



Diaspora Council of Tanzanians in America

December 5, 2016

## **Analysis and Comments of the Draft National Land Policy 2016**

The Diaspora Council of Tanzania is pleased to provide feedback on the National Land Policy 2016. The comments reflected in this document are the result of responses received from members of the diaspora community who responded to our request for input. Property and land ownership is a considerable investment and something many Tanzanian born individuals in the diaspora hold near and dear to their hearts. The protection and safe custody of these assets is likewise as important. We believe that comments presented in this document have the potential to enhance the protections and rights of not just Tanzanian-born individuals living in the diaspora, but also our brothers and sisters in our native home, Tanzania. Tanzanian born individuals living in the diaspora have acquired land and property through a number of means, including but not limited to: legal purchase, family inheritance, and village land ownership prior to or during their residence overseas. Many also intend to transfer these rights to their offspring, as has been the case for generations.

Below is a compilation of our comments.

### **1. Land Tenure (Chapter 2)**

#### **2.2. Development Control**

Development control entails enforcement of conditions to regulate land development as stipulated in policies, legislation, regulations and technical guidelines as well as Certificate of Rights of Occupancy. A large number of land developments are carried out without approved building plans and building permits, contrary to the use prescribed in the “conditions of rights of occupancy.” Planning authorities who are legally responsible for development control are still at higher level, there is a need to decentralize this function to lower levels of Ward and Mitaa.

Comments:

- i. The policy statement should provide information on how the process should be decentralized. In our views, the process should be decentralized to the City/Municipal level rather than at the Mitaa level. Decentralizing the process to the Mitaa level will be a big burden in terms of resources. There will be no funds or expertise to run the program at the Mitaa level. While doing this at the City/Municipal levels will enable sharing of city/municipal resources to control development at the Mitaa level. The district levels should be responsible for providing guidance to the cities/municipals as well as in collecting property taxes. Furthermore, cities/municipalities should be responsible for upholding development regulations.
- ii. The primary purpose of obtaining land for personal use is to establish habitat and provide adequate food and pasture for immediate family. Land policy should include natural born

citizens who changed status while residing out of the country. There can be laws and policies that prohibit such aliens from selling or change use of land without approval of commissioner of land. The objective here is to seek equal access to land without cheating the system.

## **2. National Land Policy Framework (Chapter 3)**

### **3.3 Rationale and Justification for a Policy**

The National Land Policy was passed in 1995 and to-date (2016), nearly two decades have elapsed. This has necessitated review of the policy, not in the least on account of the mere effects of time, but rather on account of the social and economic changed circumstances for the land sector now compared to what it was 21 years ago. The current national, regional and global state of socio - economic requirements of the lands sector are radically different from what they were in 1995. Hence, there is an urgent need to review the National Land Policy, 1995 in order for the policy to reflect changes, regional and global challenges and opportunities that have evolved in the lands sector.

Comments:

- i. Our hope is that the promotion of equitable access to land to all Tanzanians translates to all indigenous regardless of whether they live in Tanzania or abroad. Part of the policy should specifically indicate any indigenous Tanzanians irrespective of gender or ethnicity.
- ii. This section should specify promotion of existing land tenure structure and give ALL indigenous Tanzanian equal opportunities and options for full land rights. This way, Tanzanians living abroad are included in various opportunities to invest back home.

### **3.4 Main National Land Policy 2016 Objectives**

This section highlights and details the main National Land Policy 2016 objectives.

Comments:

- i. Secured land rights of all users (indigenous Tanzanians).
- ii. Decentralization shouldn't be at Mitaa/Ward levels, but rather at City/Municipal level which are a level higher than Mitaa, but a step lower than the District level. Doing this at the Mitaa level will be a big burden in terms of resources, whereas doing this at the City/Municipal levels will enable sharing city/municipal resources to control the streets/wards in the cities. The district levels should be responsible for providing guidance to their cities/municipals as well as collecting property taxes.
- iii. Furthermore, cities/municipals should be responsible for upholding development regulations both in new and renovation construction stages.
- iv. Access to land through inheritance should be extended to non-citizens who are children of citizens, provided they were proven to have been once citizens themselves.

### 3. National Land Policy (Chapter 4)

#### 4.1 Land tenure and Administration

An effective land administration and tenure system that fosters economic development and brings about social harmony amongst the land users in the country.

Comments:

- i. The policy is silent on legal evidence of ownership. There should be a participatory adjudication mechanism with tools to recognize occupancy rights by individuals and groups in a way that is integrated with the land administration systems.
- ii. The decentralization of land administration services can help to bring the services closer to the customers, and thereby improve the ability of poor land owners to access the service and reduce transaction costs involved in dealing with the land administration system. Under 4.1(ii) the policy should also ensure the Commissioner establishes local agents with minimal discretionary powers to administer land rights.

#### 4.2 Access to land

Equitable allocation of and access to land by all citizens, taking into account the requirements of special interest groups.

Comments:

- i. The policy statements are silent on the rights of special interest groups. There is no clear definition for what these special interest groups are. This has been defined under the last version of the draft, see page. 11. We recommend to expand the definition of the special interest groups to include individuals born in Tanzania, but, have taken up citizenship in other countries.
- ii. Policy statement should provide special consideration to address the rights of individuals born in Tanzania, who however, for one reason or another, have taken up citizenship of other countries. Tanzanian born non-citizens need not be classified in the same category as foreign born non-Tanzanians and foreign companies when it comes to land ownership. The Tanzanians born non-citizens have inherited land from their ancestors. For many of them, the land has been passed down from generations. It is our beliefs that these Tanzanians who are descendants of pre-colonial relatives should retain rights to customary and general land similar to other citizens.
- iii. With increased urbanization, the policy should provide for a clear, equitable and efficient conversion of land from Village Land to General Land as the demand warrants.
- iv. The policy is silent on non- titled land interests which provide their holders certain definite and clear-cut rights that always fall short of possession of the land. These may be labeled privileges, liberties, or advantages and give their holders some right of entry or use of the

- land of another. The policy should provide for guidelines on how these non-titled land interests will be administered and make sure they are equitable and accessible.
- v. Ensure that all citizens and indigenous Tanzanians have equitable access to land.
  - vi. Those born in Tanzania but have another country of citizenship should be allowed to own land as citizens and not investors.

#### **4.4 Availability and Utilization of Land for Investment Purposes**

##### **Optimal utilization of land resource**

###### Comments

- i. The Policy statement should provide special consideration to address the rights of individuals born in Tanzania and have taken up other nationalities. In a similar manner that the current policy provides consideration in section 4.4.3 (iv, v and vi) for foreign investors of land.
- ii. For investors, domestic or foreign, it is expected that ownership of companies might change hands multiple times over a period of time. Thus, it is imperative that land rights of occupancy as a foundational property right of these investments is preserved to maintain valuation of business assets. Design a mechanism where land rights continue to be allocated to the business. A contrary policy will always undercut the value of local business and make them unattractive to foreign investors.
- iii. Maintain a long term horizon for foreign investment of land 99 years instead of the 33 years or lesser term as proposed on 4.4 (iii).
- iv. Facilitate a mechanism for foreign investors with long term investments (99-year land tenure) to have options to invest some of their earnings in Tanzania. Special provisions for investors to own personal property in Tanzania for their families as a way to re-invest their profits in the local community. This could be a special type of occupancy rights that ensure their investments are protected and transferable.
- v. The policy is silent on land pooling. The policy should encourage land pooling and unitization for development and investment purposes and provide for a mechanism to facilitate and guide such endeavors.

#### **4.6 Acquisition and Revocation of Rights of Occupancy**

##### **Enhanced availability of land for public purpose and compliance to the development conditions.**

###### Comments

- i. The power of acquisition, change of use, and revocation of rights of occupancy should be vested in an organ such as the National Land Commission. The organ should be composed of representatives from all walks of life and that will be accountable to citizens through Parliament.

- ii. The Commission should determine public purpose and present a position paper on such acquisition, change of use or revocation of rights of occupancy to the Parliament where it will be tabled, discussed, and deliberated.
- iii. The position of the ultimate decision (Radical title) making on land matters should be vested in the Commission.
- iv. Citizen’s engagement throughout the entire process is key.
- v. The Policy should provide that Right of Occupancy or Customary Certificate of Right of Occupancy will not be taken for public use without just compensation i.e. at a prevailing fair market value. Statement (iii) should be revised to “Ensure that revocation process is not initiated without just compensation to the person with Rights of Occupancy or Customary Certification of Right of Occupancy.
- vi. Develop a tax policy and levy framework to be applied against undeveloped land instead of revocation of rights of occupancy to remove lack of security of land tenancy and strengthen property rights of land to individuals or businesses.
- vii. Develop a national registry for all revoked land right of occupancy through government expropriation for public use to avoid political and social abuse and provide transparency and fairness. The Parliament should provide an oversight of this process and the registry needs to be available in public domain.

#### **4.7 Land Registration and Disposition**

##### **Efficient and effective land registration and disposition.**

###### Comments

- i. The Policy statement should provide special consideration to address the rights of individuals born in Tanzania but for one reason or another have taken up citizenship in other countries. For those who have acquired foreign citizenships, special provisions should be provided to them in the new National Land Policy specifically for land they legally acquired while citizens and the land they acquired through inheritance. Birth rights should be one of the criteria for land ownership.
- ii. The policy should also ensure that the registration system is publicly accessible and easily searchable.
- iii. There appears to be no consideration given, to those who were born and had land before living overseas with foreign citizenship. Can that land can be transferred to their children who are citizens or to their siblings? When they return to retire, do they have access to this land?

#### **4.8 Land Markets, Value and Compensation**

##### **Streamlined Land market and compensation paid fully, fairly and promptly.**

###### Comments

- i. Before land is taken for public use, there should be an independent appraiser who will value all the factors including physical and social when determining fair market value for compensation

#### **4.9 Land Revenue Collection**

##### **Enhanced land revenue collection systems**

- i. When land is levied, accommodation should be made for homestead. A form of a homestead exemption would ensure a reduction property tax for homeowners or village landowners by sheltering a certain amount of the land value on the land used for primary residences.
- ii. Establish an adjudicative mechanism where a person with a right of occupancy can contest the determined land levy amount; and the protestor carry the burden of proof that the levy amount is incorrect.
- iii. On section (iv) this levy should be charged in lieu of revocation of title. A sliding scale of tax/levy can be applied depending on how long the land has been undeveloped. Considerations should be provided when determining the levy, for the fact that limited financial markets and capital facilities in the form of mortgage or other types of credits are available to large portion of the population and it is the primary factor in landowner's inability to develop the land.
- iv. The government should be precise open on land revenue as not all land can produce the revenue. What if the land has been idle for a long period of time?

#### **4.10 Land Disputes Settlements**

##### **Effective and efficient resolution of land disputes.**

###### Comments

- i. The District Land and Housing Tribunals should be given a mandate to train and develop the Village Land and Ward Tribunals on best practices of mediation mechanisms
- ii. The policy should also establish that before a case goes into the court system, the disputing parties will have to show they have gone through the mediation approach

**General Observation:**

- i. Expand Special Interest Groups to include individuals born in Tanzania but who have taken on nationalities of other countries, as well as their children offspring. Currently, foreigners are given consideration for land ownership, similarly, considerations should be extended to individuals born in Tanzania but who have taken on nationalities of other countries.
- ii. Individuals who were born in Tanzanian and assumed citizenship of another country as adults should be able to maintain unrestricted ownership of land gained through transfer, purchase, or allocation before assuming the other citizenship.
- iii. A broader citizen participation in reviewing and establishing an inclusive policy is crucial for an effective policy. On that front, we are recommending a draft policy be translated to Kiswahili and be made available to the citizens through media channels that are effective and provide an opportunity to provide feedback.