Lawyers in Neoliberalism: Authority's Professional Supplicants or Society's Amateurish Conscience?

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Dedicated to my unforgettable friend and comrade Chachage, very sad news of whose passing away I heard just as I finished writing this lecture.

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Eulogising Professor Hernando De Soto's book, *The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else*, Baroness Thatcher says:

> *The Mystery of Capital* has the potential to create a new, enormously beneficial revolution, for it addresses the single greatest source of failure in the Third World and ex-communist countries — the lack of a rule of law that upholds private property and provides a framework for enterprise. It should be compulsory reading for all in charge of the wealth of nations.[1,2]

Margaret Thatcher, the former Prime Minister of Britain and Ronald Reagan, the former President of the United States, were the political pioneers of neoliberalism in the post-Cold War world.[3] Francis Fukuyama, the author of *The End of History*, asserts that with the triumph of capitalism and liberal democracy in the whole world, history has come to an end. He supplied the intellectual and ideological weapons for neoliberalism. Hernando De Soto[4], we are told the most-sought after consultant by 'poor' countries, supplied the mechanism for turning trillions of dollar worth of assets of the poor, what he calls 'dead capital', into 'living' capital. Unless the poor of the Third World are brought into the capitalist mainstream, the West's capitalist civilisation is at risk, he warned. 'In the business community of the West', he says, 'there is a growing concern that the failure of most of the rest of the world to implement capitalism will eventually drive the rich economies into recession'.[5]

The mechanism to breathe life into dead capital is to construct a legal system which will enable the assets of the poor to get titles and thereby make them negotiable and saleable on the market. In his 'neoliberal revolution', De Soto, says, lawyers have the role of a vanguard. Let me quote him:

> Once [neoliberal] reformers have the poor and at least some of the elite on their side, it will be time to take on the public and private bureaucracy who administer and maintain the status quo—principally, the lawyers and technicians... No group—aside from terrorists—is better positioned to sabotage capitalist expansion. And, unlike terrorists, the lawyers know how to do it legally.[6] (Interpolation mine)

In this oration, I will try to give some glimpses of the role of law in Tanzania's jump from the frying pan of state nationalism into the fire of corporate neoliberalism. First, I will give sketches of the process of accumulation of capital underlying colonial, neocolonial and neoliberal phases in the context of land and labour regimes; then I will refer to some leading labour cases paving the way towards neoliberalism, and finally raise the question whether Tanzanian lawyers have been 'terrorists' sabotaging neoliberalism or technicians oiling it.

Accumulation by Dispossession

Nature did not posit people with money, property and capital on one side and people with nothing but their capacity to labour on the other. Nor did Nature ordain that there shall be the rich, powerful and privileged North and the poor, disadvantaged and servile South. The propertied and the propertyless, capitalists and proletarians, the rich and the poor, the landlord and the landless, the gargantuan plantation owner and the Lilliputian peasant-producer, the powerful and the powerless, were created through human agency in a historical process. Friday was not born a Friday. He was created by Robinson Crusoe.[7] And a Crusoe could not have captured and tamed a Friday without a gun. The 'savage cannibal', as Crusoe

characterised the original state of *his* Friday, could not have been rescued without the *use* of the gun. And a god-fearing Friday, as Crusoe named him, could not have been disciplined into an obedient slave without the threat of it. Friday stood in awe, astonishment and bewilderment at the gun. '... he would not so much as touch it for several days ...; but would speak to it, and talk to it, as if it had answered him, when he was by himself; which, as I afterwards learned of him, was to desire it not to kill him'. Eventually, Crusoe taught Friday how to handle the gun and even gave him one, but only after he had taught him the rules from the Bible not to kill and be obedient, loyal and stand by the master. In Malcom X's memorable phrase, the field nigger had become a house nigger.

So, what is the genesis of colonial labour and capital?

Land and labour were central to the colonial project. Land and labour were central to the neocolonial project and now they are very central to the neoliberal project. In 1923 the colonial state passed the Master and Native Servants Ordinance. In the same year the Land Ordinance was enacted. A year earlier the Governor had enacted the Hut and Poll Tax Ordinance. The years of the enactment may be coincidental. The logic was not. The tax law was not to raise revenue, although it also did that. It was meant to flush out labour of producers to go and work in mines and plantations; to use their muscle power by compulsion or habit, more by compulsion than habit during the early colonial times.[8] Every owner or occupier of a hut was liable to pay a tax prescribed by the governor. A hut was defined as 'any hut, building, or structure of a description commonly used by natives as a dwelling'. A native was neither a citizen nor a person. In the colonial parlance, the 'native' was the indigenous inhabitant of the land invaded by the colonialist, the 'primitive Negro' in the phraseology of Governor Byatt, the first military ruler of Tanganyika. If the native housed more than one wife in his hut, which was not uncommon, then he was liable to pay tax for each one of them. This was the tax on 'plural wives', as it was called. Wanyakyusa revolted against it in 1928, and migrated to Nyasaland. During the German period, one of the main grievances of the rebels was tax; the other was land. In 1894, Macemba, the Yao chief, led a protest against tax. The protest was crushed in 1899, the chief fled to Mozambique while his followers were imprisoned. In 1902 Mpoto from Kitangari was hanged for leading a tax protest.[9]

Where a person did not own a hut (or perhaps did not have a wife!), he was liable to pay a poll or head tax, a tax on one's existence. 'Every able-bodied male native of the apparent age of sixteen years or over', section 4 decreed, '... shall pay annually a poll tax of such amount as the Governor ... may prescribe'. The tax had to be paid in cash. The option was to grow a cash crop for the metropolitan market or go out to labour for capital in sisal plantations of the Eastern Province, or coffee farms of the Northern Province or tobacco farms of Southern Province and Southern Highlands. These were the labour-importing areas. Western, Lake and Central Provinces were labour-exporting areas.

Every year thousands of Wanyakyusa, Wangoni, Wayao, Wamakua, Wamakonde, Wapangwa, Wabena and Wafipa from the south and south-east; Wanyamwezi and Wasukuma from the Western and Lake Provinces; and Wanyaturu, Wairamba and Wasandwe from the Central province trekked hundreds of kilometres to employment centres. These were the so-called *manamba*[10] or migrant labour. Migrant because they could not afford to take their families and settle on the plantations. *Manamba* were given bachelor wages, bachelor rations and bachelor camps. The families were left behind to fend for themselves. So, while the man became a semi-proletarian, the woman became a semi-peasant, both subsidising colonial capital which reaped super-profits by imposing sub-human conditions of labour.

The law permitted a 'native' liable to pay tax to discharge his obligation by providing an equivalent amount of labour on any government undertaking or on any 'essential public works and services authorized by the Government'. The labour of tax-defaulters built the infrastructure of the colonial economy. 'Hundreds of miles of roads were cut, tens of buildings were built and maintained, dams were constructed and agriculture works carried out by the sweat and blood of ... tax-defaulters'.[11]

Under the Master and Native Servants Ordinance, breach of contract was a criminal offence. The offence was called desertion. There were other offences relating to discipline, absenteeism, insulting or assaulting the employer, etc. Criminal law applied to civil relations. Force dominated the economic process. The state both created and maintained the labour market not through economic instruments but by instruments of violence.

'Free' labour was preceded by forced labour and force was used to create 'free' labour. The producer had to be separated from his means of production, land. Capitalism was born out of the womb of feudalism. Feudalism tied the serf to land. Capitalism 'freed' him from land and turned his muscle power to a commodity for sale on the labour market. He was free to sell his labour or starve. There is freedom to work or not to work. You may even have a right to work, as we have in our Constitution, but no one has an obligation to give you work. The Court of Appeal pronounced in the case of *Timothi Kaare v. Mara Co-operative Union*.[12] that the right to work 'by its very *nature* cannot be absolute'. The High Court further qualified the right to work. Article 22(1) which provides for the right to work, the judge said, is qualified by Article 11(1) which stipulates that the 'State shall, within the limits of its economic capacity, make adequate provisions for securing the right to work...' When the Court talks about the right being limited 'by its very nature', it is talking about the 'capitalist nature' of work and the 'economic capacity' of the state to secure the right is also determined by the capitalist system. Capitalism by definition needs an army of unemployed, the so-called industrial reserve army, by which it ensures control of wages, curbs labour militancy and upon which it can draw during booms, and to which it can throw out workers during busts.

The creation of 'free' labour is one side of the story. The other side of the story is the creation of land as capital. Just as labour, *by nature*, is not a commodity so land, *by nature*, is not capital. Hernando De Soto's mysterious discovery of 'dead capital' in non-Western countries worth trillions of dollars is a fantasy! Capital is not a thing. It is a relation. That is elementary political economy. Land becomes capital only under certain conditions and within certain relations of production and economic systems. The first condition is to establish a *monopoly* of access to land called ownership. The second condition is that it must be negotiable.

Ownership is not a relation between a person and a thing. It is a relation between a person and a person. Ownership of land means that the owner can exclude others from access to it. *My* right to own a piece of land means my right to exclude *you* from it. And when the state guarantees my right to own, it undertakes to exclude others from it by law, meaning disguised force.

Negotiability of land can only be assured by separating possession from ownership. That is done by issuing a title, a paper representation of my ownership. Armed with a title an owner can pass his right to own and his right to exclude any one else. Just as the state guarantees my ownership, so it enables the transfer of my ownership through a system of registration. BwanaPesa X sells a coffee farm in Meru at a profit to Moneybag Y in London who transfers it at a profit again to Goldenberg Z in Washington without any one of them having ever possessed or seen the farm while all of them have used land as capital. The state guarantees the title and the integrity of the sale through law backed by force. Law and force are like a ring to the finger. But before the Moneybags can have their land as capital, they must get rid of those who are using land as means of subsistence to feed their families. That process is also accomplished by force, naked force.

Opposing government proposals based on the recommendation of the East African Royal Commission (1953–55)[13] which had recommended *individualisation, registration* and *titling* of customary lands—something very similar to what De Soto was to say half a century later, albeit in a somewhat mystified language—walimu Nyerere wrote in 1958 that land 'is simply God's gift to His living creation'.[14] The article was significantly titled '*Mali ya Taifa*' or 'National Property'. A High Court judge in the case of *Tanganyika Cigarette Company,* which I shall discuss later, tells us that 'normally, in my view, it is the Government which is the custodian of national interest'. In bourgeois jurisprudence, 'nation' is often conflated with 'state' which means 'national property' meant 'state property'. That is exactly what the Land Ordinance of 1923 did,[15] as we shall see presently. That is what precisely Mwalimu was defending. Mwalimu was a politician, not a political economist. He did not explain how a gift of God became *property* in the first place, and *state* property, in the second place.

A nineteenth century French anarchist, Proudhon, roared, 'Property is theft'. Marx corrected him. Original property was not only theft but robbery, that is, stealing accompanied by force, as lawyers would define robbery. Marx called it *primitive accumulation*, in the sense of original accumulation.[16] In the process of primitive accumulation, which included the gruesome slave trade and ruthless colonialism, force was the dominant agency. Force was the midwife of the birth of capitalism: '... capitalism comes dripping from head to foot, from every pore, with blood and dirt'.[17] Original robbery accomplished, 'Freedom, Equality, Property and Bentham' (Marx's phrase) took over. Owners of commodity-capital and commodity-labour-power meet on the market and supposedly exchange equivalents as if they were *free* to do so; as if they were *equal*, as if both owned their *property*; and both driven by Benthamite self-interest. This is what Marx called 'expanded reproduction', meaning accumulation of capital by appropriating surplus value in the place of production, and realising it through the process of exchange of commodities on the market. Theoretically, this is supposed to be regulated by a purely economic process. In practice, of course, there is a lot of fraud, cheating, deception and forceful expropriation.

Rosa Luxemburg argued that the second aspect of accumulation, akin to primitive accumulation, relates to the relation between capitalist and non-capitalist modes of production, like subsistence and small producers as in the colonial situations.[18] In this, extra-economic force is central to exploitation. So, in Tanzania, like many other African countries, small peasant and pastoral producers were in substance exploited by colonial capital while formally still retaining ownership and control of their means of production, land. Supplying male semi-proletarian labour to plantations that were paid bachelor wages, while continuing food production by peasant woman, was a method of subsidising capital. Sale of cash crops on the world market at consistently unequal terms of trade was another mechanism of exploitation. Selling crops to marketing boards, both during colonialism and after independence, below international market prices, was the third method of exploitation. Peasant producers had no choice on whether or not to produce cash crops. By-laws required them to produce minimum acreages of cash and food crops. Failure to do so resulted in criminal sanctions—six month's imprisonment.

I explained earlier the two necessary conditions for land to become property and a commodity—*monopoly* of ownership and *negotiability* on the market. In both of these, force and law play a central law. In creating original conditions, force played a dominant role; in maintaining the conditions, law, or disguised force, predominates. The mix between law and force depends on historical and social circumstances. Extra-economic coercion continues to play a role in production in many economies of the periphery.[19] The two aspects of capital accumulation, one based on 'expanded reproduction' and the other on what was called 'primitive accumulation' and which David Harvey calls 'accumulation by dispossession' continue to jostle. We may also add, short-hand, that the politics of the two tendencies are 'nationalist' and 'imperialist'. In the post-independence period the local manifestation of the imperialist tendency was neo-colonialist. Since the Thatcherite-Reaganite days of the late-1970s imperialism has been re-christened globalisation and its local manifestation is called neoliberalism. Hugo Chavez of Venezuela even wages a war—albeit of words—against neoliberalism. I have digressed. Let me come back to land!

The Land Ordinance, that masterpiece of legal British draftsmanship, expropriated all lands of Tanganyika in two sections. Section 2 declared all lands, occupied or unoccupied, 'public lands'. Section 3 vested all public lands and interests over them under the control and subject to the disposition of the Governor to be held for the use and common benefit, direct or indirect, of the 'natives'.[20] In one fell swoop, the ultimate ownership and control of land was vested in the state and the state became what the Court of Appeal was to call some sixty years later, a 'superior landlord'.[21] Colonial courts were more circumspect. They did not call the colonial state a superior landlord but acted, behaved and decided as if it were one.

The Land Ordinance gave powers to the Governor to grant various interests on land, the largest of which was what came to be called the granted right of occupancy. A right of occupancy was defined to be a right to occupy and use land and,

with an eye on the Mandate, it included the 'title of a native or a native community lawfully using or occupying land in accordance with native law and custom'. These were christened by courts 'deemed rights of occupancy'. Plantation owners and immigrant communities were given granted rights of occupancy for a term of up to a maximum of 99 years. Their lands were surveyed and their titles were registered. Farmlands which had not been surveyed were 'owned' under offers of a right of occupancy, also registered, which were, to all intents and purposes, as good as granted rights of occupancy.

Indigenous producers and communities had customary titles, theoretically in perpetuity. They were not registered. The Ordinance was ambiguous on the legal status of customary titles. Courts filled in the ambiguity. In the case of *Muhena bin Said* (1949)[22] the High Court of Tanganyika under Sir Graham Paul, the Chief Justice, decided that customary titles and interests were 'permissive'. 'Natives' and 'native communities' possessed, occupied and used land with the implied permission of the Governor. When the colonial state wanted the peasants to grow cotton, coffee, cashew nuts for metropolitan markets or food for *manamba*, the Governor's permission would continue to subsist and the 'natives' would continue to use and occupy land. When the Governor wanted to alienate customary lands to settlers, immigrants or companies, he could do it without legal restraint. He would be deemed to have withdrawn his 'constructive' permission from the customary owner. In short, customary rights were *recognised* by law, thanks to the Mandate requirements, but not *protected* by it, thanks to courts in the service of the state.

To sum up then:

(i) The relationship between the state and the *grantee* of the right of occupancy was regulated and protected by law. His title was guaranteed against the whole world, as lawyers would say, including the state. The rights and obligations of the grantor, the state, and the grantee, the 'titleholder', were governed by civil law. 'Due process' under the Land Acquisition Ordinance was available to the grantee to challenge any adverse actions of the state, such as compulsory acquisition.

(ii) The relationship between a customary owner and the state was *administrative*, not legal. The obligations of the customary owner in relation to land use were enforced by criminal law through minimum acreage laws.

(iii) Relations among customary owners were governed by customary law. Relations among titled owners were governed by civil law. The registered title was superior to customary title. In case of conflict, customary owner gave way to an owner with the certificate.

The result was lack of security of tenure for customary owners. The fragility of customary title dogged the land tenure system. It was this system which Mwalimu defended in 1958 in his article *'Mali ya Taifa'*. Contrary to widespread belief even among some legal writers, land was *not* nationalised by socialist Mwalimu; it was nationalised by the colonial, capitalist state in 1923.

The land tenure system premised on *state ownership* and *insecure customary 'rights'* reflected and reinforced the system of accumulation by dispossession. It was this system which allowed *forced* villagisation of millions of people in the 1970s without changing the land tenure regime. This was the system which allowed town planners to extinguish customary rights in peri-urban areas simply by declaring them planning areas. It was this same system which enabled parastatals, like NAFCO (National Agriculture and Food Corporation), to alienate *forcefully* thousands of acres of land in Hanang to establish the wheat project with aid from Canada, in the process burning down huts, bulldozing houses, mowing crops and beating up men, women and children. Land was then *mali ya umma* and *umma*, the 'public', was represented by the state, as Mwalimu told us.

In the neoliberal era, the same system of land tenure allows the state to appropriate land, this time around not for parastatals, but for private investors. Under 'state nationalism', the state could dispossess a customary owner because land was '*mali ya umma*', public property. Under neoliberalism the private investor—a former Zimbabwean settler, a Boer farmer from South Africa or a US seed company experimenting on GMO—can dispossess a customary owner, *through* the state, because the state says it is in 'public interest'. And 'public interest', judges keep reminding us, is the same as state interest.

In the transition between 'state nationalism' and 'neoliberalism', as ideas of private property began to gain legitimacy, courts were inclined to give customary rights certain protection. But the process was very contradictory. Courts were not prepared to hold up customary rights *against* the state, or the private investor, who had obtained his right *through* the state. In the case of *Mulbadaw v. NAFCO*, where a registered *Ujamaa* village was challenging the alienation of land to a parastatal, the High Court decided in their favour on the ground that the 'due process' under the Land Acquisition Act had not been followed. The villagers entered their land to repossess it. NAFCO appealed and filed a stay of execution. The Chief Justice expeditiously granted it. The Field Force Unit also expeditiously evicted the villagers forcefully for the second time around. On appeal, the appellate judges agreed with the High Court that customary rights could not be acquired without following the processes under the Acquisition Act, but decided against the villagers on the ground that they had not produced evidence in the High Court to show that they were 'natives' and only 'natives' could claim customary rights.[23]

The dispute has not been resolved. Since then the Hanang people have filed several court cases through the Legal Aid Committee but most have failed because of various technical reasons. Meanwhile, a new element has appeared. NAFCO is a specified corporation to be privatised by the privatisation agency, the Parastatal Sector Reform Commission (PSRC). Peasants are demanding that the NAFCO land should be returned to them. The state is saying it is not in 'public interest' to do so. Public interest demands that they be privatised. Against NAFCO, peasants could complain to the president and the prime minister and the party and file human rights complaints to shame the state. But when the Hanang lands have been sold to a private investor, most probably a foreign company, where will they complain? To the market, I suppose!

To hold that customary lands could not be acquired without due process was a legal advance, although it did not have great practical consequence in that case or later. That advance was built on in another case of Akonaay[24] where the Court of Appeal, while reaffirming state ownership, held that customary title was property and therefore protected by Article 24

of the Constitution which provides the protection of private property and payment of fair compensation on compulsory acquisition. But what is fair compensation in the case of a customary title? It does not include value of land as such. Hitherto, the land law of Tanzania did not recognise that bare land has value and can be sold on the market. This is because the state was the landlord and it extracted ground rent from customary owners by other means, mainly, extra-economic coercion through or without law.[25] Furthermore, the state as the owner could alienate land and therefore the alienation of land, where the state deemed necessary, took place by force rather than the market. Disposition of land among private owners was restricted and required the consent of the state.

While courts began to take hesitant steps in the 1980s and 1990s in the direction of changing the status of customary titles, by and large they left the main premise of the land tenure regime, i.e. state ownership, intact. This was the basis on which was predicated the dispossession of customary owners. Vesting of radical title in the state was so fundamental that the government rejected the recommendation of the Land Commission, which I had the honour to chair, that village lands should be vested in the village assembly and should not be alienable even to the state or for 'public purpose' without consultation with, or consent of, the village assembly. The government took the position that land should continue to vest in the President as was established by the colonial government. The President as Head of State was responsible for development and therefore he should control land and be able to take it whenever required for public purpose. If the Land Commission's recommendation were accepted 'the Government will be turned into a beggar for land when required for development'. The crux of the Government position was:

> The Investment Promotion Policy will be impossible when the Government does not have a say in land matters. Land has to remain in the hands of the Government ... the Commission has not given enough reasons for the departure.[26]

The new Land Acts (No. 4 and 5 of 1999) passed in 1999 therefore maintained the ultimate ownership of the state. The new law also did away with the necessity of prior consent, thus making land negotiable on the market without hindrance. The crunch is of course to promote investment for which the state has to make land available, which means it has to appropriate the land of peasant and pastoral communities. The so-called Land Bank created by the Tanzanian Investment Centre is a case in point. Village lands are identified and set aside by administrative instructions. The then TIC's Director of Investment was reported in 2004: 'Over 2.5 million hectares of land in Tanzania have been surveyed and found suitable for investment.' The figure constitutes some 62.5 per cent of over four million hectares managed under the Tanzania Investment Centre (TIC). The remainder is categorised as land that has potential for investment where additional surveying or infrastructure is required.[27]

Only four years after its passing, the Land Act was amended as a result of the pressure from Bankers' Association. Bankers wanted the rules of foreclosure in case of default relaxed.[28] This was done. The Land (Amendment) Act, 2003 also for the first time permits sale of bare land. Previously, the price for land was supposed to be only for un-exhausted improvements, not for bare land.

These changes were made ostensibly to enable Tanzanian peasants to use their land as collateral. In reality, no commercial Bank would give a loan to smallholder owning five, ten or twenty acres, which is the lot of the peasantry. In practice, it means that the so-called investor for whom land is alienated by the state, or who has obtained a derivative title from a customary owner, would use his title as collateral to get a loan. (Under the Land Act a non-citizen can obtain a right of occupancy or a derivative title if it is for investment purposes.) Again this is an apt reflection of accumulation by dispossession. First, land is acquired at a throwaway price because it is for investment and that is in 'public interest'; secondly, that land is used to obtain loan from a bank which carries the deposits of Tanzanians, and thirdly, when profits are made from the land and 'capital' of Tanzanians, they are expatriated and accumulated in a sub-imperialist centre, such as South Africa, or in imperialist countries themselves. This is the heart of the neoliberal accumulation by dispossession.

This is also at the heart of De Soto's project called *Mkurabita* or Property and Small Business Formalisation Programme. When registration and formalisation of the assets of the poor is talked about, it is not the garages under the tree or *wamachingas*' kiosks that are being referred to. The central property or asset here is land, customary land. In that respect, the programme is a non-starter. It is virtually impossible to survey and demarcate and issue titles to millions of small holders; even if that were done, no commercial bank would offer loans to small holders. What it does mean though is to register large chunks of village land as a preparation for alienation. As experience shows, this can only be done through force, fraud, deception, corruption and so on, behind the backs of villagers.

I have barely sketched the neoliberal processes of accumulation by dispossession. We are witnessing many others. Selling off parastatals at ridiculously low prices is one. The privatisation of NBC and TTCL is a case in point. Using taxpayers' money to first refurbish a loss-making parastatal before privatising it is another. Commodification of land, education, health, water, energy, all of which we have witnessed, is third. Thus public goods are appropriated for private benefit where private capital is allowed to make profit out of public resources. The vicious debt-trap in which the creditor's loan is re-valued ever so often while the debtor's payment is devalued is the fourth example.

As public resources and state assets are swallowed up, workers and peasants are spat out to join the 'surplus population', as Malthus called them, or the poor, the less poor, the more poor, as poverty reduction strategy papers categorise them. Next, I will briefly give a few glimpses of the legal process of the creation of 'surplus population' or redundant workers.

Glimpses from labour law

In 1982, only seven years after the railway was handed over to the government, the Tanzania Zambia Railway Authority (TAZARA), declared some 300 workers redundant. Ninety-six percent of these were skilled craftsmen who had participated in the building of the railway and were trained on the job by Chinese experts. The Uhuru railway, as it was fondly called, was built in the heyday of post-independence nationalism and in the midst of Cold War politics. The British and the Americans were dead against Tanzania accepting a Chinese offer for build-

ing the railway but they were not prepared to build it themselves.[29]

On receiving redundancy letters, workers were shocked,

> *sisi ndiyo tulipendekezwa na Mabingwa wa Kichina kubakia makazini kutokana na uhodari wetu, uvumilivu na nidhamu juu ya kazi' lakini 'sasatunaona ajabu sisi wenyewe tena ndiyo tumekuwa mzigo wa kwanza kushushwa wakati wa uendeshaji wa Reli hiyo.*[30]

Spurned by the state trade union, JUWATA, which endorsed the management's decision, Hamisi Ally Ruhondo and his 115 fellow workers sought the assistance of the Legal Aid Committee of the University of Dar es Salaam.

In the 1980s, there was hardly any law on redundancy in the country. But that could not deter the *then* socially conscious and intellectually committed lawyers of the Legal Aid Committee. Creatively deploying a little used subsection of the *Security of Employment Act*, the Committee filed a Trade Dispute Inquiry in the Permanent Labour Tribunal, now called the Industrial Court of Tanzania. After a long drawn-out and contested trial, the workers obtained an award of reinstatement. Employing the services of a leading private lawyer in town, TAZARA instituted a judicial review in the High Court seeking an order of *certiorari* to quash the award. TAZARA's counsel argued that the Minister who had made the decision based on the report of the Tribunal exceeded his jurisdiction because he embarked on settling a trade dispute that did not exist.[31] Quoting the letter of JUWATA's Secretary General, TAZARA's lawyer forcefully submitted that the sole representative of all employees in Tanzania (section 4(1) of the JUWATA Act, 1979) had amicably settled the trade dispute. The judge agreed.

Undeterred, Hamisi Ally Ruhondo, his comrades and their lawyers marched on to the Court of Appeal.[32] On 26 March 1986, that is, 42 months after they had lost their jobs and livelihoods, TAZARA workers won their case in the highest court of the land. The Court of Appeal held that the statutory provision on consultation requires 'meaningful consultation' with the trade union branches at the place of work and before the decision on redundancy has been made. The Court restored the order of reinstatement. Since then Hamisi Ally Ruhondo has become a cause celébrè, being cited again and again in numerous cases of redundancy that were filed in the wake of neoliberal privatisation of the 1990s.

One such case happened almost twenty years later. As irony would have it, the case involved the workers of the Central Line built by the Germans in the first decade of the twentieth century during the heyday of colonialism. Since then it has always been owned, maintained and run by the state. In the post-Arusha Declaration period, it came under the management of a statutory corporation, the Tanzania Railways Corporation, which was one of the more than 400 parastatals destined to be privatised. Anticipating redundancy, as has been typical with the privatisation practice, and getting no response from the management or the Parastatal Sector Reform Commission (PSRC), the Tanzania Railway Union (TRAWU) filed a suit in the High Court through a private advocate.

In *Tanzania Railway Workers Union v. Tanzania Railways Corporation and PSRC,*[33] the Union wanted the court to declare that the defendants were bound to consult the trade union branches at places of work before any redundancy took place, and that any redundancy without prior consultation would be null and void. The Union also sought an order of injunction from the court restraining the defendants from carrying on the redundancy exercise. Pending the hearing and determination of the case, the Union applied for an interim injunction restraining the TRC from effecting any redundancy. The real bone of contention was of course the interim injunction because as the defendants' lawyers asserted and the court realised, granting an interim injunction would stall the privatisation process. Just around this time, President Mkapa, while on a visit to Kampala, was reported to have tersely commented that he would have a law enacted to abolish injunctions because they were obstructing development, meaning privatisation![34] The President's anger could not have gone unnoticed by the judges. In a candidly undisguised ruling, uncharacteristic of courts, the judge said:

> I am of the opinion that there will be a lot greater hardship to the respondents and mischief to society generally, if the temporary injunction is granted than there would be to the applicant's members if it is refused. Needless to emphasise, TRC is a publicly-owned enterprise. Those who run it, and, and who are now opposing this application, are not doing so, i.e. opposing the application, for their ... own personal interests or benefits. They are doing so on behalf of the public or society at large. It is the public or society therefore which will suffer if this application is granted. The whole declared policy of privatisation, which of course, may not be commending itself to all, will be thwarted. This will not be in the public interest. I find and hold on this principle therefore for the respondents and against the applicant.

The application for temporary injunction was dismissed. Eventually, the suit itself was withdrawn by the Union. Obviously it would not have made sense to continue.

There have been many more cases on redundancy but none of them has succeeded, particularly those that were seeking injunctions. Judges of both the High Court and the Court of Appeal have shown greater impatience and less sympathy towards the workers, seeking to stall the process of privatisation or demanding awards as redundancy payments.

In the case of *COTWU (T)-OTTU Union and another v. Hon. Iddi Simba, Minister of Industries and Trade & 7 Others*[35] the workers of the National Shipping Company, NASACO, through their trade union, were seeking an order of mandamus obliging the minister not to renew the licenses of 29 private companies. The workers' position was that the minister for trade had granted the licenses contrary to the government policy as embodied in Cabinet Paper no. 5 of 1997. The Cabinet paper stipulated a number of steps in the process of liberalising the shipping trade. The thrust of the Cabinet paper was that the government would retain at least 40 percent of the shares and that first preference in the sale of shares would be given to NASACO employees and citizens of Tanzania, and that private people would not be given licenses until a proper regulatory framework had been put in place. Contrary to this policy, the incumbent minister issued shipping licenses to some 29 private companies. Pending hearing of the application for leave to apply for prerogative orders, the workers applied for a temporary injunction to restrain the minister from renewing the licenses as and when they fell due for renewal.

In a judgment, full of rhetorical questions, the judge denied the application on three major grounds. One, that the so-called Cabinet Directive had neither 'official head, nor official tail'; it could have easily been prepared in Manzese or Mchafukoge. Two, that the respondents, and public interest, would suffer irreparable injury rather than the applicants and, finally, that the companies whose licenses were sought to be restrained were not a party to the action.

Perhaps the most interesting and explicit remarks were made in the context of 'public interest'. This deserves to be quoted at some length for its vehemence:

> We do not need lecturing, that the Port, is not only a gateway for Tanzania Mainland, but also serves Uganda, Rwanda, Burundi, and areas of Zaire. How would the economy be affected? [if the licenses are not renewed] Under such circumstances, to say that, it is only the workers who are likely to suffer injury, and that the balance of convenience is in their favour, is sheer murderous selfishness, forgetting millions of Tanzanians, who benefit by the revenue that Government gets from taxes at the port, forgetting millions of Ugandans, Burundi, Rwanda etc. ...
>
> The temporary injunction, should not therefore be mechanically granted, the interest of society should be given serious weight. In this case, injunction if given will cause injury, economic loss, to not only our Country, but too, to nations neighbouring us and I cannot think of granting it, for it can neither be said that the applicants can suffer irreparable injury more as compared with the one to be suffered by millions of people, nor does the balance of convenience favour them.

In actual fact, NASACO was one of the most profitable parastatals and its premature restructuring and privatisation led to the 'millions of Tanzanians' suffering continuous losses from which they have not recovered to this day. It is not unusual for the courts to deploy concepts like 'public interest' or 'national interest' or 'interest of society' when it suits the conclusion they want to arrive at, while being very technical in other cases. In one of the early cases, the trade union, OTTU, directly challenged the privatisation of the profit-making Tanzania Cigarette Company (TCC) by filing a suit for declaration against the Parastatal Sector Reform Commission.[36] The Government was proposing to sell the shares of the Cigarette Company to a foreign multinational, R. J. Reynolds. OTTU, on behalf of workers, sought a declaration that the sale of shares was prejudicial to national interest and contrary to Government and CCM policies. It applied for a temporary injunction pending hearing of the suit. PSRC's response was that the trade union or employees did not have any proprietary interest in the shares and therefore had no *locus standi* to file the suit. The judge, denying injunction, observed:

> The plaintiff says that he can block the respondent's intended measure on grounds of national interest and public policy. But normally, in my view, it is the Government which is the custodian of national interest. As to whether employees, or individuals, can stand up, as against their own Government, in defence of national interest is a matter which, again, requires investigation and I cannot here say that the applicant has such a clear case, based on national interest and public policy, as would warrant the issuing of an injunctive relief pending the determination of the suit.

Professor Griffith in his book *The Politics of the Judiciary* sums it well when he says that the concept of the interests of whole society is made on a political assumption that the interests of various classes in the society are homogenous, which is not the case. He continues:

> From all this flows that view of the public interest which is shown in judicial attitudes such as tenderness towards private property and dislike of trade unions, strong adherence to the maintenance of order, distaste for minority opinions, demonstrations and protests, support for governmental secrecy, concern for the preservation of the moral and social behaviour to which it is accustomed, and the rest.[37]

As the privatisation exercise advanced, cases regarding redundancy have multiplied. In more recent judgments the Court of Appeal has gone even further, not only to narrow the scope of consultation but divest itself of the very jurisdiction to hear redundancy cases. In *Nurdin Ibrahim & 147 Others v. The Director General of Tanzania Harbours Authority*,[38] the Court of Appeal accepted that consultation with the Local Joint Industrial Committee was sufficient because it had 20 members of the Field Branch.

In another decision delivered two years ago the Court of Appeal decided that all disputes, whether contractual or otherwise, including, redundancy, between an employee, or employees, and the employer are trade disputes and therefore only the Industrial Court has original jurisdiction.[39] The High Court cannot entertain them. The effect of this judgment is to deny workers access to the High Court in the first instance and, therefore, various remedies in equity such as injunctions and damages.

Immediately after independence, a number of pieces of legislation were passed restricting the right of an employer to dismiss a worker. The chief among these was the Security of Employment Act, which provided a procedure to be followed for imposing a disciplinary penalty. It also created Conciliation Boards with power to hear complaints and order reinstatement in case it found the dismissal to be unlawful or the termination to be unfair. The Conciliation Board could order reinstatement in which case the dismissed employee had to be reinstated and paid the arrears of wages for the time that the employee was out of employment.

The principle that a worker who was out of employment because of the employer's unlawful or unfair act could not be denied arrears of wages was accepted by the courts through a number of cases fought by the Legal Aid Committee.[40] These achievements, so to speak, have been reversed by the recent decision of the Court of Appeal in the case of *Pius Sangali & Others v. Tanzania Portland Cement Co. Ltd.* In that case, without even referring to its own previous decisions, the Court decided that the employer had discretion to reinstate a worker or not and also discretion to pay arrears of wages. Thus the Courts had nibbled away at the right to job-security by the time the new labour legislation came to strike the last blow.

The Employment and Labour Relations Act 2004, and the Labour Institutions Act 2004, were drafted by a South African consultant and financed by Denmark. There was supposedly a tripartite Task Force to consult and guide the process serviced by the Legal Consultancy Services Committee of the Faculty of Law. The new laws are based on the premise that

'law should provide a minimum of employment protection with maximum flexibility', to quote the report of the Task Force.[41] Thus, for instance, there is no procedure for termination except an elaborate Code of Good Practice on termination which is not legally binding. In effect, the restrictions imposed on termination of employment by the Security of Employment Act have been removed. As one commentator put it, 'Employment is no longer necessarily full-time or life long'.[42] This is a far cry from the days when one young Kenyan lawyer trained in the Faculty of Law of this University Dar es Salaam tried to argue before a constitutional court in his country that employment was covered by the right of protection of property since a worker had a proprietary right in employment. Courts, of course, jealously guard the right to property but they would have no patience with any one arguing that there is 'right to work' and that right to life includes right to livelihood, which is employment.

Neoliberal economists say there should be labour mobility in the economy. Liberal lawyers say workers should have the right to move from one employer to another because they are not slaves. Capitalists say it is not their business to provide jobs. The state says that it is not in business, therefore, it cannot provide jobs; it can only facilitate job-seeking. So, it establishes Labour Exchange Bureau with aid from donors. Where unemployment is rampant, and unemployment inherent in the system, *labour mobility translates itself into the 'right' of a worker to move from employment to unemployment via a Labour Exchange Bureau.*

As the state is transformed from being 'nationalist' to becoming 'neoliberal', its role has changed from one of legislating job-security to one of facilitating job-seeking.

The new labour laws are elaborate and this is no place to go into details. But, interestingly, while employment is not regulated or protected the right to strike is severely regulated. The colonial concept of prohibiting strikes in essential services has been brought back. For other strikes, there are prescribed procedures to be followed. Whereas, as I showed earlier, Courts consistently refused to grant injunctions to workers restraining employers from snatching away their livelihoods, the Employment and Labour Relations Act gives powers to the Labour Division of the High Court to issue injunctions to restrain any person from participating in an unlawful strike or lockout or engaging in any prohibited conduct (section 84). The Court has powers to order damages for any loss attributable to an unlawful strike or conduct. Courts will also presumably have common law powers to sequestrate the property of a trade union, for breaching an order of injunction. It was the combination of injunction, damages and threats of sequestration of property that Margaret Thatcher used in the 1980s to break the back of the militant miners' union in Britain. In a situation, where trade unions are not strong, or do not have a long history of struggle, the consequences are likely to be worse if labour is subjected to the vagaries of the market and the whims of the employers without any statutory protection. The neoliberal language about labour and capital being social partners is as spurious and meaningless as the term international community is to describe imperialism.

I could go on and on but I will not. It is time to turn the search light onto ourselves, the lawyers. What has been our role in this process of *mageuzi* from 'state nationalism' to 'neoliberalism'?

Lawyers in neoliberalism

Neoliberalism generates a transnational legal intelligentsia to serve and oil it. Globalisation globalises corporate capital. The neoliberal elite globalises the so-called 'rule of law', à la Thatcher. This is not the 'rule of law' embedded in liberal political values of the Enlightenment period. This is the 'rule of law', firmly rooted in the exigencies of the 'rule of capital' in the service of a corporatocracy. As Cutler says the 'law that is being globalized is essentially American or Anglo-American in origin, promoting the values of neoliberal regulatory orders'. Central to these values is the expansion and protection of property relations and private appropriation of surplus value.[43]

Thus the legal elite is involved as consultants to draft legislation on privatisation; setting up enabling institutional frameworks in which corporate capital can function without let or hindrance. It is involved in drafting contracts to enable corporate capital to exploit underground minerals and overground bio-resources. It is involved in facilitating commodification of education and health; water and energy; customary land and traditional medicinal plants. It is involved in drafting intellectual property laws to protect modified seed plasma and herbal medicines, the knowledge of which is looted from peasants and pastoralists of the Fourth World. *Primitive accumulation*!

Laptop consultants fly from capital city to capital city; conduct a week or two of 'rapid rural appraisals', churn out policy papers, make Power-Point presentations to stakeholder workshops, where state policies are made and endorsed. The transnational legal intelligentsia is also divided between the First and the Fourth Worlds. The legal elite is based in the First World; the legal 'masses' or 'messengers' are based in the Fourth World. The international consultant is paid five times more than a local consultant and ten times more than a local civil servant. Research and local analysis is done by the 'legal messenger'; the international consultant does the Power-Point presentation and expounds on the norms of 'international best practice'. A local lawyer tells me that if he wants to get a tender he has to associate with a Northern law firm. A number of local law firms are thus associated.

Consultancy gobbles up billions of dollars annually. Action Aid says almost one-fifth of total aid goes to pay consultants and so-called technical experts. Donors employ 100,000 technical experts in Africa.[44] Tanzania pays US$500 million annually to foreign consultants[45] more than three times what it received annually in direct foreign investment between 1994 and 1999.[46]

Consultancy is touted as one of the main functions of our University in the new Draft Charter. In the 1970s, the mission of the Faculty of Law was to produce society-conscious lawyers using the historical and socioeconomic method. We did Legal Aid to assist workers, peasants, women and children. Now we are chasing the phantom of producing corporate lawyers. In terms of the Draft Charter, the University shall advance its objects 'in close association with industry and commerce'.

Corporatisation of the university is part of the neoliberal ideological attack on critical thinking, on intellectuals who would 'Speak Truth to Power', to use the words of Edward Said.[47] It undermines the university as a critical site of knowledge, as a mirror of society. No doubt, temptations are great and none of us is immune.

As I approach the end of my oration, allow me to be a little nostalgic, to do a little soul-searching. At 60, I guess, you will also permit me to be a little immodest. In 1968, we in USARF launched a cyclostyled journal called *Cheche*, named after Nkrumah's *The Spark* and Lenin's *Iskra*. Its first editors were three fine young persons, Zakia Meghji, Henry Mapolu and Karim Hirji. The first issue carried my *The Educated Barbarians*. Reading it today, one feels a little embarrassed. In twelve pages it has some 20 footnotes, carrying half a page text in them with numerous quotes from Baran, Nkrumah, Fanon, Castro and so on. No 'respectable' publisher would accept it but then, at that time, we did not care. We did not write for publishing. We wrote as a part of ideological struggles. Clumsy and crude in style and somewhat mechanistic in thinking, it surely is. But *The Educated Barbarians* unmistakably exuberates anger, passion and commitment. We were in the period of radical nationalism called 'socialism'. Young people were angry at the world as it was, and intellectually committed to understand it better, and passionate to change it for the better. We discussed Fanon while we worked in cashew nut farms around the University, taught literacy classes in Mlalakuwa based on Paulo Freire's *Pedagogy of the Oppressed*, built our own shelters, called houses, through self-help. Comrade Joe's (Professor Kanywanyi) stands testimony to it.

Today, perhaps, my writings may be more scholarly, more intellectually refined. I can't say. I am not supposed to say. Only my peers are allowed to evaluate. You need to be an Ali Mazrui to self-evaluate! But whatever be the intellectual verdict on them, I can say one thing about them, and no one can prevent me from saying it, these writings are not *passionate* like the 'educated barbarians'. Maybe I am more *educated* now, but less moved by injustice, and therefore, perhaps, more *barbaric*! Once, reading a draft of my article recently, my daughter quipped, *'papa, you are not angry enough'*. And it is not a matter of age; one doesn't grow out of commitment, passion and devotion because of age! We have to look for explanation, not justification; and explanation lies elsewhere.

Neoliberalism has taken its toll and the language of consultancy has displaced and replaced the language of conscience and commitment. As individuals, we can only agonise and gradually forget even to diagnose the ills of our society. 'Organise, don't agonise', my friend Chachage says, and goes back to his desk to write *Makuadi wa Soko Huria.* That, too, we need to do. It is better than flying off to Johannesburg to attend another conference on how to implement the imperialist-driven NEPAD.

I don't know if our world is better than it was thirty years ago. But I do know that neither our country nor our continent is. Structural Adjustment Programmes of the 1980s destroyed the little achievements in education, health, life-expectancy, and literacy that we had made during the nationalist period. Neoliberal policies of the last ten years have destroyed the small industrial sector—textiles, oil, leather, steel, farm implements, cashew nut factories—which had been built during the period of import-substitution. Most important of all, we have lost the respect, dignity and humanity and the right to think for ourselves that independence represented. The large majority of our people, workers and peasants, as the Arusha Declaration dignified them, have been transformed into 'the nameless poor'.

Workers and peasants who were supposed to be the makers of history and motors of development have become the subject-matter of poverty reduction strategy papers (PRSPs). The private sector is the engine of growth, we are chastised day in day out, and history has ended, we are lectured. 'Carbon' copies of PRSPs are produced in country after country by laptop consultants. The poverty reduction strategies are a condition precedent on getting debt reduction. Meanwhile, debt rises; it used to be around US$8 billion, now it is over US$9 billion. Paying debts is like chasing a mirage! The goal-post keeps shifting.

Meanwhile, funded by millions of dollars of further aid, we hire a De Soto to tell us that we are too stupid to recognise 'the mystery of capital' and understand 'why capitalism triumphs in the West and fails everywhere else'. We are sitting on trillions of dollars of 'dead capital'. We have to breathe legal life into these 'dead' assets and lo! behold, we'll all be as capitalist as the West. The question is who would have the trillions of dollars at the end of the process, and who would be dead. History teaches us that the trillions accumulate in the capitalist centre leaving behind the dead, the mutilated, the malnourished, the divided and the conflict ridden, in the Periphery.

In the 1980s, financed by Mahatir Mohammed of Malaysia, Mwalimu Nyerere chaired the South Commission to look into how the capitalist West rides roughshod over the Rest, (my words, their message). Among other things, it found that the world was skewed and lop-sided and divided and suffered from unequal power relations. And it found that this was the result both of the history of colonialism and the contemporary unequal world order. In its restrained language it said: 'The widening disparities between South and North are attributable not merely to differences in economic progress, but also to an enlargement of the North's power vis-à-vis the rest of the world'.[48] The South Commission found that there was a reverse process of flow of resources from the poor South to the rich North. '… [I]n recent years', it said, 'developing countries have had to make net debt-related transfers of nearly $40 billion per year to developed countries, and there is little prospect of a reversal of this perverse flow of capital from poor to rich'.[49]

In the year 2000, President Mkapa was appointed a member of Tony Blair's Africa Commission on poverty. In two sentences the Commission dismissed Africa's 50 year history thus:

Africa's history over the last fifty years has been blighted by two areas of weakness. These have been *capacity*—the ability to design and deliver policies; and *accountability*—how well a state answers to its people (p. 14).

So, Afr don't have the capacity to think and African states don't have the capacity to design policies. They are 'blighted' by lack of accountability which is a code word for legendry 'corruption' and the so-called 'bad governance'.

In the 1960s, the West Germans were asked to pack and go and take with them all their aid baggage because they were using aid to pressurise Tanzania not to accord any diplomatic status to the East Germans. Today 'good governance' demands that we pass anti-terrorism laws, even at the risk of dividing our people, because that is the foreign policy of some bushy bully of the world.

Yes, indeed, the world has changed. Yes, indeed, times have changed. Yes, indeed, we have a new form of imperialism called globalisation. Yes, indeed we must

change. The question is change in what direction, for whose benefit and in whose interest. Edward Said says the basic question for the intellectual is: 'how does one speak the truth? What truth? For whom and where?'[50] The basic question today is whether this neoliberal, Thatcherite counter-revolution is for the benefit of the masses or the narrow neo-liberal elites? No social, economic and political change can be described, let alone analysed and understood, except from the standpoint of a particular class, a particular people, a particular nation and, universally, from the standpoint of humanity. And, certainly, the present cannot be understood and changed for the better without understanding the past better. No intellectual worth her name can condone bestiality, which is what imperialism is.

For us the lawyers, the least we can do is to ask, in the paraphrased words of Edward Said: How do we lawyers address authority/power: as professional supplicants, or as its unrewarded, amateurish conscience?

Notes

1. In De Soto (2000), *The Mystery of Capital: Why Capitalism triumphs in the West and fails everywhere else*, London: Transworld Publishers, Black Swan Edition.
2. I am told, but I am not sure, that President Mkapa made *The Mystery of Capital* compulsory reading for his ministers!
3. See Harvey (2005), *A Brief History of Neoliberalism*, Oxford: Oxford University Press, passim. I am grateful to Ng'wanza Kamata for making a copy available to me.
4. De Soto's outfit, the Institute of Liberal Democracy, is involved in a million-dollar project in Tanzania to assess and create the legal framework for the registration of the 'assets of the poor'. In the typical Tanzanian style the project has been given a Swahili acronym, *Mkurabita*.
5. De Soto, op cit. p.3.
6. Ibid, p. 209.
7. This is a reference to the famous novel by Daniel Defoe. There is perhaps no better fictional representation of colonial/capitalist processes than this work.
8. Based on my (1986) *Law, State and the Working Class in Tanzania*, London: Heinemann.
9. Ibid. p. 11.
10. *Manamba* plural of *namba* (number) since the migrant labourer was identified by number, not name.
11. Shivji op cit. p. 9.
12. Civil Appeal No. 42 of 1992, Court of Appeal at Dar es Salaam, unreported.
13. Cmnd. 9475.
14. Nyerere (1966), *Freedom and Unity*, Oxford: OUP, p. 53.
15. The German Decrees of 1895 and 1896 were very clear: 'Excepting where ownership can be shown by private or judicial persons ... all land in German East Africa shall be regarded as unowned. Ownership to such land is vested in the Empire'. Because Britain was a trustee under the Mandate the language could not be as explicit but the practical and legal effect was virtually the same.
16. Marx, *Capital*, vol. 1, Part VIII.
17. Ibid. p. 112.
18. Rosa Luxembourg (1963), *The Accumulation of Capital*, London: Routledge.
19. Mahmood Mamdani (1987), 'Contradictory Class Perspectives on the Question of Democracy: the Case of Uganda', in Peter Anyang' Nyong'o, ed., *Popular Struggles for Democracy in Africa*, London: Zed, pp.78-93.
20. See, generally, Tanzania, United Republic of (1994), *Report of the Presidential Commission of Enquiry into Land Matters*, Uppsala: Scandinavian Institute of African Studies, chapter 1. The discussion on land is based generally on my (1998) *Not Yet Democracy: Reforming Land Tenure in Tanzania*, London & Dar es Salaam: IIED & Faculty of Law & Hakiardhi.
21. Nyagaswa v. Nyirabu, Civil Appeal No. 14 of 1985, Court of Appeal at Dar es Salaam, unreported.
22. Muhena bin Said v. Registrar of Titles (1949) 16 E.A.C.A. 79.
23. See Shivji & Tenga, 'Ujamaa in Court', *Africa Events*, December 1985.
24. Attorney General v. Lohay Akonaay & Another, (Court of Appeal) [1995] 2 LRC 399.
25. For this see Shivji (1987) ''The Roots of Agrarian Crisis in Tanzania — A Theoretical Perspective', *Eastern African Social Science Research Review*, vol. III, no.1, pp. 111-134
26. Quoted in Shivji 1998, p. 81.
27. *The Citizen*, 10 September 2004.
28. Tanzania Bankers Association, April 2001, Submission of the Tanzania Bankers Association on Proposed Amendments to the Land Act (No. 4), 1999.
29. Public Records Office, UK, Prem 13/614: 'Internal Situation: Alleged Western Plot against Tanzania: Nov. 1964-Nov.1965'.
30. 'We had been recommended by the Chinese experts to continue in employment because of our skills, patience and discipline at work; now we are surprised that we have become a burden to be disposed off in the running of the Railway'. [Translation mine] Quoted in *Mfanyakazi* ('The Worker'), 4 December 1982.
31. Tanzania Zambia Railway Authority v. Hamisi Ally Ruhondo & 115 Others, Misc. Civil Cause No. 7 of 1985, High Court at Dar es Salaam, unreported.
32. Hamisi Ally Ruhondo & 115 Others v. Tanzania Zambia Railway Authority, Court of Appeal at Dar es Salaam, Civil Appeal No. 1 of 1986, unreported.
33. Civil Case No. 190 of 2002, High Court at Dar es Salaam, unreported. I am grateful to Mr Kashumbugu for assisting in tracing this case. I also thank Mr Wilberforce of the High Court library for helping in tracing the ruling.
34. Reported in newspapers, citation misplaced, Lawyers on both sides, Mr Kashumbugu and Mr Kilindu, who appeared on opposite side remember this.
35. Misc. Civil Cause No. 100 of 1999, High Court at Dar es Salaam, unreported.
36. The Secretary General of OTTU v. The Presidential Parastatal Sector Reform Commission, Civil Case No. 145 of 1995, High Court at Dar es Salaam, unreported.
37. Ibid.
38. Civil Appeal No. 47 of 2001, Court of Appeal at Dar es Salaam, unreported.
39. Tambueni Abdallah & 89 Others v. National Social Security Fund, Court of Appeal at Dar es Salaam, unreported.
40. See, for instance, Wendelin Ludger v. Tanzania Harbours Authority, High Court at Dar es Salaam, Civil Appeal No. 8 of 1986, unreported and Esso v. Kaijage, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 6 of 1989, unreported. See, also, Kazibure v. Tanzania Post and Telecommunications, High Court at Dar es Salaam, Misc. Civil Cause No. 94 of 1985, unreported.
41. Ministry of Labour, *Youth Development and Sports*, First Report of the Task Force on Labour Law Reform, June 2003, p. ii.
42. C. Mtaki, 'Employment and Labour Relations Act, 2004: Employment Standards', p. 11. Paper prepared for the Seminar for

NHC's Board of Directors and Management Staff, 13-15 December 2004, Livingstone Club, Bagamoyo.

43. A. Claire Cutler, 'Historical Materialism, globalization, and law: competing conceptions of property', in Mark Rupert and Hazel Smith, eds., 2002, *Historical Materialism and Globalization*, London: Routledge.
44. Action Aid International (2005), *Real Aid: An Agenda for Making Aid Work*, p. 22.
45. Dr Ali Mohamed Shein, Vice President, *The Guardian*, 10 June 2006.
46. Tanzania Investment Centre, Tanzania Investor, http://www.tic.co.tz/Ipa_printinformation.asp
47. Edward W. Said (1993), *Representations of the Intellectual*, The 1993 Reith Lectures, London: Vintage.
48. The South Commission (1990), *The Challenge to the South*, Oxford: Oxford University Press, p. 3.
49. Ibid. p. 19.
50. Said 1993, op cit. p. 65.