



Land Governance in an Interconnected World

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LESSONS LEARNT FROM 1995 NATIONAL LAND POLICY REVIEW AND CSOS ENGAGEMENT

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ABSTRACT

The Ministry of Land, Housing, and Human Settlement Development is currently reviewing the National Land Policy of 1995 to ensure equitable land rights to enable citizens to enjoy economic development and poverty reduction by promoting sustainable investment, address land disputes, and effect land redistribution. The draft of the policy has been developed and is accompanied by implementation strategy to ensure effective implementation of the policy including the allocation of adequate budget to address challenges facing the land sector. This is an important shift that needs to be supported as long as it puts the majority of the Tanzanian population of 70% depending on land at its heart. However, the implementation strategy has not been shared to stakeholders for review and comments before it's approved. The inclusion of CSOs has been of great concern throughout the whole process, and important information being kept confidential from most CSOs. For example, up to this time when this paper is written there has not been any official document shared apart from the first and only one which was shared for the stakeholders meeting in 2016. This paper revisits the National Land Policy of 1995 review process and the CSOs engagement in the process. Despite of the challenges, and considering the importance of land CARE and other CSOs have worked tirelessly to bring in more stakeholders to represent different voices and ensure the policy puts the more than 70% population needs at the centre. CSOs developed analytical tools outlining issues that can be compromised and uncompromised issues especially those on women's land rights, village land management and administration, and large scale investment on village land.

Key Words: Land policy, land reform, review, women's land rights, Tanzania



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BACKGROUND

Throughout Africa, land is a fundamental issue for economic development, food security and poverty reduction. Land is of crucial importance to the economies and societies of the region, contributing to 70% of full time employment for the majority living in rural areas where almost 80% depend on agriculture as means of livelihood (J. Quan, S .Fei, & C. Toulmin, 2004). In Tanzania like many other countries in Africa land is the backbone of livelihood for the rural population and their agricultural activities which employs majority of the total rural population. Agricultural sector employs over 75% and contributing to more than 80% of livelihood to the country's population with smallholder farmers being the driver of the sector's growth (Yvonne et al., 2014: 7). For women, land is more than just land, but one the most crucial resource to their living conditions, economic and social empowerment and, struggle for equity and equality.

Land is a scarce resource without which life cannot be sustained (FAO, 2007), and it is “increasingly recognized as an important governance issue” around the globe (Palmer et al., 2009: 1). Hundreds of millions of people including farmers, herders, forest dwellers and agro-industries and other operations all rely on land resources for their survival. The capacity of households to produce, and thus enjoy decent living standards, is conditioned by their security of land rights. Given that the development pressures on land is increasing especially in rural areas security of land rights especially for women and marginalized groups must be well recognized in order to achieve efficient allocation of land uses among the rural households and promote investment on land for inclusive and sustainable development (Holden & Otsuka, 2014).

Thus, land has throughout history being regulated by laws and policies. After independence in 1961, Tanzania continued to use the colonial Land Ordinance of 1923 with some few amendments to fit the Tanzanian context. The Land Ordinance of 1923 continued to be used until 2001 when the new land laws became operational. The process to reform land laws started in early 1990s when the Presidential Inquiry Commission into Land Matters was formed in 1992. This was followed by the formation of the first ever National Land Policy of 1995 which was amended in 1997. The Land Act number 4 of 1999 and the Village Land Act number 5 of 1999 followed the enactment of the National Land Policy and has continued to be the laws governing land in Tanzania to present. Given the changing social, economic, and political situation and over two decades of implementing the policy, the review of the policy was seen necessary by the



government. In the next part, I will discuss this further in the context of the legal framework governing land.

LEGAL FRAMEWORK ON LAND

As stated in the previous section, the National Land Policy of 1995, formed the backbone of the current legal system governing land in Tanzania. Other laws are; the Land Act number 4 of 1999 which governs the administration of general lands, the Village Land Act number 5 of 1999 which governs administration of village lands, the Courts Land Dispute Settlement Act number 2 of 2002, and the Constitution of the United Republic of 1977 as amended from time to time.

Legal and policy frameworks in Tanzania uphold equality in terms of access, ownership and use of land for both men and women. For instance, the National land policy paragraph 4.2.1 guarantees women access to land, security of tenure and acquire of land. Moreover, Section 3(2) of the Village Land Act (Cap 114) and the Land Act, Cap 113, grants the right of every adult woman to acquire, hold, use, deal with and transmit by or obtain land through the operation of a will, to the same extent and subject to the same restrictions as the right of any adult man. Also paragraph 4.2.6 of the National Land Policy insisted women will be entitled to acquire land in their own rights but not only through purchase but also through allocation. The Constitution of United Republic of Tanzania, Article 24 (1) also provides equality in owning property. The Article states that, 'Every person is entitled to own property, and has a right to protection of his property held in accordance of the law'.

However, despite of constitutional and legal protection, the use of multiple laws in inheritance such as customary laws, Islamic laws and statutory laws (The Probate and Administration of Estates Act, Cap 235) creates a room for inequality in land ownership, use and access for women through inheritance. The Courts (Land Dispute Settlement) Act, No 2 of 2002 requires the village land tribunals to use customary laws and custom in land conflict resolution. Literally, the application of negative customs is equivalent to upholding the inequality and jeopardizing women's rights on access, use and ownership of land.

Under customary land law, women generally have inferior land rights relative to men, and their access to land is indirect and insecure. Land allocation especially in rural areas is guided by customs and traditions which discriminate against women by allocating land to heads of household who are usually men".

(Paragraph 4.2.5 of the National Land Policy 1995). Therefore, if the majority of women especially in



rural areas do not have the right to inherit, access, or own land, that's detrimental to their economic survival and social existence. This conduct is responsible for women remaining poor and argues that production in this way is held from reaching its potential, when only less than half of population is able to take part in the agricultural development. Access and control over resources including land ensures food security to women as a population and communities depending on land for their livelihood. Women in subsistence farming produce between 70-80 percent of their families' food supply. Yet, women usually only have access to land while men own, make decisions, control and inherit land (National Land Use Planning Commission. 1998).

The ongoing review process of the National Land Policy 1995, is thus expected to address the issues, challenges and gaps discusses above. The next section focus on this subject at length

THE 1995 NATIONAL LAND POLICY REVIEW

In April 2016 the Ministry of Land, Housing, and Human Settlement Development started to review the National Land Policy of 1995 to address its shortcomings such as poor implementation and to ensure equitable land rights to enable citizens to enjoy economic development and poverty reduction by promoting sustainable investment utilization, address land disputes between and among different users such as farmers and pastoralists, and effect land redistribution (National Land Policy draft 2016). The draft policy addresses issues of land management and administration, tenure security, gender, climate change, and sustainable investment among the few. As stated already, different from the previous policy of 1995, the current draft is accompanied by the implementation strategy to address issues of poor implementation of the previous one and hopeful ensure adequate budget for the sector. This is an important shift that needs to be pushed and supported as long as it puts over 70% of the population depending on land at the heart of the review.

Box 1: The rationale for the National Land Policy 2016 and main policy considerations are:

- Greater security of tenure to landholders, starting with recognition of current claims, through a comprehensive titling exercise of all lands in Tanzania and clearly defining the set of land rights entitlements to a landowner.;



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- Land use for crop and livestock farming are undertaken in a harmonious manner. Address heightened increasing tensions and escalation of violence between peasant land holders and farmers on the one hand and herders on the other hand, particularly in Mvomero, Kilosa Kiteto districts;
- Catering for large land tracts that are required for large-scale investment purposes, particularly for mining and agriculture in a manner that promotes sustainable investment which is equitable to investors, the country and the local population;
- Making the land sector responsive to the requirements of the current and future population of Tanzania as the country is experiencing rapid population growth. At the prevailing annual population growth rate of 2.7% per annum, the population of Tanzania will have doubled to approximately 94.7 million people in a quarter of a century. It is also acknowledged that Tanzania has experienced increased land pressure stemming from not only population growth but also from competing land uses particularly between livestock keepers and farmers;
- Clarify and provide secure land tenure to livestock farming communities with a view to scaling up the contribution of the livestock sector to the country's GDP and sustaining livelihoods;
- Providing equitable access to land for all Tanzanians irrespective of gender or ethnicity; curb land hoarding and effect land re-distribution to Tanzanians;
- Instituting a new, more innovative and effective land institutional arrangements that supports high production and productivity and is free of land use conflicts by improving services in physical planning, land administration, valuation and land surveying for better land delivery;
- Re-directing and streamlining approach for land disputes settlements through more just, corruption-free innovative arbitration systems that will also stem the occurrence of land and land related disputes;
- Amplification of existing land tenure structure and give Tanzanians the option of enjoying full land rights for better economic development in line with our East African and other African peers;
- Alignment of the country with national and international overarching policies, mindful of the central role of land in such initiatives - the Tanzania Development Vision 2025 aiming at transforming the country into a mid-income country by the year 2015; the Sustainable Development Goals, Second Five Year National Economic Development Plans and now the Tanzania for Industrialisation drive (URT 2016: pg.33-34).

In the next section, I will discuss more the involvement of CSOs in the process.

WHY CSOs ENGAGEMENT AND THEIR ENAGEMENT APPROACH

Considering the importance of national land policy as a mother policy for overall land management and administration and its impact on the majority of the people, CARE and other CSOs have worked tirelessly to bring in voices of those that will be more affected. CARE in collaboration with TALA, HAKIARDHI, TNRF, OXFAM, MVIWATA, TAWLA, and many other stakeholders organized meetings of all CSOs



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to discuss and analyze the existing national land policy of 1995 and came up with recommendations that were shared with the ministry of land. Since land touches different users such as pastoralists, hunter gatherers, fisher folks, artisanal miners and farmers, CSOs organized a meeting to harmonize issues specifically on pastoralist and farmers to make sure all issues were considered and given the deserved attention.

In addition, CSOs developed analytical tools outlining issues that can be compromised and uncompromised issues especially those on women's land rights. The analytical tool has been really important in following up with the policy by looking at what are the gray areas, what has changed and what needs more work, advocacy, and dialogue with the ministry and drafting team. For example, some of the CSOs brought women voices on the table to explain what the policy meant for women as an important segment of the population that will be affected by the outcome of the draft and final document and proceeding laws on land. In addition, CSOs analyzed the importance of community especially village level participation in the land administration and management and arguing the ministry to specifically define the role of the commissioner for land not as a sole authority but an advisory body to the process. CSOs stressed on the importance of supporting village leaders and community members with skills on land, understand their roles and limitations on land management and administration instead of having the commissioner for land as a sole authority over village land decision making.

CSOs have continued to organize meetings both formal and informal with the ministry officials responsible for the policy draft, the drafting team, and other decision makers to make sure voices of the Tanzanian people especially those in rural areas are considered by the drafters and decision makers. CSOs also sought support from the development partners interested on land matters to make sure voices of vulnerable groups especially women are addressed in the policy draft and at the same time urging the ministry to expand the stakeholders collaboration and invite more voices in the process beyond the ministry and government officials.

The whole review process has however received criticism over lack of broader stakeholders' representation in the process and silence of the overall process to the major population. Many community members in some of the regions and in rural areas are not aware the review process is taking place although they will be the most impacted by the policy and following laws on land management and administration. The policy team however organized consultation meetings in eight zones, which stakeholders think are not enough and the process was not publicized enough for people in those zones to attend these initial meetings. In addition, it remains unclear if the land review process will have impact on



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existing laws which discriminate against women such as the inheritance law which discriminates against women's access, use and control over land. Sulle (2016) contributing to his blog argued that in his opinion, the review process should not end with just reviewing the current policy but rather completely reform all laws and policies discriminating and limiting citizens right to land such as inheritance law and Land Acquisition Act of 1967.

Criticisms have also been on the number of CSOs invited to the stakeholders review meeting in Morogoro, where only 21 CSO were invited on a short notice therefore making it harder for most local under resourced CSOs to attend compared to the big resourced organizations such as International Organizations (Sulle et al 2017). Sulle et al 2017 adds that;

“Most CSOs who received confirmation of their participation around 6pm on 21 November, less than two days before the scheduled meeting could not attend at such short notice due to logistical difficulties. “The decision to invite a limited number of CSO representatives at such short notice and after persistent requests by the latter did not accord with the government's formal commitment to inclusive and open government. To date, it remains uncertain how many consultation events will be held before the final version of the National Land Policy is tabled for cabinet approval. It is also unclear whether the new policy's implementation strategy will be shared for public review, comments and further improvement” (Sulle et al, 2017, pg.21)

However, regardless of the gaps in the overall process, CARE and other CSOs have continued to push for more space and collaboration with the ministry of land to make sure voices and views of the majority of people depending on land are included in the final draft. CSOs and the ministry team have continued to hold meetings both formal and informal to address the gaps and stressing on the strengths of the policy. The ministry have in some cases provided spaces for CSOs to make presentations and dialogue with the team. It's important to note that these spaces have mostly been with few CSO representatives. This is partly CSOs and partly the ministry as discussed the process initially was not as inclusive as expected from the ministry side. The initial process was clouded with so much secrecy on who should participate especially during the zonal meeting and the following first stakeholders meeting. However, on the part of CSOs most CSOs were initially active, shared information, and held meetings to discuss both the policy document, the process, and the engagement strategy. However, as the process continued, the number of active CSOs kept going down. This can be explained partly because of inadequate resources especially for local CSOs, but also can be lack of consistence and persistence from the CSOs. Most CSOs expected the ministry to be more transparent and inclusive by engaging every single stakeholder in the process and



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sharing information as needed, when that was not possible, some CSOs continued with other priorities within their organizations and networks. In addition, lack of strong CSOs coalition contributed to the inactiveness of CSOs and therefore ended up having CSOs who had resources, funds, whom policy was a high priority in their work volunteering to coordinate and follow up throughout the process regardless of the challenges.

For CSOs who continued to follow up with the ministry and persisted to get information on the policy process and content, the ministry on its part has been able to communicate to them whenever possible. However, up to now when this paper is being prepared, the ministry has not released any other official document of the policy to stakeholders for public dialogue and review.

CONCLUSION.

Land is both political and sensitive in Tanzania, and therefore even review processes are complicated. There are so many interests on land considering the land rush globally and Africa in general, and scarcity of land for different users in the country. CARE and other CSOs understand the importance of land, and why they cannot afford to be out of these processes regardless of how complicated they are. Therefore, together they have learned to be persistent and provide evidence when meeting with the ministry. They have put forward a partnership type of relationship to be able to seat down and dialogue on the policy, pointing out both the gaps and the strengths and coming up with specific recommendations on how the policy statement should be written or sound and the impact of the policy statement to the small holder farmers, pastoralists, hunter- gathers, and even future government's revenue and management. As an organization which has been on the fore front during this process, it has insisted for more inclusive and diversity of CSOs representation including the faith based organizations to be part of the process.

In addition, CARE and other CSOs knows they cannot afford to miss this opportunity regardless of who is behind the review process. They understand the challenges on both sides but work towards finding solutions and ways that can make it easier for the ministry and CSOs to continue working together. They continue to insist on partnership more than looking for things that doesn't work between or among different stakeholders. However, it's important to note that, this has not made everything perfect there are still challenges as well as improvements. CARE and CSOs still hope the ministry will release both the implementations strategy and the new draft policy for public review and dialogue, until that happens, CSOs will continue working with what is available as long as the issues are taken on board. Moreover,



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CSOs will continue to find solutions on how they can be inclusive among themselves as CSOs putting in mind the challenges facing local CSOs especially on resources.



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