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Book Review

Abdon Rwegasira. Land as a Human Right: History of Land Law and Practice in Tanzania

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Notwithstanding the conspicuous albeit inadvertent editorial oversight in not providing for the Chapter titles in the Table of Contents, the author, in nine captivating Chapters of the Four Hundred and Twelve page book, very aptly documents the history of land tenure in Tanzania, linking it with human rights discourse. In the process of doing this, the author has compiled unpublished materials and some court cases that were loosely found in various outlets but not accessible to the general public.

The author sets the ball rolling in an exposition of the administration of land law viewed from human rights lens at the Global level (Boot, 2017; Shivji, 1996) in Chapter I. The author sets his philosophical basis for his thesis on the concept of property rights as elaborated by Aristotle, Locke and Rousseau, each providing insights on the issue of private versus communal rights to property. The author also discusses, illustrating his arguments with case law, the acceptability of the concept of equity as the basis of communal property rights as opposed to individual

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ownership of land reflected in the customary law of most communities in Tanzania.

The colonial mission on its conquest of land in Africa and the resultant border (land) conflicts that were a product of the re-drawing of boundaries of the colonies manifested in wars and cases at the International Court of Justice (ICJ) is also powerfully presented. The author does this by citing relevant and applicable international legal instruments and decisions of the ICJ.

The author seems to have succeeded in evidently tracing the reforms of land tenure and related human rights protection in Tanzania from a historical socio-economic context in Chapter 2. The pre-colonial land tenure regime (whose elements are largely still present today) among local communities is also discussed and is a good addition to the body of literature on this realm. The discussion of the customary tenure system of local communities in Tanzania and its link with human rights preservation is certainly critical in helping to chart out strategies being put in place by the government in its attempt to address the persistent cries for reform in land tenure rights by local community members.

The contentious issues of the acquisition of land and compensation thereof are covered in Chapter 3 where the author also discusses the procedure for the acquisition and allocation of land under the law and instances that can give rise to revocation. He does this by citing and amplifying the provisions of the applicable legislative enactments

supported with authoritative court cases. This Chapter should be discussed in concert with Chapter 8 which focuses primarily on compensation for acquisition of land. The author attributes incidents of double allocation of land, which he argues are now few, to negligence and fraud on the part of land officers. Important highlights of the land law provisions and related legislation on purchase of land, adverse possession and co-occupancy are also covered in this Chapter. The other contentious issue of inheritance (also addressed at length in Chapter 5) is vital in a discussion of land in the context of human rights and is adequately addressed by the author.

In Chapter 6 the author address issues of women and land rights. The author's focus only on women in this Chapter is noticeable, especially where the human rights discourse on land issues has often placed women's right to land in the wider context of the human rights of marginalized communities (including children, persons with disabilities and resource dependent communities whose livelihoods entirely depend on land). The silence on the part of the author on taking a different approach (and consequently not adequately covering this group holistically) is also evident.

The author's coverage of indigenous communities in the context of the theme in Chapter 7 is also commendable. However, we should point out here that this coverage seems to be skewed towards only the Maasai, without a

corresponding focus on other communities which fall in the indigenous peoples category in the country such as the *Tindiga*, *Iraqw, Sandawe* and *Hadzabe* whose land rights have also been infringed upon as a result of economic and natural resources preservation development projects that have increasingly moved stealthily onto their ancestral lands.

Dispute settlement, litigation and the role of courts in overseeing land rights in the context of the human rights discourse is clearly highlighted in the last Chapter. The sample Forms and other basic documents provided for by the author in the Appendix offers a useful guide for those engaged in transactions on land, such as contracts for sale of land, leases and mortgages.

The recent amendments to the Land Act by way of the Miscellaneous Amendments legislation passed in 2017 have not been addressed by the author for the obvious reason that these have come long after the book was published. The challenge is for the author to include these and others reforms that have since emerged and have a bearing on the theme of the book in a revised edition of the book, at a later stage. In the meantime, the reader would have to make a follow-up on his/her own on how these have impacted on the recommendations and conclusions drawn by the author.

It is clear that the style of writing that the author has employed brings to the fore seemingly technical issues in relation to the law regulating land tenure in Tanzania that the author presents in a relatively simple, non-legal language. This is a task that most authors of legal texts have not fully managed to attain. In the context of Tanzania, however, the challenge still remains especially for those who have suffered partly as a result of the technical legalese in the land law. These include local community members, including indigenous communities) who have grappled with tenure rights in the rural areas without much help from sympathetic legal texts and expert whose legal discourse if often opaque. Despite the author's spirited attempt to use non-legalese, this group would certainly not benefit much from the publication. A translation of the book in a user friendly manner with a view to reaching out to this group would certainly be useful. In the meantime, the law student and legal practitioner (the other targeted

audience) should make concerted efforts and endeavour to translate the simple English language used by the author into Kiswahili so as to be able to be accessible to the broader section of local community members in the rural areas.

The publication is otherwise, very welcome, timely and a new addition to the existing body of literature for the researcher focusing on human rights and tenure issues, in general; as well as a must read for the law student and members of the Bar and the Bench, in particular.

References

Boot, E. (2017). *Human Duties and the Limits of Human Rights Discourse*. Leiden: Springer International Publishing.

Shivji, I.G. (1996). Constructing a new rights regime: Promises, problems and prospects. *Utafiti* 3(1), 1-46.