



Institute of Social Studies

Graduate School of Development Studies

**LAND REFORMS AND THE ROLE OF CIVIL SOCIETY
ORGANIZATIONS IN AFRICA:
THE TANZANIAN CASE**

A Research Paper presented by:

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In Partial Fulfilment of the Requirements for Obtaining the Degree of:

Master of Arts in Development Studies
Specialization:

Public Policy and Management

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The Hague, December 2004

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DEDICATION

To my loving parents; Anthony Charles Mbilinyi and Virgilia
Mgina.

ACKNOWLEDGEMENTS

I would like to express my sincere thanks to the authorities of the Institute of Social Studies (ISS), for admitting me in the 2003/04 Masters programme. I also thank the Netherlands government for funding my studies at ISS.

Special thank go to Dr Jan Kees van Donge who supervised my research and provided me with much of the skills and ideas which helped to sharpen my thinking and understanding of research matters. I appreciate the contribution of Dr Kees Biekart who commented on my drafts. I will always remember their intellectual guidance.

I acknowledge the support I received from my brother Erasmo Mbilinyi and his family, my sister Helen Mbilinyi and my young uncle David Mbogoro. Their moral and material support made me feel strong every day. I feel indebted to thank my lovely fiancée Clara Francis Mtei who continuously encouraged me to work hard.

I also extend my gratitude to my PPM colleagues and friends. Specific thanks go to Lufunyo Hussein and Esha Ally Shuma who took their time and resource to find and send me relevant information for my thesis from Tanzania.

Mbilinyi, Teophory Anthony

The Hague, The Netherlands, November 4, 2004

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LIST OF ACRONYMS AND FIGURES

IFIs	International Financial Institutions
NGOs	Non Governmental Organizations
CSOs	Civil Society Organizations
WB	World Bank
TVs	Televisions
LTC	the Land Tenure Centre
ETLR	Evolution Theory of Land Rights
FAO	Food and Agriculture Organization
ULA	Uganda Land Alliance
DFID	Department for International Development
VA	Village Assembly
NALAF	National Land Forum
GLTF	Gender Land Task Force
NLC	National Land Commission
UDASA	University of Dar es Salaam Staff Assembly

LIST OF SWAHILI WORDS USED

Hati ya Ardhi ya Mila - Certificate of Customary Title

CHAPTER ONE

1. 1. Introduction

It is an undeniable fact that, land in Africa is an important resource in the fight against poverty. It promotes economic growth, source of income generation, source of food, employment, and export earnings. Land has also social values such as settlement, ritual association, burial sites and spiritual life. Environmental services such as drinking water, biodiversity and Wild products depend from land. Pastoralists on the other hand need land for grazing of their cattle (Toulmin and Quan, 2000). This is to say, land is a source of life to majority of African people since it sustain the livelihood of more than 60% of the population.

In many countries in Africa, land has been owned communally based on the customary traditions. Following the social and economic changes and the introduction of Structural Adjustment Programmes in 1980s, there has been a call for land reform in Africa. These land reforms are part and parcel of the on going move towards the government's withdrawal from direct control of the major means of production and the removal of market distortions. In line with government decontrol, current land reforms are geared to abandon the existing tenure regime based on communal ownership and introduce land markets which emphasize on the individual land ownership Ghimire K.B & Moore B.H (2001).

1. 2. Identification of the problem area.

There has been a general claim by the proponents of neo liberal theories that the reason for the sluggish development in agriculture sector in Africa is lack of tenure arrangements which would provide for the introduction of land markets¹. The existing tenure arrangements in Africa which are mainly based on residual communal ownerships are said to have been hindering development of modern agriculture system. Because they do not provide for enough security of tenure which would encourage more investors on

¹ See Toulmin, C and Quan, J F (Eds) (2000:45) *Evolving Land Rights, Policy and Tenure in Africa*, DFID/IIED/NRI, London

land hence promote modern agriculture production. Individual titling is seen as best way for improving land markets and security of tenure which is crucial for attracting investment on land, encourage farmers to use land as collateral in order to obtain loans from banks which in turn will be used for improvement of agriculture production.

Different actors have been involved in the current land reforms in Africa. Civil Society organizations, governments, International Non -Governmental Organizations and International Financial Institutions (IFIs) have become influential on debating the land issue. Main point on this debate is which tenure regime is appropriate for Africa. There has been opposing views on whether to introduce individual titling based on land markets or sustain the existing tenure system which is based on communal ownership. IFIs, particularly World Bank is of the view that the best approach for the land reform in Africa is just to leave it to the Market. Civil society organizations both local and international on the other hand, argue that, leaving land to the market through the introduction of individual titling will lead to the marginalization of many rural African poor people whose livelihood depend entirely on land. Because the introduction of individual titling will allow few influential and rich people to have access to land and leave majority poor people landless.

State approaches on the land issue vary from country to country. In most cases governments have sided with the World Bank approach. The experience of land reforms in Africa shows that in many parts of the continent governments have been clashing with civil society Organizations because of the difference in perspectives on the land issue. While governments would like to introduce markets by encouraging large scale farmers to buy and invest on land, civil society organizations fights for the rural poor to have more say on land. Civil society organizations would like to see a bottom up approach on the land issue than the imposition of policies from above. This is to say the main point on this debate is whether to under go radical reform or incremental reform based on the adjustment of the existing tenure arrangement by making few changes in consultation with local people.

Following the influence of actors involved in the policy process, the main question here is whether civil society organizations have been able to have their voices heard and their perspectives being taken into account in the new land laws. Since land issue is crucial in Africa as it sustain livelihood of more than 60 percent of the population, Civil Society organizations are continuously seen as an important avenue to get the interest of the majority rural poor incorporated in deciding which policy option to pursue Ghimire K.B & Moore B.H (2001). However, there has been also a warning on the way people simplistically look at civil society organization in Africa to day by referring to Non Governmental Organizations which of course part of the civil society sector but in practice they may not always be representative of the majority poor people. This is because most them are short lived, depend on outside funding and social divisions which might happen in their membership.

Since Africa is a vast continent, it is difficult to study land issue and the role of civil society in each country. This research will use case study of Tanzania Land Reforms which started in 1990 and the formal land law was enacted in 1998. However different examples and experiences from different countries in Africa, where land reform processes have been taking place will be used.

1. 3. Research Objectives.

(i) General Objective

This research seeks to examine the extent of involvement of civil society Organizations in the current land reforms in Africa. The research will use the case study of the Tanzanian land reform.

(ii) Specifically Research seeks:

To find out how land reform process evolved including the opening of spaces for dialogue among stake holders

To identify different actors involved in the process and the role they played

To find out the extent to which civil society organization have been involved in the land reform process in Tanzania.

To establish the reasons for the low influence of civil society organizations in the land policy formulation process in Tanzania.

To reflect the importance of involving different actors for better government policies and decisions

1. 4. Relevance and Justification

Land in Africa is critical, because it offers a basis for livelihood to more than 60% percent rural poor. Any decision made concerning land whether is good or bad, has an impact to the livelihood of the majority who depends on land for their living. Ghimire K.B & Moore B.H (2001) argue that the new forms of partnerships and more open space for dialogue between civil society, government and international institutions is needed in order to have stake holders interests incorporated in the new land laws. However civil society involvement in the land law will help to prevent unnecessary contingencies and uncertainty such as land conflicts caused by poor management of land and inequalities in the ownership.

Chazan, N. 'et al.' (1999), is of the view that in Africa, state is viewed by potential elites as an avenue for attaining wealth and status. She further argues that African states have a tendency of consolidating power, suppression of space and limiting opportunities for oppositions. All these characteristics necessitate the need for strong civil society organization to engage in the dialogue with the state to ensure that land rights are achieved.

Land reform has come in 1980s and 1990s when most of the African governments have adopted political pluralism. Issues such as good governance, decentralization and participation are highly emphasized. The study provides an opportunity to evaluate the process of democratization and building good governance in Africa

The findings of this study help other researchers who will be interested to study about the land issue in Africa.

Lastly the study is party of the partial fulfillment for obtaining Degree of Master Of Arts in Development Studies (Public Policy and Management) at the Institute of Social Studies.

1.5 .Hypothesis

- (i) In Africa Civil Society Organizations do not have much influence in a policy making process because they lack direct link with the ordinary citizens.
- (ii) Although Civil Society Organizations were involved in the land policy making process, did not have much influence.

1. 6. Research questions.

Using the Tanzanian case in studying the role of civil society organizations in the land policy formulation process, this research seeks to answer the question:

What was expected from the Civil Society involvement in the land reform process in Africa?

What actually happened on the ground and why?

1. 7. Research Methodology

The research paper will be based on the case study approach. In this, Tanzania case study will be used. Literature survey of land reforms in various countries in Africa will also be used.

Comparative analysis will be used to find out the expected (desired outcomes) from the civil society involvement in the process and the actual outcomes. The research is based on both descriptive and explanatory methods.

1. 8. Source of data

The research is mainly based on secondary data. Information from the Libraries, internet, past research papers on the same topic will be used to enrich the research. However for the case study, data from various Government papers, journals and official documents available from Tanzania such as Land Policy document, Tanzania National Constitution, and the report of the 1992 commission of inquiry over land matters will be used.

I will also use various research reports about land reforms in Africa. Oxfam and World Bank websites will be used to get more information about the reform. This is due to the fact that Oxfam in particular, has been at the fore front in the reform process supporting many African civil societies which were voicing to have rural poor interests incorporated in the new land laws. Oxfam has also a special website about the land reform in Africa <<http://www.oxfam.org.uk/landrights/resources.htm>. Various literatures on the land reforms in Africa will be used. Books by Bruce J.W (1993) and Ghimire K.B & Moore B.H (2001) will provide enough information about issues on civil society and land rights in Africa.

1. 9. Limitations of the study

First, the research will only use secondary data. Some times data from secondary sources tend to be unreliable as in most cases are collected by different people who have different perspectives in looking at land issues and the role of civil society. A combination of primary as well as secondary sources would provide better results. Second, I will not be able to study land reform and the role of civil society intensively in each country of Africa. The research will focus only on the Tanzania case study and some general examples and experiences on land reform from different countries in the continent. This approach might overlook some of the peculiarities of the reform in some countries.

1. 10. Organization of the paper

The paper has six chapters

Chapter one provides the introduction, statement of the problem, research objectives, research questions, the rationale for the study, research methodology and scope and limitations of the study.

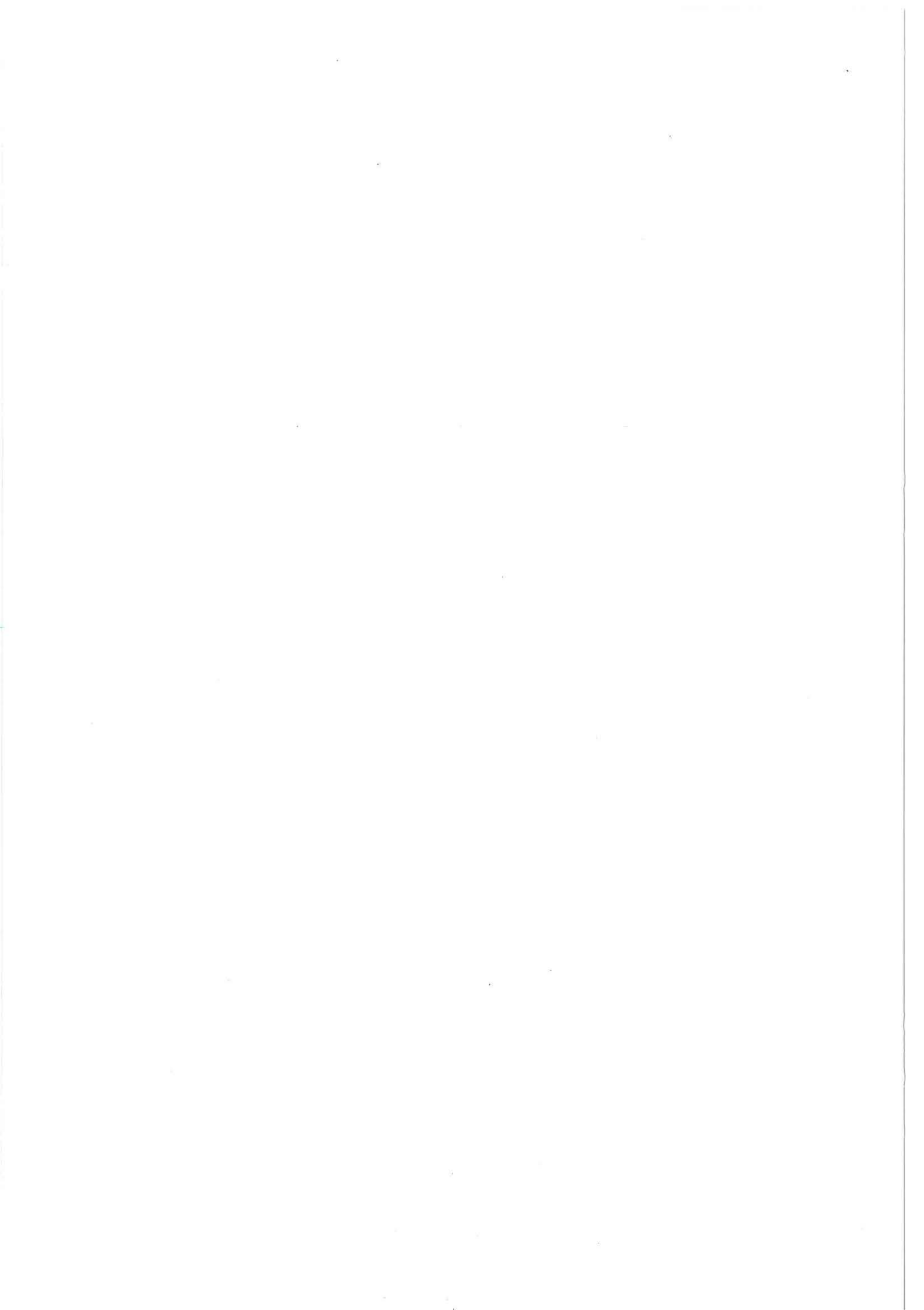
Chapter Two focuses on the theoretical and conceptual matters on the land policy reform and the role civil society organizations in Africa.

Chapter Three gives the detailed information on neo liberal debate on the land issue in Africa. More specific it analyses issues on current land reforms and the question of individual titling and customary tenure systems. The implications of both tenure systems to the majority poor African people will be discussed.

Chapter Four addresses the general over view of the land reform in Africa, focusing on the role of civil society organizations and representations of interests concerning land law.

Chapter five is about the case study. This chapter gives detailed information about land reform process in Tanzania, exploring the role of civil society organization and the representations of the interests. It gives comparative analysis of the desired outcomes and the actual outcomes resulted from the Civil Society involvement in the land policy formulation process in Tanzania.

Chapter Six offers conclusion. This part reiterates the general discussion.



CHAPTER TWO: THEORETICAL AND CONCEPTUAL FRAMEWORK

2. 1. Contextualizing the role of Civil Society Organizations in the policy process in Africa (Theoretical Perspectives).

The concept of civil society is still contested one. It depends on who define it and for what purpose. In most cases civil society is defined in relation with the state. Biekart (1999), define civil society as an intermediate associational realm between state and family populated by organizations which are separate from the state and are formed voluntarily by members of the society to protect their interest or values. In this case state (African perspectives) is defined as unitary actor separate from the society and it provides main framework in which certain political action are made possible and others are circumscribed Chazan.N, et al (1999). Therefore, the organization of the state institutions affects the types of the political issues raised and the way are played out.

Ghimire K.B & Moore B.H (2001) distinguishes between two types of civil society in agrarian sector. One is those formed by large land owners, associations and paramilitary forces, rich merchants, and traders including agro industrial groups. These are considered to be powerful at local level as well as national level. Normally they are able to influence the state and donor agencies on matters relating to agrarian sector such as land reforms. They tend to oppose views and perspective of small scale agricultural producers such as peasants because in most cases their interest is to have land market which is also favored by neo-liberals.

The second group of the agrarian civil society includes, peasants associations, cooperatives, rural trade unions, civil rights, rural and agriculture development organizations, environmental groups, professional organizations such as lawyers and women associations. These organizations are considered to promote peasant land rights, improved wages and wider social mobilizations.

However, many scholars argue that ability of civil society organizations to change rural production relations depends on the number of factors. Ndangor .Z, (2000), Ghimire K.M & Moore B.H (2001), Lange. S (2000) gives number of factors for effective participation

of civil society organizations in policy process. One is the nature of the regime in power; in this the argument is that civil society organizations will be able to involve in the dialogue with the government if the government itself is willing to invite them. Many governments especially in Third world countries seem to be skeptical about civil society especially those which are engaging in policy advocacy and human rights activities because they pose great challenge to the legitimacy of the regime in power. The second factor is the legal environment.

The question here is whether the existing laws support and facilitates the emergence of diverse forms of associational activities e.g. registration procedures and existence of basic rights which offer the citizens freedom of speech and freedom of association. On one hand if the registration procedures are cumbersome and costly it is difficulty to have grassroots and vibrant civil society organizations in African context where majority of the rural people are poor and illiterate. Third, is the nature of the citizens; it is quite difficulty to have vibrant civil society in situation where there are people who are apathetical, apolitical and more or less ill –informed. In such a case, they will always keep quiet because they have no idea of what is going on.

Fourth, is the fact that the ability of civil society to influence policy/decisions also depend on the nature of the organization itself in terms of its social base. For instance who constitute the membership e.g. elites, professionals, ordinary citizens, peasants etc. Is the organizations urban based or rural, foreign or local. All these questions have to be looked carefully in order to analyze the role of civil society in policy process.

Fifth is the capacity which is defined in terms of both financial and personnel. Here we need to ask questions like: what is the source of funding? Is it self funding or donor support? If an organization is highly relying on external funding, very unlikely, it will be able to have independence in terms of its mission and strategies. In terms of personnel; the question is whether organization has competent personnel who have the capacity to articulate and diagnose the relevant and complex policy issues they want to address.

Other factors include the role of the media to disseminate information in both urban and rural areas. The question here is; what is the media coverage in the country in terms of

geographical location and how citizens from both urban and rural are able to access different information which is disseminated through TVs, radio and Internet?. Organizational structure and democracy within the organizations themselves is an important aspect for the civil society to bring a desirable change. If civil society organizations are not democratic within their organizational arrangements, it is unlikely that they will bring democracy outside to the ordinary citizens.

2.2. Civil Society Organizations in African perspectives.

Civil Society in Africa has to be understood by tracing back the history especially during the struggle for independence in 1950s and 1960s. Civil Society took the form of nationalist movements where different social groups joined forces to fight against colonial domination. Civil Society was all about mobilizing pressure for political change by encouraging wider citizen's participation and public scrutiny of the state. These organizations were emanating from the popular sector, were broad based, grassroots oriented and in most cases they were self funded.

Social groupings such as peasants associations, cooperative societies, trade unions, farmers associations, religious movements, kingship organizations were very instrumental in representing the interests of their members.

After independence most African governments, introduced one party system where by all people were supposed to think and argue along the dominant party line Lange .S et al, (2000). Freedom of association was prohibited in many parts of the continent. This political structure provided an opportunity for the few elite to determine the fate of the population in the country.

With the end of cold war in 1980s and the implementations of SAPs, most of the African governments had to adopt liberal democracy which provided for the re-emergence of civil society organizations. Lange S, et al 2000 argues that creation of strong civil society organizations at this period were necessary condition for liberal democracy to exist. The period between 1980 and 2000 has experienced the mushrooming of social groups which identify themselves as NGOs and claim to represent the interests of the poor people. In

this case NGOs are defined by using Claire Mercer's (2002) definition who conceptualize it as those organizations that are officially established, run by employed staff (often professional or expatriates, well- supported (by domestic or more often the international funding), and that are often relatively large and well resourced. NGOs normally tend to be international organizations, regional or national. NGO can be created by an individual or a group of people. These social groups normally tend to specialize on service delivery, advocacy environmental issues, women and gender matters, sector support and networks. Issa Shivji *in* Lange. S, et al 2000 categorizes such groups in four different types which includes Government Organizations (GONGOs), foreign NGOs (FONGOs), Local NGOs (LONGOs), and people organizations (Pos).The problem of these groups which has emerged with the resurgence of neo liberal democracy is that, most of them are urban based, created by elite and educated people, and in many cases they do not have link with both urban and rural poor people. See the table below.

Table 1: summary of the features of contemporary African civil society organizations

<ol style="list-style-type: none"> 1. Most of them are donor dependent 2. Project oriented 3. Un -even geographically located 4. Urban based and elite based advocacy organizations 5. Ordinary people have no say on organizational matters 6. Most of them are in the mushrooming stage 7. Popular participation in NGOs managed activities is generally low. 8. Both government and common citizens suspect actors within CSOs of fraud. 9. Their autonomy depends on the existing regime <p>Source: Ghimire K.B & Moore B.H, (2001), Lange, et al (2000), Toulmin, C and Quan J F (Eds) (2000), Bazaara N (1998), Rugemeleza, N, (1997)</p>

NOTE: Some of these features may be absent in one country but exist in another country. However this table provides generalized features of the contemporary civil society organizations in Africa

Donor agencies such as USAID, Ford Foundation, and DFID together with countries like Canada, the Netherlands, and Nordic countries on the contrary have tremendously increased their funding to these organizations. These donors' main objectives have been to promote good governance, transparency and participation of citizens in decision making. In Tanzania for example, the mushrooming of civil society organizations started in 1980s when donor community started directing their financial assistance to these organizations (by-pass the state) with the reasons that state consisted of corrupt bureaucratic officials. Scholars such as Mercer C (2002), Hearn J (1999), argue that policy makers and donors have been pigeonholed themselves with liberal democracy, taking for granted that funding these social groups means building the strong civil society sector in Africa. In the words of Abrahamson, 1999; Edwards & Hulme 1996; Hyden 1995; Kelsall, 1998; and World Bank, 1997 quoted in Igoe J, (2003) "*it has become common for policy makers to assume that NGOs could be equated with civil society*". Concluding that funding NGOs means building Civil Society Chabal and Daloz (1999): 22 quoted in Igoe J (2003).

The question here is what has been the implication of this generalization on the civil society sector in Africa.

First, looking at civil society by just focusing on the NGOs is seen as narrow perspective and it has greatly undermined the participation, transparency and good governance which originally aimed to achieved Whitfield (2002). How? What is actually happening is the fact that these organizations mostly exclude the majority poor people as most of them are staffed by elite, government retrenched officials, African university professors and middle class citizens Mercer C, (2002). They have as well distanced themselves from the poor as in most cases their activities are being determined by donors and the government of the day.

Second is the fact that the recent emphasis on the so called "partnership" and "consultation" has given the African governments a path to justify their decisions by generalizing that their daily top -down policies are based on the consultations of civil society even when they have just consulted two or three selected NGOs. Donor

community on the other hand, by using these organizations (in terms of asking them to put pressure on the government) have been channeling their interests or enforcing certain reforms in a country because they have strong voice on these organizations which is based on their financial resources.

The above discussion suggests that in order to analyze the role of civil society in the land reform process in Africa, one need to take into account the dynamics of civil society in Africa. Meaning that he/she has to be able to find out who was involved from which organization, and for whose interests. This is because most of the groups which identify themselves as part of the civil society organizations are based on parochial interests and they are created and organized by certain influential figures that purport to represent the interests of the general public.

Looking back to my research question, what is expected from the civil society involvement in the land policy formulation process in Africa? First, one would expect to see a wider mobilization of social groups engaging in the land policy debate. In this case, apart from NGO sector, other groups such as farmers associations, trade unions, and religious organizations had to be fully engaged. Youth organizations, cooperative societies, pastoralist societies and peasant's associations would be mobilized to ensure that their interests are taken into account. Second, one expects to see high level of awareness among common people particularly rural poor on the land issue. Third is the timing of civil society engagement to the dialogue. Civil societies had to be involved in the policy process from the beginning e.g. from point of collection of opinions, drafting of a policy document, implementation and evaluation. Fourth is fact that one expects to see different opinions and perspectives of different social groups being enshrined in the new land policy/law documents.

The question here is weather all these criteria were met in the formulation of the new land policies in Africa. This is the main subject of this thesis as discussed in detail in chapter four and five. Next chapter summarizes the neo liberal debate on the appropriate land policy option for Africa.

CHAPTER THREE: NEO-LIBERAL DEBATE ON INDIVIDUAL TITLING IN AFRICA

3. 1. Introduction

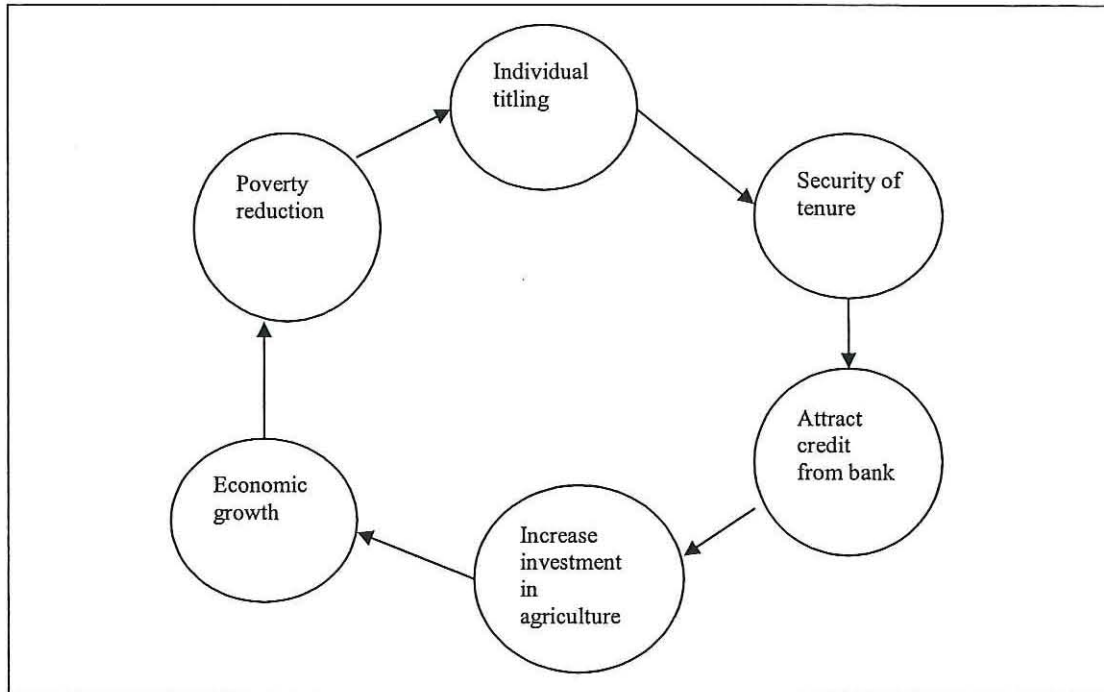
This chapter looks at the neo liberal debate on the proper land policy option for Africa. It discusses the advantages and disadvantages of land markets and individual titling and the question on whether there is still a need to sustain residual communal land ownership in African context following the on going social and economic changes.

3. 2. Individual Titling

The main point on the side of neo-liberal economists is that, individual titling is important for the achieving greater productivity. Because it is seen as essential for providing security of tenure which in turn leads to attraction of higher level of agriculture investments and hence leads to economic growth. Since security of tenure provides an avenue for investment in the agriculture production, majority of the poor have an opportunity to get employment and affordable food. Furthermore it will increase land transactions and provide peasants with an opportunity to use their land as collateral to get credits from banks for the development of their farms. Other benefits include better government control over the land and the gain governments get from the revenue generated through the registration fees, land tax and other levies Dorner (1972), World Bank (1974) *in* Bruce W.J and Mighot- Adholla (eds) (1994).

Security of tenure in this case is defined as “one’s freedom to gain and access land, decide what crops he/she can grow, how long one till a particular piece of land, the rights over the fruits of his/her labor and the ability to undertake long improvement on the land” Benneth (1987), quoted *in* Camilla Toulmin and Julian Quan (eds) (2000). In this case when farmers have assured tenure security, they are motivated to use land as collateral to get loans from bank and invest in agriculture. Lack of tenure security is claimed to be an obstacle to agriculture development in Africa WB Report (1974) *in* Ghimire and Moore B.H (eds)(2001).

Table 2: Rationale for individual land titling



The diagram above suggests that agriculture growth requires conversion of kingship system based on customary tenure to the individual tiling.

Different social groups ranging from advocacy organizations, human rights organizations, women and gender groups, research centers and academics which in the contemporary civil society in Africa can be referred to as civil society organizations have been skeptical with the introduction of individual titling based on neo liberal perspectives. They argue that, creating access to land through combination of privatization and unrestricted market forces will lead to marginalization and exclusion of rural poor. They see the danger of few rich people to use their financial resources to grab the land from the majority poor people Palmer R, (2003). They dispute the claim by the neo liberalists supported by World Bank about individual titling and privatization that will lead to increase of production and hence reduce poverty. In supporting this perspective, Atwood (1990) in Bruce J.W and Migot-Adholla (eds) (1994) argues that whenever it has been introduced in sub-Saharan Africa, individual titling has created greater insecurity and conflicts.

3. 3. Consequences of implementing individual titling

Empirical evidence shows that, there is no relationship between individual titling and productivity. In Kenya individual titling has caused more insecurity than security which was expected to be achieved. There is no either, relationship between individual titling and the increase of the peasant's application of the bank credits. Research conducted by "The Land Tenure Centre" (LTC) in Rwanda, Kenya and Ghana found no incidence of increase of formal borrowing from bank resulted from the introduction of individual titling Bruce W.J and Migot-Adholla (1994). The research found that many people are reluctant to use their land as collateral to apply for bank loans because of the fear of loosing their plots incase they fail to pay back their loans.

Individual titling wherever it has been introduced, it has benefited the private interests such as rich people, government bureaucrats and elites. Formal titling has caused concentration of land in the hands of the few and leave majority of the people without land. Incidence of landlessness have noted in Kenya where the government started to privatize land after independence in 1963.

In terms of gender, individual titling has lead to more marginalization of women from owning land. Since land titling involves cost such as registration fees and tax, most women will be unable to register their land because they normally have little command in the ownership of money at household level. Furthermore most of the registration centers are located in the big cities which in most cases far from the rural areas, this lead to more women fail to register their land because of financial constraints and domestic responsibilities. In Tanzania for example, since the adoption of the National Land law of 1999, no effort has been made to decentralize registration process. All land registration procedures are done in the ministry of Land and Human Settlements Development based in Dar es Salaam and few other selected cities and towns.

Land registration is too expensive for African countries which highly depend on donor support for almost half of their budgets. LTC survey indicates that registration costs in smallholder agriculture; even if it has been done in a most cost effective method will amount up to at least \$50 and \$100. If we multiply this figure by the number of pieces of

land to be registered in country, it means governments have to incur huge amount of money which could be spent for other development programmes.

Roth, et al, 1986 quoted in Bruce J.W and Migot-Adholla (1994) argues that there is no recognition that formal titling means security of tenure. Experience drawn from Bukinafasso shows that despite of absence of formal title and individual rights farmers in all villages perceive a high degree of security in their rights to continuously use most of land under cultivation.

In their “ Evolution Theory of Land Rights” (ETLR), Platteau quoted in Bruce and Migot-Adholla (eds) (1994) argue that African customary tenure system is not static but rather with the increase of scarcity of land and the people demand for greater security land has been evolving towards greater measure of individualization and formalization. LTC research findings in Ghana confirm that rights to sell were more vivid in the areas of high population pressure. In Tanzania land selling has been noted in areas where population is high such Kilimanjaro and lake zone, even before the adoption of new land policy 1998. If customary land tenure evolves towards stronger, and more alienable individual rights as population pressure on land increases, technological changes and as agriculture becomes more commercialized, there need to question the rationale for the replacement of the existing indigenous tenure regime.

It should be noted that for most African people, individual titling is seen as a western idea. It lacks social acceptability. Since people tend to identify themselves with their property in a group, the implementation of individual titling may not gain legitimacy by many of the African people and even its objectives of promoting agriculture development is unlikely to be achieved.

3.4. Customary Tenure, Legal Insecurity and the Role of the state.

One among of the reasons given for the need to implement individual land titling registration is the existence of legal insecurity resulted from the continue existence of the communal land tenure. In this, the argument is that customary tenure does not provide enough security a situation which results into conflicts. This position has overlooked the

fact that the problem is not communal tenure system per se, rather particular approaches which are used in the process of handling land disputes. According to van Donge (1999:49), *“legal insecurity is not seen as resulting from particular forms of land tenure, but as being the outcome of particular process of dispute settlement”*.

The prevailing of certain cultural practices within African social life has created a situation whereby some people are favored and others are marginalized in terms of ownership of land. Such cultural belief includes among other things the belief on consensus, culture of belonging to a group which has implications when it comes to the question of disputes settlement. *“ [C]ases are thus in this respect not looked at in terms of the factual situation that are confronted with the general situation, but rather in terms of the social interpretation of the particular situation.”* van Donge (1999: 53)

This means that the right over the ownership of property does not always depend on the general prevailing rules but rather how other people (relatives) perceive it. This situation brings difficulties for an individual to obtain rights against the group as it is in western laws. State intervention is crucial in such a situation to protect the rights of the people who are seen by the group as outsiders van Donge (1999). However, in this case the solution is not to replace one tenure system by another, rather there is need for the making of some progressive changes from the existing tenure arrangement and the adjustment of local legal system to suit the social and economic changes. Decision by many African governments to introduce individual titling as solution to the existing problems in the customary tenure is unlikely to work as such tenure impose a huge burden to the governments which are mostly ineffective and dependent on financial aid. This is evidenced by the prevailing corruption, mistrust and inefficient of the state lead courts. van Donge (1993) illustrates this in the case of the land conflicts in Uluguru Mountains Morogoro Tanzania, in which the court lost legitimacy to the people.

3. 5. Customary Rights, economic growth and Security of Tenure.

It is not true that customary rights are totally inimical to the market and they lack security of tenure as it has been claimed by neo liberal theorists. Many aspects of customary land rights are compatible with the economic growth.

Quan (2000) *in* Toulimin and Quan (eds) (2000) summarizes the factors showing that economic growth and security of tenure is provided within the customary land rights. One is the fact that customary tenure includes heritable use rights which can by their nature provide incentives for longer term investments in land improvement. Second is the fact that, customary rights have great social acceptability, this is important in the process of development. Third is the recognition of different people and interest in the same piece of land or area aim to maximize the potential productive use of resources. Lastly, the existence of intra-community land loan, rentals, share cropping and sales within customary land tenure allow customary land users to get advantage which could be available under individual titling.

3. 6. The Rationale of sustaining Communal Land Ownership

The introduction of individual titling have proven to be ineffective every where it has been introduced in Africa. This may be caused by the fact that individual tenure regime seems to be not part of the African culture, many people look at it as an imposition of the so called “western culture” on top of African culture.

Sustaining indigenous land tenure system seems to be crucial, due to the fact that it involves traditional community, as well traditional political structures in the management of land rather than government bureaucratic structures Kojo Sebastian Amour (1999). It provides an easy access to land by the poor because land is directly acquired through traditional chiefs and headmen who belong to the same community. Customary tenure system is cheap compared with state led tenure systems because it needs no survey or plans prior land acquisition. Even people with extreme poverty can afford to acquire piece of land as land taxes such as rates, ground rent and municipal land are in most cases not applicable under customary regime Kambole C.P, (2004).

3. 7. Limitations of the customary tenure system

The main limitation of the customary land tenure is the marginalization of women and other interests groups in the ownership of land due to the fact that most of the rural African communities are based on are patriarch relationships. This is the case especially

in the areas where inheritance of properties goes along the male line eg Kilimanjaro Region in Tanzania. In such a case customary land tenure does not provide equal chance for both men and women to have access to land because married women are not allowed to transact land without the permission of their husbands.

Other problems regarding customary law are that, it lacks clear demarcation and documentations; “this may cause problems when it comes to adjudication and conflict resolution” (van Donge, 1999; [quoted in Kambole, C.P, 2004]). Further more, under customary arrangements, chiefs and clan heads have enormous power over land allocation. They are the ones who determine the rights of their members to own land. This may cause eviction of unwanted persons from the land for their own interests.

3. 8. Proposing option for land policy in Africa

The imposition of land markets by introducing individual titling as advocated by the World Bank and implemented by the African governments will not provide solution to the land problems in Africa. Researches have revealed that, individual titling every where it has been introduced in Africa, has exacerbated land insecurity, land conflicts and landlessness to the majority of African people. However, there has been no evidence of the improved agriculture production in those countries e.g. Kenya and Uganda the case of *mailo* land. Individual titling which has been recommended for being gender sensitive by providing equal chance for both men and women has become more threats for women in terms of accessing land. Most women have been dispossessed their land either by failing to register it or lack of money to pay land taxes. At the household level most of the title deeds have been written in the names of husbands. As a result, when it comes to divorce or separation most women are left landless. It has been argued that women are most likely to enjoy security of tenure under customary law than thorough individual titling. However the limitations of customary land arrangements will not be solved by market rather will be solved through the involvement of the community itself and some incremental amendments of customary laws.

Many African governments depend on the donor finances for almost half of their budgets; this means that even the administration of the land under individual titles will be

problematic. Most of the African bureaucrats lack enough skills on the land matters; this will lead to the problems when it comes to implementation.

Policy option: The policy options for African land policy should consider:-

- The need for intervention from below,
- The need gradual/incremental process rather radical approaches (replacement of already existing arrangement),
- The need for the policies that takes care for the poor,
- The question of equity v/s efficiency should be looked carefully; “growth is necessary but not sufficient; it must be buttressed by equity and above all by people’s participation...” (FAO, 1981: iii).

3.9. Conclusion.

The discussion above suggests that, residual communal land ownership based on customary traditions still appropriate for African situation. The introduction of individual titling has proven to have negative implications for the poor people and so to undermine the efforts toward poverty alleviation in Africa as majority of the population depend on land to sustain their livelihood. Further more, individual titling is said to be too costly for most African countries whose budgets depend on external aid. Limitations within the communal land tenure will not be solved through replacement of the regime based top down approaches. Rather, there is recognized need for adopting incremental changes through intervening from below and in consultation with local people. In this civil society organizations are expected provide an avenue for citizens to have voice on decisions about land. The question is to what extent civil society organizations have been able to represent the interests of the people in ongoing land reforms. The following chapter discusses in detail the participation of civil society and the representation of interests in the current land reforms.

CHAPTER FOUR: LAND REFORMS, CIVIL SOCIETY ORGANIZATIONS

AND THE REPRESENTATIONS OF INTERESTS

4. 1. Introduction

The current land reforms have come along with great emphasis on the need for involvement of stake holders in order that their interests are realized. This part of the paper looks at of the role of civil society and their representations of interests in the ongoing land reforms in Africa.

4. 2. The role of civil society organizations in the current land reforms

As discussed in the previous chapter, there has been a number of what I call social groups or NGOs which came up and challenged the governments and World Bank approach on the land policy. However the extent to which these groups were able to voice up, vary from country to country where these reforms have been undertaken. At least in many countries there has been a kind of resistance on the policy option.

These social groups have been engaging in building awareness, mobilizing and educating people about the negative impacts of the land markets. In other countries they were involved in lobbying by influencing the members of the parliament not to pass the law. In Tanzania for example, such organizations were able to delay the new land law for three years from 1995 to 1998, following the suggested changes which were to be made before the land law was to be passed by the parliament Mallya, (1999). In order to build a strong voice, these social groups formed coalitions which consisted of many non governmental organizations. In this case Oxfam and DFID were very instrumental especially on the side of funding Whitehead, A & Tsikata.D, (2003).

4. 3. Survey of the civil society organizations involved in the struggle for land rights in some of the African countries.

In South Africa, there was a network of the so called “civil society organizations” which included number of NGOs forming the “the National Land Committee”. These NGOS includes Surplus People Project, Transvaal Rural Action Committee, Border Rural

Committee Association for Rural Advancement and the Farm workers' Research for and resource project. Other organizations which were actively involved but not through the coalition includes Group for Environmental Monitoring, the Land and Agriculture Policy Centre and the Centre for Rural Legal Studies and Academic institutions such as University of Witwatersrand Ghimire K.B & Moore B.H (2001). These organizations were involved in mobilizing and sensitizing people on land issues. For example the coalition of NGOs managed to organize a summit in 1994 which was attended by 400 civil society organizations, the summit managed to produce a land charter that was circulated to government officials and political parties.

In Mozambique, organizations such as Rural Association of Mutual Support (ORAM), National Union of Peasants Farmers (UNAC) and Association of Rural Mozambican Women (AMRU) were very instrumental in shaping the new land Law. Ghimire & Bruce 2001 argue that civil society organizations were able to disseminate about 15,000 copies of manual about new land policy. They were also active in conducting campaigns, building partnership with the government and investors. Unlike in many other countries, in Mozambique civil society organization opt not to confront the government but rather to enhance partnership through dialogue.

The Federation of Non Governmental Organization played an important part in Senegal. This federation acted as an umbrella organization to a number of organizations. It has been a member of the national committee for a dialogue on the land matters particularly in defending the interests of the poor. However it has been accused for misuse of funds and fraud by its leaders. In Cameroon organizations such as UPAMO (federation des Unions et Groupements Paysans d'Ambam, Ma'am et Olamze, COPAD (le Collectif des Organisations de Participation au Developement), and CAPLANKAM (la Cooperative Agricole des Planteurs du Nkam), have been involved. However like in Senegal these organizations have also being accused for misuse of resources Marc Rwabahungu *in* Ghimire & Moore, (2001).

In Uganda land tenure reform began in 1988, where the government established a committee in the ministry of agriculture to look for the way of making land available for

markets Robin Palmer (2003). Researches were conducted in consultation with outside experts including USAID and Wisconsin Land Tenure Centre. A draft Land Bill was written in 1993. Having read the Bill, civil society organizations were not satisfied with the way the bill was addressing the land issue. Their main concern was the question of land markets versus the interests of the poor. For example one among the principles guiding land use in Uganda stated that “good land tenure should support agriculture development and overall economic development through functioning of land markets which permits those who have rights in land, to voluntarily sell their land to producers and investors gain access to land”. Civil society Organizations on the contrary was of the view that the introduction of markets on land would lead to the marginalization of poor people. The experience of *Mailo*² land was enough to convince them to stand against the in introduction of markets.

In 1995, civil society organization formed an alliance called “Uganda Land Alliance”. The alliance gained strength especially after having received support morally and financially from Oxfam (UK), COOPIBO (Belgium), SNV (Netherlands) and World Vision (US).

The mission of the alliance was to ensure that land policies and laws are reviewed to address the land rights of the poor and to protect access to land for vulnerable and disadvantage groups and individuals. Among other things the alliance attacked different sections of the land Bill that were detrimental to the poor. ULA main claim was that, the Bill did not address the question of the land redistribution especially the *Mailo* land which was given to Buganda by British colonizers. Also they argued that the bill was set in the way that it could favor rich people than it could do to the poor people and vulnerable groups. The alliance criticized the government intention to introduce land markets and its negative implication to the poor.

² See Bazaara N (1998:4) Civil Society and the Struggle for land rights for marginalized Groups: The Contribution of Uganda Land Alliance to the Land Act 1998, paper, part of the International Research Project on “Civil Society and Governance” funded by Ford Foundation, conducted under auspices of the Centre for Basic Research.

In addressing the land issue ULA used number of strategies including seminars, workshops and campaigns. In 1997, the alliance prepared a workshop in Kampala which was attended by 300 people including prime minister, Minister of land and members of parliaments. Representatives from World Bank and British High Commissioner also attended the workshop. The alliance used this meeting to address their concern about the land bill.

The workshop was successful because the prime minister agreed to hold a public debate on the land issue which had never happened before. There was a sign of taking care of the interests of the poor. Government agreed to open the land bill as a document for public comment.

After the government tabled the land bill for debate, ULA used this opportunity to lobby to the members of parliaments, government officials so that major changes are made in the bill. The alliance used methods such as publications, radio talks, open letters to ministers and members of parliaments. Conferences were also used to raise awareness among the people.

Despite efforts by the alliance to sensitize members of the parliaments and citizens to resist the bill, government came up the winner after the new bill having passed consisting of 80% of the government recommendations including its stand on the introduction of market and individual titling. However ULA was in one way successful in bringing government officials, donors and civil society organizations in the dialogue to land issue. Since independence in 1960s many African governments have not been ready to sit together with people who have different opinions.

Even though most of the alliance recommendations were not considered by the government, land issue in Uganda is regarded by many scholars and activists as one of the success stories in an avenue of state and civil society relationships Bazaara N (1998).

Table 3: Summary of the CSO'S involvement in the struggle for land rights in some of the African Countries

Country	Organizations Involved	Strategy Used
South Africa	Surplus People Project, Transvaal Rural Action, Border Rural Committee, Association For Rural Advancement and the Farm workers Research for and resource project	-Forming a net work and coalition e.g. The National Land Committee -Mobilizing and sensitizing people Organizing Summits etc
Mozambique	ORAM, UNAC & AMRU	-Dissemination of about 15,000 copies of the manual about new land policy, -Building partnership with the government in the process
Senegal	Federation of NGOs	-Forming coalition, joining the national committee for the dialogue on the land matters
Cameroon	UPAMO, COPAD & CPLANKAM	Forming coalition
Uganda	ULA	-Coalition -Public awareness and Lobby
Tanzania	NALAF and GLTF	-Campaigns, Lobby, Public awareness and Coalition

4. 4.Conclusion.

Despite the fact that the ongoing land reforms has gone through negotiations and dialogue among different stake holders at least in a limited scale, the role and the influence of civil society organizations has been minimal. Governments and international financial institutions have been dictating decisions on the land policy option. To a large extent, the new land policies in Africa do not reflect the interest of the majority poor people who are the main stake holders on land. Civil society organizations which were

expected to play important role in arena of citizen's representations have been facing enormous challenges such as lack of funds, poor internal organization structure, misuse of funds, government threats and lack of understanding of the reality in the rural community. All these factors have undermined the ability of civil society organizations in advocating for land policy which is embedded on the interests of majority poor. The coming chapter discusses the trend towards civil society involvement in the land policy process in Tanzania. Looking at what was expected from the civil society involvement in the process as discussed in chapter two, and what has actually happened on the ground and it gives a critical analysis as to why civil society has not been influential in the current land reform process in Tanzania and Africa in general.

CHAPTER FIVE: CIVIL SOCIETY ORGANIZATIONS AND LAND POLICY FORMULATION PROCESS IN TANZANIA

5. 1. Introduction

Like many other African countries as discussed in the previous chapters, Tanzania began its move towards the formulation of new land policy /law in 1990. There were number of factors which necessitated the need for land reform in Tanzania. Some of these factors include population and increased demand for land, large livestock population and demand for grazing land, the impact of investment policies, lack of clear policies to govern the country land use, gender inequality and problem of female land succession. Just to mention few Longway M.H.C.S & Mutakyamilwa (2000). In line with the specific factors mentioned above, the main forces behind the new land policy in Tanzania was the social and economic changes which occurred along with the structural adjustment programmes in 1980s championed by IFIs. The marketization and individual titling were seen as the best alternative for increased agriculture production and encourage more investment on land. The process of formulating land law in Tanzania is said to be one among the successful processes in the arena of state/civil society relationship. This part of the paper assesses the land formulation process in Tanzania specifically it looks at the role of civil society organizations.

5. 2. Land policy formulation process

Appointment of the commission of inquiry.

The process started by the formulation of the inter-ministerial committee and the Steering committee. Two committees were charged with the task of coming up with the policy recommendations on land which considers the current social and economic changes taking place in the country Longway M.H.C.S & Mutakyamilwa (2000). The committees suggested for the need to appoint the presidential commission of inquiry into land matters which will analyze the land issue and recommend for the best way to go on preparing a policy. In 1991 president appointed 12 commissioners to form the presidential

commission of inquiry into land matters under chairmanship of Issa Shivji, professor from faculty of law, university of Dar es Salaam Tanzania.

The appointed land commission after having analyzed the whole land issue in Tanzania came up with a number of recommendations which were to be taken into account in the new land policy. The commission report was submitted to the government for decisions in 1993. Among other things, the land commission recommended for the need to have public debate, allowing the involvement of citizens in decision about land policy in Tanzania.

Land commission recommendations

- (i) Preparation of the major principles governing the land should base on the broad national consensus in order to insure the realization of the interests of the poor.
- (ii) Land tenure should be stipulated in the constitution and it should consist of two categories of (I) national land (II) village land.
- (iii) The need for abandonment of radical title and give more power over land ownership to National Land Commission (NLC) which will be charged with the task of administering national land and Village Assembly (VA) which will be dealing with village land. Land commission and village assembly should be accountable to the parliament and not executive.
- (iv) Land alienation and transfer of land from one category to another as it used to be in the past should involve consultation of the customary owners of the land.
- (v) Customary land tenure should be protected and given legal recognition as in right of occupancy.

Generally the commission recommended for the new land law to give more powers to the people over land matters. It also cautioned the government on the consequences of the introduction of land markets that would lead to alienation of land from the poor people.

Government response on the commission recommendations.

Government in responding to the commission's report argued that, the recommendations of the commission on the land policy option were too radical and ambitious. If land is vested to the Board of Land Commission and Village assembly, government will turn to be beggar when it comes to the need to alienate land for investment purpose. It was argued that government should have decision and administrative role over land matters in order to ensure effective regulations of the land markets.

In 1995, the government came up with a new land policy with expectations of having land law in place in 1997 Mallya (1999). The new land policy mainly disregarded the commission report because most of the sections in the policy document were contrary to the commission recommendations.

Table 4: some of the government policy decisions on the new land policy

<ul style="list-style-type: none">- Individual titling is the basis for investment promotion and development of agriculture production (section 4.1.1 {ix} of the land policy)- Right of occupancy and customary land rights will be given certificates of registration which will be eligible to be used as a collateral to obtain loans form banks- All powers over land shall be vested to president and the executive arm of the government will be responsible for administration and allocation of land (Section 4.1.1 {i} of the land policy)- Investors who have the interest to invest on land in Tanzania will be considered and the interest of the people who occupy that land will be safeguarded (Section 4.2.8 {ii} of the land policy).- Village land will be administered by village council which has to be responsible to the village assembly. The procedures and powers of the appointed officers (council officials) will be defined by the minister of land, this include execution of the decision made by village councils with respect to village land administration (section 4.2.2 {iv} of the land policy)
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It has been argued (by Shivi (1998) that government drafted land policy with above policy decisions (see table 4 above) without even consulting the citizens. There were no even public debates on the land matter as it was suggested by the commission report. The drafting of the land policy was done simultaneously with the commission of investigation

over the land matters. More than that it was done by foreign consultants from DFID who did not have enough knowledge on the reality of land issue in Tanzania Shivji (1998)

5.3. Civil Society Organizations and the land policy debate in Tanzania

The new land policy and Land Bill of 1995 was severely criticized by civil society organizations for having been drafted in such way that it could jeopardize the interests of many poor people. The criticisms forced the government to enter into the dialogue with the civil society Organizations to discuss about the issue which lead the new land policy to delay for two years from 1996 to 1998 when the new land law in Tanzania was passed.

Several workshops and seminars were held to sensitize people about the bill and its consequences to the poor. On due process two contending opinion were raised. There were NGOs which supported the introduction of individual titling and those which were against it. This resulted into the emergence of two groups of NALAF and GTLF.

National Land Forum (NALAF)

This group consisted of Non governmental organizations and individuals who formed a coalition called “National Land Forum” (NALAF). NGOs such as HAKI ARHDI, University of Dares salaam Staff Assembly (UDASA), and Legal and Human Right Centre were instrumental. NALAF was formed during the workshop held in Dar es Salaam in 1997. Among other things NALAF mission was to engineer the debate, disseminate information, and educate people about the land bill.

This group was against the introduction of markets and individual titling arguing that, it will jeopardize the interests of the poor.

NALAF criticized the land policy particularly those sections that allowed for the introduction of individual titling. For example section 4.1.1(ix) of the land policy, states that “[A] right of occupancy as a title to the use and occupation of land shall be confirmed by certificate of title for the Statutory Right of occupancy. Customary right of occupancy will be confirmed by *Hati ya Ardhi ya Mila* which will be issued by the Village Council and registered at the corresponding District Land Registry” Shivji

(1998). Their main concern was that the introduction of titles will allow few rich people to have access to land on the expense of the majority poor.

They also were of the view that land registration procedures will be cumbersome in such way that many people particularly women will be dispossessed their land just because of being unable to register their land.

NALAF criticized the enormous power over land given to president under section 4.1.1. (i) {A} “All land in Tanzania is public land vested in the president as trustee on behalf of all citizens Mallya (1999). NALAF was of the view that vesting such enormous power to president and the executive arm of the government may lead to abuse or allocate land for his/her own interests. NALAF recommended for the new land law to give more power to the local people.

Gender Land Task Force (GLTF)

GLTF consisted of Women organizations such as Tanzania Media Women Association (TAMWA), Tanzania Women Lawyers Association (TWLA), Tanzania Gender Networking Programme (TGNP) and Tanzania Home Economics were involved. In March 1997, they formed a coalition which was called “Gender Land Task Force” (GLTF).

On the contrary with the first group, women organizations were advocating for the introduction of individual titling and the need to abandon customary land tenure system. For women organizations customary land tenure was seen as an obstacle for women to have access to land. They blamed the commission of inquiry for recommending the need for retaining customary land tenure. GLTF main argument was that customary tenure has been built in patriarch social relationship which does not take into account the rights of women in accessing land.

GLTF supported the government for introducing individual title arguing that it will give opportunity for women to have title deeds registered in their names.

Government response on the civil society demand was some how positive to women organizations. Several sections in the new land Bill which were biased against women were reviewed. For example all customary land practice which inhibited women to inherit land was declared unconstitutional. However government accepted the demand by the women organization to have certificate of land titles consisting names of both spouses.

For NALAF things were not good, most of their recommendations were not considered in the new land Bill. For example the government continued with its mission of introducing individual title and retaining powers of the president. Furthermore, the Bill was still based on the assumption that land is a commodity and it can be sold to the market Mallya (1999). Land administration procedures remained to be top down where executive arm of the government hold power over all issues regarding land in Tanzania Shivji (1998).

The new land law was passed by the parliament in 1998 and its implementation is under way.

5. 4. Observed weaknesses among civil society organizations.

Very few people in the organizations involved on the debate on the land policy had clear vision and strategy towards the issue. Majority of the organizational members were not able to clearly articulate the coalition's position on the land issue Shivji (1998). It was difficulty for those few people to deliver the coalitions message on its policy position through out the country.

There was confusion among civil society organizations on the question of general land rights versus women land rights. This resulted into the emergence of two camps of NALAF and GLTF. NALAF was advocating for general land rights and GLTF stood for women land rights. It has been argued that GLFF failed to link between ensuring land rights to all citizens against land grabbers, rich people and foreigners. NALAF position was that, it is none sense to fight for the imposition of the policy option (individual titling) which could lead to the alienation of the land from the poor people where by both men and women will be affected. GLTF on their side argued that NALAF position was

much pre-occupied with protecting people without clear indication of where it stood as far as gender inequality in land ownership was concerned Mallya (1999). This disunity weakened the position of civil society organizations on its struggle for land rights as state used this gap to rationalize its decisions on land policy option.

Most of the civil society organizations shifted their effort from the mobilization of support and sensitization of citizens to engage in the policy debate, to mobilizations of members of parliament and legal bureaucrats who did not help much to change government position on the land issue.

Much of the campaigns were held in the city of Dar es Salaam. There were no national wide campaigns conducted by the civil society organizations which could have helped to make rural people get informed about land reform issue.

5. 5. Analysis of the civil society organization engagement in the process and the representation of the interests of the poor.

(i) land policy formulation process

Looking at the land policy formulation process in Tanzania, there is clear indication that government did not intend to make the process more open for public debate. Although it started by the creation of the commission of inquiry, most of its recommendations were not considered. The process of preparing land policy and drafting of land bill went parallel with the commission investigation. This concludes that even the creation of the commission was symbolic Shivji (1998), Odhiambo (2002)

“In fact, a ministerial committee within the Ministry of lands had begun work on land policy in 1990 (ibid.) and worked parallel to the commission. It was the officials involved in this committee, assisted by foreign consultant who were the prime force behind the document which was eventually produced as the National Land Policy (Tanzania Ministry of Lands 1995) and which became the basis for new land act” (Shivji, 1998 : 70)

Civil society organizations were not involved from the beginning of the process. They initiated the land policy debate very late at the time when every thing were in place and the land Bill were about to be passed by the parliament. It was even difficult to challenge

the fundamental principles guiding the land law. They ended up challenging some sections and paragraphs in the land bill while the main principles guiding the land management remained the same.

The division among civil society organizations into two camps of GLTF which was advocating for women land rights and NALAF which stood for general land rights weakened their ability to come up with one common strategy which would help the government to change its attitude.

(ii) Content of the Passed land Law and Land Policy

The final document of the new Land law reflects very little the perspectives of the civil society organizations. Most of the recommendations made by the civil society organizations were not considered with exceptions of few amendments made in response to the women lead coalition (GLTF). See table 5 and 6 pg 35 \$ 36 below:-

Table 5: some of the women lead coalition recommendations and the government's response

Government position	GLTF observed consequences	GLTF position	Final Draft
Continue recognitions of customary rights	Danger of marginalization of women from accessing land	The need for registration of customary land on individual basis	Amended (section 4.1.1(ix) of the 1995 of the land policy)
Tittles consisting the names of the head of the household	Danger of husbands selling land without consulting their wives and their children	Land titles should include both names. And land transactions should be done with the consent from both spouses.	Amended (section 164 of 1998 land act)
Village council should consist of the both male and women representatives	Possibility of the council to be dominated by the male	There should be a ratio of 1:1	Amended (section 17 of 1998 land act)

Table 6: some of the NALAF lead coalition recommendations and the government response

Government policy option	Consequences	NALAF recommendations	Final Draft
Continuation of radical title	<ul style="list-style-type: none"> -Ultimate power over land to the president and executive arm of the government not the people. -State monopoly over land matters which will undermine democracy and transparency in the governing of land -Danger of abuse of power 	<ul style="list-style-type: none"> -Power over village land should be given to village assembly -General land should be given to independent land commission which will be accountable to the national assembly 	-No amendments were made
Titling and registration	<ul style="list-style-type: none"> -Owners of certificates will be in a position to dispose their land through sale without consulting their families -increase land selling by peasants and pastoralists in time of distress leaving them landless and destitute -it makes possible for powerful and clever people to manipulate bureaucratic procedures to get certificates in their favor and therefore appropriate land from the ignorant and poor -danger of increasing land conflicts 	<ul style="list-style-type: none"> Collective ownership of village land Village Assembly should be given power to allocate land Customary land titles should prohibit selling without consent of all members of the family and village assembly. 	-No amendments were made
Classification of land into three categories (i) national land (ii) village land (iii) reserved land. The bill gives president power to transfer land from one category to another.	-village land can be transferred to general land and allocated or sold without the consent of the villagers.	-There should be no legal authority to transfer land from one category to another without the consent of the villagers.	- No amendments were made
The land bill and its emphasis on investment policies.	-rural peasants have to compete with local and foreign investors when it comes to land acquisition	- investors should be given land on condition that they do not own it and can not transfer it	-No amendments were made

(iii) Capacity

Capacity here means three things. One is the ability of the members to articulate issues concerning land and being able to explain in simple language to the ordinary citizens. Second, it entails ability of the organization to finance its activities. Third, capacity means the ability of the organizations to form common position on a certain policy issue (networking capacity). All these three factors were missing in the civil society engagement in the land policy process. For example dependence on donor funds affected to the great extent the strength of the coalitions as some organizations relied on their funding agencies perspectives which were diverse. As a result most of the civil society organizations either withdrew from the coalition or failed to have their own perspectives regarding the land policy Shivji (1998).

(iv) Representations of the interests

While Tanzania main land has more than 20 regions and 50 cities, most of the coalitions campaigns for land rights were held in Dares salaam at the head quarters of the organizations involved in the process where majority of the people have no interests on the village land rights. Some organizations claim to have been working with partners in the rural areas but empirical evidence shows that very few peasants were informed about the land policy process. There is either no evidence of a single rural based organization to have engaged in the process.

This means that 80% of the Tanzanian population living in the rural areas denied their right to engage in the land policy formulation process. Organizations which at least based on broad membership such as Tanzania Federation of Cooperatives (TFC), Religious organizations which covers at least all parts of the country, rural and urban e.g. BAKWATA, Christian Council of Tanzania (CCT), Tanzania Episcopal Conference (TEC), Network for Small Scale Farmers (MVIWATA) were not part of the land policy dialogue.

Table 7: civil society organizations involved, their social base, coalition they belong and the geographical location.

Name of the organization	Social base	Coalition	Geographical Location
Legal and Human Right Centre (LHRC)	Civil rights	NALAF	Dare es salam.
Tanzania Gender Networking Programme (TGNP)	Women Association	GLTF	Dare es salam.
Tanzania Lawyers Women Association (TAWLA)	Lawyers association	GLTF	Dare es salam.
Tanzania Media Women Association (TAMWA)	Media Association	GLTF	Dare es salam.
HAKI ARDHI	Civil rights	NALAF	Dare es salam.
University of Dar es salaam staff Association (UDASA)	Civil rights	NALAF	Dare es salam.

NOTE: table above suggest that no peasants association, co-operative society, religious organization, youth association, pastoral organizations or environmental groups were engaged in the debate.

The above analysis suggests that there is greater disparity between the expected (desired) outcomes and the actual outcomes resulted from the civil society involvement in the land reform process. This disparity disputes the argument by some policy makers and politicians in Tanzania that land policy formulation process of the 1998 marked the beginning of the new era of good governance and democracy after many decades of single party system where decisions were mainly state centered. Instead more has to be done in order to ensure real civil society participation in the policy making process. See table 8 below.

Table 8: summary of the expected outcomes and the actual outcomes from the civil society engagement in the land policy process.

Expected Outcomes	Actual outcomes
Greater mobilizations of the grassroots organizations and the rural poor people to engage in the land policy dialogue	Narrow range of social groups based on grassroots and rural poor. Few groups which engaged in the process were based on parochial interests e.g. obtaining donor money (see table 7 pg 38 above)
Greater public awareness on the policy decisions.	Majority of the population especially from the rural areas did not have an idea on the land draft bill and the policy document.
Civil Society could take part from the beginning of the process	In most cases they joined late hence failed to challenge the fundamental principles of the land Bill and the policy document.
Incorporation of the ideas put forward by Civil Societies involved in the new land law and the land policy document.	Governments in most cases did not take into account the perspectives of the civil society organizations in the new land policies (see table 6 pg 36 Above)

The general trend towards land reform process shows that Civil Society Organizations to the great extent were weak. The question here is why such weakness. As discussed in chapter four, yes some scholars argue for the reasons like donor dependence, being urban based, elite initiated etc. In this thesis I believe that along with the above mentioned factors, there is a fundamental reason for low influence of civil society in Tanzania and Africa in general as discussed below.

5.6. Why the influence of civil society in the land reform process in Tanzania and

Africa in general was weak?

I argue that the fundamental reason for the low influence of civil society organizations in a policy process as we have seen in the current land reforms is the imposition of the western conceptualization and the application of the western principles guiding the activities of civil society to Africa Mercer, C, (2002). With the introduction of neo liberal democracy there has been a shift of focus from those social groups which were broadly based such as peasant associations, cooperative societies and trade unions which had comprised of the popular sector, to the NGOs which are mostly based on the narrow range of interests. The tendency by many donors to take for granted that funding NGOs means strengthening civil society have greatly undermined the civil society sector in Tanzania and Africa in general.

The recent increased funding by donors to this sector has made NGO sector as an arena for competition and struggle for resources Igoe. J, (2003). NGO sector has become an avenue where people can be rich. They have lost their link to the poor people as they concentrate on struggling to meet donor's requirements for funding.

With liberal democracy, organizational activities have to be done according to a certain criteria for instance organizations should have a paid staff, it should be able to pay annual fees, it should have an office etc. These criteria have automatically excluded rural and urban poor people because they can not afford to meet all these procedures in order to form their associations. Instead middle class, educated and political elite and retired government officials are the ones who can afford them hence dominate the civil society sector serving their own interests. Also it has created bureaucratic structures which make it difficult for normal citizens to know even what is happening in the organization which purports to represent their interests.

Civil society to day lack autonomy, as they are urged to work in partnership with the state, and sometimes government have to fund these organizations which at the end of the day they find themselves in difficult position in terms of challenging some of the

decisions made by the state hence they end up supporting the state as well as donors leaving interests of the poor unrepresented.

In summing up I argue that there is a need to rethink on the role of civil society in policy process in Africa. The existing civil society structures which have been dominated by NGO sector do not represent the interest of majority poor. NGOs consist of complex realities which make it difficult to completely recognize their positive role in the policy process as we have seen in the Tanzania land reform process.

CHAPTER SIX: CONCLUSION

African states have been undergoing land reforms since the adoption of structural adjustment programmes in 1980s. These reforms have been characterized by the contending views among different actors. The main point of contention among actors in the debate on the land policy process has been which tenure system is appropriate for Africa following the ongoing social and economic changes influenced by structural adjustment programmes (SAPs). In this case two tenure systems are contested, one is the indigenous tenure system which is based on customary traditions and the other is the individual titling registration based on land markets. In this research paper, I have identified three main actors which were involved in the policy debate. These actors include African governments, IFIs and Civil Society Organizations. While civil society organizations claimed to stand for pro poor land policies and advocated for the maintenance of the existing tenure regime based on residual communal land ownership, governments and IFIs whose policies are informed by a neo liberal perspective have strongly argued for land markets and individual titling as the best way for improving agriculture production in Africa.

This research paper has investigated the role of civil society organizations on the land policy formulation process. Specifically it has explored the extent to which civil society perspectives have been incorporated in the new land laws. It has also investigated the extent to which civil society organizations have managed to represent the interest of the rural poor people on the land reform debate, taking into consideration that more than 60 percent of the African population lives in the rural areas and their livelihood depends on subsistence agriculture.

Reflecting back to my research questions, basing on what were expected from civil society involvement in the process and what has actually happened, I have confirmed the greater disparity between the expected outcomes and the actual outcomes resulting from the land policy formulation process (table 8 pg 39 illustrate). While the process expected to have greater mobilization of grassroots organization and rural poor to engage in the dialogue, greater public awareness on the policy decisions, involvement of civil society

from the beginning of the process, incorporation of civil society ideas in the new land law, instead the process was marked by a narrow range of interests limited to donor funded NGOs. It was also marked by low level of awareness on the new land policy among the ordinary citizens especially rural poor. Further more civil society joined the debate very late hence failed to challenge the fundamental principles of the land bill as the case study of Tanzania land policy formulation process illustrates. Finally there has been weak incorporation of civil society perspectives in the new land policy (table 6 pg36).

In investigating the limitations of the civil society organizations in engaging in the land policy dialogue, I have confirmed that most of the civil society organizations were donor dependent and had a weak organizational and institutional capacity. More specifically, the government's unwillingness to welcome civil society organizations as one of the important stakeholders when it came to the representation of the interests of the majority poor was an obstacle to their participation in the process. Land policy process in Uganda has revealed some mistreatment of civil society organizations by the government side.

In line with the above mentioned factors, this research has confirmed that, the fundamental reason for the low level of Civil Society influence in the land policy formulation process is the dominance of liberal perspectives on the civil society sector since the introduction of SAPs. Conceptualization of civil society has been based on the narrow view which is limited to donor funded NGO sector. This has greatly undermined other social groups such as religious groups, peasants associations, cooperative societies, trade unions and youth organizations which basically consist of wide range of interests and they are normally grassroots organizations.

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APPENDIX:

Brief definitions of the concepts used

Participation:

For the case of this study participation means the process of equitable and active involvement of all stake holders in the formulation of development policies. It is the deliberate effort by policy making bodies to increase stake holder access and control over resources and related decisions. Further more it refers to the process of consulting stake holders when it comes to the decisions that affect their life.

Participation is where citizen's share decisions making powers either directly or through representatives. It is more or less empowering and transforming individuals from subjects to citizens Bazaara.N, (2002)

Land Reform:

Land reform is defined as process of providing access to land by poor agriculture workers and small producers who either posses little or no land and those who have access to land but lack security of land use and formal entitlements Ghimire\$ Bruce, (eds), (2001).

Land Tenure system:

Bruce, (1994), defines land tenure as perceived rights by the possessor of land to manage, dispose of its produce, and engage in transactions, including temporary or permanent transfers without hindrance or interference from any person or corporate entity or a more formalized arrangement setting the boundaries of what is permitted in matters of owning, disposing of, using and managing land.

Individual Land Titling

Can be defined as a process of registering a piece of land to an individual, giving him authority to manage, dispose of its produce, and engage in transactions including temporary or permanent transfers without hindrance or interference from a person or cooperate.

Land Markets

Defined as a process of buying and selling of freeholds as well as temporary transfers such as lease and rental, long and short term informal land borrowing including; land pledging, land mortgaging, land exchanges and other informal exchanges Toulmin & Quan (2000). A Land transaction takes place not only between individuals but also between companies and public institutions.

Mailo Land

It is a specific form of tenure, which emerged in Uganda among the kingdoms of Buganda, Ankole, Toro and parts of Bunyoro. This system arose as the result of British colonial government's giving miles of land from the kingdoms of Ankole, Toro and parts of Bunyoro to Baganda Kingdom Chiefs who had assisted them in colonizing Uganda. This system still exists and majority of the people from three then occupied kingdoms are still living as tenants on their own land until to day.

Land Alienation

It refers to the act of disposing or transferring of land.

Certificate of occupancy

It is a certificate given to an occupier of land and it contains the terms and conditions of the right of occupancy.

Tanzania

Tanzania main land excluding the islands of Zanzibar

