WOMEN NGOS AND THE POLICY PROCESS IN TANZANIA: THE CASE OF THE LAND ACT OF 1999

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ABSTRACT The economic reforms that have taken place in many African countries have necessarily led to political reforms as well. The re-introduction of multiparty politics in Tanzania opened up the political space through political liberalization and led to other developments including the founding of NGOs specifically those that cater to women's needs. In Tanzania, women created NGOs that have seen several legal and constitutional changes in their favor. Tanzania's Land Act is one such legislation. The politics involved in the search for influencing policy outputs in gender-imbalanced society through gender-specific NGOs is the main point of discussion in this paper.

Key Words: Tanzania; Women NGOs; 1999 Land act; 1996 Land bill; 1995 Land policy.

INTRODUCTION

Gender has nowadays become one of the major tools to classify population in societies. Much of it may seem natural, but there is more to it than the sexual divide that exists between men and women. There is much imbalance in many aspects pertaining to men and women that has been created not by nature but by social constructions. Unfortunately, the tilt has in many cases been against women. Statisticians – whether from the World Bank, national governments or locally-based NGOs – use this classification in order to highlight the extent to which side of the sexual divide one belongs to can be advantageous or disadvantageous in relation to access to resources, division of labor, or participation in politics. As most of us are aware, the female gender has been disadvantaged in most aspects. However, women have decided to organize and address the situation in Tanzania. They have now realized that they have been victims of unjust socio-political systems and that they have to fight back.

The 1975 World Women Conference in Mexico, followed by others in Copenhagen (1980), Nairobi (1985), and Beijing (1995) are indicative of the effort that women have decided to put into the attempt to regain their rights. The Mexico meeting set minimum targets to be attained in five years in areas of securing equal access to such important resources as education, political participation, employment opportunities, and access to health services, or housing. In the second Women Conference, the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted and most UN member countries (165 out of 189) are now signatories. In the meeting participants raised many issues such as the need for measures to ensure women the

rights such as right to property, to inheritance and to child custody. In the third conference participants acknowledged the fact that the push for gender equality had been recognized and that the effort should be to set strategies for the realization of this equality. Key in these strategies was the call for national governments to amend constitutional clauses that went against the interests of women, or add some that would guarantee their rights. The fourth meeting in Beijing refocused the effort on the concept of gender itself, noting that societies need to be restructured to do away with the constructions that have, finally led to gender differences and imbalance. The message was that women should take their position in society as equal partners, not second-rate participants. In this meeting, areas of critical concern were also listed. These included women and poverty, education and training, employment opportunities, violence against women, women and armed conflict, women trafficking, etc. There have been other fora used by women internationally and nationally. Women have also used the non-government channels to try and remedy the situation.

In the developing countries, however, the processes towards the targets identified in these fora are still of a low profile compared to their developed countries counterparts. In the former countries, the rural women are still left far behind as compared to urban women. Even among the urban women, there are divides by levels of education, income, and levels of participation in governmental matters (Whitehead, 1992: 57; Bujra, 1986: 117, for Tanzania, Mascarenhas & Mbilinyi, 1983: 25). In the developing world, Africa in particular, gender inequality is entrenched in the patriarchal systems in which masculinity is contrasted with femininity and confer the former superiority, especially in decision making. As it is, decision makers are usually the power holders. Women have, therefore, been subjected to a subordinate position in many societies as far as power distribution is concerned. This affects all other aspects including division of labor and the distribution of resources. Furthermore, in these societies, the body of a woman has also been an object for use and of abuse. If one looks at the status of women with regard to such variables as the procedure for the institutionalization of marriage, power within marriage, control of sexuality and fertility, control of wealth and income and employment opportunities and education, one finds that women are extremely disadvantaged. In marriage, ideas that pertain in some African societies that wife battering is a deserved punishment meted on the wife by the husband – and never the other way round – is but one example of this gender imbalance.

Women have always been the disadvantaged in respect to political power, whichever level one would want to analyze. As I noted earlier, politics is concerned with resource allocation. Missing out in this process implies much. And, as politics is not a phenomenon of the recent past, in Africa also, simple routinized processes such as the formation of initiations, dances, or folktales would indicate types of power and authority distribution, as well as participation levels between men and women. In this paper, I describe the development of women NGOs in Tanzania: first briefly to the history of NGOs, then women NGOs in particular, and explore how they have been active in the issue of land.

THE DEVELOPMENT OF WOMEN NON-GOVERNMENTAL ORGANIZATIONS IN TANZANIA

The Colonial Period

Colonial rule had a profound impact on the lives of the people found in the territories occupied by the colonialists. Of much importance was the impact of colonial economic policies on the way the colonized household and kinship relations functioned. The main change in the economic sphere was the reorganization of the economy into a capitalist cash economy, through the introduction of cash crops. This economy led to the new division of labor in communities. In some areas men had to leave their home areas and migrate to the plantation and mining sites, as well as look for employment in urban areas. The women left behind had to adjust to doing some of the things that men used to do in the pre-colonial framework. But of most importance was the attempt by men to be the cash custodians, as cash was the new means of exchange.

The movement of men from their traditional settlements to new settlements, including urban areas, gave them an advantage over women in terms of learning more about the world, how to organize, and even getting some elementary training in various fields. The type of civil society that existed before the coming of the colonialists naturally underwent transformation. It is no wonder that men started to engage in civil organizations first. Within the cash economy, three areas manifested themselves as the center of economic activity and it is from these areas that the first civil organizations were to emerge:

- areas where peasant production was allowed, including Kilimanjaro, with men in control;
- an emerging working class (urban areas, mining areas) overwhelmingly male;
- emerging elites comprising the business community and the few white collar employees.

Independence and After

Immediately after independence the state had to take steps to make sure that there was stability in the country. This was done through the creation and consolidation of institutions of control and governance. Unfortunately, in these moves, civil society was being stifled. The state created several institutions for purposes of governance and control. First, was the change from the Westminster model to the executive presidential system. The presidency was given extensive powers by the republican constitution of 1962 as well as the interim constitution of 1965. It is important to note here that the 1965 Constitution turned Tanzania into a single party state. With the shift of power to the party, parliament lost power (Tordoff, 1977: 235-239). The devised process of electing representatives within the single-party framework aimed at allowing the voters only a chance to say “no” to the only candidate handpicked by the party. For the MPs there was a choice in that two candidates from the same party were on offer. The creation of the Permanent Commission of Enquiry in 1965 was aimed at,

among other things, the control of the bureaucracy (McAuslan & Ghai, 1972: 502), to check any abuse of power. There were other moves aimed at making sure that the single party state had control over the civil society. This implied further restriction of formation and free operation of civil organizations.

The creation and consolidation of institutions of control and governance indicate considerable internal restructuring within the government and the party. The party was to a large extent very successful in emerging as a cohesive and effective institution, and one that had a seemingly tight grip on the state and on all political activities in the country (Mallya, 1994: 150). Of significance also is the move by the party to be deeply involved in the recruitment of army personnel after the mutinies of 1964. Apparently, the army also came under party control (Bienen, 1972: 216-225).

The strengthening of the regime's control over civil society called for changes in the economic and social spheres as well. The government, through its regulative capability clamped down on the workers movement with the disbanding of the Tanganyika Federation of Labour (TFL) in 1964 and the creation of its replacement, the National Union of Tanganyika Workers (NUTA). This was to mark the end of free trade union autonomy in Tanzania for the following three decades (Berg-Schlosser & Siegler, 1990: 79; Potholm, 1970: 157). The same extension of control was attempted at the cooperative movement. The restructuring of the economy was to come after 1966 when the institutions of control and governance were already in place and functioning adequately.

According to Kiondo (1999: 8), developments in the political sphere negatively affected the development of the civil society. He noted that between 1961 and the late 1970s, only seven NGOs were formed. The result of this was the government's ability to exercise power over the society with minimal limits and control from the civil society (Meena, 1997: 34). Therefore, between Independence in 1961 and the mid-1980s when liberalization of the economy was effected and that of politics thereafter, very few NGOs were formed because of the restrictive policies pursued by the state.

Women's Organizations in Tanzania up to 1986

As noted above, women were disadvantaged in society from the pre-colonial period, through the colonial period and even after independence. In general, one can say that women were excluded from politics; politics was the domain for men. A few women organizations were formed, and they were mainly for the support of members' husbands in the execution of government assignments rather than addressing women's problems and issues. These organizations included Women's Service League, Mothers Union, Asian Women Association, African Welfare Association and Tanganyika Council for Women (URT, 1988: 55). As one can imagine, these were not peasant women organizations but organized by the wives of the elite that existed in Tanganyika during the colonial period.

When Tanganyika African National Union (TANU) was formed in 1954 as an independence movement, it realized that it would need the women to succeed.

In 1955 a women's section was established within TANU under the leadership of the late Bibi Titi Mohamed (Geiger, 1996: 465). The section was charged with several tasks, including that of mobilizing women (and men) to join the party, bringing Tanganyikans together for the cause of the struggle for independence, and fundraising for the independence struggle. TANU's mass base was greatly boosted by the participation and membership of women.

After Independence, TANU decided that all women should have one unifying organization. The Umoja wa Wanawake Tanganyika (UWT) was formed with the president as its patron. The main objectives of the UWT were:

- to unite all women of Tanganyika under one organization;
- to foster the development of women in respect of economic, political, cultural, educational and health matters;
- to work with the TANU and the government;
- to fight for and maintain respect and justice for women of Tanganyika, Africa and the world at large; and to collaborate with all women organizations in the world whose policies and objectives were similar to its own (UWT, 1962).

With the accession to a single party state in 1965 it was declared that all political activities in Tanzania should be organized under the (only political) party. The result was that the mass organizations (youth, parents, cooperatives, workers and women) were turned into party affiliates. The implication was that UWT was not an independent civil society organization. That its objectives were given from elsewhere, clearly show this. And, even worse were the objectives it assumed after the merger of TANU and Afro Shirazi Party (ASP) to form Chama Cha Mapinduzi (CCM) in 1977. In this year, the women organizations in the defunct two parties formed one organization in the name of Jumuiya ya Wanawake Tanzania. It however, retained the same abbreviation, UWT. Some of its objectives were:

- to unite all Tanzania women through which the policy of socialism and self-reliance and party policies regarding women's liberation could be spread and interpreted to the Tanzanian women;
- to cooperate and lead all women in various activities concerning family welfare, development, defence, and culture;
- to unite all women mentally and practically under the leadership of the party, to maintain the policy of socialism and self-reliance;
- to defend and promote equality and dignity of the whole nation;
- to liberate all women of Tanzania from oppression and from all traditional beliefs and values that deny them development and of the nation as a whole;
- to coordinate with other organizations under the party to foster national development;
- to maintain mutual relationship with other African women and the rest of the world for the common struggle of their liberation and the struggle against imperialism and all kinds of exploitation (UWT, 1978).

The close link between the party and the organization can clearly be seen in the objectives. It was not an independent civil organization.

Economic and Political Liberalization and NGOs

The economic decline that was witnessed in the late 1970s and the mid-1980s had a positive effect on the livelihood of the Tanzanian civil society. The citizens finally realized that the policy deliberations of the state being the producer and provider of nearly all services was, indeed, a myth. There was urgency that there was need to reorganize and try to fill the gap made by the economically weak government. This could be done through civil organizations. From 1986, many development-oriented NGOs were established. The liberalization of the economy allowed this and the citizens took the opportunity. After the 1992 liberalization of politics, many more NGOs were formed. Kiondo (1992) noted that NGOs started to be formed in all spheres – social, economic, as well as political spheres in forms of professional associations, community based organizations and cultural associations. Others had specific objectives such as advocacy. It is under this category that many women NGOs were established, such as the Tanzania Media Women Association (TAMWA) and Tanzania Women Lawyers Association (TAWLA).

Baraza la Wanawake Tanzania (BAWATA)

The reintroduction of multiparty politics in Tanzania in 1992 led to the formation of other political parties with a women wing. This eroded the UWT's claim over the representational role of all Tanzania women. Women as a group were now fragmented – at least theoretically as we cannot claim that the UWT was a truly unifying women organization. The Presidential Commission on Single or Multiparty System in Tanzania had recommended that the state should separate the mass organizations from its control (URT, 1992, para. 386). However, UWT opted to remain under the CCM. With UWT no longer the unifying organization for Tanzanian women, a need for one such organization was imminent. This was much so because women's problems were not likely to be addressed in the fragmented and divided organizations that emerged with the introduction of multiparty politics. It is on this footing that a conference was organized in July 1994 at the University of Dar es Salaam to discuss the position of women in the new political setting. It was decided that a free non-governmental organization in the name of Women Council of Tanzania (in Swahili Baraza la Wanawake Tanzania, BAWATA) be formed. On 16 May the following year, BAWATA was registered by the Registrar of Societies.

BAWATA's objectives were listed out in Article 4 of its constitution. These include:

- to liberate the women from all forms of gender exploitation, oppression, discrimination and degradation and to condemn the same;
- to work as an institution or a forum on behalf of women and through which they will be able to initiate and further their targets and interests in all aspects of social life;
- to unite all women without regard to their religious, color, age, creed, status,

levels of education or authority, political parties, ideology or any other thing so as to strengthen their efforts in the struggle for protecting their rights and equality;
- to mobilize all women for purposes of giving them leadership whereby they will effectively be participating in the bringing about economic and social development;
- to educate women on their basic rights and duties in the society;
- to maintain women's respect;
- to foster women's participation and implementing of various national projects;
- to make a follow-up on law reforms, particularly in the area affecting women activities (BAWATA, 1995).

BAWATA did not last long. After its mobilization activities in the 1995 elections, the government flung a barrage of accusations at it that, among others, it was run like a political party, and that it did not submit its annual accounts to the relevant authority. The government de-registered it on 30 June, 1997 under grounds that it failed to comply with the provisions in the Societies Ordinance, Cap. 337 of 1954. For the purposes of this paper I will not go into the politics of the BAWATA saga, but I will revisit BAWATA later.

WOMEN AND NEW POLICIES: LAND POLICY

Developments in the economy and politics led to changes in land utilization, with a government-appointed Shivji Commission in 1991 to look into land matters and recommend to the government on how they should be addressed. A catalogue of problems in land ownership and utilization was presented by the commission, which thereby recommended the formation of a National Land Policy.

The Commission noted in its report problems such as:
- improperly designed land allocation procedures and institutions;
- demarcation problems due to low capacity;
- the distraction of socio-economic and political systems by the villagization process;
- land grabbing by speculators and investors;
- infringement into alienated lands;
- inaccessible and inefficient land dispute settlement machinery;
- gender imbalance (emphasis author's).

Gender Imbalance

There was gender inequality and biases against women in land ownership, and particularly under the customary system. The system was such that it rendered land inaccessible to women. There were also discriminatory inheritance laws embedded in custom and culture. Daughters and widows suffered most. Specifically, the following problems were at the core of this issue:

- disposal of land by men without consultation with and regard to the interests of their spouses and children;
- lack of participation of women in the distribution of the fruits of their labor on the land;
- lack of rights in the distribution of land in case of divorce or separation;
- lack of rights of women to inherit land upon the death of their husbands.

These were also reinforced by the fact that 80% of rural communities in Tanzania was patrilineal.

THE LAND ISSUE AND CIVIL SOCIETY: AN ANALYSIS

Raising Awareness

The government adopted the National Land Policy in 1995. This policy was, among other things, a result of the recommendation of the Land Commission led by Professor Shivji. One among the major recommendations of the Land Commission was the need to have a national debate on land policy. A national land policy had to be based on citizens concerns, drawn from a national debate. Contrary to this recommendation, the state enacted the Land Policy of 1995. This policy reflected a continued top down policy-making style. Given the environment that led to the adoption of that policy, interested individuals and organizations started to debate on this particular policy. Among such active organizations were women NGOs. A year later, the government drafted the Land Bill in 1996.

Several civil organizations started to actively engage in land issues following the August 1996 Land Bill. The debate on the Bill was based on two major interests. The first group, which included Haki Ardhi, (Haki means right to, Ardhi means land), University of Dare-es-Salaam Academic Staff Assembly (UDASA), Sahiba Sisters' Foundation, The Pastoralists Indigenous Non Governmental Organizations (PINGOs) Forum, Women's Research and Documentation Project Association (WRDP), Ilaramatak Lorkonerei, Inyuat-e-Maa, Kipoc-Barbaig, Aigwanak Trust, and Legal and Human Rights Centre (LHRC) called for the national debate on the 1996 bill. They demanded that the policy debate should be more inclusive and public. In fact, the group demanded a national debate where all people would be given the right to air their views. According to this group, this was important, as land was a resource that more than 90% of Tanzanians depended on for their livelihood.

The second group was led by women organizations, which is of interest to this paper. Their major concern was more of the marginalized interests of women in the 1995 Land Policy than a national debate on the 1996 Land Bill. Below is a discussion in which we show the women groups that took part in the campaign for a better deal for women in the Land Act and the initiation of the sexual offences bill.

The Gender Land Task Force (GLTF)

At first the government seemed not to care about the clamour from the civil organizations. It went ahead and issued a Land Bill draft in August 1996 with the hope of enacting it into law by the end of that year or early 1997. In reaction, women organizations and groups met and formed the Gender Land Task Force (GLTF), a product of a consultative women workshop on the draft Land Bill for the Basic Land Act held from 3–5 March 1997 at the Russian Cultural Centre in Dar es Salaam. The workshop was facilitated by the TAWLA. GLTF was to lead women's struggle for their rights to be included in the land law. More specifically, GLTF was to closely to monitor the implementation of the recommendations from the workshop to increase the chances of them being included in the final draft of the Land Bill and subsequently in the Land Act.

INFLUENCING PUBLIC POLICY: THE STRATEGIES EMPLOYED

While in the struggle to influence the land legislation all organizations that participated in the workshop became members of the GTLF and each organization was assigned specific tasks. The following strategies were used in order to influence decision makers.

Media Advocacy

GLTF used the media to ensure that as many stakeholders as possible were aware of the impending Land Act. TAMWA provided the necessary expertise and access to the media. TAMWA was also given the task of using the media to publicize the deficits that can be found in the new law. All media available were used, including radio, television and newspapers.

Review of the Bill

The second step in the pursuit of the issues in the Land Act was to make sure that the proposals in the bill were understood. Those provisions that were against the rights of women were identified and a challenge was prepared. This task was given to TAWLA.

Parliamentary Lobbying

Parliamentary lobbying was done by the Tanzania Gender Networking Programme (TGNP). A group of women had to go to Dodoma, the political capital of Tanzania, during the parliamentary session to speak to the legislators about the weaknesses of the Act from the women's point of view. They also provided information to individual legislators particularly women MPs, for the purpose of equipping them with data for the parliamentary debate.

Community Outreach

Sensitization of the wider community via other means than the media was also used as a strategy. The organizations that were charged with this task included Tanzania Home Economics Association (TAHEA), Shirika la Uchumi la Wanawake Tanzania (SUWATA) and Women's Legal Aid Centre (WLAC).

Seminars and Workshops

Dissemination of the successes scored and hitches encountered was done through the strategies above as well as through briefings in seminars and workshops. The resource persons would come from the participating organizations as well as GLTF. Government officials were also invited to these workshops.

Concerns Raised by the Gender Land Task Force

I. Customary Law and Gender Land Issues

- GLTF observed that most customary laws were patriarchal in nature, granting land ownership rights to men at the expense of women. Most customary laws deny women inheritance rights. They grant rights to men who in most cases are head of clans and family. This is so despite the fact that women are the daily managers and users of land. Similarly, all land reforms which have been adopted since independence are biased in favour of men (GLTF, 1978)[1].
- GLTF also took to task the Shivji Commission Report on Land. The Commission recommended the continuation of customary laws of land inheritance as most of the people interviewed by the commission were of that opinion. Contrary to this view, GLTF argued that the continuation of the customary laws of land inheritance was detrimental to women land interests. GLTF wanted the three modalities of land ownership, individual, family and clan ownership, be subjected to public debate and a gender-balanced solution be sought, because it was very difficult for women to inherit land under customary law.
- Moreover GLTF saw Sections 3(a), 20, 23, 62, and 67 of the Land Bill as perpetuating the male dominance in land ownership. To this view, these sections needed to go beyond recognition to granting women land rights. Recognition alone did not suffice. Lack of land ownership imperiled life as widows, divorcees, and those at old age were left with their survival at the mercy of their adult children and relatives. To solve this problem, GLTF called for the Bill to categorically state women land rights.
- GLTF also suggested that the Village Council, rather than families or clans should deal with all matters pertaining to village land ownership. According to GLTF it was very difficult for family and clans to grant land ownership to women. GLTF also observed that though, Section 20 of the Land Bill elevated the stipulations of the customary law concerned with land inheritance

to the national level, but did not explicitly address the issue of gender imbalance. They wanted this section to explicitly state ways in which customary law would address the issues of women inheritance as to land. They also suggested that family land should include land owned by single-parent families, including families headed by women.

II. Land Ownership, Registration and Gender

- Part V of the Land Bill on rights and incidents of land occupation, and Part VI of the Land Bill, that focuses on granted rights of occupancy showed the government intended to allow individual ownership of land. This was an important step toward granting equal opportunity to men and women to own land. However, it was important that in all monogamous families both husband's and wife's names appear on the land title. In cases of polygamous marriages, land registration certificate should show the names of a man and all women. This would help build confidence and also help reduce exploitation of the first wife by subsequent wives. The law should also show how land may be distributed after divorce.

III.Women's Representation in Land-Related Institutions

- GLTF commended the bill for stating explicitly the minimum number of women required in each of the institutions adjudicating on land (Sections 18, 233, and 236). However, Sections 232 and 234, which focused on the land issue in the High Court and Primary Courts, respectively, did not state explicitly the number of women required. GLTF called for women to be represented in authoritative institutions dealing with land issues such as courts and not only on peripheral organizations. The 1996 Land Bill should have considered equal representation.

IV.Youth and Land Issues

- GTLF observed that the Land Bill did not address the youth aged 18-35 and their relation to land issues. To this view, the Bill had not taken into consideration the Youth Development Policy. The GLTF suggested that the Land Bill should allow youth to own land regardless of their gender. It should have stated categorically that land would not be given to youth on a gender basis. The bill should have also ensured that this group was represented in all institutions dealing with land issues.
- GLTF recognized land as a resource, to be used for the benefit of all people regardless of their gender and age. Land must be used for the development of all sectors of the society without discrimination. Thus, it was important for government to educate people about the Land Bill, and gender and land issues. It was also important for all citizens to debate on the Land Bill as most Tanzanians depended on land for their livelihood.

It is important to note that issues raised by the GLTF among other groups that pursued the land issue following the first draft bill were critical to the

state. The demand for the elevation of policy debate from private to public had serious implication to the state-civil society and state-investors relationships. While donors and the government were pro-investors, civic groups were pro-common interests. This put the state in a dilemma. Allowing people to debate on the policy and influence policy output and outcome could jeopardize investors' potential interest in Tanzania. At the same time, preventing citizens from debating the land policy undermined democratic norms to which the state was publicly committed, especially at that time of "good governance." Besides, the state was not sure of the people's reaction to the land bill. Furthermore, the elevation of the debate would imply a shift of policy debate from private (as it used to be under single party regime) to public, which meant a re-distribution of policy-making power, not a welcome issue to the state.

On the women's rights issue the state had a limited choice as well. Donors and the international community were pro-gender equality, and the female gender had been "defended" now and then for participation in national issues. Donors have come to advocate for and encourage the enactment of gender-sensitive laws. Donors have also encouraged developing countries to open their borders for international capital. The interests of international capital and those of the female gender on land issues in Tanzania were not congruent. But the choice had to be made, and the donors chose to stand by the sidelines and wait for the outcome of the national debate on the land law. The law did not, however, thwart all interests of the investors in that some loopholes were identified, which foreigners could use to acquire land from villagers.

THE LAND ACTS: CIVIC ORGANIZATIONS' RESPONSE

The Land Bill as presented by the government met much resistance from civil organizations interested in land issues. The subsequent redrafted 1998 Land Bill had been receptive to some of the recommendations from the GLTF. Still, many women groups raised the following concerns with regard to the two Land Acts that emerged from the legislative process – The Land Act (URT, 1999a) and The Village Land Act (URT, 1999b).

Principles of Land Policy

The first issue came from Section 3(2) of the Village Land Act. This section stated that the "... right of every adult woman to acquire, hold use, deal with and transmit ... of a will ... shall be to the same extent and subject to the same restrictions as the right of any adult man." The GLTF recommended this section and said that it was preferable to that of Section 3(2) of the Land Act as it included the phrase "operation of a will".

The second concern was from Section 3(3) of Village Land Act. This section dealt with either spouse acquiring an interest in land in their own name and for their own occupation and use. That interest in land belonged exclusively to the spouse who acquired it, and should not under any circumstances be regarded as

part of the property of the other spouse.

According to the women groups this section contradicted Section 161(2) of the Land Act, which protected a spouse who "has contributed to the productivity, upkeep, and improvement of land … that spouse is deemed to have acquired an interest in land in the nature of a joint occupancy." The section contradicted also Section 114 of the Law of Marriage Act (URT, 1971). According to this view, Section 3(3) of the Village Land Act should be deleted.

The Application of Customary Law

Section 20 of the Village Land Act explained the law applicable to groups of persons, non-village organizations or a person occupying land under a "customary right of occupancy." It stated that, in case a person alleges that he/she is entitled to succeed to or otherwise occupy land upon the death of or permanent incapacity of a person occupying the land, or other matters affecting this land held under customary right of occupancy, the applicable law should be the customary law. To the GLTF the existing customary laws, including those acknowledged in the Customary Law Declaration Order (CLDO) 1963 denied women rights to land inheritance.

Furthermore, the 1999 Village Land Act provided for the customary laws to be used in all matters of dispute settlement. These laws applied in 80% of Tanzanian patrilineal societies. These customs did not allow women to inherit/own land. Section 53(3) of the Village Land Act, as well as Section 60(1) put emphasis on the application of customary laws. The GLTF observed that it was difficult for "elders" to adjudicate with customary land law, but at the same time, try to do justice to women, because justice to women contradicted customary law. Was it possible for the elders to do away with their custom? GLTF proposed that the decisions of the elders, which were not legally binding, should be abandoned and instead, the Ward Tribunal, which was already established in the court system take its functions. Such a system will minimize confusion and wastage of time. If this was the situation therefore, the CLDO also should be repealed. Or since Section 61(4)(a) of the Village Land Act states that the Elders Council would be issued with guidance on mediation by the authority of the Chief Justice, then these guidance/rules only were to be in use.

Composition of and Representation in Land-Related Institutions

GLTF observed that the National Land Advisory Council with members appointed by the Minister for Lands, Human Settlements and Urban Development, who is responsible for land matters is very important. Section 17(1) of the Land Act stipulated eleven as the maximum number of members of this Council. Section 17(1) of the Land Act vested power to the President to appoint the Chairperson of the Council. Section 17(2) of the Land Act called for the Minister for Lands, Human Settlements and Urban Development to ensure "fair balance" of the women and men in appointing members to the council. GLTF

observed that the word "fair" was a subjective test. The word fair does not mean equal. Therefore, the Minister for Lands, Human Settlements and Urban Development may appoint only two women out of the total of seven or four out of eleven. Moreover GLTF also noted with concern Section 60(2) of the Village Land Act stating that the Elders Council should consist of a maximum of seven members of whom at least two shall be women. Of concern to the GLTF was Section 53(2), on the Village Adjudication Committee, stipulated that it should have a maximum of nine members, of whom at least three were to be women.

The GLTF therefore observed that women were not given equal representation in institutions dealing with land through out the Bills. In most cases the Bills required at least one third of members of the adjudicating body in land institutions to be women. For purposes of equal representation, the GLTF proposed that the number of women in those organs be 50%. This would help women particularly when voting for decisions. Otherwise there would be no point of voting on any issue of women's interest, since women were already the minority.

THE OUTCOMES

The enactment of the Land Act of 1999 is the most significant achievement of the activities of civil organizations. Citizens' struggle for participation in the policy process paid off in this piece of legislation. This was a challenge to the myth established under the single party regime that only the party/government were capable of initiating policy. From this interaction between state machinery and civic society organizations, women groups witnessed a number of successes. Women's efforts led to a number of adjustments to the Bill which otherwise would have not. In fact the GLTF was more pleased with changes which appeared in the 1998 Land Bill than most other participants in the issue. In GLTF opinion they had a cause to celebrate. Women MPs also celebrated on the day the bills were passed, and echoed the view of GLTF. To them, putting gender on the agenda of the Land Bill debate was a significant achievement. They also saw that they were successful in making the government feel the pressure of civil organizations for the first time in many years, keeping it from rushing the bill to parliament as was expected.

Another outcome was that there was a slight shift in government attitude toward civil organizations. Senior officials from respective ministries, including Principal Secretaries as well as commissioners, attended meetings organized by the GLTF and answered questions from participants. This was not a common phenomenon in the past, when government either remained silent or declared its position through public media.

The Land Act, which the parliament passed in January 1999, accommodated some of the GLTF's recommendations. GLTF was of the opinion that the new pieces of legislation were "gender sensitive." What remained was the issue of

the customary law practices, which the Land Act 1999 and Village Land Act 1999 left untouched. Customary practices and law discriminated on the basis of gender. The last concern was the representation of women in bodies and committees, which according to GLTF was not enough.

The delay in the enactment of the Land Law for more than two years showed that the power of organized citizens in the policy process. It also showed that the state no longer had a free hand. Moreover, the processes equipped citizens with confidence, new strategies and the experience of dealing with the state in the policy process. Below I list the major achievements on the part of the NGOs:

- The government of Tanzania had been trying to formulate a national NGO policy. Given the experience that the NGOs gained from the struggle in the land policy and legislation, the reaction to this government move was quite interesting. The way individuals and NGOs reacted to the state-proposed National NGOs Policy (NNP) attest to this. In fact, when the state came up with its NNP proposal, NGOs quickly organized themselves, acquired a copy of the proposal and came up with an alternative proposal. This was one step beyond the struggle for the 1999 Land Act. This time civil organizations did not wait to debate government policy proposal. The proposal which civil organizations came up with provided a fertile ground for bargain and compromise. This was also a challenge to a belief that the state was the only institution with capabilities of formulating policies. It showed that citizens and community-based organizations were also capable of making significant inputs to the policy outputs from government.
- Second, civil organizations were able to form coalitions and work together for their common good. The establishment of the GLTF attested to this. These processes had brought a number of civil organizations together and enabled them to create a network in the policy process.
- Third, civil organizations learnt how to use mass media, workshops, meetings, seminars, networks and coalitions to influence public policy. They had also learnt how to reach out to involve the general public in the policy debates rather than confining policy debates within elite circles. However, because the women NGOs used TAMWA expertise to use the media, it was important that all such powerful NGOs as the TAMWA and TAWLA should participate in such policy issues.

CONCLUSION

The land issue in Tanzania opened a new page in the relationship between the state and the civil society in that there was an intense interaction that resulted in a positive land policy which was not government-tailored. While it was a welcome process as well as outcome, there have been several more possible developments. Here I shall mention a few. Firstly, as the government has seen the potential of civil organizations, it might make it difficult for civil orga-

nizations to operate, especially in sensitive (to those in power) issues. Already, during the struggle over the land policy, the government was drafting an NGO policy without even inviting representatives from this sector. In the draft, the government proposed to tighten registration of NGOs as well as making them more accountable to the government. As the latter was contrary to the rationale of NGOs in the first place, analysts saw it as a knee-jerk reaction by the government towards a potentially powerful BAWATA as I mentioned earlier. This NGO was accused by the government of campaigning for the opposition in the 1995 general elections. The government banned it, but there followed a court action that led to the reinstatement of BAWATA. What this demonstrates is that the government will try to make it difficult for NGOs to operate, or the government will try to co-opt the NGOs or the powerful members of NGOs for its own interest. Already the Office of the Vice President, which registers NGOs, has threatened to ban several NGOs for "having digressed from what they declared they would do." While it is true that many NGOs have failed to do what they promised to do, such an action as proposed by the Office of the Vice President may be used to suppress some vital and viable NGOs.

Secondly, the way TAMWA and other civil organizations sensitized the society about their participation in the policy process as well as all changes that were made to the land bill due to inputs from civil organizations have proved that people's participation will always make a difference for the betterment of life in communities. The long held tradition of making policy first and letting the communities participate in the implementation phase missed much policy input, in most cases, to the detriment of the targeted communities. What is indeed needed is bringing policy debates to the ordinary people, because the way policy makers see societal problems can be quite different from the way the affected parties see them. When both positions are synthesized, the output is likely to be of a higher quality, and one that responds to the actual needs of communities. However, it may be important also to note that the government may adopt a strategy of pushing through many legislative pieces in parliament in a very short time making it difficult for all interested civil organizations to be able to keep pace. This was the case in 1999 and 2000 budget sessions when even the MPs themselves were unable to contribute enough to the bills. The excuse can always be financial, that there is not enough money to keep the parliamentarians in session for long.

Thirdly, states have always been very rigid against change. Indeed, policy makers fear radical changes and they would prefer incremental or no change at all. Therefore, by participating in the land policy civil organizations have realized that the state is not willing to embrace public debates. In this regard, civil organizations have to initiate and take up debates when they feel that the government, deliberately or not, exclude them. In the formal process inclusion may be gained, as was the case with the land policy.

Fourthly, the collaboration that occurred between civil society organizations including Haki Ardhi, PINGOS, Kamati ya Taifa ya Ardhi (KATAA, translation, National Land Forum), TAWLA, and TAMWA for land issues show prom-

ise. This type of cooperation and networking is what is needed in the future as far as civil organizations are concerned. They need cooperation. This does not only give them strength in terms of resources as expert personnel and finance, but also media coverage becomes wider, and therefore, increases the legitimacy of the problem in the eyes of policy makers. They also bring together shared experience between the affected parties.

Lastly, it would seem that the civil organizations have scored one victory at the level of policy. However, there is need for a concerted effort to make sure that what is entailed in the policy is implemented. It would make little sense if the "gains" that were made by the participating civil organizations remained on paper only. There is a need for a concerted effort to see to it that hurdles are overcome in the implementation of the policy. There is also a need to transcend from the rhetoric to action in such issues as resistance from traditionalists with regard to women owning and inheriting land. There is a need for women in particular, and the society at large to be educated and encouraged to explore and know their rights in the new policies. Politicians should be asked to speak openly about these changes in land ownership as well as women and children rights. The civil organizations that participated in ensuring the public-friendly clauses in the Land Act of 1999 should not end there, but make similar campaigns on the implementation level to make the policy work. This will encourage other civil organizations to take on the state on policies that affect them.

NOTE

(1) GLTF is the English acronym while KIKUHAKI is the Swahili one. KIKUHAHI stands for Kikosi cha Kutetea Haki ua Ardhi Kijinsia.

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———— Accepted November 14, 2005

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