dar es salaam tends to hold another view. For example, Rutinwa and Mukoyogo⁴ hold that as a matter of constitutional law and theory, this is not the incident which created and vested the radical title in the colonial state. The radical title, or "eminent domain" as it is also known is not and cannot be created by statute. It is an inherent right of the sovereign which is acquired by the same process by which sovereignty is established. The phrase "eminent domain" is defined by the authoritative Black's Law Dictionary as

"the right of the state, through its regular organization, to reassert, either temporarily or permanently its domain over any portion of the soil on account of public exigency and for the public good... (emphasis added).

Implicit in this definition is the fact that the ultimate domain in land belongs to the state and it can be reasserted. To quote Black's dictionary again

"Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity".

³Issa Shivji: A Commentary on the Draft Report by the Land Tenure Studies Group on "The Implications of the "Regulation of Land Tenure (Established Villages) Act, 1992" for Peasant Land Tenure Security and Natural Resource management and Conservation in Tanzania" University of Dar es Salaam, Second Draft, October, 1993.

⁴Mukoyogo, M.C. & Rutinwa, B. I. (1994); "Comments on the Report of the Land Tenure Study Group and Professor Shivji's Comments Thereon" University of Dar es Salaam, June, 1994.

Rutinwa and Mukoyogo argue that it is for this reason that by declaring all lands as public lands vested in the Governor, Cap. 113 did not create the radical title. The radical title over Tanganyika lands was vested in the German sovereign immediately when he asserted his political authority over this country. It was taken over by the British monarchy after World War I as an incident of the transfer of sovereignty over Tanganyika from the British. Cap 113 simply gave this legal situation a statutory expression just as the Acquisition of Lands Act, 1967 did when it gave the President powers to compulsorily acquire land with compensation.

It is also not correct to suggest that "it is the monopolization of the radical title in the state which simultaneously created insecurity of the customary land rights..." (Shivji, *op. cit*). While it is true that customary land rights were insecure, this is not a result of being subjected to the radical title, it is precisely a result of the content given to that right by law which is just usufructuary rights. In Britain and the United States, the sovereign have radical title, yet those who hold freeholds and fee simple have rights *in rem* (Mukoyogo & Rutinwa, *op. cit*).

The existence of the customary land rights and indeed of granted rights of occupancy is not a result of existence of radical title but its misuse or abuse. It appears all leading experts of constitutional law and theory are agreed that the radical title, or eminent domain, allows the state to acquire lands only for public purposes only⁵. The only controversy relates to whether exercise of eminent domain powers entails duty to make compensation. Certain countries such as the United States have resolved this dispute by incorporating the eminent domain into constitutions and specifically requiring payment of compensation whenever it is exercised (see Fifth Amendment).

In Tanzania, the state has taken the ambiguity in Cap. 113 as to the exact nature of the President's title over the lands to acquire privately owned land for any reason and sometimes to reallocate to some other private interests. What must be asserted is that Cap. 113 confers upon the President the eminent domain and according to constitutional jurisprudence, powers thereunder can only be excised for public purpose only.

Apparently, this is what the legislature had in mind when it enacted the Acquisition of Lands Act, 1967 which provides expressly that

⁵(see Citation in Encyclopedia Britannica at p. 395).

"The President may acquire any land for any estate or term where such land is required for any public purpose" (s.3).

Public purpose is defined under section 4 and does not include most of the grounds on which land is in practice acquired in Tanzania. The Act also requires the government to pay compensation to the dispossessed (s.11).

Unfortunately, the Land Acquisition Act is just a statute and cannot prevent injustice occasioned with the authority of another law. Even article 24 which guarantees the right to own property is not helpful because it does not restrict the grounds on which property may be compulsorily acquired. It only requires compensation. **Therefore, to prevent abuse and misuse of the radical title, what is required is not to take it away from the President as the Land Commission proposes but to incorporate the substance of the Acquisition of Lands Act into the Constitution.**

Policy Implications from Principle 1

In our view, the principle of vesting the radical title in the Executive should be retained. But the above analysis supports the proposal by the Land Commission, that land should become a constitutional category. Also, what should be addressed, and an issue to which we now turn, is the insecurity created by the arbitrariness of the state in allocation and revocation of land rights.

Principle 2: Maintain a dual tenure regime for village lands and public lands provided measures are taken to improve the security of both modes of tenure.

The total adoption of a dualistic land policy was first introduced by the German colonialists and was later incorporated by the British in the 1923 Land Ordinance. Despite numerous amendments, the basic tenets remain in force.

On the one hand, under Section 2 of the Land Ordinance, cap. 113, rights may be derived from customary tenure or deemed right of occupancy, which, subject to use, are held in perpetuity (usually by rural farmers). On the other hand, are statutory tenures called granted right of occupancy, given for up to 99 years subject to development conditions (usually to urban land interests and estate farms). Except for the existence of development conditions, which if unfulfilled

could be used by land administrators to revoke the title, the granted right of occupancy with a title deed as proof of ownership has been considered more secure and conducive to land development.

The deemed right of occupancy is based on customary law. Its strength lies in its being inclusive: most members, particularly men, are guaranteed access to land, thus promote equity and all the social, economic and political advantages that go with it. Its weaknesses centre on arguments that customary tenure does not provide adequate security, which is a dis-incentive to investment in land improvement.

However, claims about the insecurity of customary tenure have also been challenged by empirical studies which have shown that where it has taken place, for example in Kenya, land titling among smallholder has in fact been manipulated by the rich and the elite in general who have consequently increased tenure insecurity among small farmers. This view holds that titling *per se* has not led to significant increases in land investments (Bruce, 1986; Atwood, 1990; Migot-Adholla et al, 1991).

In the case of Tanzania the utility of titling has been discussed by Justice Rugakingira (in his memorandum to the Land Commission). In his view, even without titling, there exists no insecurity of tenure for the villagers. He argues that a native cannot simply be driven from the land he occupies without cause or compensation.

However, we would caution that security under customary tenure must not be exaggerated. Since colonial days to the present, in practice, the peasant's security has depended on who is entrusted to define the "cause" for evicting him/her from the land, and experience has shown some arbitrary decisions in this matter. The massive forced villagization of peasants in the 1970s is a good example.

As for compensation, it is true that until its last revision in 1992, the fee schedule used for compensation by the Tanzanian government has been, for all practical purposes, confiscatory. The real value was long eroded by inflation, and deliberately kept so depressed to the advantage of government. What is worse, the compensation by government is rarely paid in time and without tips and bribes, so that beneficiaries are faced with high transaction costs.

When it is given, compensation is for unexhausted improvements in land, in practice permanent crops. Neither is compensation given for investments in

physical infrastructure like terraces, bush fences, pastures, etc, nor to minimum tillage practices like leaving land under fallow. As awareness to the value of land has increased, this compensation policy has proved harmful to the environment. It has tended to encourage the clearing of land under forests and woodland in order to plant it with recognized exotic trees mostly eucalyptus. Unfortunately such tree species do not protect the soil from erosion as effectively as do the traditional tree species and bushes which are not recognized as improvement! Many lands previously kept under fallow to regain fertility are also routinely burnt and cleared of their vegetation in order to protect them from re-allocation to other users by village governments. In Tanzania, tenure insecurity has undoubtedly led to some practices which are not conducive to sound environmental management and sustainable agriculture⁶.

At individual level, lack of automatic proof of land ownership (in the form of certificates and/or relevant written document and survey maps) and dependence on witnesses has increased the vulnerability of peasants to injustices in case of disputes. Even if justice might finally prevail, it is normally secured after a lengthy and expensive court process. Many poor peasants especially women driven from their land without due cause have not been able to endure the gruelling court procedures, and have lost their land rights.

The deemed right of occupancy system served the interest of the colonial dual economic policies. Beside making it easier for the state to alienate land owned by natives, the deemed right of occupancy ensured that capital and services would go to the large farm sector operating almost exclusively under the Granted Right of Occupancy system.

After independence, the government continued to exploit the weaknesses of the customary land ownership system and transferred land from smallholder to large farms owned by the state. There are several cases where village land has been hived off, in the name of the public interest, for game conservation, tourist hotel construction, or for allocation to state-owned enterprises. The annexation of huge tracts of land for the Tanzania-Canadian Wheat Project (TCWP) in Babati district, Arusha region is a case in point. By official account the TCWP covers 100,000ha of land (12% of the district). By Barbaig account, it occupies some 123,000ha of land. At the same time HADO - a range conservation project to the South of

⁶Tibaijuka, A.K. (1991); "

Barbaig territory has pushed people and their livestock into Hanang, aggravating the Barbaig situation.

The above review and the evidence given by the Land Commission leaves little doubt that the deemed right of occupancy holders have been faced with a lot of insecurity. But, before we decide whether or not to do away with this system of land holding, a legal clarification is necessary.

The Legal Position

Prof. Shivji is of the view that the monopolization of the radical title "declared the superiority of statutory grants (granted right of occupancy), thus creating a hierarchical system of land tenure with perpetual tension between them". Mukoyogo and Rutinwa (op. cit) maintain that the deemed right of occupancy does not stand in hierarchical relationship with granted right of occupancy. The two systems are different and parallel. The former derives from customary law while the latter from state law. The Court of Appeal, the court with the final word on the meaning and status of laws said in *Maagwi Kimito vs Gibeno Werema* (C.A. Mwanza Civ. App. No. 20/84) that

"customary law, where applicable, has the same status in the courts of Tanzania as any other law.....subject to the Constitution and any other law that may provide the contrary"

A year later, the same Court of Appeal in *M.P. Nyagaswa v. C. M. Nyirabu* (Civ. App. No. 14 of 1985) applied this general proposition to the particular issue of land rights and therefore we share Professor Fimbo's view that the effect of that decision is that

"a deemed right of occupancy stands on the same footing as a right of occupancy granted under section 6 of Cap 113 and that the latter does not extinguish the former over the same plot⁷".

It may be true customary land rights are more abused and invaded than granted right of occupancy. Moreover, superimposition of granted rights of occupancy over them is the frequent mode of abuse. However, this is illegal and more a

⁷ (in *EALR* Vol 16 Dec, 1989. No. 2 at p. 138)

reflection of the weakness and defenselessness of the poor who hold deemed right of occupancy rather than the legal standing of the rights themselves. If anything, the situation is a manifestation of the raw deal meted out to the poor by the Tanzanian justice (Mukoyogo & Rutinwa, op. cit).

Policy Implications Arising from Principle 2

The above review leads us to conclude that the Land Commission is correct in being concerned about the insecurity of tenure facing smallholder farmers. The problem is not so much the dual land tenure system, but a dysfunctional administrative and legal system. This being the case, we are of the view that the dual system should continue to operate, but there is urgent need to devise ways to facilitate the adaptation of traditional land laws to suit present day reality, and to improve security for the peasants.

As first proposed in the 1983 Agricultural Policy, and reiterated by the Land Commission, three measures are necessary. Firstly, there should be clear demarcation of village boundaries, so that encroachment and unilateral annexation by state organs is effectively brought under control. We endorse the recommendation by the Land Commission that the Village Assembly rather than the Village Council should hold the title to the land. Under principle 1 above we recommended retention of the Radical Title in the Executive. Our recommendation is that villages should be given free hold titles of 999 years. They can in turn issue sub-titles of 21-99 years to their members, or any other person wishing to invest in village land. In our view, once the Village Assembly has obtained a freehold title to its land, it should be able to decide what to do with that land. As we elaborate in Section III, the large variability in local conditions prevailing in Tanzania, precludes any possibilities of making hard and fast rules on such things as land size and the exclusion of outsiders as proposed by the Land Commission.

Secondly, we support the proposal by the Land Commission that on national lands, the granted right of occupancy of 21-99 years should continue to operate, and that national lands should be determined as a residual category of village lands.

Thirdly, within each village a titling programme for individual plots should be undertaken so that individual/family cultivated plots are differentiated from common properties. We endorse the recommendation of the Land Commission that more practical methods for land survey should be devised. If issued as a sub-title by a village, the *Hati ya Ardhi ya Mila* (HAM), proposed by the Land Commission

seems to be a reasonable proposition. The only difference is that in our proposals, except in those areas where local customs are likely to contravene the Constitution, as in the case of gender, it should be left to the Village Assembly to decide the specific conditions to be tied to the disposal of the HAM. For example, in some villages, for security reasons, it may not be safe to demand that the sale price be declared publicly.

Finally, in the medium and long terms, proper surveys should be undertaken. It is therefore not a question of suspending the surveying and mapping exercise, but making interim arrangements so that titles can be issued basing on natural boundaries, and later, as proper cadastral survey maps become available, proper records should be kept. We see that once the land policy is adopted, and appropriate land laws enacted, the demarcation exercises for both village lands, and within villages individual plots would start immediately. In our opinion, only this procedure could reduce land disputes between villagers and protect communal land from being individualized at the expense of the greater village community. We shall return to detailed operational issues in Section III.

Principle 3: While upholding the principle of effective use of land, adopt a market based land allocation system as opposed to the present administrative land allocation system

The Granted Right of Occupancy is a title to the occupation and use of land subject to development conditions imposed by the state. Failure to follow the conditions invites practically unilateral revocation of the title by the President⁸. Tenga (1994)⁹ maintains that one of the reasons which invited the extinction of the freehold titles in Tanzania was the Government was unhappy with the extent to which it could control land under the Freehold Tenure. A substantive part of the Freehold Titles (Conversions to Government Leases) Act, 1963 applied what were termed as "Development Requirements" which enabled the State to intervene in land use. These requirements were so similar to those applicable to the Rights of Occupancy (i.e. Land Regulations of 1948) that by 1969 it became necessary to convert Government Leases into Rights of Occupancy¹⁰.

The instinctive urge of the state to control productive activities over the land is not limited to the granted right of occupancy, it also extends to customary land tenure. Since the colonial period to today, the peasants have been faced with a myriad of penal by-laws in the cultivation and conservation of agricultural land¹¹. The notorious minimum acreage bylaws have been passed by local government authorities from the colonial period, and are currently widely practiced by Village and District authorities. Failure to comply often invites fines and even imprisonment. Ironically, such harsh rules are self-defeating because once a peasant is in jail his or her family will nevertheless be left without secure livelihood. The extreme case of what now with the benefit of hindsight seems to have been

⁸ (See S.10 of the Land Ordinance, cap 113)

⁹Tenga Ringo, (1993); "Notes on a Report Entitled : The Implications of the Regulation of Land Tenure (Established Villages) Act, 1992 for Peasant Land Tenure Security and Natural Resources Management and Conservation" by the Land Tenure Study Group. June, 1993.

¹⁰ (See Government Leases (Conversion to Rights of Occupancy) Act, 1969.

¹¹ (See: David Williams "State Coercion Against Peasant Farmer in Tanzania" 20. Journal of Legal Pluralism and Unofficial Law (1982) p. 95-122).

reckless state intervention with perhaps most far reaching consequences on the land tenure regime in Tanzania is the Villagization programme of the 1970s.

The rationale for the principle of effective occupation is to ensure that land is put to planned and effective use. It is also supposed to guard against speculation in land. In reality, the existence of development conditions on land held even under statutory tenure, while sound, has proved very difficult to enforce. The matter is effectively left to the discretion of Land Administrators, who have shown inconsistent behavior. Some land occupiers have been harrassed, and have had their rights revoked, while others have virtually been holding land, particularly plots in urban areas, for years without any visible improvement. When and where land officers have tried to enforce the development conditions, their efforts have been pre-empted by title holders who have rushed to erect gimmick structures such as foundations, mere fences, or planted a few permanent trees. Once this is done, it is almost guaranteed that by appealing to the courts, any enterprising lawyer would secure the complainant with a court injunction barring the land officers from revoking the title and re-allocating the land to other potential users.

Implications for Policy from Principle 3

Development conditions and requirements, while sound, are not enforceable administratively. The only sure way to ensure that land is used effectively, and according to planned use is by instituting a **land tax** that is graduated to reflect the intended use of land. Instead of allocating land to potential users, land should be allocated by a tender system. Thereafter, a land tax is imposed. In some cases, a grace period (tax holiday) could be given for development purposes.

A criterion for evaluating the bids for the allocation of land will need to be developed in such a way that, in addition to price, the greater objectives of proper land use according to agro-ecological conditions are not sacrificed. **We are of the opinion that for this system to work, the government must first adopt a policy that land cannot be leased directly to non-citizens.** We consider such positive discrimination as absolutely essential to safeguard wider national interests including peace and stability. It means foreign investors will have to join hands with local people. For, unless this condition is observed, the system of land tax cannot, in our opinion be said to be fair to natives. It is an open secret that if forced to compete with foreigners, only few, if any, Tanzanians would gain access to national lands. The *Wananchi* will not be able to compete effectively with foreigners in bidding for public land.

It is conceivable that there are cases where foreign investors might fail to get suitable local partners for land based investments. In order to enable them access to land, such investors would, in effect have to enter partnership with the state. The state would in this case retain the title to the land, and its declared value would be considered as the contribution/share of the state in the venture. The foreign investor would, in principle, have a management responsibility. We should emphasize that such ventures, should not be likened to current state enterprises because management responsibility would entirely be the responsibility of the investors. The test case for the effective use of the land by such ventures would be their ability to pay an appropriate land tax like everybody else while using public land. Failure to pay would also be treated as in other cases. In principle, this system also can work on village lands. It should be left to the discretion of the village assembly to enter partnership with foreign investors in land development in their areas. The investor would not get a title, but enter a joint venture in which he/she has management rights.

In making this recommendation, we are aware that we are in fact calling into question both the spirit and philosophy of the National Investment (Promotion and Protection) Act (No 10 1990) (hereafter the Investment Act). For, under Section 26(1) of the said Act it is stipulated that

"Where an investor is granted a Certificate of Approval by the Centre under this Act, the Minister Responsible for Lands shall grant him on such terms and conditions as may be prescribed a lease of appropriate land for a term suited to the requirement of his enterprise: provided that land belonging to any registered village shall not be leased for commercial activities other than joint ventures with the village government or the village cooperative society, save that such land may be sub-leased by the village itself for a small or medium scale, public or private economic activities. Any lease granted under this section shall be a term not exceeding 99 years"

In retrospect, it was unwise to start with the Investment Act, before formulating a land policy. However, we can argue that this oversight is no reason for compromising the broader interests of the country. With a debt overhang which is now about 140% of the GDP, land is the only resource left, and many people feel that this too should not be taken away by foreigners. True, long-term leases based on the rights of occupancy are not, strictly speaking, selling land. However, we submit that once you introduce a tendering system for this allocation, the psychological impact that land has been sold to foreigners is virtually the same.

Absurd as they are in a poor country, free allocations are less damaging in this regard. In view of the rising impoverishment of the Tanzanian masses, it is a situation which could easily be used by populists to incite the poor to the detriment of public order. A case in point is the demolition of a fence at a plot at Mnazi Mmoja grounds in Dar es Salaam following press reports that land had been illegally allocated to a foreigner.

If our proposal were to be accepted by policy makers, then the necessary amendments would have to be made in the Investment Act. Foreign investors, and those who maintain, and with good reason too, that current economic and political realities necessitate the creation of confidence in capital (including real estate) markets, need not worry unduly for three reasons.

First, a genuine foreign investor, as opposed to a mere trader looking for a market for his/her products, would not be discouraged by our recommendation because, by making some effort, he/she should be able to locate a Tanzanian partner with whom to join hands and get land for the proposed venture. Our view is that a foreigner investor who feels too insecure to team up with Tanzanians, or is unwilling to assist in developing the country's most precious resources - its human resources - through joint enterprise would be most unlikely to do the country much good. We have already pointed out that in cases where private local interest cannot be found, this partnership would be with the state as a silent partner. Secondly, for foreigners who have already acquired land titles, necessary conversions would be made. In cases where local partners cannot be found, we assume the state would become a silent partner as proposed above. Finally, we submit that any investor is insecure if the system of investment creates negative attitudes against foreigners. For example, the state might guarantee the investor against nationalization without compensation (as in fact it does under Section 28(1-2) of the Investment Act), but the state cannot guarantee the investor against acts of sabotage (e.g a blazing fire against field crops) if the society develops negative anti-foreigner feelings. In fact, security for the foreign investment might be enhanced when the masses feel that the investor is here not only to reap benefits, but to join hands with Tanzanians and develop the nation.

The Land Commission agonized over this issue, and proposed that in the allocation of land, preference should be given to citizens (p. 171-172). But this is tantamount to endorsing the present administrative allocation. If we are to avoid arbitrariness and favoritism, and if, as we discuss below, the land market is to develop, we must have objective criteria for land allocation based on the tender system. It

means, as far as possible, the highest bidder should secure. Short of this, we might as well retain the present administrative allocations because, in the absence of objective criteria for the former, the two would in practice turn out to be almost the same thing.

Principle 4: Allow the Land Market to Develop Unimpaired

Another important feature of the land tenure regime in Tanzania is that commoditization, except under certain restricted conditions, is prohibited. This principle has been used for a variety of purposes. Under the colonial regime, it was used to impose racist conditions against native Africans so that they could not enter the formal market¹². The same principle has been used to put restrictive conditions on the transfer of granted rights of occupancy and also to monitor land speculation¹³. The principle has been used to control rents (see the Rent Restriction Act, 1984) and to acquire buildings (See Acquisition of Buildings Act, 1971).

Fear of commoditisation has given rise to a stifling of any attempt to modernise agriculture or build a land market. Hostility to land markets is justified by the spectacle of hordes of landless peasants deprived of their traditional heritage by land hungry "foreigners/outsideers" or worse "capitalists". Bruce (1994)¹⁴ and Tenga (op. cit) argue that such reasons have been based on half-truths which cannot be empirically supported. For, whether land transfers are restricted or not depends on a variety of factors including policy, economic management, categories of land, etc. In some cases an open policy of alienation is positive, in some, negative and so on. In Tanzania, recent household land use and sociological surveys show that in some cases land, supposedly under customary communal tenure, is sold *de facto* like private property. An all embracing principle is thus redundant.

¹² (see the Credit to Native Restriction Ordinance; s.11 of the Land Law of Property and Conveyancing Ordinance, cap. 114; and S.8 of the Land Ordinance Cap. 113).

¹³ (see: S.3 of the land regulations of 1948 and S. 41 of the Land Registration Ordinance Cap. 334);

¹⁴Bruce, J.W. (1994), et al; "Individualization, Titling, and Registration of Land Rights and National Land Policy in Tanzania" A Study for the Ministry of Lands, Housing and Urban Development. November, 1994.

Policy Implications Arising from Principle 4

We are of the view that whether in villages or national lands, the rules adopted should be flexible enough to allow the development of the land market defined as freedom to transfer land rights through sales when necessary. Subject to the conditions to be imposed by policy and law to protect the land rights of women and other family members, peasants with sub-titles for their individual plots should be free to sell such rights unimpaired to citizens. In other words, we endorse the recommendations by the Land Commission that women and family interests must be safeguarded in the sale of land, but do not think it is necessary or possible to make a general rule for the whole country. The specific rules for the transfer of land should be left to the discretion of the village assemblies (see Section III).

As for national lands, the bidding system and the land tax to be imposed should be able to take care of market development and allocation. For, if you are not using land effectively, and provided the land tax is not set below the market value of the land, there would be no economic incentive to keep the land unutilized. Those finding that they cannot pay the land tax from the land, would be forced to sell it, or in any case the tax collector would auction it to recover the tax. However, an important assumption here is that the system for determining the land tax would be fair and rational. In Tanzania, the tax assessors have exhibited even more arbitrary behavior than land officers. For this system of land administration to function, right from its inception, it has to be rescued from discretionary behavior by the land tax assessors. This could for example be achieved by fixing the land tax as a proportion of the initial prices of the land, which is periodically adjusted to take into account inflation (indexation). These are the matters to be worked out by the Land Tax Department which we propose should be established in the Ministry of Lands, or an appropriate Government Tax Authority or Ministry.

Principle 5: Democratize the Management of Gazetted Areas

The colonial administration, and later the independence government have all made several decrees geared to preserving the environment. In 1891, in order to protect water catchment areas, and to conserve the environment the Germans declared the preservation of several closed canopy highland tropical forests and mangrove

swamps along the Coast¹⁵. In 1911 the Germans further decreed for the protection of wildlife in most of what is today the Ngorongoro Conservation Area and Serengeti National Park. In 1921, the British instituted 3 categories of wildlife areas, including partial, complete, and closed reserves - implying a rising degree of protection. On 25th June, 1951, Tanganyika ratified the London Convention of 1933 which introduced the concept of national parks free of human interests, seeking to preserve fauna and flora in their natural state (See section 2, Fauna Conservation Ordinance, 1951, cap. 302, 23rd schedule, Land Commission, p. 262).

The forest ordinance came into force on 1st July, 1959. Section 5 (cap. 389) empowers the creation of forest reserves out of any area of unreserved land by declaration, after issuance of the due notice of 90 days, and also after considering objections by interested parties. Although it is stated that before the declaration, all rights to forest land or produce must be determined, and if rights owners are agreeable, and they voluntarily surrender their rights, the rights must be recorded immediately and compensated without delay, as we shall see in this paper, such clauses have not been always observed. Section 17 of the same Ordinance provides for the declaration of reserved trees in terms of unreserved land. A restriction is imposed on felling, cutting, damaging or removal of reserved trees on unreserved land. However, traditional users are accorded some exemptions.

The Wildlife Conservation Act (No. 12 of 1974) gives wide ranging powers to Conservation officers and authorities to regulate human activity in game reserves, national parks, the Ngorongoro Conservation area or forest reserves. Stringent conditions relating to entry, residence, carriage of weapons, causing fires, damaging or removing vegetation are specified. The Fisheries Act, (No. 6 of 1970) provides for the declaration of controlled areas within territorial waters.

¹⁵The closed canopy areas include the Eastern Arc Mountain ranges of the Pare, Usambara, Uluguru, Udzungwa, Ukaguru and Usagara mountains. They cover approximately 37% of the total area designed as catchment forests in Tanzania. Other closed canopy forest areas include Kilimanjaro, Meru (Koimerek), Monduli, Ketumbeine, Gelai, Lolmalasin, Olmoti, Satiman, Makaroti, Odeani and Marangi. Germans also declared preservation of mangrove forests in Tanga, Bagamoyo, Dar es Salaam, Mafia, Kilwa and the Rufiji delta. (See Mbwana S.b. 1990 "Management of Catchment Forests with Emphasis on the Eastern Arc Mountains" Dar es Salaam).

Instruments of Regulations

The means of regulation in respect of forest reserves, wildlife, and fisheries is the issuance, or withholding of licenses. In this model, the licensors are the chief conservators of forests, wildlife, and marine resources. For example, national park authorities are empowered under these laws to use armed rangers vested with powers of police officers (Section 17). Also, the soil-conservation protection by-laws imposed by the Germans and formalized by the British colonial government via the Conservation Ordinance of 1937 were quite unpopular and depended on strict policing by local chiefs and agricultural extension officers¹⁶.

In practice, the command approach to conservation has not worked effectively. There are 6 factors for this failure which are relevant to bear in mind as a basis for formulating a new land tenure policy in Tanzania.

First, in its conception and, and as pointed out at the 1972 International Conference on the Environment in Stockholm, the welfare of the natural environment was being promoted at the expense of human habitation and welfare. The protection of the environment was so abstract that it was above the understanding of ordinary villagers whose immediate interests, in terms of agricultural land, firewood, food from game meat and fish, etc, necessarily conflicted with those of preservation. The villagers did not, or more aptly could not, afford to cooperate. They were being asked to bear all the cost of conservation, while not sharing in the benefits particularly in the short term, and while no effective action was being taken to improve their productivity to cope with their increasing numbers.

Secondly, after independence, despite numerous decrees seeking Conservation, many of the actual protective and control measures which all along had been unpopular among the peasantry became political sacrifices and were in practice (rather than in law) expediently declared "colonial" and "anti-Ujamaa" and were either relaxed or abandoned. The colonial administration had enforced strict protection of the reserved areas through *inter alia*:(a) clear demarcation of boundaries which were also screefed annually before the dry season to prevent

¹⁶ In some cases the soil conservation techniques advocated by public officials were technologically wrong and so, were justifiably resisted by the farmers who knew better. For example, bench terraces prescribed in the Uluguru mountains increased chanced for landslides (Coulson, 1980).

forest from adjacent cultivated communal lands; (b) controlled harvesting of mature trees through coupe demarcation; (c) tree numbering and allocation of felling rights to longterm licensees; and (d) reserving pit sawing strictly as a salvage operation directed at what the long-term licensee left. Outside the reserved areas local chiefs regulated land use activities including forest use by enforcing a series of by-laws instituted to discipline those who did not comply. Such authoritarian top-down non-participatory approach used by the colonial government to enforce these practices, meant the native population failed to appreciate the good reasons behind them. In fact, many a peasant had supported the liberation struggle believing that, once in power, the nationalist government would ban such restrictions.

Thirdly, and related to the preceding, in accordance with the policy of Ujamaa the long term licensees were abolished as it was regarded unacceptable for a few people to control public natural resources. This made the control of resource use in reserved areas by a myriad of users more complicated.

Fourthly, in the Land (Settlement of Disputes) Act passed in 1963, local chiefs were substituted by appointed divisional executive officers who neither knew the local people so well nor enjoyed sufficient support and loyalty to be able to enforce such unpopular by-laws and social control mechanisms. The forest officers and range guards therefore defaulted, since they lacked the legitimacy to enforce the unpopular bylaws.

Fifthly, in most of the Conservation legislations, a number of sections (e.g. Section 19, 22, 41 in the Wildlife Conservation Act) empower the President , to lift restrictions in game reserves. As observed by the Land Commission (p. 268), this can be subject to abuse, especially considering that many presidential powers are often delegated¹⁷.

¹⁷ The pressure on forest resources by those manipulating the power of their offices has escalated under the Economic Recovery Programme, a major thrust of which has been to promote non-traditional exports (NTEs) through the foreign exchange retention scheme for traders. As a result, the share of NTEs in total export earnings rose from 15.32% in 1986 to 28.04% in 1989. However, a study conducted to assess the impact of the ERP on the environment has shown that the NTEs are dominated by timber and wood related products, and therefore, success in export performance in NTEs has been to the detriment of the environment. The study shows how the exploitation of both natural and

Finally, there is a problem of the sheer size of the areas which the licensors and their guards are supposed to protect. Available figures on land use in Tanzania are as summarized below:

Table 1: Land Use in Tanzania, 1987

Use	Tenure	Area sq. km	Per cent total
Smallholder farming	Customary	41,300	5
Large estates	Statutory	10,000	1
Rough grazing	Customary	350,000	40
Conservation areas: National parks, game and forest reserves, and the Ngorongoro Conservation Area	Public	221,300	25
Forest and woodland	Customary & Public	256,708	29
Total	Dual	885,200	100

Source: Commonly cited ODA figures, e.g. Bruce, op. cit.

The data suggests that as much as 25% of the total land area can be classified as Public Land. To this must be added the land which is in customary tenure areas but is public because no peasants can prove its effective occupation which is therefore under the the direct management of the Government and its

plantation forests is taking place too rapidly and argues that, if unchecked, short term benefits might lead to long term, unforeseen negative impacts. (See Tibaijuka, A.K. (1991); "Issues Arising From the Non-Traditional Export Drive Policy of Economic Adjustment: The Case of Wood and Wood Products in Tanzania". In: "Tanzania Economic Trends", Vol. 4 No. 1 April, 1991. Economic Research Bureau, University of Dar es Salaam.

representatives at lower levels of administration including District Authorities and Village Councils. The question is, how can a handful of forest and range guards, often times without necessary transport and other field gear for surveillance be expected to offer effective management and control of such vast forest reserves and national parks? In our opinion, it is not an overstatement to note that the system of surveillance from above has proved grossly inadequate, and in some cases has virtually broken down. Little wonder that poachers continue their activities with impunity knowing that the chances of being caught are slim, and that even if caught, they have a good chance to negotiate their way through by greasing the hands of the underpaid forest and range guards.

Policy Implications Arising from Principle 5

The rising population pressure and the apparent failure of the Forest and Game Departments and regional authorities to protect the natural forests through the use of guards and bureaucratic rules indicates the need for a new approach to management system. Central to the new approach is the involvement of villagers in the husbandry of natural forests. A new paradigm is emerging that the solution to deforestation of gazetted tropical closed canopy forests lies among the large number of people living in or around "public" forest zones and national parks. Only the involvement of local people, supported by law and policy to reinforce or create community based tenurial incentives for managing natural forests, can and must play a role in any credible and sustainable efforts to stop deforestation and to promote afforestation (Lynch, 1992:1); Shah, 1993). For this reason, we propose that village assemblies can enter management contracts with the relevant Ministries to manage protected forests and the wildlife in it .

Principle 6: Work towards the elimination of the discrimination against Women in matters of inheritance and access to land rights

Given the existence of about 120 ethnic groups, each with a customary land law that is slightly different, generalizations can be misleading. However, available evidence supports the observations that, under customary laws, women generally have inferior land rights relative to men, and their access to land is indirect and insecure. Despite being the main operators of land, Tanzanian women depend on husbands, fathers, brothers, and even sons for a guarantee of their access to the land they operate. Interestingly, this is true in both patrilineal and matrilineal lineage. For, while in the former the father is the key figure, in the latter the

maternal uncle dominates. Equity apart, several case studies have shown that tenure insecurity reduces the innovativeness and willingness of women to invest, bars them from institutional credit, and thereby reduces overall economic efficiency (Tibaijuka, 1979 & 1984; Swantz, 1985).

There are 7 arguments for advocating women's full land rights in Tanzania today.

1. Traditional provisions which used to protect women from tenure insecurity have been eroded.

Population pressure and marketing forces are slowly but surely leading to the individualization of customary tenure, thereby eroding traditional provisions protecting women from tenure insecurity in communities where such existed. It is therefore either a myth or arrogance by those favored by the present system to argue that women's interests are cared for by custom. We submit that in the majority of cases this is no longer applicable (Fortman & Bruce, 1988; Davison, 1988; Fleuret, 1981).

Large scale data is not available. However, good indicators can be gleaned from results of a case study from Kagera region based on a farm management survey conducted on 200 households in a baseline survey in 1982/83 and a follow-up survey in 1989. One third of the 20 women-headed households in the sample were widows. They did not own the banana coffee farms (*kibanja*) but were operating it on behalf of their children under trusteeship from the clan. More than half of these women admitted that they live under considerable harassment and sometimes direct threats of ejection by ruthless clan members, and sometimes irresponsible children (Tibaijuka, op. cit).

As for childless widows they stand little chance of living on the deceased husbands' land. Usually, the only option open to them as well as to divorced women is to return to their own clan-land operated by their brothers (and their brothers' wives). Generally, these returnees are neither welcomed by their brothers nor their sisters-in-law. The returnee is regarded as a person exercising her ancestral right to "reap where she has not sown," especially in situations where the returnee has been away (married) for a long time. Conflicts are almost always inevitable.

Also, while married women face high risk of disenfranchisement by irresponsible male relatives, the Kagera study revealed that, in some cases, divorced and or

widowed women ejected from their nuptial homes have simply have had nothing to return to. While they were away, the brother might have already sold the banana farm thus making his married sister (not to mention his wife) landless. As observed by Swantz (1985) young divorced women have tended to go to towns in search of employment and are finally forced to turn to prostitution primarily to raise money to purchase land in their home villages. Some engage in illegal trade like distilling alcohol (konyagi) from the local banana beer, with all the risk in fines or imprisonment.

2. The number of households headed by women is increasing. Denying women direct land rights amounts to condemning these women, and the increasing number of children they support to landlessness and poverty.

In the Kagera study, the proportion of women-headed households had increased from 18% in 1982 to 26% in 1989. This is a rapid increase over a span of 7 years. The reasons for this tendency include the rising incidences of unwed mothers, rising divorce rates, and increasingly the scourge of AIDS. In the same sample, as a % of adult females, the number of returnees (divorced women) living in men-headed households had increased from 23% in the 1982 to 32% in the 1989. More than half of these women were young divorcees aged below 40 years. These data suggest that divorcees have increased and many young women are living in their fathers' and brothers' households.

The increasing instability of marriages has great bearing on the design of land tenure regimes which can give women a more secure tenure whether married, widowed or divorced. It is noteworthy that when returning widows and divorcees have been given land, it has been on marginal land, from which they are unable to make a decent living. The feminization of poverty, is an increasing problem in Tanzania (Tibajuka, 1994).

3. In allocating land, Village Councils have been guided by custom, and have continued to discriminate against women and have allocated land to heads of households, who are usually men.

A uniform policy needs to be made to guard against this practice. In the Kagera study, none of the women-headed households in the sample had been allocated land freely by the state machinery (village governments). All the sample households which had acquired land through free allocation (12%) were headed by men. The record of submissions to the Shivji Commission site several cases where women

complained against discriminations by Village Councils. For example, a daughter of a widow in Katesh, Hanang district, deplored the fact that her mother, simply because she is a woman, was not allocated any plot of land in the family's 57 acres which were redistributed to strangers during villagisation (Land Commission Report, Minutes of Evidence).

4. Dependence of women on the market to acquire land has sometimes forced them to prostitution and crime.

In the Kagera sample, two thirds of the land operated by women-headed households is owned privately compared to 25% in men headed households. The discrimination that faces women in the allocation of land is clear. **Compared to men, women wishing to own land in the study area have had to purchase it.** Of the 20 women-headed households owning land, 40% admitted that at some stage in their life they had resorted to prostitution to raise the income they used to purchase their banana-coffee land, 20% had raised funds by petty trading predominantly selling banana beer and distilled alcohol; another 20% had purchased kibanja-land using funds given to them by their children after being divorced by their husbands; 10% had inherited land from their fathers but one of these had sold the inherited land and purchased private kibanjaland in order to be able to pass it over to her own children born out of wedlock (technically such children are without a clan); and 10% had inherited clan land from their mothers. Given this reality, the reform of land allocation regulations to improve women's access to land is urgent, and so are credit programmes to assist women to purchase land in densely populated areas where there is no longer any free land for allocation.

5. Women do not have guaranteed tenure in the village when they divorce their husbands. This may deny them access to common properties whose acquisition they may have contributed to.

Women have been the target of many common property management interventions such as community forestry. However, no steps have been taken to improve the security of their tenure in their nuptial villages and clans. This amounts to the exploitation of women labour because in the event of divorce, women are forced to leave villages where they had contributed to communal programmes without any compensation. There is no guarantee that they may find similar investments in their natal villages, and in any case, returnees may well be excluded from such

benefits since they will not have made any personal contribution, especially if the returnees, as is usually the case, are too old to be included in new village undertakings (Tibaijuka, 1990).

6. Unless Government introduces an overriding policy entitling women to full land rights, even if the law of inheritance is to be reformed, widows would continue to be denied the right to inherit land from the estate of their deceased husbands' property on the argument that custom does not so permit.

Although, in some communities, daughters may, if unmarried, inherit in their father's estate, practically an average woman is excluded because she is married, and lives and operates the land in her husband's estate which she is usually not allowed to inherit because she is not a clan-member. While, where relevant, measures have to be taken to guarantee women their rights to inherit land in their natal homes, the main issue for the policy maker today is in fact to guarantee the woman a right to inherit her husbands estate in the nuptial (marital) clan. This is in most cases the land which she operates.

Under principle 2 above, we have seen that the principle of actual land use as foundation of Title is fundamental to the land tenure regime. As argued by Tenga (op. cit), it is paradoxical, that this democratic principle has not been extended to gender, where, most probable, the majority of land users are women and thus title to land should have been granted to them if Courts were to be consistent. The question of gender inequity with regard to access to land is so central to any improved land tenure regime in Tanzania, and as we elaborate, if women were organized, with an enterprising lawyer they should be able to show that discriminatory customary tenure laws in fact violated the Constitution.

8. Discrimination against women in matters of inheritance and land rights is unconstitutional.

The Constitution of the United Republic of Tanzania (amended by Act. No. 16, 1984) through the Bill of Rights provides for the right to own property (Article 24) and also bars discrimination of any kind (Article 13(4) and 13(5)). The constitution being the basic law of the land is not subject to any law, and all laws must be in conformity with it. Thus here customary law must be amended. It was on this premise that in Civil Case no. 70 of 1989 in the High Court of Tanzania at

Mwanza , Justice Mwalusanya ruled that gender discrimination in matters of inheritance is unconstitutional, and declared the sale of clan land by a daughter as lawful.

It is worth mentioning that conservative "legal" opinion dismisses arguments that customary tenure discriminates against women by arguing that men too do not inherit absolute titles under customary law. For example, Mukoyogo and Rutinwa (op. cit) argue that the term "inheritance" as the taking over ownership of the deceased's property is a misapplication of an English concept to an African phenomenon. They maintain that there is nothing like inheritance under customary law since the very concept of communal tenure excludes that. Men are just quasi-custodians and quasi-trustees although they have right of enjoyment of the property under their custody/trust. Their argument is that it would be futile to place trust in land in women who are expected to get married and move out of the family lands for the rest of their lives rather than men who are expected to spend the whole of their lives in those lands.

With due respect, we find this argument deficient on three grounds:

First, in Tanzania, no body has absolute land rights, so the issue is not whether under customary law men inherit property (land), but that women are denied the custodianship of the usufructuary rights.

Secondly, as we have seen above, with changing social values, many women are not getting married, and an ever increasing number of children are being raised by single mothers. The expectation that women would marry and move out of their natal homes is therefore no longer always true.

Thirdly, AIDS is having its toll, and the widows who survive their husbands cannot be expected to get someone to marry them because, even if they were still free of the virus, they are feared to be infected. In any case, most of the healthy AIDS widows still have young children to take care of. Current practice in places where customary tenure prevails puts them at great risk. A recent study into the socio-economic experiences of families affected by AIDS has shown that male relatives acting as guardians distort tradition in order to defraud widows and orphans of their inheritance rights. On pretence that in accordance with custom the clan would care for the children, it was found out that many widows have been evicted from clanland (and sometimes, even from privately owned land which the

deceased and his wife might have acquired outside the clan system). Once the widow is evicted, many a relative, have subsequently failed to care for the orphans, who choose to follow their evicted mothers wherever they might have sought refuge. In response to such manifest injustices, the Muleba District Council intervened to contain the situation. It has passed a bylaw which protects interests of widows in the property of the nuptial homes. Passed under the Authority of the Local Government Act, 1982, and duly signed by the Prime Minister in his capacity as Minister for Local Government, this innovative and progressive bylaw by the Muleba District Council stipulates that any property left by the deceased is the property of the widow(s) and children, unless the deceased will have directed otherwise in a written will, either testified to by not less than four clan members or registered in a court of law(See Kaijage, 1994)¹⁸.

Policy Implications Arising from Principle 6

The above analysis leaves little doubt that social relations have changed dramatically with the introduction of the money economy. Men as well as women are now providing for their families. As such traditions based on the belief that males are the "bread-winners of the family", and therefore worthy of preferential treatment with regard to access to and control of the means of production are mythical and outmoded. This is especially so in the Tanzanian rural economy where, without doubt, women are the main actors as far as agricultural production and the management of natural resources are concerned. For this reason, in Section III, we argue for a clear policy and hard law pertaining to women's rights.

7. Solving Land Conflicts Created by Villagisation

Since the adoption of the Economic Recovery Programme in 1986 improved marketing opportunities and prices for agricultural enterprise have resulted in rising awareness of the value of land. At the same time, population pressure, aggravated by the nucleated settlement patterns created during the villagization programme has meant that the land conflicts created by villagization have come to surface. As the Land Commission has established, throughout the country, the outstanding feature of *operation vijiji* was that district and village authorities

¹⁸Kaijage, 1994 "HIV/AIDS and the Orphan Crisis in Kagera region: Socio-Economic, Cultural and Historical Dimensions" University of Dar es Salaam.

implemented it with a great deal of arbitrariness and injustice, thereby generating unforeseen land conflicts which operate at three levels.

Firstly, numerous disputes have arisen over individual or family holdings. Those who lost their holdings during *operation vijiji* have increasingly been asserting their customary rights with a vengeance. Secondly, village boundaries have recently become a subject of intense controversy. Villages are jealously guarding their land against encroachments by outsiders. Thirdly, there is conflict between agricultural and pastoral interests in land. In both Hanang and Babati districts, land allocation by district and village authorities since *operation vijiji* has favored cultivators at the expense of the pastoralists whose mode of life is nomadic. The latter have progressively been pushed into marginal areas.

By 1992, the courts had been inundated with land disputes relating to the lands redistributed during *operation vijiji*. For reasons pertaining to new economic opportunities and a more liberal political climate, those expropriated during villagization brought legal suits against the new occupiers of their land. Some of the litigations were successful, leading to eviction orders served against a number of village councils. Government responded with a face saving 1992 Land Act which abolished customary land rights. A detailed analysis of the implications of that Act to peasant land tenure security is contained in our main report. Here it will suffice merely to list the established weaknesses in the Act. They include:

- i) *There is problem of application or scope of the Act since some areas are covered while others are not, and this creates confusion.*
- ii) *By denying those expropriated some compensation, the Land Act seeks to seals the confiscatory deeds of the villagisation era.*
- iii) *The Act extinguishes customary tenure without explicitly defining the system under which those who received land during villagisation actually hold the land they occupy.*
- iv) *The Act ignores, wittingly or unwittingly some categories of peasants who still exists under constant threat of ejection.*
- v) *The problems relating to the encroachment on village lands are unlikely to be affected by the Act to any consequential degree.*

- vi) *The Act does not provide for the protection of land tenure security for livestock keepers especially in areas where there is stiff competition with the expanding wildlife-based tourist industry and large-scale farms.*
- vii) *From an economic perspective, the Act is not geared to promoting the emergence of an efficient natural resource tenure when this is defined as one designed to balance and promote the often conflicting though not mutually exclusive objectives of economic growth, equity or fair access by all, tenure security, and land/natural resource improvement and conservation.*
- viii) *The Act is completely silent on the fundamental issue of improving access to land and tenure security for women, the main cultivators and rural actors in the use of natural resources and therefore the main actors in improved economic production and management and conservation of natural resources¹⁹.*
- x) *It is submitted that the 1992 Land Act is not comprehensive since it does not provide for all categories of land disputes in villages.*

It is obvious that the 1992 Land Act still leaves many land tenure related problems unresolved. This is true even when the Act is viewed narrowly in terms of land tenure conflicts in the established villages. This is an instructive example of the limitations of a top-down approach to land reform.

There is no doubt that the 1992 Land Act is an important intervention by the state in trying to deal with an extremely difficult situation created by *operation vijiji*. The villagers whose tenure the Act seeks to secure had been resettled against their will. Their impending eviction from their present moorings as a result of the litigations which were taking place appears a monstrous injustice, and, as events have turned out, a major threat to peace and tranquility in the rural areas concerned. One must therefore acknowledge that the situation called for some form of state intervention.

¹⁹Although it can be argued that the redress of gender imbalance in respect of ownership of, and access to, land was not the central concern of the sponsors of the Act, it was probably unwise of them not to have addressed the issue.

It is our view, however, that the manner of intervention in the shape of the Land Act was rash and rather ill-conceived, and that its advantages are outweighed by its negative long-term implications. Since the government's own Land Commission presented its Report just a few days before the Land Bill was to be tabled in Parliament, it would only have been reasonable for the government to study the Report first and be advised by it. Greater dividends might have been gained if the land disputes in the established villages were to be approached as an integral part of a well-considered, comprehensive land policy.

The Land Act has already been declared unconstitutional in a High Court ruling on Lohay Akanaay and Joseph Lohay vs the Attorney General on 21st October, 1993. Its fate is to be determined by the Court of Appeal and, depending on the nature of the Appeal Court's judgement, current occupiers of the disputed lands could easily be dispossessed. What is more, even if the Act were to be upheld, there is always the possibility that if government should change hands in the future, a new political party may rock the boat by reinstating the extinguished customary land rights. In fact, at least one opposition party is rumored to have expressed its intention to repeal the Act, if it ever came to power.

After reviewing the Act, we are now in a position to look at the proposals of the Land Commission and to present our proposals more concretely.

III THE RECOMMENDATIONS OF THE LAND COMMISSION

Any review of present day Land Tenure would be incomplete without a thorough understanding of the Report of the Land Commission. However, given the size of that monumental report, and in order not to drown in details, we have chosen to base our commentary on the recommendations of the Land Commission on specific land tenure policies, as they compare with the existing land tenure regime and our own recommendations arising from the analysis of the operating principles delineated in Section II above. First, we outline the proposals for the land tenure structure, as well as the legal and institutional framework and the proposed machinery for the settlement of disputes as outlined in Chapters 15, 19 and 20 in the Land commission Report (p. 145-202). Secondly, we outline the recommended land tenure in village lands (Chapter 16 of the Land Commission Report). Thirdly, we look at the proposals on the National Lands (Chapter 17). Finally we turn to

our commentary on the proposed structures and management at the village and national level.

3.1 Proposals for the Improvement of the Land Tenure Structure

The essence of the recommendations by the Land Commission is that the problems facing land tenure in Tanzania are structural rather than managerial. The recommendations are based on the premise that the present structure of land management is:

- i) not close enough and accessible to the majority of the people;
- ii) is insensitive to the expectations and interests of the ordinary villagers and town dwellers; and
- iii) is effectively controlled by a handful of administrators who have the mandate to decide on land matters at village, district, regional and national levels and who often abuse their offices for lack of professional ethics and checks and balances (Ch. 18:174-75).

In order to rectify the above ills, the Land Commission recommended a management structure on the principles of separation of powers, people's participation, transparency, accountability, professionalism, and the independence of the judiciary which is provided for in the Constitution. This way the structure proposed for land management

- a) would be independent from the Executive and its accountability would be to the people through their representative organ, the Parliament;
- b) would involve the participation of the people generally, and the land users particularly, in the administration of land;
- c) would conduct land matters in the open and its administration would be transparent;
- d) would make the management and delivery of land systems as provision of professional, as opposed to administrative service; and

- e) would provide for in-built institutional checks and balances into the land management structure to prevent it from developing into a monolithic, bureaucratic body (Ch. 18, p.174).

Focus is therefore on outlining the legal and institutional framework for de-linking the control of land from the state. Land is proposed to be a Constitutional Category and it is suggested that the basic foundations of the land tenure system should be provided for in the Constitution of the Republic.

A framework statute called the Basic Land Law Act is recommended. The provisions would be that all land in the Republic is either

- 1) National Land or
- 2) Village Land.

While national lands would be held under the right of occupancy, village land would be held under village land certificates.

3.2 Village Lands

The Land Commission proposes that once demarcated, village lands would be vested in the Village Assemblies (VAs) instead of the present Village Councils (VCs). We endorse this proposal. And, according to the Commission, VAs can give 2 types of land interests

- a) Right of Customary Ownership or **Hati ya Ardhi ya Mila (HAM)** which is given strictly to villagers under the domain of customary law modified by certain specific recommendations.
- b) Customary lease to non-villagers or medium scale developers, the ceiling being 3 acres.

The ceiling is 200 acres per HAM. It is recommended that a spouse too will appear on the HAM. In the case of polygamous families, the HAM would be given to the wife not living with the husbands in the same village, and the husband will be only included on the HAM, since at law, he is an outsider to the village.

The customary lease is intended for traders, industrialists, etc wishing to invest in the village.

The control, administration and management of land will be vested in the VA which will discuss and decide upon land allocation, disposition, and compulsory acquisition of land.

Common lands extending over more than one village will be controlled and administered through joint management agreements between the village assemblies concerned.

The powers of the village assembly over land matters should not be delegatable to the Village Council. Thus deliberations of the VC touching on land would have to be forwarded to the VA in the form of proposals for approval.

However, neither the VA nor the VC or any of its officers or Committees will have powers over adjudication over land disputes. All land disputes and claims, whether between villagers or between a villager and a VA or a VC, will be heard and resolved by the Council of Elders for Land or "Baraza la Wazee wa Ardhi (BWA) (Ch. 16, p. 151). From the BWA appeals can be made to the Judiciary in the Circuit Land Courts, the High Court land division and, the Court of Appeal, in that order (Ch. 15, p. 155).

3.3 National Lands

National lands are defined as all land that is not village land and which would be established after villages obtain their certificates of village land (CLVs).

The Land Commission proposes that National lands, would be vested in the Board of Land Commissioners (appointed by the President) and administered by the National Lands Commission (NLC). The NLC is conceived as an extra-executive organ linked to Parliament as far as accountability is concerned, and to the President's Office only for budget estimates.

The NLC can give 2 forms of land interests,

- a) rights of occupancy based on statutory law and recorded in the Registry of Titles of 21-99 years, and

- b) Customary Rights based on customary law and recorded in the Registry of Customary Rights with tenure of 5-99 years.

It is proposed that the Ministry of Lands should be dissolved and be replaced with the NLC.

Except for integrating the activities of the National Environmental Management Council as a Directorate of Environment under the NLC, all other departments proposed are similar to those found under the Ministry of Lands, Housing, and Urban Planning.

It is also proposed that an Institute of Land Tenure be established to act as a think-tank and undertake training in land tenure matters for the NLC and the Village Assemblies.

3.4 Commentary and Policy Proposals

Our reaction to these proposals are outlined in column Z of Tables 2, 3 and 4 the overall structure, village and national lands respectively. For the sake of brevity these are discussed in an overlapping manner by category.

The Radical Title

For the reasons argued earlier in Principles 1, 2 and 3 above, we have suggested that the President retains the radical title, and that the Ministry of Lands should continue to exist. We are not convinced that vesting the radical title in the National Lands Commission is the answer to the problems facing land tenure and land administration in Tanzania. The Commission, has taken the view that the problems facing the Tanzanian land tenure situation are structural rather than managerial. Our analysis above leads us to a different conclusion.

We submit that democratization, participation, accountability and transparency will not necessarily be achieved through the creation of new structures. A surer route towards this goal is to empower the people to demand that the standard divisions of state power, namely, the Executive, Legislature, and Judiciary check and balance each other as intended. With great respect, we think that the radical restructuring of the land tenure regime proposed by the Land Commission can be likened to a father, who, having lost confidence in all his 3 sons on whom he had invested his hopes, asks his wife that they should try for yet another son in the hope that this time around, they will produce a more responsible one.

The point is, if the present Executive, the Legislature and the Judiciary cannot follow the rules and stop the injustices suffered by the people because of failure to follow laid down procedures why should we expect the National Land Commission to do any better? It is for this reason, that we would warn against radical, if not reckless restructuring of our institutions instead of reforming them. We have to bear in mind that past efforts in radical restructuring have in other areas have not been successful . For example, the nationalization of private property and services, the so called decentralization of government, the villagization of scattered populations, the abolition of local governments, and the abolition of cooperatives stand out as monumental failures. All these radical reforms, justified at the time they were taken as steps to improve the situation of the masses, have now been declared as costly mistakes, and some have been reversed.

The issue therefore is reforming both the Judiciary and the Executive as well as balancing power and control over tenurial matters between the two. It is not a case of either or. As such, in order to ensure that the principles of accountability and checks and balances are observed, under a multi-party constitution, Parliament should be able to initiate the formation of a Commission of Inquiry to investigate whether legal procedures are followed in the allocation of land by the Executive. Where evidence is brought to bear that the Executive was in breach of regulations provisions do now exist in the Constitution to hold him accountable²⁰.

²⁰ While on this note, it is worth noting that during the 1992 Budget Session, the MP for Karatu tried to raise a private motion to set up a Parliamentary probe team to look into the "Loliondogate Scandal" but he was not successful. This failure could be interpreted either as reflection of the participation of most parliamentarians in the land grabbing that is going on all over the country, or partly fear by the CMM parliamentarians that the findings might undermine the legitimacy and credibility of their government. It can be argued that for both these reasons, the Parliamentarians did not wish to open a Pandora's box. Hopefully, with a Parliament comprising of many parties after the 1995 elections, the culture of "self-preservation" which has always limited the effectiveness of the Tanzanian Parliament under one Party will be overcome. In such a situation some of the alleged abuse of power by the Executive can be better brought under control.

The Difference is in Approach Rather than in Principle

We must also hasten to add that the reforms we are proposing do not differ in principle with those of the Land Commission; the difference is one of approach. True, the President retains the radical title, but on the basis of experience, we propose that his freedom be limited by requiring him to get the approval of Parliament in his choice of the person to act on his behalf as custodian of all land. We recommend that the Minister of Lands must be approved by Parliament and a clause to that effect should be included in the Constitution.

We agree entirely with the Land Commission that an institution charged with the day to day running of matters pertaining to land, a resource so central to the life and spirit of the nation, should not be changed at the stroke of a pen, by the Executive. But instead of creating another institution totally divorced from the Executive, and therefore distant from other organs administering land based activities, such as the Ministries of Agriculture, Natural Resources, Energy and Minerals, Water, etc, we recommend that the Ministry of Lands, Housing and Urban Development should be protected from arbitrary changes by an appropriate clause in the Constitution. For, we can foresee a problem of co-ordination here. Unless the proposed Land Commissioner General is allowed to have a cabinet post, how is he/she expected to liaise with other land based sectors on a day to day basis? Likewise, the Cabinet will be excluded from the consideration of important crises that may arise in land administration.

We are in agreement with the Land Commission that a distinction should be made between village lands and national lands, the latter as a residual category of the former. However, because we recommend retaining the radical title with the Head of State, we suggest that villages should receive free hold titles of 999 years, so that they can in turn issue sub-titles or sub-leases of 21-99 years to their members. This structure virtually allows a gradual but unrestrained individualization of land in village areas as will be dictated by market forces. If we believe in democracy, then there should not be need for excessive protectionism of the village lands. We need not, for example, restrict the sale of village land only to village members. We must have greater confidence in the Village Assemblies, and allow them to make their own decisions on whether to grant sub-titles to outsiders or not. To put it bluntly, once given the freehold title, if the Village Assembly cannot protect its lands from encroachment by outsiders, then no one else can.

Dispute Settlement

We concur with the Land Commission on their proposal of dispute settlement based on a system of specialized Circuit Land Courts within the Judiciary, but with adequate participation of the people and as far as possible trying to solve problems in the localities where the dispute is situated. In fact, in many villages, the proposed Council of Village Elders (*Baraza la Wazee wa Ardhi (BWA)*), often called *Kamati ya Mashamba* do exist in the present Village Council Structure. Experience suggests that if their power was not being constantly undermined by the fact that any of the aggrieved parties can decide either to bypass them, or ignore their decisions and proceed to Primary Courts; the Courts themselves would not have been inundated with cases in the manner that they presently are. Regrettably, in Tanzania, it is increasingly proving cheaper to pay the magistrate than the lawyer; and therefore it makes economic sense to bribe. It is no exaggeration to say that justice is virtually being turned into a commodity on sale, and those with money choose this short-cut. In light of this grim reality, the decentralization of the Judicial system to involve popular participation is logical and a sound innovation to restore some credibility into the whole structure (Land Commission, Chapt. 20. P. 197-202).

However, in order to guard against the risk that the BWA and the CLC is over influenced by traditional prejudices in regard to gender, we propose that by legislation, half of the members of these committees should be women. In order to balance the genders, we propose that the BWA should have 6 instead of 5 members, while the CLC should have 4 instead of 3 members as proposed by the Land Commission. We should point out that the principle of equal representation of both genders has been adopted in the Water Policy, and is working quite well.

The Dissolution of the Ministry of Lands

Having recommended the de-linking of the administration of land from the Executive, the Commission had no option but to propose the dissolution of the Ministry of Lands and the setting up of a National Land Commission (NLC). In addition to the points raised earlier, we are skeptical about the potential performance of the NLC on 3 grounds.

First, the institution is bound to end up with the same staff now working for the Ministry of Lands. Unless the attitudes of these people change, the creation of the NLC, by itself, is not likely to result in increased efficiency, but is guaranteed to create more confusion. The NLC might just turn out to be another bureaucracy lacking effective control over land.

Secondly, transparency, accountability and public participation in the disposition of land can be achieved even under the present institutional structure. What is required is sticking to the administrative rules, and getting politics as well as legal manoeuvring out of land administration. Once a land tenure policy is agreed upon, legal frameworks and administrative procedures for its implementation should be developed, publicized, and strictly followed. In general, we are of the view that the problem facing the Tanzanian civil service is not so much that the structures are wrong or rules and regulations lacking. Rather, that the administrative systems have been politicized so much that ethics are no longer observed and, when violated, often no punishment is given to the culprits. It is a culture of self-preservation for those in favored positions (kulindana).

We are of the view that land reform institutions should not be looked at in isolation from the rest of society. If not addressed, the malaise affecting the existing institutions are bound to saddle new ones as well.

Last but not least, one necessary condition in bringing about efficiency and restoring work ethics in the public service, including the Ministry of Lands, is giving public employees a reasonable pay. It is unrealistic to expect land officers to work with dedication and without demanding bribes when their official pay is not related to the cost of living, and for surveyors, to create reasonable incentives for tough field work.

Inadequate Attention to Women Land Rights.

Surprisingly, despite the extremely radical reforms being recommended by the Land Commission, when it comes to gender relations, the report argues virtually for maintaining the *status quo*! Perhaps this should have been expected since the Commission was made up of 9 men and only 1 woman! True, the Land Commission makes some commendable fundamental improvements to improve the security of land tenure for women. For example, it requires that women spouses should also be written on the HAM. In making this recommendation, the concern of the Commission is to prevent heads of households from selling land without the consent of other members of the household especially their spouses. This is a legitimate concern because many rural households have been dispossessed by irresponsible heads. However, progressive as it may seem, this recommendation is not likely to help women very much if they are not given direct land rights, i.e. to be identified as joint owners of household land.

In principle, the Commission favours an evolutionary approach in matters of land inheritance and gender equality. Yet, as the customary law stands, females in

many societies, cannot inherit clan land in full (but in usufruct) in case of daughters, and none in the case of widows. The Commission worries (with some justification) that opting to enact a hard law which would provide equal rights to both sexes forthwith might not be obeyed because of cultural inhibitions. However, with all due respect to the distinguished members of the Land Commission, there is a fundamental flaw in their line of reasoning on gender equality in land tenure.

To continue to deny women equal access and rights to the land they operate for fear that an enabling legislation may not be obeyed, is in essence, an excuse to admit one's guilt in a conspiracy to keep women in their place by denying them complete control over the means of production, and thereby economic independence and the innovative spirit associated with it.

Besides, a hard law on land tenure would not set any precedent. For example under Section 66, the Law of Marriage Act (No. 5, 1971), outlaws domestic violence despite some customs which consider this as a God given right for a husband²¹.

The Kagera case study shows that in attempts to improve their tenure security, women more than men, have to buy land, and some have resorted to prostitution to raise the necessary cash. The case also showed that customary tenures are being

²¹True, many males do beat their wives, and wives do not report them. But, to argue that a law is out of place because it is often violated without consequence, is in our opinion fundamentally wrong. In the case of the Marriage Act, one should not fail to see that there are courageous women, who if abused, have filed suits against their husbands under the same law. There is evidence that the latter category of women is on the increase. More important is the deterrent effect that the Marriage Act has had on those men who are not prepared to become subjects of social gossip that they had in fact degenerated into domestic tyrants by harassing and beating their spouses. Such a behavior increasingly attracts embarrassment and ridicule not only for the victims but for the perpetrator as well. By similar reasoning, we are of the opinion that a hard law with respect to women land rights is appropriate in Tanzania. For, not only would it grant women direct access and security in tenure with respect to natural resources, it would accelerate the evolution of more progressive attitudes on equality between genders, with all the socio-economic benefits that would go with it.

violated and daughters are inheriting land from their fathers! This leaves little doubt that with supportive educational campaigns by Government, the Tanzanian society would receive a hard law on land tenure favorably since an autonomous process to redress gender inequality is in fact already underway. In light of the above it is not unfair to argue that the resistance to granting direct women rights is not so much a reflection of the Tanzanian society but most likely the personal inclination of the Commissioners! Interestingly, the only Lady on the Land Commission did not object to this conservative stance in the Minority Report. It was a missed opportunity for women.

Limitations of the Compromise Approach to Gender Injustices

The experience of the 1971 Marriage Act offers insights on what may be called the limitations of a compromise approach to gender equality. In Section 11 (1) the Marriage Act seeks to protect wives in monogamous marriages from unilateral polygamous acts by their husbands. It stipulates that no man in a monogamous marriage may marry without the consent of his wife. But this law is violated with impunity, and often with very little legal consequence.

Instead of outlawing polygamy for monogamous families, the Marriage Act adopted a compromise and allows Conversion from monogamous to polygamous marriages provided the wife gives her consent (Section 11). In practice, many men simply take on a second wife, and leave it to the Courts to decide the legality or otherwise of such marriages. This has put women at great disadvantage. Many of them despair and do not even bother to pursue the matter further.

By the same token, it is not enough for the Commission to adopt, an ambivalent position on women land rights and hope that the BWA would protect women interests. Even if we assume that the representation of women on the BWA was 50% (as we have proposed), the kind of men likely to dispose of household land without consulting their wives, are likely to force or intimidate their wives to submit to the demands to dispose of land. The same has been experienced in the Marriage Act. In many cases consent has been obtained literally at "gun point".

It is for this reason that we feel that only a hard law can steer society towards the desired direction. This of course does not happen over-night and many would attempt to break the law, but those who are caught and exposed get appropriate punishment. This then works as a deterrent for others and the pace of change in attitudes would be facilitated.

We are of the view that household land (and other property) should be owned jointly by the spouses, for only then are we guaranteed that a husband cannot dispose of the property without the consent of his wife, and vice versa. After all, the Marriage Act assumes this when in the case of a divorce the lawful wife should get 50% of the property accumulated together with her husband, regardless of the nature of her contribution.

In fact the conservative inheritance laws in Tanzania are contradicted by the progressive Marriage Act to an extent that in her testimony to the Land Commission, a pre-eminent female lawyer argued that

"as for women they would better divorce" (Rwebangira, 1992)

We would maintain that the granting of direct land rights to women including inheritance rights is the only sure way to improve their tenure. The compromises suggested by the Land Commission are not likely to work. We are of the view that unless gender discrimination is outlawed, it will be difficult to encourage the Village Assemblies to develop acceptable ways to incorporate gender equality in their land tenure laws.

Issues in Village Lands

In principle we are in agreement with most of the recommendations summarized on Table 3 concerning Village lands. The only difference is that, as argued before, there is no need for imposing restrictions on the village assemblies except in matters where customs violate the constitution as in gender discrimination. Some other observations are in order.

Village level administration

At village level vesting land interests in a huge body like a Village Assembly, while democratic, needs to be operationalized. Probably a Land Management Sub-Committee would be formed to administer land matters and report to the VCs and the VAs in that order. In the final analysis, the VA can only perform its duties effectively if it is a functioning democratic institution. However, for the foreseeable future, VAs are likely to continue being manipulated by the elite, the rich and the Village Councils, so it could well be argued that the actual benefits to be gained from this change would be limited.

Therefore, this reform is insufficient unless accompanied by measures to improve the effectiveness of such a Committee and to ensure active participation of

villagers in the VA. Democratic participation is not possible if the would be participants are ignorant of their rights and responsibilities. All those involved in the management of land tenure have to work towards better security, equality, transparency, and accountability. These attributes do not come by decree alone but changes of attitudes fostered by appropriate educational programs and incentives. We recommend strongly that civic education in democracy accompanied by organization of special interest groups such as women should be seen as a part and parcel of the proposed reforms in land policy.

Management of Village Land and Common Property Resources

The Commission sees the propagation of the concept of village land as a way to protect such land from encroachment by outsiders. It also imposes a pan-territorial acreage ceiling of 200 acres on the ownership of land in villages. Clearly, there is a case for trying to protect the premature individualization of common property resources like forests, water catchment areas, beaches, sacred sites, grave-yards, mountains above certain heights, etc. However, it is doubtful whether the best way to do this is to prevent outsiders from owning land in the village. Indeed the concept of outsiders in villages is laden with potential conflicts. Who is an outsider? Except for the Asian community, most of the urban dwellers have their roots in the countryside, and many hope to return to their home villages upon retirement. Are these people outsiders in their respective home villages or not? What if a Sukuma wants to buy land and settle in a Nyamwezi or Haya village? The policy of outsiders is likely to revive and fuel tribalistic feelings, which it must be admitted, the Nyerere administration was quite successful in discouraging.

Beside, from an economic point of view, agricultural development will partly depend on investment flows from the urban and trading sector to the rural areas. The concept of outsiders seems to prevent the small scale flow of investment capital from urban to the countryside that is presently taking place, e.g by public employees sending money to relatives to run their (the public employee's) farms. Under principle 3 above we have proposed that the surest way to prevent premature individualization of village land is to impose a land tax.

We should also point out that if owners of capital resident outside the village wish to invest in village land, let them do so, because, to pay the tax they would have to operate their lands with paid labour, thereby creating employment for those rural dwellers unable to manage their private holdings. As Bryceson (1990) argues in her memorandum to the Land Commission, there is no need to idealize the

egalitarian ownership of land. Everyone in the rural areas need not own land. What matters is that people should have access to means of livelihood, whether in the form of land, or a job.

If the enclosure of land in the countryside creates employment and leads to agricultural growth, we see no harm in it, and that is why we have difficulties with the introduction of a pan-territorial ceiling on land ownership in villages. We go along with the view of one dissenting Commissioner who maintains that in Tanzania farming systems are so diverse that the imposition of a pan-territorial acreage ceiling is likely to cause problems rather solve them. Land ownership ceilings should be left to market forces, and regulated by the requirement that those holding agricultural land will be subjected to an appropriate tax²². In effect, village assemblies are free to impose a land tax on land beyond a given size in their respective areas.

Is there a role of Land Use Planning in Villages?

We are of the view that, while villages should participate in the exercise of demarcating their boundaries, professional guidance (in form of land officers, agricultural, forestry, and livestock experts) is also necessary in deciding final village boundaries. There is need for villages to be allocated land according to both presented and projected future need. In fact there is need to reserve some land for future resettlements, in areas where land reform becomes necessary. It appears that many regions have comprehensive land use plans which were prepared during the 1970s in the context of the Regional Integrated Development Programmes (RIDEPs), an exercise which was overtaken by the economic crisis and the introduction of Structural Adjustment Programmes. Except for 2 regions (Tanga and Kilimanjaro) the RIDEP was still-born (Tibaijuka, 1989). We recommend that it is time to appraise the wealth of information contained in those reports, update it, and see how useful it could be for the exercise of demarcating villages.

²² Operation here does not necessary mean continuous cropping, but would also take into consideration fallow cycles to rest the land all depending on the farming system.

Land as Collateral for Credit in Village Land

With regard to the utility of land for obtaining credit, it is recommended that the HAM will be negotiable and transferable, except to an outsider. A HAM can also be used as a guarantee for acquiring loans. This would create no problem if the creditor is himself a villager since that land could be foreclosed in the event of failure to pay. But because HAM is not transferable to an outsider, it is unlikely that the HAM can be effective collateral to institutional credit. In any case, even if titles were issued in respect of family lands, it is unlikely that this would facilitate extension of credit by financial institutions. First, due to population pressures, plots are likely to be so small that they will only attract sums of money whose administrative costs will outstrip returns on interest. Secondly, and more importantly, even after titling, most if not all of the present village lands will remain to be dwelling places and the occupation of owners will be agriculture and animal husbandry. Under the Bankruptcy Ordinance (s. 43) and the Civil Procedure Code, 1966 (S. 48) a debtor's household goods, working tools, residential houses therein, agricultural crops and animals are not attachable in bankruptcy or in a satisfaction of court judgements and decrees. Accordingly, only an ill advised financial institution will extend loan on an asset which cannot be reached in in the event of bankruptcy of the debtor. Therefore, use of titles in villages land as security for loan is not only undesirable, it may be impracticable. Moreover, it may unjustifiably take away the fruits of labour of those who toil or the lands registered in the names of others such as spouses and relatives. In light of such, limitation, the Land Commission proposed that HAMS be used as collateral because

".. a system of credit could evolve based on HAMs being used (by way of deposit) as guarantees to obtain credit. The fact that the borrower has to part with the possession of his certificate to obtain credit, we believe, could act as a good enough deterrent against default".

We do not think that in the present environment of competitive capital markets, many commercial bankers would subscribe to this view when they know that, in case of default, they cannot take over the assets of the debtor, but merely his/her piece of paper called a HAM. While we do not propose that a debtor peasant's assets be attached, we propose that VAs establish ways to facilitate the use of land as collateral from outsiders such as Banks. For, in view of its prevalence, it is difficult to see how smallholder agriculture can be modernized when it is excluded from commercial borrowing. This is an area in need of research.

IV CONCLUSION

This study has outlined some features and principles which are fundamental to land policy formulation in Tanzania. It has looked at the social, political, economic, legal, and constitutional aspects of these features. Common to all is the tendency for the state to take it for granted that the interests of peasants are unquestionably within its purview and monopoly. The state has behaved as the sole guardian of such interests notwithstanding the fact that, in many cases, its interventions have had negative consequences. The long standing issue of Villagization and the controversial 1992 Land Act are good examples of the limitations of development interventions from above. They are also good examples of the limitations posed by inconsistencies both in policies and legal practice with regard to the issue of continued lack of women land rights. The most important conclusion that can be drawn from the analytical framework presented in this paper is that the formulation of land tenure lies in democratizing the state, and empowering the people, to hold the executives accountable.

Some of these principles have already been recommended by the Land Commission, and indeed, some have already been incorporated in the Second Draft of the Land Policy issued by the Ministry of Lands. We conclude by calling upon the drafters, to consider new recommendations that emerge in this report.

Table 2: A Comparative Analysis of the Recommendations on the Land Tenure Structure for Village Lands and National Lands

X. Existing Law	Y. Land Commission	Z. Land Tenure Studies Group
The Constitutionality of Land Not applicable	Land to be a constitutional category	In agreement with the Land Commission
II. Declaration and Vesting Radical Title vested in the President. All land is public or state owned. Individual tenure is based either on the granted right of occupancy or the deemed right of occupancy. If Act 22 is sustained by the high court, then some peasants in operation vijiji areas will be holding a special type of Acquired Right of Occupancy in Operation vijiji areas termed the Village Title.	Radical title divested from the Executive. 1. National lands vested in a Constitutional body to be called the National Land Commission 2. Village lands vested in the Village Assemblies 3. Village assemblies be given a corporate status by the Constitution	President retains the radical title. 1. Citizens including companies owned by nationals in joint ventures with foreign companies can have Granted right of occupancy ranging from 21-99 years on National lands & village lands. 2. VAs to have free hold titles of 999 years for village lands. 3. Village assemblies be given a corporate status by the Constitution 4. Ministry of Lands be protected from arbitrary changes by an appropriate clause in the Constitution. The Minister for Lands to be approved (vetted) by Parliament.
III. Village Lands	1. Village lands are all lands falling within the boundaries of villages	As the Land Commission
IV. National Lands	2. National lands are a residual category, of all land that is not village land	As the Land Commission
V. Institutional Framework Ministry of Lands	Ministry of Lands replaced by the National Land Commission	Skeptical of radical restructuring. Concentrate on solving the problems of the Ministry of Lands, Housing, and Urban development, including staff development and fair pay.
VI. Legal Framework	Constitutional changes to accommodate changes proposed by the Land Commission and revision of other laws to eliminate conflicts.	In agreement with Land Commission except where they conflict or are irrelevant as a result of differences in approach on institutional reform and social policy.
VII. Dispute Settlement machinery Multiple authorities are involved leading to confusion.	A system of specialized Circuit Land Courts within the Judiciary, but with adequate participation of the people to be credible, and as far as possible trying to solve problems in the localities where the dispute is situated. 2. A council of 5 village elders (Baraza la Wazee wa Ardhi) established to settle disputes at village level. 3. CLC based in regions, and not bound by criminal and civil procedures but operating on simpler rules made by the Chief Justice. 4. Appeal from CLB to High Court of Tanzania, Land Division, thereafter to the CA.	In agreement with the Land Commission.

Table 3: A Comparative Analysis of the Recommendations of Tenure Reforms by the Land Commission and the Land Tenure Study Group for Use of Village Lands.

X. Existing practice	Y. Land Commission	Z. Land Studies Group
<p>I Demarcation of Village Boundaries</p> <ol style="list-style-type: none"> 1. Accurate surveys 2. Linked to land use plans 3. Villagers's participation depends on discretion of land administrators 4. Granted right of occupancy "title", with development conditions 	<ol style="list-style-type: none"> 1. General boundary rules 2. "As is" basis 3. VA's participation guaranteed 4. CVL as evidence of vesting 	<ol style="list-style-type: none"> 1. Same as the Land Commission 2. As is basis with some adjustment to take into account broad agro-ecological and projected land use needs 3. VA attended by government officials in advisory capacity 4. Freehold 999 years Sub-leases to villagers
<p>II Powers of Village Assembly</p> <ol style="list-style-type: none"> 1. None, power lies with Village Council 	<ol style="list-style-type: none"> 1. Village Assembly 	<ol style="list-style-type: none"> 1. VA can delegate day to day management of land matters to VC
<p>III Inalienability of Village Land to an Outsider</p> <ol style="list-style-type: none"> 1. Alienable 	<ol style="list-style-type: none"> 1. Inalienable except by inheritance 	<ol style="list-style-type: none"> 1. Discretion of the VA to citizens of Tanzania
<p>IV Customary Leases and Licenses</p> <ol style="list-style-type: none"> 1. Sub-leases granted 2. Up to 21 years? 3. Granted for general dev. purposes 4. Area unlimited 5. Granted by Village Councils 6. Non-transferable 7. Licenses given by administrators 	<ol style="list-style-type: none"> 1. Sub-leases granted 2. Up to 10 years? 3. Use specified 4. Limited to 3 acres 5. Granted by VAs 6. Non-transferable 7. Licenses limited to 5 years and issued by VA except for underground resources which need consultations with relevant organs 	<ol style="list-style-type: none"> 1. Sub-leases granted 2. Up to 99 years? 3. Use specified 4. Discretion of VA 5. Granted by VAs 6. Non-transferable 7. Transferable to any citizens of Tanzania
<p>V Customary Land Tenure</p> <ol style="list-style-type: none"> 1. Grant deemed right of occupancy called HAM 2. Based on local customary law 3. Trees <i>prima facie</i> evidence of boundaries 4. All forms of customary ownership registrable 5. Certificate to indicate owner plus spouse 6. Registration in names of wives with non-resident males to 	<ol style="list-style-type: none"> 1. Grant deemed right of occupancy called HAM 2. Based on local customary law 3. Trees <i>prima facie</i> evidence of boundaries 4. All forms of customary ownership registrable 5. Certificate to indicate owner to show spouse 6. Registration in name of wife if husband is non-resident in village 	<p>As by Land Commission except that gender discrimination in customary tenures will be outlawed by virtue of violating the Constitution. HAM issued in name of both spouses. VA to decide in case of polygamous families which wife is to be registered.</p>
<p>VI Village Land Registry</p> <p>Non-existent</p>	<ol style="list-style-type: none"> 1. Simple book of records managed by a clerk to the VA 	<p>Simple book of records, a copy of which must be kept by the Land officer, and updated as necessary. Useful as back-up copy and for longterm land survey exercise</p>

Table 3: A Comparative Analysis of the Recommendations of Tenure Reforms by the Land Commission and the Land Tenure Study Group for Use of Village Lands.		
X. Existing practice	Y. Land Commission	Z. Land Studies Group
<p>VII Allocation and Compulsory Acquisition</p> <p>Declared and effected by government authorities on paying compensation</p>	<p>1. Unoccupied land allocated by the VA, minutes of meetings must be kept.</p> <p>2. VA has power to acquire land of the holder of the HAM on paying compensation for unexhausted improvements and offering alternative land</p> <p>3. Acquisition of land for public interest, e.g. for a road must go through the VA.</p>	<p>1. As Land Commission</p> <p>2. As Land Commission except that market price must be paid to the holder. Value of new land offered can be deducted if offered.</p> <p>3. While retaining the right to decide, depending on intended use of land, the VA to seek advise of official experts for acquisitions.</p>
<p>III Disposition</p> <p>Not allowed but in reality, individual plots sold on effective demand</p>	<p>1. HAM negotiable and transferable except to outsiders</p> <p>2. All dispositions null and void if not registered</p> <p>3. All dispositions except inheritance would require consent by the BARAZA</p> <p>4. BARAZA cannot withhold consent unless it is satisfied that: i) Spouse of transferor has not consented to the transfer; ii) transferee is an outsider; iii) transferee will thereby exceed his/her land ownership ceiling in the village</p> <p>iv) disposition will leave the transferee without any means of livelihood.</p>	<p>1. HAM negotiable and transferable to any citizen.</p> <p>2. As Land Commission.</p> <p>3. As Land Commission.</p> <p>4. BARAZA to withhold consent only if the spouse of transferor has not consented to the transfer, or children above 18 years raise objections.</p>
<p>IV Ceiling on Land Ownership in Villages</p> <p>Inexistence</p>	200 acres	Discretion of village assembly
<p>V Inalienable Lands and Commons</p> <p>Systematic individualization in progress</p>	Direct control of Village assembly	Discretion of village assembly to determine management system for commons properties

Table 4: A Comparative Analysis of the Recommendations of Tenure Reforms by the Land Commission and the Land Tenure Study Group for Use of Village Lands.

X. Current Practice	Y. Land Commission	Z. Land Studies Group
<p>I Coverage Gazetted area, land under granted rights of occupancy, and all land for which deemed right of occupancy holders cannot prove effective occupation</p>	<p>All land except village land</p>	<p>As Land Commission</p>
<p>II Forms of land holding Granted right of occupancy up to 99 years. 99 years, renewable on expiry. Land officers delegated powers to give short term rights of up to 5 years.</p>	<p>1. Right of occupancy, 21-99 years, may be renewed on expiry. Origin lies in grant. 2. Certificate of Customary right of 5-99 years registerable from existing use on national lands, e.g. squatters in peri-urban areas, in conservation areas, etc. Renewal cannot be denied unless it adds up to 99 years. Origin lies in claim.</p>	<p>1. As Land Commission 2a) Site plans should be completed as soon as possible and squatters granted rights of occupancy. Subsequently, resettlement of squatters in urban and peri-urban areas by allocating them appropriate plots elsewhere. 3. Villages should be curved out of so called squatter populations in conservation areas and operate under the rules of villages - free hold. Isolated squatters on national lands should be resettled with compensation for investments being left behind.</p>
<p>III Dispositions</p>	<p>National lands to be allocated in this manner: 1. Registration to determine those who have customary rights on national lands and issue them customary rights of 5-99 years as appropriate 2. Planning, to lay-out sites and determine use of land. Zoning to be abandoned, and the stringency of development conditions to be based instead on term of occupation. 3. Surveys witnessed by neighbors 4. Certification of planned areas to be advertised. Complaints can be filled with the CLC, which once it has satisfied itself that there are no problems would certify the plan. 5. Allocation by elected Land Committees at Wards and Districts assisted by Land officers as secretaries a) Government and public allocation, and residential plots to be applied for by citizens. Business allocations by auction or tenders- bids for premium and land rent. Citizens to have priority over non-citizens.</p>	<p>1. As Land Commission 2. Zoning should be retained among other things to make the enforcement of development conditions. 3. As Land Commission 4. As Land Commission 5. As Land Commission but at least 40% of land allocation committees should be women at all levels.</p>

Table 4: A Comparative Analysis of the Recommendations of Tenure Reforms by the Land Commission and the Land Tenure Study Group for Use of Village Lands.		
X. Existing practice	Y. Land Commission	Z. Land Studies Group
<p>III Development Conditions</p> <p>Grants or rights for farming and pastoral purposes are attached with development conditions. Building conditions for urban areas</p>	Present practice endorsed	Land use to be specified but introduce tendering system for allocation, and thereby graduated land tax to reflect stringency of development conditions and adherence thereof.
<p>IV Revocation</p> <p>President has powers for good cause or in public interest</p>	<ol style="list-style-type: none"> 1. Revocation for good cause by Commissioner General. 2. Revocation in public interest repealed. Land Acquisition Act invoked when necessary. 3. Compensation for unexhausted improvements 4. Complaints to be filed with the CLC. 	<ol style="list-style-type: none"> 1. By the President as holder of the radical title. 3. Compensation based on the market value of the land in question. The premium paid could be used to determine the value of land where the market value is not known. 4. As Land Commission
<p>V Disposition</p> <p>Consent of the Commissioner for Lands necessary.</p>	Consent of the relevant ward and District necessary. Not to be withheld unless the proposed disposal is considered as purely speculative, or change of use requiring a new premium or higher land rent, in which case these should be paid	Only citizens can buy land rights and among them land market to determine disposition. The new right holder (transferee) is bound by the development conditions on which the transferor held the title. Transferee could apply to make changes in land use. Speculation to be handled by the premium and the land tax.
<p>VI Compensation and Land Values</p> <p>For all practical purposes the Compensation scheme is confiscatory. Bears little relation with the value of the asset. There have been revisions, but these are quickly eroded by inflation.</p>	<ol style="list-style-type: none"> 1. Retains the principle of compensation for unexhausted improvements in land. 2. Base compensation on market rates 3. Expand the concept of improvements to include for example clearing land. 	1. Market determines the value of land.
<p>VII Compulsory Acquisition</p> <p>Declared and effected by Government authorities</p>	1. Only under the Land Acquisition Act which must be overhauled to limit compulsory acquisition to "eminent domain purposes" and not general purposes of economic development or for obtaining land for general government business	1. President retains the right to acquire land for good cause and for greater public interest including economic development and government business. The point is to compensate at value of the land acquired
<p>VIII Land Reform</p> <p>Some settlement schemes have been implemented, e.g. Chaggas were resettled in Morogoro region.</p>	<ol style="list-style-type: none"> 1. Need for resettlement of villagers squatting on alienated land, or in overpopulated areas. 2. Resettlement of villagers on land claimed by traditional right holders. 3. Conversion of the granted rights of occupancy belonging to outsiders on village land, and give them new land 4. Establish Land Reform Unit in the Institute of Land Tenure. 	As Land Commission but special studies need to be made to appraise settlement schemes more carefully.

REFERENCES

- Atwood, D. (1990); "Land Registration in Africa: The Impact on Agricultural Production". World Development Volume 18, No. 5
- Behnke, R.H. & Scoones, I. (1991); "Management and Sustainable use of Communal Rangelands in Africa: Rethinking Range Ecology: Implications for Rangeland Management in Africa". Overseas Development Institute and International Institute for Environment and Development
- Birgegard, L.A. (1993); "Natural Resource Tenure: A Review of Issues and Experiences with Emphasis on Sub-Saharan Africa". Swedish University of Agricultural Sciences, International Rural Development Centre, IRDC, Uppsala. draft.
- Bruce, J.W. (1986): "Land Tenure Issues in Project Design and Strategies for Agricultural Development in Sub-Saharan Africa". LTC Paper 128. Land Tenure Centre, Wisconsin (1989); "Community Forestry: Rapid Appraisal of Tree and Land Tenure". FAO, Rome.
- (1994): "Individualisation, Titling and Registration of Land Rights and National Land Policy in Tanzania," Dar es Salaam, MLHUD.
- Campbell Horace, (1991): "The Politics of Demobilisation" in Campbell Horace & Howard, Stein (ed) "The IMF and Tanzania". Sapest Trust, Harare Zimbabwe
- Coldam, S. (1979); "Land Tenure Reform in Kenya: The Limits of Law" in Jr. of Modern African Studies, Vol 17 No. 2
- Collinson, M. (1972); "Farm Management in Peasant Agriculture: A Handbook for Rural Development Planning in Africa", Praeger Publishers Inc. New York
- Coulson, Andrew (1980); "Tanzania: A Political Economy". Clarendon Press
- Davison, J. (1988); "Land and Women's Agricultural Production: The Context" in Davison J. (ed) "Agriculture, Women and Land: The African Experience". ?????? London.
- Fleuret, A. (1988); "Some Consequences of Tenure in the Agrarian Reform in Taita, Kenya" in Downs R.E. & Reyna, S. P. (ed) "Land and Society in Contemporary Africa"
- Fortmann L & Bruce, J (ed), (1988): "Whose Trees? Proprietary Dimensions of Forestry". ??????
- Freudenberger, K. S. (1992); "Guidelines for Using Rural Rapid Appraisal to Study Natural Resource Management, Land and Tree Tenure Issues". Prepared for a Community Forestry Field Manual for the Forest, Trees and People Programme. FAO. Rome.

- Goodland, R., Daly, H., & El Serafy, S. (1991); "Environmentally Sustainable Economic Development: Building on Brundtland". World Bank, Environment Working Paper no. 46. Washington DC.
- Haugerud, A. (1983); "The Consequences of Land Tenure Reforms Amongst Smallholders in the Kenyan Highlands" in *Rural Africana*. Vol 15-16.
- (1989): "Land Tenure and Agrarian Change in Kenya", *Africa* 9 (1)
- Kaijage, F. J. (1993): "AIDS Control and the Burden of History in Northwestern Tanzania", Population and the Environment, Vol 14, No. 3, p. 279-300.
- Mackenzie, F. (1989): "Land and Territory: The Interface Between Two Systems of Land Tenure of Muranga District, Kenya" in *Africa* 59 (1)
- Nshala, R.A.K. (1993): "Women and Inheritance in Respect of Bill of Rights in Kagera Region" Faculty of Law, University of Dar es Salaam, Mimeo.
- Migot-Adholla, Hazell, S., Blard, P. & Plese F. (1991); "Indigenous Land Right Systems in Sub-Saharan Africa: A Constraint on Productivity?" The World Bank Economic Review, Vol. 5 No. 1
- Mbwana, S. D. (1990): "Management of Catchment with Emphasis on the Eastern Arc Mountains" Paper presented at the Co-ordination Seminar on the Tanzanian Forestry Action Plan Programme Formulation for Eastern Arc Forest Management Programme, 5-6 September, 1990. Dar es Salaam.
- Lane, Charles, (1993); "The Barbaig/NAFCO conflict in Tanzania: On Whose Terms Can it be Resolved?". in Forest, Trees and People Newsletter, No. 20, April, 1993.
- Okot-Ogendo, H.W.O. (1988): "The Perils of Land Tenure Reform", Paper presented at a the workshop on "The Land in Agricultural Countries. Botswana, 1988
- Ridell, J. (1988); "The Dynamics of Land Tenure and Spontaneous Changes in African Agrarian Systems" in *Land Reform, Land Settlements and Cooperatives* No 1/2 1988. FAO
- Shipton, P. (1988); "The Kenyan Land Tenure Reform: Misunderstandings in the Public Creation of Public Property" in Downs, R.E. & Reyna, S.P. (ed) Land and Society in Contemporary Africa,?????
- Swantz, Marja Liisa (1985); Women in Development: A Creative Role Denied, London, C. Hurst & Company.
- Shivji, I.G. (1994): A Legal Quagmire: Tanzania's Regulation of Land Tenure (Establishment of Villages) Act, 1992, London, IIED.

- Shivji, I. (1992); "Contradictory Development in the Teaching and Practice of Human Rights Law in Tanzania", in Commonwealth Law Bulletin, Volume 18 (3), July, 1992, pp. 1151-1160
- Society for the Promotion of Wastelands Development, Newdelhi (1992; "Joint Management of Forest Lands: Experiences from South Asia", Mimeo.
- Society for the Promotion of Wastelands Development, New Delhi(1992; "Joint Management of Forest Lands: Concepts and Opportunities", Proceedings of the National Workshop at Surajkund, August, 1992, Mimeo.
- Tenga, Ringo (1992); "Monstrous Land Bill to Make Most Tanzanians Landless". in The Express, 14th December, 1992.
- (1992): Pastoral Land Rights in Tanzania: A Review, London, IIED.
- Tibaijuka, A. K. (1979); "Strategies for Smallholder Agricultural Development
- (1987) "Women's Participation in Soil and Water Conservation in the SADCC Countries". Proceedings of the Workshop on Peoples' Participation in Soil and Water Conservation". MAPUTO 2-6. March, 1987. SADCC Soil Conservation Unit, Maseru, Lesotho.
- ; Kisanga. M., Hamisi J., & Abubakar M., (1989); "Strategies to Enhance Women's Access and Effective Utilization of Institutional Credit in Tanzania: Report on a Survey on Women's Land Rights in Tanzania". Report to the Presidential Commission of Enquiry into Monetary and Banking Systems in Tanzania: Subcommittee on Women's Credit Facilities. Dar es Salaam, October, 1989.
- (forthcoming); "Women Land Rights as a Precondition for Sustainable Economic Recovery in Sub-Saharan Africa: A Case Study on Smallholder Banana-coffee farms in the Kagera Region, Tanzania" in Economic Development and Change". Published by SAGE for the Institute of Social Studies, the Hague.
- (1991); "The Impact of Economic Adjustment on the Environment: A Case Study of Deforestation in the East Usambara Catchment Area in Tanzania" A Research Report to SIDA, August, 1991
- United Republic of Tanzania (URT), 1992a; "An Act to regulate land tenure in villages established pursuant to Operation Vijiji, to provide for the settlement of land disputes and for connected purposes". Government Printers, Dar es Salaam, 20th December, 1992.
- 1992b; Report of the Presidential Commission of Inquiry into Land Matters, multi-volume, including Minutes of Evidence, Dar es salaam.

1992c; "Special Bill Supplement: A Bill to regulate land tenure in villages established pursuant to Operation Vijiji, to provide for the settlement of land disputes and for connected purposes". Government Printers, Dar es Salaam, 9th November, 1992.

1994: Report of the Presidential Commission of Inquiry into Land Matters, Vol.I: Land Policy and Land Tenure Structure, Uppsala, URT, in cooperation with the Scandinavian Institute of African Studies.

World Bank, (1991); "The Population, Agriculture and Environment Nexus in Sub-Saharan Africa". World Bank, Revised Draft, 7 August, 1991, Washington DC.