

WOMEN'S LAND RIGHTS: THE CASE OF THE GENERAL AND VILLAGE ACTS 1998

Introduction

For the last 3 years, NGOs and gender groups in Tanzania were engaged in lobbying for a more transformed Land Law in the country. This process began with the realization that the government was preparing a new Land Bill in the country.

For instance, the government commissioned a National Land Commission. In 1992 the National Land Commission, under the chairmanship of Professor Issa Shivji, presented a report on land issues in Tanzania. It was recommended by the National Land Commission that the report and the White Paper on land should be made public. However, it was only available in academic circles and to a questionable extent in the general public. The Tanzanian National Land Policy was then prepared by the Ministry of Lands, Housing and Urban Development in June 1995. This policy was one of a number of Economic and Political Reform Policies being passed by the government, in the context of international economic and political pressures. This report became the basis from which a draft Land Bill was prepared by a foreign consultant.

As a result of the content of the draft Land Bill, NGO actors in Tanzania felt the need to organize and lobby to make changes to the Bill. Originally representing women's interests in the bill, an organization called Baraza la Wanawake la Taifa (BAWATA) received support from the Royal Netherlands Embassy to hold a workshop for women on the draft Land Bill. However, the government suspended BAWATA's activities, and as a result it was decided that the Tanzania Women Lawyers Association (TAWLA) would facilitate and convene the coalition on land. This consultative workshop on the draft bill occurred from March 3rd – 5th of 1997 at the Russian Cultural Centre, and was attended by over 15 NGO actors, key government actors, University associates, religious organizations, international partners, individual gender activists and the media. The meeting identified issues of concern that needed to be changed, so as to assure women of equality in land use and ownership. These issues, therefore, needed immediate action.

As a result of this meeting, actors representing various NGOs decided to enter into a coalition to address the issue of gender within the land bill, which was to be coordinated by TAWLA. A committee was formed known as the Gender Land Task Force (GLTF) to advocate for a Bill that would take into account the rights of all people to ownership of land, including and in particular, women and youth (in Swahili the group was referred to as KIKUHAKI). The GLTF consisted of active organizations such as TAWLA, Tanzanian Media Women Association (TAMWA), National Organisation for

Children, Welfare and Human Relief (NOCHU), Tanzania Home Economics Association (TAHEA), Women Advancement Trust (WAT), the Women's Legal Aid Centre (WLAC) and the Tanzania Gender Networking Programme (TGNP).

Already underway at this time was a process looking at the land issue from a progressive perspective in general. The National Land Forum (NALAF), known in Kiswahili as Ulingo wa Kutetea Haki za Ardhi (UHAI), coordinated this process. NALAF formed a sub-committee known as Kamati ya Taifa ya Ardhi (KATAA), or National Land Committee, to function as the working team for the Land Bill issue. The team, among other members, consists of NALAF itself as well as TGNP, TAWLA, TAMWA, LHRC, JET, Kigamboni Women's Group and others.

Each of the two processes at first independently planned activities, divided roles among members, convened meetings for action, gave feedback and operationalised events. Many members of one process were also members of the other. Later, as will be discussed later, the two processes attempted to merge.

The goal of the GLTF was to pass a gender-sensitive Land Law that takes into account the interests of the majority of marginalized groups of women, men and youth. Members of the GLTF divided roles amongst each other, and could be roughly divided as follows:

- TAWLA took the responsibility of coordinating GLTF meetings as well as reviewing the Bill and giving legal interpretations of it.
- TAMWA took the role of publicity and media advocacy.
- TGNP took the role of lobbying parliamentarians to pass a gender-sensitive and progressive Land Act.
- TAHEA, SUWATA, NOCHU and WAT took the responsibilities of raising awareness, and sensitizing the public on issues of land through community mobilization, outreach and participatory workshops.

After this initial March meeting, coalition members were busy with many activities. GLTF activities in 1997 include reading and analyzing the draft bill from a gender perspective, as well as a lot of awareness raising activities, workshops and working sessions to sensitize key actors on gender issues. The drafters of the draft land bill and the Commissioner for Land were lobbied intensively, and invited into GDSS seminars and other coalition activities. Lots of fliers and handouts were produced and disseminated. MP allies were identified and lobbied as a point of entry for sensitizing other MPs. Of course, many meetings of coalition members took place, which, in themselves, were capacity building activities for those involved. Fundraising took place, and the first round of funding covered activities from 1997 to February 1998, denoted as Phase 1. Some major events in Phase 1 included:

- *TAMWA MPs Kongamano/Conference, Dodoma*

Dissemination of information and lobbying of parliamentarians.

- *TAHEA Mandaka Workshop, Mandaka (Moshi)*
The land bill was fully discussed in a rural area, which was a first exposure to the issues for most participants.
- *Annual Gender Studies Conference (AGSC '97)*
Six hundred people gathered to discuss gender with a particular focus on the land issue. Information was disseminated and various actors in the Task Force presented key issues. Task force members assisted with AGSC preparations.
- *Land Symposium*
Attended by the commissioner, this seminar on land gave space for the Ministry of Lands and Settlements to share the discussion with other actors.
- *Wednesday Seminars, TGNP, Mabibo*
Two Wednesday seminars (GDSS) gave space to discuss the land bill with members of the community and invited MPs. Over 160 people attended.
- Publication of *Azimio la Uhai, KATAA*
A popular publication, which acts both as a catalyst for further debate and as an advocacy tool.
- *SUWATA/WLAC*
Workshop on the draft bill.

Major Events for 1998-99

In April 1998 it was learnt that the draft Land Bill had been split into three bills (Village, Public and Reserve Land), although only two have now been sent to Parliament. Coalition members felt that the efforts of activists were in danger of being overtaken and divided. Also, funding started to become scarcer at this point, and so many activities were continued by individual organizations or as a group task force with meager resources. Many NGO actors were feeling a general feeling of a loss of momentum. TGNP approached KATAA about how to merge the two processes. TGNP took the initiative to organize a FemAct meeting to discuss how to better cooperate between the two processes. Thus in May of 1998, after discussions among coalition members and the encouragement of TGNP, the GLTF came into a bigger coalition with KATAA to work as members of one coalition process that focused on gender issues as well as progressiveness of the Act concerning issues of other marginalized groups such as the pastoralists, hunters, collectors and youths. The merged coalitions then became known as the Land Coalition.

There was, however, some confusion over the way the coalition was organized. It was assumed that the issues of the two separate processes now became the issues of all involved in the coalition. However, the bond between the two processes was tenuous. Not all coalition members agreed on the issue of radical title, which was a key issue for the members from KATAA in particular. At the same time, more activities started to become the projects of individual organizations, as opposed either of the GLTF or broader coalition. Issues started to arise over donor funding and funding allocations, after it was decided that all funds should go to one account for the coalition. These issues will be discussed further in the Analysis section of this report.

The Land Bill was finally sent to Parliament for a first reading in November 1998. Comments arising from the reading were sent to the Ministry of Land and the Ministry of Justice and Constitutional Affairs. During December and January the coalition was also heavily involved in lobbying parliamentarians and soliciting support from the community through workshops, newspapers, radio, TV, plays, posters, leaflets and one-to-one lobbying. The bill was finally passed in January 1999, which was much earlier than expected since it was passed after only the first reading. A process of interpreting the bill and identifying the successes and gaps was started. In the end there were some successes and failure for the coalition, since some coalition concerns were successfully or partially reflected in the final Land Bill, but others were not. In terms of the coalition process, much was learned from the experience. It was also obvious in the end that the coalition was a force that the government could not ignore. Of course, the process is not yet over since it is never too late to lobby for amendments to be made to an Act. In addition, since the President's delay in making the Act become a Law by signing it gave room for further land maneuvering and grabbing, the process was not over when the Bill was passed.

A post-mortem coalition meeting was held on April 24th, 1999 in the TGNP Mabibo Gender Resource Centre, and was attended by nearly all coalition members. The goal of the meeting was to go over the successes and failures of the coalition in order to learn from the experience and to get an idea of the way forward. Many of the points expressed at that meeting are reflected in this report. What was most striking about this meeting was that, although many people were frustrated with some of the coalition gains, many of the participants were openly putting constraining issues on the table for discussion. That spirit of cooperation and open dialogue is, in itself, an indication that future coalition activities will be even more fruitful.

Other major events for the 1998-1999 period included:

- Land Coalition issues press releases, many fliers and bulletins, distributed to MPs as well as to the grassroots including the regions of Kagera and Kigoma.

- Two-day workshop on land organized by KATAA, February 13th-14th, followed by a one-day workshop, which drew a plan of action for Land Week.
- TV programme 'Sema Kweli' aired on DTV depicting land issues, March 7th.
- Land Forum, June 1998.
- TAHEA Annual General Meeting – 200 participants from various parts of Tanzania discussed land and women's rights.
- Coalition Workshop of Land – 20th June, Russian Cultural Centre. Nearly 100 participants took part, including KATAA constituents such as pastoralists and other activists. The issues were discussed in order to raise awareness and sensitize the public.
- Parliamentary Workshop on the Proposed Land Bill, led by TGNP – 11th July, Dodoma.
- Two 2-day workshops with MPs, led by TAWLA/GLTF – Dar es Salaam.
- Two-day Public Hearing, led by the Finance and Economic Parliamentary Committee, January 26th-27th, 1999. Coalition members made strong presentations of the issues of lobbying for the Bill. More than 80 participants including MPs, NGO members and individuals from the public attended.
- Street performance with the group *Parapanda*, 27th – 29th of January 1999, Dodoma. Street performances took place to raise awareness in the area, and afterwards the audience took part in sessions to allow for detailed discussions. Some MPs were in attendance and the events received newspaper coverage. Alongside of this, youth from Dodoma Rural performed in 'Land Night' activities along with *Parapanda* on the 30th of January.
- Workshop on the Land Bill, led by TGNP, January 28th-29th 1999, Dodoma. Twenty-four male and female MPs participated in this workshop, including members of the opposition. The goals of this workshop were to share knowledge on land issues, sensitize MPs on the issues, encourage MPs in attendance to disseminate information to their fellow MPs, determine future directions and, of course, influence the final writing of the bill. Both larger group discussions and one-to-one lobbying took place.
- Continuation of the Workshop Series in Dodoma. As part of the above-mentioned workshops in Dodoma, two other workshops were conducted. One involved religious leaders from a wide variety of denominations. The

other was an ad-hoc workshop at a central marketplace in Dodoma with constituent members.

- Evaluation Meeting to Feedback on the proposed Land Act. This meeting was in the end a MCDWAC-led process, but another NGO-led process started at the same venue. The latter was, however, co-opted.

Achievement Gaps in the Act

The achievements that have been made in terms of changes to the proposed Land Act are a great success, in spite of the fact that some of the issues of lobbying were not addressed. The following is a brief summary of the issues of lobbying that were successfully addressed in the final writing of the proposed Act:

- Women are to own land through their own capacity and through families.
- Equal representation of women and men to exist in all Land Committees.
- Small communities are to be honoured and respected, e.g. the pastoralists are given land for their activities.
- Investors to be leased land under a special body for a 99-year term. No investor will own land.

The Village Land Act 1998

Section 20(2) Any rule of customary law which denies a woman the right to acquire, hold, deal with, transmit or receive by will or by gift or by any other means an interest in land for the reason only that she is a woman, shall be void and inoperative and shall not be given effect to by any village council or village assembly or any person or body exercising any authority over village land or respect of any village over village land or in any court or other body before which any matter concerning village land is brought for adjudication or determination.

However, the following key issues were not picked up in the final writing of the proposed Act:

- The issue of customary land tenure.
- The issue of all powers on land vested on the President (Radical Title).

The Village Land Act 1998

Section 3 (2) The right of every adult woman to acquire, hold, use, deal with or transmit by or receive land through the operation of a will, shall be to the same extent or subject to the restrictions as any adult man.

Ensuring equal representation of women and men in Land Committees is a great triumph and will help to ensure a more gender-balanced distribution of land. A statement of the right of women to own land is a basic requirement for the development and advancement of women, and if men and women are sensitized on how to use this success it can be a valuable tool. Preventing a foreign investor from owning land is a success, although many feel the 99-year lease is too long. The true victories for pastoralists are subject to debate.

The Village Land Act 1998

3(3) For the avoidance of doubt, it is hereby declared to be the law that where during the course of any marriage, either spouse acquires an interest in land in their own name and for their own occupation and use, whether in practice that spouse shares that occupation or sue or not, and by whatever lawful means that acquisition occurs, that interest in land belongs exclusively to the spouse who acquired it and it shall not under any circumstance be considered part of the property of the other spouse.

Unfortunately, the loss over the issue of radical title means that all the other gains made are tenuous, since no one other than the President truly owns land. In addition, keeping customary land tenure in the law can still effectively prevent women from owning land and makes the gain in principle of women's ownership of land harder to actualize.

The Village Land Act 1998

Section 60(2) Where a village council establishes an elders council, that council shall consist of no less than five nor more than seven persons, of which not less than two shall be women