

ABSTRACT

A TALE OF TWO LAWS: DUAL DEMOCRATIZATION OF LAND GOVERNANCE IN TANZANIA

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The end of the Cold War at the end of 'Africa's Lost Decade' of the 1980s coincided with 'new' waves of Africa's globalization and democratization. These waves arguably exported, in unprecedented ways, tenets of 'Western Liberal Democracy' to the shores of Africa. These tenets include 'Good Governance', 'The Rule of Law' and 'Multipartyism'. They also include a related tenet, that of 'Free Market Economy.'

One of the defining features of the first phase of this 'Age of Globalization', which began in the early 1990s, was the mushrooming of 'new' policies and laws in many African countries. These IMF and World Bank-led neoliberal reforms were generally aimed at adjusting national policy and legal regimes to fit the (then) Washington Consensus and Poverty Reduction Strategies (PRS) that metamorphosed from Structural Adjustment Programs (SAPs). Of particular interest here is the case of legal reforms on – and security for – property rights in relation to the 'Liberalize, Marketize and Privatize (LIMP)' Strategy.

In the case of Tanzania, as it is in many other African countries, land was the main property that was subjected to these reforms relatively earlier on. Even though the process started in a seemingly nationalist – as contrasted to imperialist – way, it finally took a different trajectory. With the benefit of hindsight one could conclude that the reform process was but a premeditated, albeit disguised, imperial project.

It is this process that this paper attempt to interrogate in relation to its main outcome, that is, the creation of two legal regimes of land governance in Tanzania. The paper starts by reviewing the extent to which the underlying principle that informed the recommendations of *The Presidential Commission of Inquiry into Land Matters*, as tenured from 1991 to 1992, has been realized. This rationale is thus captured by its chairperson in his book *Where is Uhuru? Reflections on the Struggle for Democracy in Africa*: "The policy, legal and structural recommendations of that commission are primarily based on the need to democratise land tenure system in the country. This was to address the main grievance of the pastoral and peasant communities – lack of security of tenure – and to answer their main demand, which was for full participation or involvement (*kushirikishwa*) in the decision-making processes."

The paper then looks at how the Duboisian notion of 'Double Consciousness', or 'Double Bind', could offer reasonable theoretical explanations for – and practical solutions to – the problematic tensions inherent in the concurrent implementations of the *Land Act Number 4 of 1999* and *Village Land Act Number 5 of 1999* in Tanzania. In this case it particularly looks at when, why and how this 'legal duality' undermines democratic village land governance and hence impedes popular democratization in general. To that end the paper use case studies from both primary and secondary sources, especially the ones archived at the Land Rights Research and Resources Institute (LARRRI/HAKIARDHI).

Since these dual legal tensions tend to manifest themselves visibly and violently in areas attracting Foreign Direct Investments (FDIs) among other LIMP schemes, the paper concludes by recasting the issue of local governance within the broader global debate on national and international governance of natural and human resources. As such it locates the discourse of the said new waves of Africa's globalization and democratization within the context of what Frank Furedi aptly calls *The New Ideology of Imperialism* that seeks to morally rehabilitate imperialism under the guise of globalization. In the final analysis, then, this paper seeks to unmask the imperial(ist) agenda behind 'The Rule of Law's Empire.'