

**PRESIDENT'S OFFICE, TANZANIA AND
NORWEGIAN AGENCY FOR DEVELOPMENT
COOPERATION**

**ANNUAL REVIEW OF THE PROPERTY AND
BUSINESS FORMALISATION PROGRAMME
(PBFP) IN TANZANIA**

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LIST OF ABBREVIATIONS

BEST	Business Environment Strengthening for Tanzania
BRA	Business Registration Act
BRELA	Business Registration and Licensing Agency
CBO	Community Based Organisation
CCROs	Certificate of Customary Right of Occupancy
CL	Commissioner for Lands
DHS	Director of Human Settlements
DLO	District Land Officer
GPS	Global Positioning Systems Receiver Unit
ILD	Institute of Liberty Democracy of Lima Peru
LGRP	Local Government Reform Programme
LGSP	Local Government Support Programme
LRDT	Local Reform Design Team
MEO	Mtaa Executive Officer
MKUKUTA	Mkakati wa Kukuza Uchumi na Kuondoa Umasikini Tanzania
MKUZA	Mkakati wa Kuondoa Umasikini Zanzibar
MKURABITA	Mpango wa Kurasimisha Rasilimali na Biashara Tanzania
MLHHSD	Ministry of Lands, Housing and Human Settlement Development
MOF	Ministry of Finance
MOJCA	Ministry of Justice and Constitutional Affairs
MOTIM	Ministry of Trade, Industries and Marketing
NBAA	National Board of Accountants and Auditors
NGO	Non Governmental Organisation
NSGPR	National Strategy for Growth and Poverty Reduction

NSSF	National Social security Fund
PBFP	Property and Business Formalisation Programme
PEACE	Public Education Awareness Creation and Enhancement
PLUM	Participatory Land Use Management
PMU	Programme Management Unit of MKURABITA
PSRP	Public Service Reform Programme
RIA	Regulatory Impact Assessment
RITA	Registration of Insolvency Trusteeship Agency
SACCOS	Savings and Credit Cooperative Societies
SMEs	Small and Medium Enterprises
TIN	Taxpayer Identification Number
TRA	Tanzania Revenue Authority
ToR	Terms of Reference
TZS	Tanzanian Shilling
USD	United States Dollar
VAT	Value Added Tax
VEO	Village Executive Officer
VLA	Village Land Act

PREFACE

This report presents the outcome of a review of the Reform Design Phase of the “Property and Business Formalisation Programme” in Tanzania, in Swahili known as Mkurabita (Mpango wa Kurasimisha Rasilimali na Biashara Tanzania). In conducting the review, the review team enjoyed valuable contributions from a number of stakeholders to the programme only to mention a few;

The management and staff of the Programme Management Unit (PMU) for Mkurabita at the President’s Office provided extensive support and made available detailed information and background to phase II of the programme, as well as the draft Reform Design Programme proposal which was the main focus for the review. The study team also were granted additional inputs and contributions by the Institute of Liberty and Democracy (ILD) in Peru which has been serving as the main advisor to the Mkurabita team in Tanzania during the reform design phase.

Both the PMU and the Royal Norwegian Embassy in Tanzania assisted in putting together a comprehensive programme, provided logistical support and valuable professional inputs to the review process. In addition the team was provided professional inputs and a lot of information from consultations with numerous public institutions, researchers, None-governmental-organisations (NGOs) and others familiar with past and current processes related to “formalisation” of business and property rights.

The President Office and Norad contracted a team of four professionals to jointly conduct the review. The findings and conclusions from this review represent those of the team consisting of Mr Jens Claussen, Nordic Consulting Group, Norway, serving as the team leader, Professor Stein Terje Holden from the University of Life Sciences, Norway, Professor Florens Dominic Luoga, University of Dar es Salaam and Professor Joseph Semboja, Repoa, Tanzania.

Jens Claussen

Team leader

Oslo, 08 May 2008

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1. EXECUTIVE SUMMARY

1.1 Introduction

The Property and Business Formalisation Programme (PBFP) known as MKURABITA in Kiswahili (Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania) is an initiative of the Government of the United Republic of Tanzania assisted by the Institute of Liberty and Democracy (ILD), Peru. The main purpose of the programme is to empower the poor majority in the population in Tanzania by increasing their access to formal financial markets and other services by formalisation of their property rights and businesses.

In October 2004 the Government of Tanzania and Norway signed a grant agreement of 7 million USD to finance the Diagnosis Phase and the Reform Design of MKURABITA. The grant included support for a consultancy agreement between the Government of Tanzania and ILD who has provided professional services to the Programme Management Unit (PMU) under the President's Office in charge of implementing the first two phases of the programme.

In 2005, after finalising the diagnostic study, MKURABITA was subject to an external review commissioned by the President Office of Tanzania and the Norwegian Agency for Development Cooperation (Norad). One of the main recommendations from this review was to apply a more inclusive approach in implementation to create more local awareness, ownership and support, and to also consider other programmes which in total address the same issues as MKURABITA.

A midterm review was conducted in December 2006¹ which focussed on the progress to date in the reform design phase (phase II) following the diagnostic study. The point of departure for this review was a work-plan and a comprehensive progress report produced by the PMU in November 2006. It made a follow up to the recommendations from the 2005 review with further emphasis on Tanzanian ownership and stakeholder involvement in the entire MKURABITA process.

This report presents the finding and recommendations from the third review of MKURABITA undertaken in February 2008. The focus of the review has been on the process and content of the draft reform proposal which was made available to the review team at the inception of the review. It is important to state that the reform proposal presented was a preliminary draft. It also means that some of the tasks in the work-plan have yet to be completed and services under the ILD contract still remain. However, hopefully the timing of this review gives the Local Reform Design Team (LRDT) within the PMU a better opportunity to reflect on the findings and recommendations and incorporate them in the reform programme as they see relevant.

¹ "Mid Term Review of the Reform Design Phase of the Property and Business Formalisation Programme Tanzania", Michael Fergus, Mohammed Khalfan, Haavard Steinholt and Sylvia Temu, February 2007. Published by Norad in their publication series of "Collected Reviews" no. 04/2007.

1.2 Main findings

The ultimate goal of MKURABITA is to empower the target groups and individuals, especially in the informal sector (by MKURABITA labelled “extralegal”), so that they can participate effectively in the formal market economy. It is based on the assumption that formalisation leads to growth in wealth and employment opportunities since property holders and businesses are then given access to financial and other services only available to owners of formalised property and businesses.

The above logic is reflected throughout the programme proposal, a very comprehensive reform proposal which include drafting of new laws, amendments and regulations, several capacity building measures at central and local government levels as well as development of support systems with nation wide outreach. The programme proposal is a result of a major effort by the PMU and its LRDT in the driver’s seat supported by ILD guided by a new revised consultancy agreement reflecting the recommendations from previous reviews to promote greater involvement by Tanzanian professionals to ensure ownership and sustainability of the process. This change is in compliance with the decisions made during their Second Annual Meeting by the Governments of Tanzania and Norway.

Building on the main findings from the diagnostic phase, the reform programme contains many new elements and activities complementing ongoing reforms implemented by Government ministries, agencies and donor supported programmes. Many of them, if implemented, will reduce barriers and remove unnecessary procedures which create prohibitive or discouraging opportunity costs for formalisation. As such, the programme focus to a large extent on initiatives aimed at reducing regulatory and administrative barriers to formalisation although it also contains initiatives aimed at increasing services to business.

The main challenges for the programme relates to the process in which it was developed and the overall programme logic which has impact on the structure and proposed implementation arrangements. These challenges are addressed below.

Progress in reform design phase

The PMU has made a significant effort in producing a comprehensive and ambitious reform proposal. It has undertaken most of the tasks planned in the work-plan. The main tasks to be undertaken as per work-plan were to:

- Draft reform packages;
- Prepare institutional arrangement for formalisation;
- Develop and implement a communication strategy;
- Pilot and implement front runners and evaluation of proposed reforms;
- Design, draft and approve legal reforms.

Of the above main tasks the draft reform programme presented indicates that the first task is close to completion but some major additional work may be required as suggested in our findings below. A proposal for an institutional arrangement is

enclosed to the reform programme and is further discussed in sections below. A consultant has been contracted to produce an inception report relating to this task. Some pilots have been undertaken and one pilot is still ongoing in Bagamoyo. Finally, draft legal reforms have been produced and annexed to the reform proposal.

In total it means that the timeline suggested by the work-plan may be met although this review recommends substantially more efforts to adjust and refine the proposal through a process which ensures active participation of those government ministries and agencies which will implement them.

Process of designing the programme

The process of designing the programme which also has had impact on the product was constrained by the fact that LRDT embarked upon the tasks of developing it before the PMU had put in place the enabling infrastructure. The Orientation document that was issued to members of the LRDT did not explain the concept of convergence analysis. As a result the LRDT embarked upon its tasks with a conceptual background that is not holistic. Consequently what is lacking in the reform packages is the application of the convergence analysis in designing the reforms, an issue recommended by previous reviewers and the meetings between the Governments of Tanzania and Norway.

The other enabling infrastructure included the Reference Groups that was to serve as resounding boards to the LRDT to guide the design process. The groups were never operational and the design work have thus not benefited from peer reviews by Reference Groups.

There was no communication strategy to guide the process allowing it to be informed by participation of stakeholders and other reform implementing institutions. The LRDT therefore found itself having to proceed by way of workshops to consult with stakeholders and members of the public. The process has been participatory in the sense that relevant government institutions have been informed of the process (through workshops, individual consultations and participation in Steering Committee meetings). The main participation by stakeholders in the process has been by some civil society organisations monitoring the implementation of one of the pilot studies. However, the institutions that will eventually implement the reforms have not actively participated in formulating the reform “packages”.

This lack of participation in the actual design process will become a major challenge for the Government in ensuring ownership among the relevant institutions. It has also meant a lost opportunity in ensuring that proposals made are realistic and can be implemented in the time frame indicated. As an illustration, while the programme proposal includes draft Bills and proposed amendments to existing Acts, none of the main institutions mandated by the legislation or involved in drafting and presenting Bills to the Parliament have actually been involved in drafting them. The need for many of them may be questioned and some define new types of legal entities which require additional amendments in existing Acts.

Lessons from the pilots indicate that a lot more information is required for design of a model for formalisation which can be replicated based on qualified information on actual outcomes and impact of different approaches. In fact little is still known on the

actual demand for formalisation and whether formalisation is the binding constraint for growth in income and employment opportunities. However, the programme document still suggests that the reforms proposed should be implemented as designed and followed by “massive formalisation. In other sections of this report some recommended approaches to formalisation are presented based on experience from other countries which suggest a gradual and informed approach.

Programme logic

The overall goal of the programme is to promote poverty alleviation through formalisation. The programme objective and justification falls within the Poverty Reduction Strategies of the Government (MKUKUTA and MKUZA). However, there is no evidence to suggest that the nation-wide formalisation the programme attempts to achieve will promote poverty alleviation. Only few studies in urban and peri-urban areas support this logic in which it predominantly relates to land security in high population growth areas. It suggests that a formalisation strategy should be *demand driven* and focus on those areas in which there are high demand (areas of observed conflict over property, areas with significant outside investor interests and medium scale business) rather than a “supply driven approach” focusing on how to formalise the economy.

Land is an immobile asset and land markets (rental and sales markets) emerge only where land is scarce but even in such locations land markets are characterised by having substantial transaction costs. It means the focus should be on how to reduce transaction costs and information asymmetries in the economy. Reduction of transaction costs and information asymmetries will lead to better market access, also for the poor, whether they operate in the formal or in the informal economy.

Land reforms may help to reduce transaction costs and enhance the functioning of land markets with potential benefits to sellers and buyers, landlords and tenants. Recent research on land markets in Africa has documented that land rental markets may be particularly important for poor households, while land sales markets to a less extent benefit the poor, who are typically unable to buy land. The potential role of land rental markets to provide a livelihood for poor land-scarce households has not been addressed in MKURABITA.

Like many other countries, Tanzania suffers from cumbersome and sometimes prohibitive procedures for formalisation of those entities that require licensing, registration or other government regulatory services to access formal financial and other markets. These are in most cases not among “the poor and vulnerable groups”.

Based on the above this review suggests a change in the programme logical framework. A more relevant objective for MKURABITA would be to reduce transaction costs and information asymmetries of formalisation rather than opt for massive formalisation through proactive awareness campaigns based on a notion that it will lead to poverty reduction; an assumption for which there is limited evidence.

The above is also based on the recognition that formalisation is a *gradual process* that does not involve moving from one fixed state to another and that demand for formalisation *increase with growth* of the economy *which reduces incidence of*

poverty, not the other way around, i.e. that formalisation *leads to growth and reduced incidence of poverty*.

A major weakness of reform proposal is that it builds on strong assumptions for which there is limited evidence; i.e. more efforts are needed to test if these assumptions hold in the case of Tanzania. Two of these strong assumptions are:

- 1) After land titling land can be used as collateral to obtain loans and this assumption is also used as a basis for recommending rural land registration and certification of individual land holdings.
- 2) Land titling will increase the market value of land substantially implying that it is assumed that well-functioning markets for land will develop after land titling, also in rural areas.

Accordingly it is recommended carry out baseline studies and follow-up surveys in the locations where pilot experiments were introduced. What is required is a careful impact assessment satisfying the requirements of a comprehensive impact assessment methodology. A short term evaluation that is planned at the end of the design phase of the project is not likely to yield much of additional insights beyond what is found through this review while a comprehensive survey would. The research would include an assessment of the impacts on different groups of society.

Programme content

The Programme, although comprehensive, will require changes to ensure internal consistency in its programme structure and to complement rather than substitute ongoing reforms. As MKURABITA recognises, formalising business and property rights by changing legal procedures and registration systems do not alone ensure that formalised assets can be transacted in a market. Thus it also points to issues like tax reforms and changes in the financial sector. However, it needs to reflect if MKURABITA is to focus on “initiatives aimed at increasing services to business” and/or “initiatives aimed at reducing regulatory and administrative barriers to formalisation”. It is only the latter that has been subject for the diagnostic study and there is in general limited information on outcomes from the former. Accordingly, the programme should focus on the latter rather than also include the former.

Another issue that needs to be resolved is whether MKURABITA is a programme including all ongoing reforms or if it only focuses on gaps not currently covered by other reforms. A review of the proposal suggests that it is something in between. This finding reflects the main challenge in the process of designing the reforms, i.e. to ensure participation by the other relevant government agencies in actual design of reform packages assuming these agencies are to implement the proposed reforms.

The above is also linked to another design issue, i.e. the identification of who is to implement the reforms. When presenting the reform proposal it will be of importance to have identified who will be in charge of implementing the legal and procedural changes, who will provide what capacity building measures and who will develop the support systems. As indicated in the reform proposal many ongoing programmes are already addressing the issues presented and undertakes the activities listed in the programme. However, prioritizing and sequencing them, and determining who will be

undertaking the additional needed interventions, are among the challenges the programme now faces if it is to serve as an operational instrument to guide the revision and implementation of ongoing programmes.

The latter will require a consultative process with those ministries and agencies identified to facilitate adjustments of existing programmes to include the additional activities identified. This will require substantial time and effort since most of them have not actively participated in the formulation of the reform “packages”. The likely outcome of such a process will be a “reformed” reform proposal.

Implementation arrangements

The Reform Programme document and the diagnostics report point to a need for a national level organization with sufficient mandate to supervise the formalisation processes, conduct studies required to put in context the challenges and provide permanent overall monitoring and oversight functions. The Programme Proposal introduces a high level “Commission” as the legal entity to serve these purposes.

The issue of implementation arrangement is linked to the issue of what the programme is, if it is a complementary or comprehensive programme that includes ongoing reforms, if the reform “packages” then are to be “handed over” to relevant agencies and institutions, and if there is a need for additional institutional arrangements to effectively implement them.

Since the reforms are wide reaching and cross-sector, it will require an arrangement for oversight, consultations and coordination, in particular related to monitoring progress in all areas. It could be subject for debate if this function is best performed by an “Inter-ministerial” committee rather than a higher level “Commission”. In any event, it will require a function in the form of a secretariat to support the process. This could be a unit within the President’s Office rather than a “political autonomous” entity (“Commission”) outside. The Programme is to reflect a policy promoted by the political leadership. This stands in contrast to the proposal of establishing an “apolitical” entity.

The secretariat would need to be staffed and funded to contract research and studies related to the implementation outcomes and impact for the target group of pilots to inform the implementing ministries and agencies for the purpose of adjusting approaches and reforms. It means that the entity will be a coordinator and service provider for the implementing agencies rather than a decision maker and overseer of reforms. The question remains if this is a different role than what another entity established for the same purpose, BEST, is undertaking today.

1.3 Main recommendations

Based on the above the following main recommendations are made:

- The Programme proposal should be presented to all relevant stakeholders in a consultative process involving all of them simultaneously and most of all those entities already undertaking reforms addressing the same issues as the Programme. It may serve as the “stakeholders forum” initially planned for at an earlier stage, to get feedback on the reforms being proposed. It would serve

as a validation process with the main stakeholders like BEST, BRELA, Ministry of Lands, Ministry of Industries, Ministry of Local Government and Regional Administration and Adrhi Institute at the University of Dar es Salaam to mention a few of the most relevant institutions. Additional external funding may be required for undertaking such a process..

- The Programme logic should be reviewed and possibly revised to take into account the findings presented in this review. A more achievable operational objective for the Programme would be “reduction of current regulatory and administrative barriers to formalisation” rather than poverty reduction which is a much wider scope that entails multiple sectors and interventions far beyond those related to formalisation.
- In the presentation of the Programme it should be made clear if MKURABITA is a programme including all ongoing reforms or if it only focuses on gaps not currently undertaken by other reforms. Furthermore, it should include sequencing of them and who will be undertaking additional activities identified as needed interventions will be required if the programme is to serve as an operational instrument to guide the revision and implementation of ongoing programmes.
- The Programme should also include an additional presentation of reforms along a different set of dimensions i.e. required legal and procedural reforms, institutional and capacity building measures, and development of support systems.
- The approach presented in the Programme includes promotion of “massive formalisation”. However, there is no evidence to suggest that formalisation is a driver for growth in income and employment and certainly not for all entities and target groups in a diverse informal sector economy as the case is in Tanzania. Accordingly, the suggested approach should be revisited and prior to designing a specific formalisation approach several new pilots and formative research should be undertaken to make informed decisions on what approach to chose for different markets, target groups and areas.
- It also suggest that the Programme should be revised to consider a demand driven approach to formalisation and targeting those areas and communities where costs of complying with regulations will be less then the benefits.
- The Programme should also reflect the fact that formalisation is a continuum; that entities, target groups and areas differ and so do their requirement for formalisation as well as degree of formalisation. The above suggest that the approach should be gradual, that the process is informed by continued surveys and research on the developments. The above recommended process of revising the proposal may require additional external funding to assist the PMU in a programme reformulation exercise.
- The question of then establishing a new entity or not will be dependent among others, on the outcome of the above. Accordingly, it is in our view too early to decide on whether the existing ministries and entities are the ones that should

be the “drivers” of the proposed reforms or whether a new “Commission” or other type of entity will be required.

2. SCOPE OF REVIEW

The main purpose of the review presented in this report was to assess the process of implementing the reform design phase (phase II) of MKURABITA as well as the outcome of the process; i.e. the reform programme proposal (ref. Terms of Reference in annex I). The main output of phase II at the time of the review was a draft reform programme presented to the team when commencing their one week joint team work in Dar es Salaam 4th February 2008. In addition to the report, work-plans and progress reports as well as other documentation related among others to the implementation of pilot projects in three areas were made available.

As per terms of reference the specific tasks of the review was to:

- Review the changes made in the Consultancy Agreement between the Government of Tanzania and ILD.
- Review progress made in implementing the approved work plan of the Reforms Design phase.
- Assess degree of alignment of reform to the poverty reduction strategies of mainland Tanzania and Zanzibar (MKUKUTA and MKUZA) as well as other policies, strategies and programmes in relevant sectors.
- Review the extent to which key stakeholders have been involved in the Reform Design processes.
- Assess the extent to which the reform proposal has addressed empowerment of the poor and vulnerable groups.
- Compare the reform proposal with other similar reforms in the Region and internationally.
- Based on the findings of the above provide advise on the modality of Reforms, time frame and resources requirements and present an opinion on the proposed implementation arrangements.

The above has been translated into the following main tasks which are also reflected in the structure of this report;

- To assess process and progress made in designing the reform programme.
- To assess the content of proposed reform programme.
- To compare the reform programme and lessons learned from pilots undertaken with regional and international experiences from similar programmes.

- To assess the proposed institutional arrangement for implementing it.

The review was jointly commissioned by the President Office of Tanzania and the Norad, who contracted a team of four professionals through individual contracts to conduct the review. The team consisted of Mr Jens Claussen, Nordic Consulting Group, Norway, serving as the team leader, Professor Joseph Semboja, Repoa, Tanzania, Professor Florens Dominic Luoga and Professor Stein Terje Holden from the University of Life Sciences, Norway.

The review included a one week mission in Tanzania in February 2008, where the full team had opportunities to consult with the Programme Management Unit (PMU) of the MKURABITA under the President's Office, various government officials linked to formalisation issues in Tanzania, researchers and other resource persons who has conducted research and studies on the issue of "formalisation", representatives of the business community and civil society organisations, programme management of reform programmes and other interventions linked to the "formalisation agenda".

3. BACKGROUND AND OVERVIEW OF PROGRAMME

PBFP or MKURABITA (as it is known in Kiswahili) is an initiative of the Government of the United Republic of Tanzania supported by ILD. The main purpose of the programme is to empower the poor majority in the population in Tanzania by increasing their access to finance and other services by formalisation of their property rights and businesses. Formalisation of their property rights and businesses is assumed to give the their properties and businesses protection under a national legal framework as well as allow them access to markets and services currently only available to larger scale formalised business and property holders.

MKURABITA was conceived within the National Strategy for Growth and Reduction of Poverty (MKUKUTA for Tanzania mainland and MKUZA for Zanzibar). The programme seeks to facilitate transformation of property and business entities in the informal sector, into legally held and formally operated entities in the formal sector of the economy.

MKURABITA targets property and business owners in the informal sector, whose entry into the formal market economy is assumed to enhance their opportunities by using their assets to access capital and thus improve national economic growth and reduce individual household poverty.

The ultimate goal of MKURABITA is to empower the target groups and individuals, especially in the informal sector, so that they can participate effectively in the formal market economy. The national property and business framework developed by the programme is intended to enable economic policies and supporting mechanisms such as monetary and fiscal stimuli to actually benefit the majority once most people operate under a national legal framework rather than in the informal markets (in the MKURABITA terminology defined as “extralegal activity”). In this way the proposed reforms are intended to safeguard the economic interests of the majority of the people of Tanzania.

The following are the specific objectives of the Programme:

- To build an architecture of property and business rules that will bring together, standardise, and modernise the prevailing local customary arrangements dispersed throughout the country, so as to create one Tanzanian property and business legal system that incorporates all sectors of the society.
- To foster national integration by enabling the government to bring the informal sector into the legal system in order to govern the Nation's market activities more effectively.
- To ensure that assets of the poor, which are held and exchanged outside the existing legal system, are adequately documented and standardised into universally accepted property records that can be used to create liquidity.

- To develop means to achieve broad-based support for change, for both traditional community leaders and the poor, towards a national property framework that can help realise the potential of a modern market economy.
- To enable overall economic policies and supporting mechanisms such as monetary and fiscal stimuli, to actually work once most people are inside the legal market economy.
- To safeguard the economic interests of the poor majority of the people of Tanzania from adverse impacts of globalisation

The main outcome of the first phase has been a report from the diagnostic study. The Reform Design phase (phase II) has focussed on developing a comprehensive reform proposal using the outcome of the Diagnostic Phase (Phase I) as a point of departure. It is the reform proposal which is the main focus for this review.

In February 2003 the concept "Formalisation on Property Rights" was presented to the Tanzanian Parliament in Dodoma. This event was later on followed by a dialogue between the President of Tanzania and the Minister of Development Cooperation in Norway on this issue. As a result of the dialogue, a workshop financed by the Government of Norway to present the agenda for a formalisation programme in Tanzania was held in Dar es Salaam in September 2003.

As a follow up to the workshop, the Government of Norway signed an agreement in 2003 with the Government of Tanzania to finance the Planning Phase of a "Property and Business Formalisation Programme" (PBFP). The Grant was earmarked to programme design activities with an approximately 0.5 million USD in contributions from Norway to the preparation stages. The planning phase led to a programme proposal described in a programme document².

In March 2004 the Government of Tanzania requested the Government of Norway³ for grant assistance of 7 million USD to finance the Diagnosis Phase and the Reform Design of the PBFP as described in the programme document. Following an appraisal of the programme proposal commissioned by the Norwegian Agency for Development Cooperation (Norad)⁴, the Government of Norway and the Government of Tanzania signed a financing agreement in October 2004. The same programme document also provided the basis for the consultancy agreement between the Government of Tanzania and the ILD, which was signed in November 2004. According to this agreement, ILD is to provide professional services as described in the Terms of Reference annexed to the agreement.

² "Programme to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law", February 2004.

³ Letter from the President of Tanzania to the Minister for Development Cooperation in Norway dated 31st March 2004.

⁴ "Appraisal of Programme to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law", Noragric, Agricultural University of Norway, 9th July 2004.

In 2005, after finalising the diagnostic study, it was subject for an external review commissioned by President Office of Tanzania and Norad⁵. The main recommendations from this review can be summarised into the following:

- Apply a more inclusive approach in implementation as a means of creating more local awareness, ownership and support. It will create a better understanding of the key findings and required actions.
- Take into consideration other programmes⁶ (BEST, SPILL, LGRP, etc.) which in total address the same issues as MKURBITA.
- When selecting actions take into consideration actual capacity to implement them and allow sufficient time to ensure that they are fully understood by relevant stakeholders and can be sustained by them.
- Distinguish between legal, institutional and procedural constraints versus other binding constraints (tax, financial sector, etc.), i.e. when selecting areas of change take into consideration that legal and procedural issues addressed by MKURABITA may not alone to achieve desired objectives.
- In choosing reform interventions assess possible distributional effects to ensure widest possible benefits of actions chosen i.e. who will benefit and how.

These recommendations have to some extent been taken into consideration in the design of the reforms and will be addressed further in the following sections assessing the reform proposal.

A midterm review was conducted in December 2006⁷ which focussed on the progress to date in the reform design phase (phase II) following the diagnostic study. The point of departure for this review was a work-plan and a comprehensive progress report produced by the PMU in November 2006. It made a follow up to the recommendations from the review of the diagnostic phase but with particular emphasis on process more than content of reforms since the latter was still at an early stage of being designed. The main recommendations from this review were the following;

- There is greater need for Tanzanian ownership and stakeholder involvement in the entire MKURABITA process which is not yet well known or understood in Tanzania.

⁵ “Review of The first phase of the Property and Business Formalisation Programme (PBFP) in Tanzania”, Nordic Consulting Group, 08 May 2008

⁶ Like Business Environment Strengthening for Tanzania (BEST), Strategic Plan to implement Land Laws (SPILL), Local Government Reform Programme (LGRP).

⁷ “Mid Term Review of the Reform Design Phase of the Property and Business Formalisation Programme Tanzania”, Michael Fergus, Mohammed Khalfan, Haavard Steinsholt and Sylvia Temu, February 2007. Published by Norad in their publication series of “Collected Reviews” no. 04/2007.

- There is little evidence of progress on formative research.
- It is recommended that a larger proportion of the consulting work is carried out in Tanzania.
- It is recommended that the proposals for a land register for rural areas be reconsidered because of the complexity and size of the problems likely to be encountered.

As a result of the above reviews and following the last annual review meeting between the President's Office and the Norwegian Embassy, a Local Reform Design Team (LRDT) was recruited and new revised contract with ILD was signed in March 2007 which changed their role taking the above into account.

4. THE PROCESS OF DESIGNING THE REFORMS

4.1 Progress in implementing the work plan

The PMU has made a significant effort in producing a comprehensive and ambitious reform proposal. It has undertaken most of the tasks planned in the work-plan and may be able to complete all of them within the planned time frame with some few exceptions. There are, however several challenges a head, both related to process in developing the programme, related to the structure and content of proposed reforms as well as proposed implementation arrangement.

As part of a change in the approach of moving the main tasks in formulation of the programme, a Local Reform Design Team (LRDT) was recruited and commenced its work in July 2007. According to the terms of reference for the LRDT they have been tasked to:

- Draft reform packages;
- Prepare institutional arrangement for formalisation;
- Develop and implement a communication strategy;
- Pilot and implement front runners and evaluation of proposed reforms;
- Design, draft and approve legal reforms.

In total the above constitutes the main tasks of the Work-Plan for the remaining part of the reform design phase as agreed to in the last annual review meeting between the Government's of Tanzania and Norway.

The above tasks are envisaged to be completed by March 2008 with the deliverables described below;

Draft Reform Packages - These have been developed with drafts of:

- Detailed Property and Business Reform Proposals (January 23, 2008)
- Legal and Institutional Reform Outlines and Packages (December 31, 2007)

Institutional Arrangement for Formalisation - This has also been developed with the draft write-up of the "Institutional Arrangements for the Implementation of the Formalisation Programme" together with a "Draft Bill for an Act to Establish a Commission" appended to the "Legal and Institutional Reform Outlines and Packages" referred to above.

Communication Strategy - According to the PMU Progress Report a consultant has already been engaged to develop a communication strategy for the programme and an Inception Report has been submitted for consideration by the PMU.

Pilot and Implement Front Runners and Evaluation of Proposed Reforms - two Pilots have been implemented. An earlier pilot at Handeni was implemented before the LRDT was appointed. For each of the pilots some reports have been produced among others from NGOs observing the process (ref. sections below describing the pilots in more detail) like the reports from the Legal and Human Rights Committee (LHRC), the Ministry of Lands, Housing and Human Settlement Development (MLHHSD) and Oxfam Tanzania. Currently a pilot is under implementation in Bagamoyo.

Design and Draft of Legal Reforms - The LRDT has drafted extensive legal reforms through the document labelled “Institutional Arrangements for the Implementation of the Formalisation Programme”. It involves proposed amendments to more than 70 pieces of legislation. Among others the LRDT has drafted the following Bills;

- A Draft Bill for an Act to Establish a Commission
- A Bill for an Act to Amend Certain Written Laws (Annex 1), containing proposed amendments to:
 - (i) The Land Act
 - (ii) The Land Courts (Dispute Settlement) Act
 - (iii) The Survey Act
 - (iv) The urban Planning Act
 - (v) The Village Land Act
- A Bill for an Act to Amend Certain written Laws (Annex 4), containing proposed amendments to:
 - (i) The land adjudication Act
 - (ii) The land Tenure Act
 - (iii) The land Survey Act
 - (iv) The Registered Land Act
 - (v) The land Transfer Act
- A Draft Bill for an Act to Provide for the Establishment and Administration of Limited Liability Partnerships (LLPs) and to Provide for Other Related Matters in Tanzania Mainland (Annex 9).
- A Draft Bill for an Act to Provide for the Amendments of Certain Written Laws for the Purposes of Introducing Limited liability Single Shareholder Companies (LLSSCs) in Tanzania Mainland (Annex 7), containing proposed amendments to;
 - (i) The Companies Act
 - (ii) The Business Names (Registration) Act
 - (iii) The Business Activities Registration Act
- A Draft Bill for Miscellaneous Amendment Act 2008 of Zanzibar (Annex 11).
- A Draft Bill for an Act to Provide for the Establishment and Administration of Limited Liability Partnerships (LLPs) and to Provide for Other Related Matters in Zanzibar (Annex 12).
- Draft Regulations for a Bill for miscellaneous Employment Act (Annex 13).
- Draft Regulations for Effecting the Formation of Single Shareholder Companies in Tanzania Mainland (Annex 10).
- Draft Rules for the Establishment of Commercial Court Division at the Primary, District and resident magistrate Courts in Tanzania Mainland (Annex 8).
- Draft Regulations for land Allocation in Zanzibar (Annex 6).
- Procedures for CRO Application and Issuing (Annex 3).

- Draft Regulations for Amendment of Land Regulations in Tanzania Mainland (Annex 2).

The document on “Institutional Arrangements for the Implementation of the Formalisation Programme” contains very detailed proposals on the various laws to be amended. The amendments to the laws are also detailed and time-framed in the following documents:

- Action Plan for activities on Formalisation of Rural Real Properties (Mainland): Matrix table 1 (Appendix 1 to the Legal and Institutional Reform Outlines and Packages).
- Action Plan for activities on Formalisation of Real Estates (Mainland): Matrix Table 2 on urban Real Estate (Appendix 2).
- Action Plan for Property reform in Zanzibar (Appendix 3).
- Action Plan for Formalisation of Business (Tanzania Mainland): Matrix Table 4 (Appendix 4).
- Action Plan for Activities on Formalisation of Business (Zanzibar): Matrix Table 5 (Appendix 5).

The deliverables show that the LRDT have done an impressive amount of work and that the March 2008 for the completion of the reform design stage may be met.

The LRDT is a product of recommendations from previous reviews and understandings from the successive meetings between the Governments of Tanzania and Norway. The main objective was to ensure local ownership of the reform design processes. At stake was the legitimate apprehension that the control of the processes by ILD was not adequately insightful of the realities and sensitivities in Tanzania. The LRDT was expected to bring about the deliverables above through a participatory approach. This would ensure that relevant stakeholders not only understand the programme, but are fully involved in the development and designing of the reforms. The LRDT would in this context be facilitative rather than prescriptive reformers. It was expected to submerge and fuse-in with the substratum (the poor and legally marginalized business operators and property owners that form the “extralegal” sector) and strategize to arise with them in the subaltern approach together with the “archetypal” legal frameworks in forms that can be given legal recognitions and that are ultimately developed into a single reformed legal framework.

The LRDT was expected to bring on board other interventions by the different government institutions implementing ongoing reforms in a manner that clarify the context of the formalisation programme and join them not as adversaries or competitors, but as partners with the ultimate responsibilities to take-up the challenges of legal reforms that would make it possible for the formalised businesses and property ownerships to converge and merge into the single legal framework without being disadvantaged by the existing prescriptive rules.

In order to achieve the above expectation, the LRDT was given the challenge to apply the convergence analysis and ensure that the top-down and bottom-up initiatives

merge without conflict. The joint process being the subsequent legal reforms was to make the existing frameworks friendly and accommodative to the formalised entities.

The current separate processes are perceived as being the top-down process that is undertaken by the existing interventions like those under BRELA⁸, BEST, SMOLE⁹, SPILL, the Local Governments Reform Programme (LGRP), the Law Reform Programme (LRP) and the like. The LRDT would in this context promote collaboration and serve as an educator and campaigner and not a fault finder and rectifier.

The viability of the formalisation programme depends heavily on its correct understanding nationwide, particularly by government institutions and other stakeholders in their efforts to combat poverty and implement poverty alleviation programs. Conflicting understanding would undermine its political acceptability and negate the bureaucracy that is crucial in devising and administering the top-down reforms.

The LRDT was further expected to use the convergence analysis as a mediating paradigm whereby the institutional interventions are to continue carrying out ongoing reforms without interferences but with an informed anticipation that at the right time the reforms will have to be further fine tuned in order to embrace the formalised “extralegal” activities without sending it scampering back into “extra legality”. This may easily happen if the immediate effect of the formalisation is to expose the formalised entities to unmitigated taxation, regulatory organs with extra-judicial powers like the health inspectors, local government rate collectors, weights and measures authorities and the like.

The LRDT was also expected, through consultative and participatory methodologies to foster the consensus on the choice and creation of an implementation organ that can strategically fit in the top-down and bottom-up processes. Ideally this should be able to provide the supportive facilities for the formalised extralegal entities and units to be able to effect legal compliances in a manner that is not onerous, certain and just. The subaltern and customary norms and rules will be assured of continued use and given legal recognition until such time the laws applicable to the current legal sector are fully reformed and are accessible by the formalised entities and units. In this context, the envisaged implementation organ would not be a super-structural overseer and controller of other institutions, but an infrastructural incubator of the entities and units promoting formalisation.

The evaluation of the progress made in implementing the annual work-plan has been made within the backdrop of the above and which will be addressed in the following section.

⁸ Business Registration and Licensing Agency (BRELA)

⁹ Sustainable Management of land and environment (SMOLE)

4.2 Design process

Participatory Methodologies - The consultations made during the review revealed that the LRDT has applied a narrow definition of participatory methodologies. Many respondents explained their knowledge of the formalisation programme to have come from workshops run by the PMU to explain what the programme is all about and how it is likely to be beneficial. It did not serve to bring stakeholders on board and draw from them ideas and innovations and foster their partnership in designing reforms.

All representatives of the main stakeholders outside the PMU had limited information on what exactly is being proposed in MKURABITA because they were not actively engaged in formulation of reforms and given an opportunity to assist in identifying required additional interventions over and above what is already being implemented by ongoing reform programmes.

It is conceived by many as a process in which the President's Office through MKURABITA will acquire powers and mandates to direct the existing Government institutions on the content and directions of reforms they currently implement. A clear message was that there is a lack of understanding as to whether MKURABITA is an attempt to duplicate rather than complement and/or contribute to improving ongoing reforms.

In general the above clearly indicates that too limited effort has been made to bring on board the various institutions that are crucial for the top-down convergence to participate in designing the reforms. It is like assigning the person who will manage the convergence to prescribe what the manager should do. This will escalate incompatibilities between the ongoing government interventions and MKURABITA.

Accordingly, PMU should create the previously recommended stakeholders forum where the LRDT will continually interact with the larger public and get feedback on the reforms being proposed. At the stage reached, the draft proposals should be placed through a validation process with the main stakeholders like BEST, BRELA, Ministry of Lands, Ministry of Industries, Ministry of Local Government and Regional Administration, Adrhi Institute at the University of Dar es Salaam, etc.

The same stakeholders should be engaged in the drafting process through reference groups which was to be established as per work-plan and contract with ILD. They will serve as groups of experts who are capable of critical evaluation of proposals and who can assist in refining the constructs developed by the LRDT in participation with all stakeholders. The reference groups will bring in objectivity to the process.

Application of the Convergence analysis - The findings from the review point to the fact that other government institutions that are involved in interventions that are akin to the components of the formalisation programme find the latter an undesirable parallel. The question that often was asked by various stakeholders relates to the wisdom of giving statutory mandates to a new institution to do what is already statutorily vested into existing civil service institutions.

The implicit resistance to the formalisation programme is due to the fact that MKURABITA has not been adequately conveyed to the public and government institutions. For example, for MLHSD, the monies currently availed to the

formalisation programme would be best spent to support SPILL which is constrained by lack of financial resources and accordingly they may not be able to survey all the village lands in the country "in the near future".

It means through SPILL formalisation is not in contemplation, rather, implementation of the laws according to means and opportunity. Clearly the two prongs could be unpacked in the sense that SPILL relates to the top-down process that is likely to take a very long time and is not aimed at impacting on the "extralegal" sector in the near future. Thus strategies to untangle the "extralegal" activities can still be considered from the subaltern perspectives and gradually integrated through the bottom-up process that should not be initially implemented through prescriptive statutory rules that are currently responsible for the "extra legality". The logic is very simple. The extralegal have no reason or incentive to align themselves into the statutory rules which they find highly invasive and costly.

While the LRDT appear conscious of the two distinctive processes, it is not translated into a programme that provides the divide between ongoing reforms and the focus of formalisation. The universe of formalisation, namely, the "extralegal" cannot immediately be reached by the current interventions. The existing interventions should look at the formalisation programme as a creation of an infrastructure from which it will broaden their own coverage in future. This is true for BRELA, SPILL, the National Identity Cards project, tax reforms, local government reforms and the like.

It is recommended that the PMU and the LRDT should re-orient their articulation of the convergence analysis or many of the current proposals will be discarded as pointed out specifically in the subsequent parts.

Communication Strategy- As pointed out earlier, to absence of effective communication may be the reason for the conceptions by others like BEST, BRELA, SPILL, LGRP and the like in the mainstreamed Government system of MKURABITA as a parallel programme. This is compounded by the fact that the LRDT has not employed a participatory methodology effectively. For a broad based and correct understanding of the formalisation concepts, purpose and implementation arrangements, as well as the understanding of the intended benefits and the beneficiaries' involvement of stakeholders and members of the various communities in the country through information and discussion workshops are not sufficient. Participatory methodologies need to be effectively complemented with an effective communication strategy.

Efforts to get the communication strategy developed by the assistance of a consultant are still underway. However, at the same time the reform design stage is drawing to an end. By not having effective communication fully operational at this point is a serious delay that constrains any endeavour to build a national consensus and draw the participation of intervention institutions and other stakeholders.

A communication strategy should be embarked upon hand in hand with the recommendation to draw in stakeholders and other government agencies into the reform design process, including the creation of the reference groups and stakeholder forum.

4.3 Inputs as per Consultancy Agreement

The President's Office and ILD signed the first consultancy contract for assistance to the implementation of MKURABITA in November 2004. This contract was a result of a single source procurement procedure and covered services from ILD for both phase I and II of altogether 31 months. The signing of the agreement led to the implementation of the Diagnostic Study (Phase I) which was to a large extent led and implemented by ILD.

According to the contract between Tanzania and ILD the total programme cost was estimated to 6.988 million USD to be fully funded by Norway. Of this amount the remuneration for services from ILD was 4.219 million USD (approximately 60%). According to the finance agreements between the Governments of Tanzania and Norway (October 2004 and the addendum no.1 of August 2005) the contributions from Norway to the programme are 7 million USD based on a budget that deviates from the contract between Tanzania and ILD.

The review of the diagnostic phase as well as the first review of the Programme Design phase both emphasised the need to institutionalise the programme in Tanzania with the President's Office managing the process and ILD instead acting as a demand driven service provider. Following the reviews it was decided that the actual work to design the reform programme was to be undertaken by the Local Reform Design Team (LRDT) recruited by the PMU rather than ILD as stipulated in the initial contract with them.

Subsequently the consultancy contract with ILD was renegotiated with revised terms of references. The new revised contract was signed in March 2007 with a contractual value of 0.5 million USD for the remaining 9 months of the reform design phase which implied a reduction in the cost of ILD services from 4.2 million USD to 3.3 million USD (48% of total costs).

Table 1 – MUKURABITA budget (in USD)

	Total	ILD	Local costs
Phase I	1,499,964	1,014,264	485,700
Phase II	5,487,870	3,204,990	2,282,880
Total	6,987,834	4,219,254	2,768,580
Revised contract Phase II	5,487,870	2,310,196.00	3,177,674
Revised total	6,987,834	3,324,460	3,663,374

The approach in implementation of the programme has evidently changed from one in which ILD was in the "driver seat" to an approach where the PMU of the President's Office has taken charge of the process and ILD providing services as per revised terms of reference. Since the new contract came into effect and LRDT was recruited in July/August 2008, ILD has changed their approach first and foremost as a service provider by assisting in the preparation of ToRs and work-plan for the LRDT members, training of the new LRDT members recruited and assistance in developing the reform outlines including programme formats.

The training was conducted with a team of nine ILD representatives visiting Dar es Salaam in November 2007 during which a two day training workshop was conducted in Bagamoyo. The training included the following:

- Presentation of the fundamental pillars of formalisation.
- A list of reforms to be included in the formalisation programme for business and real estate in both Mainland and Zanzibar.
- A work-plan for LRDT and ILD in order to produce final versions of reform proposals.

Some of the tasks still remaining to be completed as per ToRs are;

- assistance in the formulation of a communication strategy (the recruitment of consultant to formulate the strategy is still on process),
- to provide an opinion on the implementation plan for the reform programme (the first draft of the reform programme was just completed as an when this review mission commenced), and
- review of the cost benefit analysis of reform proposal (still not completed by the LRDT).

A preliminary report from ILD with comments to the Reform outline has been produced. However, this will be followed by a mission to Tanzania by ILD to interact with LRDT and discuss the reform proposals and the other related documents. This will include a review of the “Action Plan for reform proposals” after LRDT has revised it based on the comments provided by the ILD, review of the “Cost – Benefit Analysis of Reforms” once submitted by LRDT and produce a final report that contains the final comments on the reform proposals.

5. REVIEW OF REFORM PROPOSAL

5.1 The programme logic

The reform proposal consists of 260 activities classified under eight subcomponents/objectives (property/business, rural/urban, mainland/Zanzibar) and two main components (property and business formalisation). They consist of three broad types of activities; legal and procedural changes (revising existing and/or introducing new laws), capacity building measures for public institutions (like local governments) and development of support systems (like land registry). Most of the legal and procedural changes and many of the capacity building measures are the same for all components; effectively the number of activities to be undertaken is less than 100.

The above suggest a need to restructure or at least include an additional presentation of reforms along a different set of dimensions i.e. required legal and procedural reforms, institutional and capacity building measures and finally, development of support systems.

In the study of linkages between MKURABITA and ongoing reforms¹⁰ commissioned by the PMU, 11 other reforms are listed and analysed to see to what extent MKURABITA complement ongoing reforms. The key results from these analyses are that there are many synergies between existing reforms and MKURABITA. When reviewing the reform proposal however, some major issue remains unclear;

- is the MKURABITA a programme that meets all the required needs to achieve the overall objective,
- does it incorporate all ongoing reforms or has it left out those which are considered unnecessary to achieve the objective; or
- is it only focussing on additional interventions required to complement ongoing reforms.

The programme proposal is comprehensive in as much as it attempts to include wide ranging reforms important for achieving the objective like reform of tax systems, promotion of a conducive environment for business including changing financial sector products and services targeting also low income households and informal businesses being formalised. The programme, although comprehensive, will require some major changes to ensure internal consistency in its programme structure and to complement rather than substitute ongoing reforms.

¹⁰ “The Study on Government and Non-government Programs that have a bearing or related to the Formalisation Programme”, Jovin A. Banturaki, CO-Opedec, April 2006.

The first issue is linked to the overall programme logic; poverty alleviation through formalisation. While secure business and property rights may be a required factor for growth in household income and wealth, it is not alone and not even necessarily the binding constraint and subsequently proactive formalisation may not be a desired approach. As MKURABITA recognises, formalising business and property rights by changing legal procedures and registration systems do not alone ensure that formalised assets can be transacted in a market. Thus it also points to issues like tax reforms and changes in the financial sector. However, these areas need to be considered if they are to be incorporated in the programme or if MKURABITA is to focus on “initiatives aimed at increasing services to business” and/or initiatives aimed at reducing regulatory and administrative barriers to formalisation (ref. section below on experience from international practices). It is only the latter that has been subject for the diagnostic study and there is in general limited information on outcomes from the former. This leads to the challenge of relating formalisation to the MKURABITA programme objective; formalisation leads to poverty alleviation, an issue further discussed in sections below.

The second and third issues relate to if MKURABITA is a programme including all ongoing reforms or does it only focus on gaps not currently undertaken by other reforms. A review of the proposal suggests that it is something in between; it includes some but not all ongoing efforts under implementation. As an illustration, under BEST a number of activities are undertaken which have not been included under MKURABITA while others have. It indicates that BEST needs to reprioritise its activities or MKURABITA should be expanded to include all. This may also reflect the main challenge in the process of designing the reforms, i.e. to ensure participation by the other relevant government agencies in actual design of reform packages assuming these agencies are to implement the proposed reforms, not the President’s Office or any other new entity (ref. section on implementation arrangement).

The above is also linked to another design issue, i.e. the identification of who is to implement the reforms. When presenting the reform proposal it will be of importance to have identified who will be in charge of implementing the legal and procedural changes, who will provide what capacity building measures and who will develop the support systems. As indicated in the reform proposal many ongoing programmes are already addressing the issues presented and undertake the activities listed in the programme. However, sequencing of them and who will be undertaking additional activities identified as needed interventions will be required if the programme is to serve as an operational instrument to guide the revision and implementation of ongoing programmes.

The latter will require a consultative process with those ministries and agencies identified to facilitate adjustments of existing programmes to include the additional activities identified. This will require substantial time and effort since most of them have not actively participated in the formulation of the reform “packages” (ref. chapter 4 above).

5.2 Alignment to national policies and strategies

The primary objective of MKURABITA is to build an architecture of property and business rules that will bring together, standardise, and modernise the prevailing local

customary arrangements dispersed throughout the country, so as to create *one* Tanzanian property and business legal system that incorporates all sectors of the society. An attempt to predict the possibilities for success and sustainability of such a programme involves a consideration of many variables one of which being strategic fit of the programme itself in the country's overall policy framework.

Today's development agenda for Tanzania mainland and Zanzibar is informed by two sets of national policies namely the long term development visions and medium term strategies for poverty reduction. The long-term visions 2025 for Tanzania mainland and vision 2020 for Zanzibar envisages transforming the economy of Tanzania and catapulting living standards and nature of economic activities to the standards of middle-income countries. Aspirations of vision 2025 for Tanzania mainland and vision 2020 for Zanzibar are the same; while Zanzibar aspires total eradication of poverty by the year 2020, Tanzania mainland aims at building a nation with high and shared growth, high quality livelihoods and a competitive economy among other characteristics.

Both visions see modernization of economic activities as the principle strategy for realising the visions while individual initiative and the private sector are seen as the central driving forces for renewing the economies. This focus on modernization of economic activities especially private sector activities places formalisation high on the policy agenda because simple and effective formalisation procedures are equivalent to a conducive environment for modernization and growth.

Poverty reduction strategies are organizing frameworks for poverty reduction and development. These medium term national policies are the principal vehicles laying down actual strategies for realization of development visions. The National Strategy for Growth and Reduction Poverty for Tanzania mainland (MKUKUTA) and National Growth Strategy for Zanzibar (MKUZA) sets out strategies for modernization of private sector activities.

MKUKUTA for example identifies Private Sector Development as one of the principal sources of growth. In order to modernise private sector activities the policy stipulates that during MKUKUTA period of 2005 and 2010 efforts will be directed at creating enabling environment for growth through addressing entrepreneurship development needs for rural private producers (on farm and non farm); agro based industries, and urban-based, formal and informal enterprises. Some of the specific formalisation related activities emphasized in MKUKUTA include:

- Scaling up reduction of administrative hurdles due to complicated licensing, and taxation system, harassment by tax authorities and local administration; replace them with simple one stop mechanisms to reduce the high costs of starting and doing business.
- Improving access to and ability to use productive assets e.g. (land) for the poor, for example those in small scale agriculture and rural non farm activities, SMEs and groups such as women and youth, micro finance activities will be expanded and land access rights ensured for both men and women for small and large scale producers.

In addition, MKUKUTA recognises the role of informal sector as an important contributor to GDP growth. The framework stipulates that widening of the spectrum of actors in the economy particularly the informal sector, SMEs and the cooperatives as an important strategy for GDP growth. This widening of actors in the economy may also entail formalisation of some informal activities to make them part of the mainstream economic activities.

The role of informal sector in poverty reduction, growth and development and formalisation of the same is appreciated by not only MKUKUTA (second generation of PRSP) but also even in the first PRSP of 2000/01 – 2002/03. Section 1 of the first PRSP addresses income poverty including GDP growth, agriculture and employment. In this strategy, informal sector is identified as significant component. The need of bolstering is also highlighted though the strategy doesn't set specific strategies for bolstering of informal sector. It is interesting to note that this deficiency is filled in the second generation PRSP (MKUKUTA) that highlights the specific strategies for bolstering of informal sector activities and their formalisation. Apparently, these changes suggest an evolution in policy focus towards informal sector activities. It appears that over time national policies have provided more space to informal sector activities.

Apart from national policies, Tanzania's development agenda is further guided by sector policies and strategies. These are detailed principles to guide developments of specific social and economic sectors. Sector policies are informed by national policies and they are meant to translate country's long and medium term development policy into day-to-day operations in different sectors. Put it differently, today's sector policies and strategies provides blue prints on how to realise modernization agenda underscored by national policies in the various social and economic spheres. A brief review of a few sector policies below suggest that part of modernization efforts aim at formalisation of informal sector activities and business assets:

- The National Micro Finance Policy (2001) seeks to provide financial services to low-income individuals, households and groups in both rural and urban areas who usually find services of the conventional financial institutions inaccessible. Targeted beneficiaries are mainly those engaged in micro, small and medium enterprises in commerce, industry, mining or agriculture. The impact of this policy is mainly in legal recognition of specific institutions (organs) as legitimate providers of micro finance services, thus laying the ground for its clients to obtain legal identity and recognition.
- The objective of the Rural Development Policy is to archive a dynamic and sustainable economic growth in the rural areas thus contributing to poverty reduction in the rural areas. The policy recognises the importance of property rights and rural commercial enterprises among other key ingredients of rural development.
- The Local Government Reform Programme (LGRP) seeks to translate the overall national social economic reforms to locally based programs based on the participation of the local people and their institutions. The facilitative and regulatory roles of the District and Urban Councils in matters related to

business and property rights are spelled out in this Local Government Reform Agenda.

- The small and Medium Enterprises (SME) Development Policy recognises the constraints facing small and medium entrepreneurs in accessing capital and operating within the legal framework applying to businesses, not to mention inability to access consultancy services. The policy also recognises the importance of this sector in the national economy. Currently, this sector of the economy holds a big number of informal businesses and property owners; the sector has a potential of growing fast and be a source of some 700,000 job seekers who join the labour market every year.

From the above it is evident that the objective of MKURABITA is aligned to the general and sector specific policies related to modernisation and growth as well as poverty reduction strategies. However, the policies and strategies recognise that informal (“extralegal”) activities are important factors behind growth and that barriers to formalisation is not necessarily the binding constraint for further growth. A conducive environment includes a number of other factors and access to financial markets is not necessarily a question of having registered property and assets. Equally important are service providers that can reach out with relevant financial services for informal sector activities and service low income households and small business with so small assets that they are inapplicable as collateral be it formal or informal.

5.3 Empowerment of Poor and Vulnerable Groups

The development objective of MKURABITA is to enable the poor in the informal sector to use their properties and business assets in the modern economy in order to raise their incomes and reduce poverty. The idea is that legally recognized property and business assets give access to financial markets that are essential for modernization and growth. In this section we discuss the extent to which the development objective of MKURABITA is achievable in the context of Tanzania, especially in the rural areas where the majority of the poor and much of the informal sector are located.

The ultimate objective of the Programme is to reduce poverty by raising incomes of the poor through formalisation of property and business. Formalisation of property and business would raise security of both the asset holder and the lender and improve enabling environment for business transactions. In the following, the discussion of the two assets is made separately because the issues and level of sensitivity are different.

Property (Land) Formalisation

We can identify three benefits to land formalisation, namely increased security, increased incomes and poverty reduction by land becoming a tradable commodity, and enhanced knowledge and information. Although they are interdependent we shall discuss each of them separately.

These are linked to the issues of reduction in land-related disputes, improvement of land markets, especially rental markets which would imply that land may be reallocated to more productive users, and increased investment on land and better land

management due to higher tenure security. However, the extent to which these materialize is an empirical issue that has to be assessed in each case.

Increased Security

In the current legal framework, all land in the urban areas is public; under the trusteeship of the President of the United Republic of Tanzania. However, land in the rural areas is governed under the customary law. Therefore in the urban areas, formalisation by granting individuals the right of occupancy provides the security needed for private use or intentions. In the rural areas a number of issues have to be addressed before a formal land registration (implying its privatization) can be considered to produce net benefits to the majority of the poor residents.

- In the rural areas most of the land is communally or family owned. The issue is how to identify individual rights in such land; both for the present and future generations.
- In the rural areas most livestock is grazed in common or public land. The issue is how to deal with pastoralists (in the process of privatization of land).
- In many parts of Tanzania, traditions or customs exclude, among others, women from inheriting or owning land. Privatization of land based on the current ownership framework will legalize the current land distribution criteria. This will result into exclusion of most women from land ownership.

On the basis of these issues, and probably others, we can conclude that blanket formalisation of rural land in the current setting may not necessarily give equal opportunities to all and may therefore not necessarily provide security to some.

Poverty Reduction

According to the Programme, legally recognized land provides access to financial markets, and therefore raises opportunity for increased economic participation and incomes. Experience however shows that the value of land for commercial credit is a function of its degree of convertibility into liquid asset. The latter is determined by the level of development made on the land and its surroundings rather than its legal status. In this case urban land is more valuable for commercial credit than rural land; and formalisation of urban land may benefit the poor by raising the value of property and assuring security. The urban poor may sell property at a premium and use the cash productively or enter into partnership with investors as is currently happening in Kariakoo and other parts of Dar es Salaam and urban areas.

However, the situation in the rural areas is different for the following reasons.

- The market value of village land in many areas of Tanzania is low; its productivity potential is low. Infrastructure (roads, access to water, electricity and other facilities,) is limited and unreliable, and significant investments are required to convert the land into commercially viable means of production. As a result the value of land is likely below any commercially viable threshold to be applied as collateral; i.e. formalisation is not the

remedy for access to financial services but rather financial services that can operate efficiently in informal markets (like microfinance banks).

- Banks prefer to focus on a few organized clients such as public employees (for consumer credit), cooperatives and contract farmers (also referred to as out grower farmers) that guarantee a critical minimum group of clients and payment through employers/associations deductions. Even in these situations, experience shows that land is not used as collateral. The majority of the rural (poor) population is left outside the financial market network.
- The experience of SACCOS in recent years is also revealing. In spite of their popularity and outreach in the rural areas, they have avoided using land *per se* as collateral. They have invented more innovative instruments such as member/social pressure and easily convertible assets such as radios, refrigerators, television sets, and occasionally houses. This is due to the fact that in any formal system converting collateral into cash carries a transaction cost that makes low value property of limited use as collateral. In addition they have kept the levels of credit low to match the socio-economic contexts.

This discussion suggests that formalisation of rural land as a means to access credit for promoting growth and poverty reduction has to be undertaken with great care and requires significantly more research before considering it as a viable approach in promoting capital formation for the rural areas. Experience shows that the focus on land may be misleading. If land has to be targeted, the focus should be on high potential land, and even here complementary factors must be considered to be more important than land *per se*, property rights may a constraint but not necessary the binding constraint or the first priority on the list of factors that needs to be considered.

Knowledge and Information

In discussions with the LGRP Management the need for knowledge and information was put forward. Formalisation is good for both, the citizens and the Government and considered an important complementary issue to local government reform and capacity building. It provides information to enable the Government to determine revenue potential and impose appropriate tax rates/levels. This information also enables the Government to plan and provide the required public services to its citizens.

This raises an issue which the Programme has not yet incorporated into its equations. The cost of formalisation to owners of land must be considered; including the risks of exposure to increased taxation, and costs associated with regulatory and other statutory requirements. These costs are important to make informed decisions as to whether the benefits of land formalisation exceed the costs, especially for the low productivity potential land.

Business Formalisation

Also in terms of business formalisation we can identify three benefits from formalisation, namely facilitating business operations, increased incomes and poverty

reduction and enhanced knowledge and information. Again these are interrelated but the discussion will be made on each separately.

Improving Business Environment

The Programme has assumed that the current legal framework, fiscal and financial systems, procedures and other support systems are a hindrance to entrepreneurship and private sector development, especially for the informal sector; and the solution is to change them. Therefore the draft Work Plan of the reform design phase includes a number of changes that aim to make it easy for micro, small and medium scale enterprises to register and operate; simply put, to improve the enabling environment for growth of business.

A 2007 study undertaken by VIBINDO, an umbrella organization for the informal sector enterprises, to determine reasons why enterprises continued to remain informal came up with two main reasons, namely the lack of working premises and discouraging registration procedures. The latter was attributed to lack of commitment on the part of BRELA staff rather than cumbersome and bureaucratic systems. Since many members of VIBINDO do not own working premises, the issue of registration of premises was irrelevant to them. In addition, perhaps because they are not registered, the results of the survey also indicated that taxation was not a big issue for small businesses. Therefore, changing registration procedures and the fiscal environment would not give an immediate and significant boost to the informal business.

An assumption that needs to be addressed relates to business registration as a vehicle for accessing the financial market. Constraints in accessing credit using rural land have already been addressed. Although in the urban areas land can be used as collateral, most informal sector enterprises operate on rented premises. Therefore they can not use property as collateral to secure credit.

Moreover, the major problem with loan financing for the informal enterprises is bigger and more generally applicable to SME and even to medium business enterprises. This has to do with Government involvement in the commercial financial market (through the treasury bills and other government papers) to finance its budget. This has tended to crowd out the private sector by raising the cost of borrowing, especially to SME and the informal enterprises in particular.

This discussion suggests that many of the constraints facing the informal sector enterprises do not relate to inadequate legal framework, procedures and support systems. Rather they relate to lack of commitment and interest on the part of individual government staff in business promotion. This negative mindset against the private sector may be traced back to the period of public sector driven economy, and although a different economic philosophy is being pursued some government officials have not changed their (mindset) positions.

This suggests the need for a private public partnership programme to improve the working relationships using existing systems and structures. Only then can genuine constraints to business development be identified. In addition, government budget financing through the financial market needs to be factored into the reform proposals because it changes the incentive system in the financial market operations and affect

the levels of credit available for the private sector and the rates of interest (cost of borrowing).

Poverty Reduction

In order for growth and poverty reduction to be realized from formalisation, the resulting gains must exceed the resulting costs. The Programme has attempted to explore the possible gains from formalisation even though very little empirical evidence has been generated for this assumption; also caution must be exercised since this does not seem to be a straight forward matter unless also the cost side of formalisation to the enterprise is factored in.

An area which the Programme has not considered fully relates to the cost of formalisation, not only opportunity costs of actual registration (fees, time used and efforts in complying with procedural requirements). As stated earlier on, formalisation may expose informal sector enterprises to fiscal and regulatory bodies which will raise their cost of doing business. These costs have to be determined and weighed against the benefits to enable informed decisions to be made.

Finally, there must be provisions for business exits (not only entries) with minimum cost and inconvenience. This will give adequate flexibility for firms to determine their future. Exit strategy is currently not provided for in the planned reforms. Transaction costs associated with business mergers, acquisitions and closures are all important elements for private sector development.

Knowledge and Information

As stated for property/land registration, this aspect is considered beneficial to both the government and businesses. For the government information on businesses enables the enhancement of revenue collection and facilitation of economic service delivery. The extent to which this will produce net benefit to the business sector is a matter of further discussion and subject to verification.

However, the decision to register all businesses down to the village level, including farming may need to be reviewed. Given the size of the country (talking about 7 million households according to the 2002 Census) and the seasonality of some businesses, especially in the rural areas, the cost is bound to be high and the data may change seasonally. To determine the benefit of formalisation to the individual it will accordingly require more information before promoting formalisation on any scale.

This call for more pilots and formative research before any an exercise of promoting formalisation is promoted through MKURABITA or other reforms. It means instead working on reforms which obviously removes barriers to formalisation but not promoting any formalisation on a large scale without ensuring that the target group have the full understanding of the benefits as well as the costs in order for them to make informed decisions.

MKURABITA and poverty reduction

The property and Business Formalisation Programme perceives widespread poverty to be a result of lack of modernization that has affected both scale and quality of production negatively. The main constraints to modernization have been identified to be inability to access the financial market for credit financing due to unavailability of high value and secure collateral and, unfriendly business environment due to existing bureaucratic, outdated and cumbersome legal frameworks, procedures, fiscal and support systems that deprives the poor from accessing the modern economy. The implied solutions therefore include formalisation of property/land to raise its value and security and change of the current legal frameworks, procedures, fiscal and support systems in order to improve the enabling business environment for SME.

This line of argument is correct in the urban areas where property/land registration raises value and issues of security. Such properties have been sold at premium prices to raise cash for productive use or used as contribution to partnership ventures. In Dar es Salaam such sales and partnerships have been experienced in recent years. In the rural areas however, the situation is different. There the value of land is low due to limited infrastructure such as roads, water and electricity. In these areas financial institutions have preferred to work with organized groups such as public employees (for consumer credit) and cooperatives (producer, trade and marketing) to reduce operational costs and the risks of default. These institutions have also preferred guarantees from employers and easily convertible (into liquid) assets such as radios, television sets and refrigerators rather than land *per se* as collateral. Therefore in the rural areas, in addition to land formalisation, work must be done in the areas of infrastructure development and organizing people around cooperatives to reduce both bank operational costs and the risk of default.

For business formalisation the MKURABITA line of argument is partly correct. However, the major and immediate constraint for informal enterprises' growth and development appears to be the lack of cooperation from the institutions of governance as well as fiscal and regulatory bodies. The lack of commitment from public sector employees to service provision for private sector development seems to be the major problem. Exploiting the benefits of the existing systems fully before identifying the gaps for changes may produce the required quick wins. At the macro level it may be useful to address the apparent crowding out of the private sector from the financial market by the government as it struggles to finance a big budget from the sale of treasury bills and government papers. In addition to reducing the level of credit to the private sector, especially the SME, this exercise has led to rising cost of credit.

5.4 Review of proposed legal reforms

The proposed reforms imply very wide spread and comprehensive set of legislative changes. The approach appears to be one of setting the ground ready for informal businesses and properties to be formalised. New laws and amendments to existing laws are proposed. They have been prepared with limited involvement of the other institutions and stakeholders when formulating them. The strategy appears to be one of presenting them for stakeholder and public debate at a later stage in the form of a comprehensive package of proposed reforms.

A review the proposed legislative reforms raise some questions on the suitability of the draft laws in catering for and sustaining the continued existence of the formalised entities and units within the legal sector. Some of the proposed laws could be more onerous and demanding to the formalised entities and units whose most attractive aspect of the reforms could be the possibility to become formal without being hampered by the laws.

Some of the proposed legal reforms could be too expensive and cumbersome such that they are only feasible amongst a more literate within the business and property owning sectors. This includes the proposed establishment of the commercial court division that cascades down to the primary courts (Annex 8). This can only be achieved in a longer terms perspective given the financial and human resources needed to implement the reforms. Notwithstanding, such reforms run contrary to the

spirit of giving recognition to the customs and norms that emerge from the existing “archetypes”.

The desired approach should be one that any proposed legal reforms must not upset the existing legal regimes until such time when the relevant institutions are ready to administer reforms in the top-down convergence. Changes in the laws may produce widespread undesired effects if rules are changed for purely accommodative purposes.

Annex 1 contains the proposed *Written Laws (Miscellaneous Amendments) Act 2008*. It proposes to amend the Land Act, the Land Courts (Dispute Settlement) Act, the Survey Act, the Urban Planning Act and the Village land Act. The content of the amendments are largely to change the various laws to accommodate the perceived needs of regularization.

Some of the proposed amendments are straightforward and easy to accommodate like changing designations by for example substituting the “minister” with the “commissioner” or reconstituting the memberships of committees and the like. The laws intended to be amended are proposed to be enacted to cater for the formalised “extralegal” entities and units. The question is on the utility of the convergence analysis that has been accepted as fundamental. What happens to the “archetypes” and customary law? Does it imply abolishment of all customary norms by drawing the unsuspecting formalised entities and units into the existing cumbersome laws? If currently the existing institutions cannot effectively reach and administer the rural areas, can the proposed changes cause an overnight added ability to the Commissioner to handle the formalised rural entities? These are practical questions that need to be addressed before preparing the legislative amendments.

Annex 2 contains the draft *Regulations for Amendment of land regulations in Tanzania Mainland*. The overall the proposals are aimed at bureaucratization of the regularization. It provides for the mandates of the Commissioner to declare a regularization area and the administration and management of such areas.

The thinking that goes in the drafting is that the bottom-up convergence will be directed by the top-down convergence. This is exactly the constraint that makes interventions like SPILL to be very restricted. The idea of the bottom-up convergence is to free officialdom constraints in the formalisation while the existing regimes gradually acquire capacity to transform and converge to the formalised entities.

The proposed scheme of regularization is prescriptive. It is desirable that during the initial stages the processes should be very flexible and facilitative rather than compulsive and compliance based. The people should acculturate and accept a full scale entry into the legal sector after the benefits become visible. Approach the programme prescriptively may risk the eventuality of formalisation and immediate de-formalisation once the entities visibility turn into an entrapment.

Accordingly, MKURABATA (as well as other reforms) should take into consideration that the process of formalisation is a continuum, i.e. that some regulations and registrations may be considered beneficial to an entity or property holder at a given time depending on the nature of the situation for the entity. It is not either “full formalisation” or not. Some business may opt for registration of its name,

not necessarily full registration of the company unless it can reap the full benefits of the latter which is unlikely for instance for small scale single proprietorships.

Annex 3 contains the *procedures for (Customary Right of Occupancy) CRO application and issuance*. It is more of a manual than a legislative proposal. It explains the existing laws. These are the procedures applicable where the existing institutions have the reach to the expansive rural lands and populations. Their utility under the current set-ups where it has not been able for the existing institutions to reach those areas is questionable. The context in which Annex 3 is presented would require that all villages are turned into pilot projects so that the processes are linked-up to the existing institutions and the CROs and Certificate of Customary Right of Occupancy (CCROs) obtained. In the absence of such projects the viability of the procedures to bring about full-scale formalisation may remain doubtful.

Annex 9 is a draft *Bill for an Act to provide for the Establishment and administration of Limited Liability*. An LLP is a highly sophisticated entity. In other jurisdictions this is brought about by the partners but regulated by statutory laws in order to safeguard against their abuses. They are entities that are highly dependent on the satisfactory levels of literacy of those who seek to use this specific business form. It is, for example, ideal for professionals who cannot limit individual liability in the blanket manner available through the company form. Its rules are very intricate.

It is highly unlikely that the proposed Bill considered the possibility of the large numbers of the individual units who are least educated and incapable of meeting the various conditions prescribed for the continued existence of the LLPs. The draft also contains rules that may be conflicting with existing laws. For example, winding up rules are usually provided for in the Companies legislation which often has special rules for the winding up of unincorporated companies. If the LLPs are incorporated then it may not be desirable to have its own distinctive rules.

The draft appears to be quite elitist such and its expected role to facilitate intended entities and units can be challenged. This would have been resolved if participation from relevant stakeholder institutions had been ensured in the process of drafting the Bill.

Annex 7 is the draft *Bill for an Act to provide for the amendments of certain laws for the purposes of introducing Limited Liability Single Shareholder Companies (LLSSCs) in Tanzania Mainland*. LLSSCs are widely associated with tax avoidance and tax evasion. Worldwide they are a subject of very strict prescriptions under the tax laws. In the process of drafting the Bill it appears not to have been any consultations with the Tanzania Revenue authority and BRELA or the consultations were not effective. These are the core institutions to consult in such a process since they are also the ones which from a regulatory perspective will be affected by the proposed Law. Often restrictions are imposed on the use of the LLSSCs for the personal service companies and not every business venture. While the objective of devising a divide between assets used for businesses and those for personal sustenance is laudable, it is highly questionable if the LLSSC is the most efficient and preferred vehicle.

5.5 Reform proposal versus other interventions

There are a number of ongoing reforms of relevance to MKURABITA. In the review from the diagnostic phase, 14 ongoing reforms were presented with analysis of their likely relevance for the reform design process of MKURABITA¹¹. In the midterm review some of the same reforms were discussed and, as mentioned in sections above, a study commissioned by the PMU identifies 11 reforms of relevance to the design process¹². The key results from the latter are that there are many synergies between existing reforms and MKURABITA.

In the following we will focus on those reforms that are of particular relevance to the reform packages proposed which will most likely be the ones involved in implementing them and/or undertake similar activities as contained in the MKURABITA proposal.

Local Government Reform Programme

There is an ongoing “Local Government Reform Programme” led by the Ministry of Regional Administration and Local Government. The LGRP commenced in 2002 as part of the broader Public Service Reform Programme. A Constitutional amendment of the 1990s, entailed redefinition of the relationship between the Central and Local Governments, in which the former retained policy making and regulatory functions while the latter has the autonomy to formulate and implement own plans and decide on associated budgets.

While the first phase of the LGRP involved Restructuring, Governance, and Human Resources Management, phase II focus to a large extent on fiscal decentralisation. With more resources now being channelled through local government as unconditional grants, LGRP has included additional capacity building measures.

The Local Government Fiscal Review of 2004 was undertaken to analyse the funding of local government and funding relationship between local government and the central government as well as review of the local revenue taxing devices in place at the moment. Emphasis is on the District rather than the Region and district and village government relations are also taken into account.

LGRP is accorded high priority and enjoys substantial external support following devolution of authority to local government levels. The link to MKURABITA and other reforms addressing formalisation of property is evident by the fact that local land registration and formalisation of businesses may serve as an opportunity for local governments to enforce more efficiently local land taxes, a key issue for LGRP in assisting local governments in raising revenue.

¹¹ A detailed presentation of these reforms is available in the report from the review of the Diagnostic Study.

¹² “The Study on Government and Non-government Programs that have a bearing or related to the Formalisation Programme”, Jovin A. Banturaki, CO-Opedec, April 2006.

Legal Sector Reform Programme

The Legal Sector Reform Programme (LSRP) is led by the Ministry of Justice and guided by a Medium Term Strategy for 2005/6-2007/8. LSRP is implementing a number of initiatives which are also contained in the MKURABITA reform proposal. Among them are introduction of alternative dispute resolution mechanisms, establishment of Zonal and Regional Justice Committees, and Case Management Committees. All these measures are aimed to increase capacity of the legal system and ensure improved access to justice among others by reducing costs.

Strategic Plan for the Implementation of the Land Laws” (SPILL)

The “Strategic Plan for the Implementation of the Land Laws” (SPILL) is a seven year plan implemented by the SPILL secretariat under the MLHHS. It commenced implementation with analysis of the different categories of land management problems related to the different characteristics of Regions and Districts.

SPILL promotes the implementation of the new land act which includes investment in land administration infrastructure with projected cost of USD 300 million over seven years. Of the eleven activities identified in the programme, seven are devoted to planning, mapping and survey requirements, two to land registration and property registers, one to valuation of land and one to transport and communication. One important component is the development of a national ID registration system.

SPILL has trained 2000 District Land Office personnel based on the recognition by the Village Land Act that the village landholders are the experts when it comes to management of their land. The target for SPILL has been the delivery of 50 000 new registered properties per year to deliver Residential Licences in squatter settlements.

Business Environment Strengthening for Tanzania

The most significant programme which embraces most of the same areas as MKURABITA is the Business Environment Strengthening for Tanzania (BEST) Programme. It aims to reduce the burden on private sector operations by reforming and eliminating procedural and administrative barriers and improve the service to the private sector.

BEST is implemented and coordinated through the Better Regulation Unit (BRU). Implementation of the government components is overseen and coordinated by a Steering Committee at the Permanent Secretary Level, comprising of key government and private sector stakeholders. Fast-track decision-making and hands on policy direction is provided at the Ministerial level by the National Investment Steering Committee (NISC), chaired by the Prime Minister with the Tanzania Investment Centre as Secretary. Monitoring and Evaluation structure is vested in a Tripartite Review Committee (TRC) comprising of representatives from the government, private sector and development partners.

The BEST programme consists of five main components covering a number of activities directly linked to MKURABITA. BEST has promoted several legal reforms related to legislation that imposes an unnecessary burden on businesses. It has introduced Regulatory Impact Assessment (RIA) as part of the legislative process in

Tanzania (ref. sections below on international good practice experiences), Business Activities Registration Bill (which was read for the first time in the Parliament in July 2005), Estate Agencies Bill, Workmen Compensation Bill, Occupational Health and Safety Bill, Social Security (Employment based) Bill, and Land Mortgages Regulations.

In terms of Central and Local Government Taxation, BRU works closely with Tanzania Revenue Authority (TRA) and with the Tax Policy Unit in the Ministry of Finance to promote further reforms of the tax regime and rationalisation of local government taxes and levies.

In terms of land access and planning BEST includes activities related to city planning, land allocation with reform of the Lands Commissioner's Department and establishing Land Allocation Customer Charter, revisions of the Land Act, site development and reforms in urban areas.

Related to Business Licensing and Registration, a key component relevant to MKURABITA has been reforms of licensing procedures under the principle of businesses *not to require a license* unless a licensing procedure is necessary to protect the public. It includes amendments to the Business Licensing Act, computerisation of the Business Registration and Licensing Agency (BRELA), business name systems and decentralisation of services.

Similar to MKURABITA, BEST is built on the recognition that most businesses in Tanzania lack access to justice due to the complex adjudicatory framework, the injunction/adjournment culture, as well as perceived low standards of integrity in the courts. To enhance access to the commercial courts, cases will be transferred and outreach extended in terms of the Commercial Courts. In addition the programme will attempt to simplify the Civil Procedure Code and introduce special rules for small claims.

Another important activity, highly relevant to the MKURABITA, is the enhancement of the effectiveness of alternative dispute resolution guided by the Civil Procedure Code. In addition BEST has made proposal for amendment of the arbitration act.

An important capacity building component is included in BEST; namely training of political leaders, senior and middle managers in central and local government, departments and agencies, judicial officers, 'Front-line' staff providing services directly to the private sector and the general public. It includes introduction to Customer Charters and capacity building on RIA and Regulatory Best Practice (RBP) in policy formulation and implementation.

A component to empowering private sector advocacy is included, among others, to ensure that the needs of the private sector continue to influence the development of the BEST programme. It includes an Advocacy Challenge Fund (ACF) targeting support for under-represented sectors of the economy with emphasis on micro firms and small businesses and potential new entrants.

Relevance to MKURABITA

The above initiatives and programmes cover most of the same activities as presented in MKURABITA reform proposal and operate under the same operational objective, to reduce barriers to formalisation although their level of ambition is not nationwide formalisation though a proactive awareness and/or nationwide formalisation campaigns.

For the many of them, coordination mechanisms have been established within the government. The Cabinet has designated the Chief Secretary (the Secretary to the Cabinet, and Head of the Public Service) to be responsible for reform coordination. The Chief Secretary chairs the Committee of all Permanent Secretaries, which is commonly known as the Inter-Ministerial Technical Committee (IMTC).

The IMTC is the 'Steering Committee' of the reform programmes, and all the reform issues are discussed at this level, where policy decisions are made on behalf of the Cabinet. At the technical level, the Committee known as the Inter-Ministerial Working Group (IMWG) convenes once every quarter of the year to approve and review implementation activities.

Whether or not MKURABITA will fall under this arrangement is unknown.

5.6 Stakeholder involvement in reform design

For other than the consultation process mentioned in sections above, stakeholder involvement in the reform design phase has primarily been related to the pilot studies. Norwegian Peoples Aid (NPA) facilitated participation by Legal and Human Rights Centre (LHRC) and Tanzanian Pastoralists, Hunters and Gatherers Organization (TAPHGO) in the pilot study in Handeni. Another land rights organisation, HAKI ARDHI that is involved in promoting village land use planning had not collaborated with MKURABITA in relation to this.

SPILL, the land registration and certification programme of MLHSD has been consulted but did not collaborate with MKURABITA in the design of the reforms even though they carry out very similar implementation schemes themselves. Similarly, BEST, based in Ministry of Planning and with a similar agenda to reform the business and land laws did not collaborate with MKURABITA in the design of the reforms up to now. As previously mentioned, most stakeholders did not feel they knew what was going on and the interaction had been very limited after the design stage of the programme.

What we learnt from the MKURABITA reform design team was that they had been very busy with drafting their reform designs and with pilot testing and that they were now still working on preparing their Action Plan. Considering the large number of proposed reforms this is understandable.

According to the Detailed Work Plan for the period March 2007-March 2008, prepared by the Programme Management Unit in February 2007, a Reference Group should have been established each for Real Estate formalisation, business formalisation, formative research, capacity enhancement and linkage to financial and

other economic opportunities. However, such Reference Groups have not yet been formed.

Furthermore, the Work Plan included establishment of; a monitoring and evaluation framework to facilitate stakeholder feedback to the Reform Design processes; a stakeholders' forum to allow regular meetings to evaluate the progress and to provide feedback to the Reform Design team; and participatory methodologies should be adopted in developing reforms, and a strategy that will promote consensus around the process.

The renegotiation of the Terms of Reference for the ILD team may have contributed to the delays and this may also have affected the implementation of these aspects of the Work Plan that could have ensured a stronger stakeholder participation in the process. One could also say that the Work Plan was overly ambitious for what a local reform design team of five persons that just had been recruited could achieve in such a limited time. It is understandable they would like to gain some experience and have something to show before they start interacting with stakeholders that have longer experience in the field.

The PMU has planned a sequence of meetings in February-March where they will invite key stakeholders. This appears, however, to be far from enough to create stakeholder participation in the reform designs. Much more time will be needed, particularly when considering the large number of reforms proposed and their nature.

6. REFORM PROPOSAL AND PRACTICES

This section presents some observations from the pilot projects implemented by MKURABITA and compares them with practises implemented in other countries. It presents observations on the process of formalisation of property rights and businesses in separate sections although the issues are interlinked and for the majority of Tanzanian households the “property is their business” i.e. the majority of the population derives their income from small holder agriculture in rural areas.

6.1 Review of land certification pilot studies in Tanzania

Hanna Nasif pilot

Hanna Nasif is located in Kinondoni Municipality in Dar es Salaam City. The Hanna Nasif Ward comprises of three sub wards; Hanna Nasif, Mkunguni and Kisutu, and has a population of 32,023 people with 8281 households. MKURABITA got involved in the project in 2006 after having been contacted by an NGO, WAT – Human Settlement Trust. The actual survey process started in early August, 2006 and on 31st March, 2007, a field survey of all un-surveyed plots amounting to 1,423 was completed. A private surveyor (Integrated Property Consultancy and Services Limited) conducted the survey and MKURABITA facilitated the work.

Survey plans were approved by the office of the Director of Survey and Mapping at MLHHDS, and submitted to the Kinondoni Municipal Land Division for processing letters of offer and subsequently issuance of certificate of Right of Occupancy for the 1423 residents of Hanna Nasif by the Ministry of Land, Housing and Human Settlement. The plan was that this should have been completed by January 2008.

There are considerable economies of scale in doing this type of work and the costs per title was reduced from 500 000 Tsh. To 30 000 Tsh. per certificate with the approach used as compared to individual plot surveying. This means that obtaining of certificates also can be affordable for relatively poor households.

The project document also states that the registration and certification has contributed to reduced border disputes although limited information was available in terms of how this impact was estimated. It is not known whether the certificates will make it easier for the owners to access credit. It is also not known whether the land certificates will increase the value (selling price) of the properties while this is the assumption the ongoing cost-benefit analysis that MKURABITA is implementing is based on.

Residential Licence Project in Unplanned Settlements in Dar es Salaam¹³

It is important to see the Hanna Nasif pilot in relation to the experiences of the Residential Licence project in unplanned settlements that is undertaken by MLHHDS.

¹³ This summary is based on Kironde (2006). Issuing of Residential Licences in unplanned settlements in Dar es Salaam, Tanzania. Final report prepared for UN-Habitat, Shelter Branch, Land and Tenure Section.

The project aimed to expand from an initial pilot of 20 000 plots survey between 2002 and 2004 to include an additional estimated 400 000 plots in the period 2004 to 2006.

The project was started based on an initial loan but the plan was to recover the fund through payment for the residential licences and through land rent. The project was implemented through collaboration between MLHSD and the local Municipalities. Additional socio-economic data on the owners and on investments on the plots were collected parallel with the land surveying.

The project used a high-tech approach and the estimated costs to the government of issuing a license was estimated to be USD 9 (10 000 Tsh.) while the official cost to the owners was USD 5 (5600 Tsh.) plus land rent (which varied with size of the plot). These costs may be considered affordable by most of the licence holders but the project faced problems in the collection of licence fees and only 25% of the expected funds had been recovered by August 2006, while the aim had been 100% recovery.

The recovered funds were planned to be used to expand the surveying and licensing and this caused a delay in the expansion of the project. While more than 200 000 properties had been mapped, only 43 000 licences had been issued although the process is ongoing. As a remedy to this problem the government has tried to make it compulsory to get the licence for the surveyed plots and it remains to be seen how successful this has been.

Kironde (2006) investigated the reasons why residents may or may not be willing to pay for and obtain residential licences. These included:

1. Exposure to a number of new payments that were not paid before. These include land rent, stamp duty and residential licence fees. Since the licences are of short duration (two years) and have to be renewed, people are reluctant to pay even though the fees are fairly low.
2. Exposure to development conditions. Licence holders have to seek building permits and prepare architectural and engineering drawings, which are costly to prepare, and they have to pay a number of fees before they can establish new buildings on their property and getting a building permit in Dar es Salaam may take a year. Before they did what they wanted.
3. Unrealistic space standards. A minimum plot size of 400 square meters was established and it turned out that 87.5% of the plots were smaller than this.
4. Delays in issuing licences. Offices tend to be far from the owners of licences and there is a lot of missing information in the registries because the owners may not have been present when the survey was carried out.
5. The Residential Licence is considered as collateral with a high risk. Many fear to use their property as collateral because they may fail to pay back the loan and risk losing the property. The property is considered more important as a shelter and social security than as an asset for securing loans. Some have tried but failed to obtain loans from banks due to the short duration of the licence, non-accessibility of the properties and lack of assurance of how the loan should be repaid.

6. Poor information and limited participation. The majority of the residents were not informed before the project was implemented and were not informed in advance when their property was to be surveyed, causing many of them to be absent and data collection to be limited, even plot border identification was not accurate.
7. Verification of registered data. Based on the point above it was not possible for the residents who were absent during measurement to verify the quality of the registered data.
8. Short duration of licence. A two year licence that has to be renewed by payment of additional fees is both cumbersome and may not provide the tenure security that would enhance the demand for such licences. This system adds to the bureaucracy and reduces the suitability of licences as collateral for loans.

There may be a lot to learn from these experiences and there seems to be considerable room for improvement in the future approach to formalisation of urban unplanned settlement areas. The added value of the Hanna Nasif pilot study is not clear, however, and it is not evident how it builds on the experiences from the Residential Licence project.

Contrary to the Residential Licence project no baseline data were collected for the households involved in the Hanna Nasif project. Kironde (2006) revealed many weaknesses in the baseline data collected in the Residential Licence project but nevertheless there is a substantial data base that may be built on and improved upon e.g. for impact assessment in relation to the project. The value of Hanna Nasif as a pilot could be enhanced if good quality baseline data could be established.

Handeni pilot

The purpose of this pilot study was to test a few innovations on land use planning and registration in order to come up with a more efficient methodology for implementation of the Village Land Act of 1999 and secondly to gain field experience on implementation of the Act that would produce reform proposals for the envisaged reforms in rural land management systems. Handeni was chosen because it was one of the Districts covered in the survey during the Diagnostic Phase by ILD.

During the survey three villages in Handeni were found to have started implementing the VLA while only nine Certificates of Customary Right of Occupancy (CCROs) had been issued in a period of 2 years. This rose curiosity for MKURABITA to do a pilot project in order to gain field experience to identify practical changes that would speed up implementation of the Act.

Handeni District had already prepared the District Land Use Framework Plan; it had also constructed a District Land Registry and had obtained the necessary equipment like computer and GPS. Therefore the MKURABITA project in Handeni begun by mobilizing and sensitizing concerned village councils to participate in the exercise. The project went through the following steps:

1. Educating the village councils about the VLA and training of the technical team

2. Boundary adjudication and surveys
3. Preparation of Village Land Certificates (VLCs)
4. Construction of Village Land Registries
5. Preparation of Village Land Use Plans and its by-laws
6. Survey of individual land parcels
7. Issuance of Letters of offers
8. Issuance of Certificates of Customary Right of Occupancy (CCROs)
9. Registration of CCROs

Many lessons were learnt from the Handeni pilot of which the following are the main observations;

1. It is important to mobilize the village properly to fully participate in the process. It is important not to rush the process too much when doing this.
2. Temporary staff like Form 4 leavers may quickly be trained such that they can implement this type of survey work as technical support staff.
3. Establishment of village borders may be challenging and may involve disputes with neighbouring villages.
4. Issuing of village land certificates (VLCs) should be decentralised from the Commissioner of Lands and to District Land offices.
5. Villages should themselves take the responsibility to establish village land registries.
6. Establishment of Village Land Use Plans requires participation by all relevant stakeholder groups and preferably the relevant professional staff from Ward level.
7. The land use plans need to be accompanied by bylaws and it is important that the villagers are involved in approving these to ensure that they do not violate them.
8. Forms to be filled to get individual certificates are long and cumbersome and need to be filled in many copies. This should be simplified.
9. Spot adjudication is tedious when neighbours have to be mobilized for each applicant who voluntarily wants to obtain a certificate.
10. The process of issuing a letter of offer before issuing of the certificates appears unnecessary and cumbersome.

Some other actors were involved in the Handeni pilot. These included the Legal and Human Rights Centre (LHRC) and the Tanzanian Pastoralists, Hunters and Gatherers

Organization (TAPHGO). Some of their conclusions on the experience are summarized by Mkulila (2006) and Sundet (2008)¹⁴. They perceived that the attempt to “fast tracking” the process caused more problems and contributed to land grabbing, partly due to misinterpretation of the term customary right of occupancy, causing some to claim ownership of land where their forefathers were buried whilst some other people have been on the land for over 30 years. A group of Maasai women were also left out of the process.

Sundet (2008) also refers to a report which states that two local businessmen managed to gain access to 2000 ha of land in the process, causing others to have become landless. Still, Mkulila (2006) thinks that the Handeni experience with participatory land use planning is something to build on through further modifications and testing.

Participatory land use planning, if properly implemented, not only as a quick PRA activity but by establishing more permanent local teams with representatives from all key stakeholder groups, may help to sort out or reduce land use disputes.

Bagamoyo pilot

This was the second pilot area selected by MKURABITA after Handeni to further test the Village Land Act. Unlike Handeni, Bagamoyo district has neither prepared District Land Use Plan nor does it have a District Land Registry equipped with necessary facilities like computers, printer, cabinet files, GPS, etc. However, whereas all seven villages selected for the pilot project in Handeni District had not been surveyed and issued with a Certificate of Village Land (CVL), all six villages selected for the pilot project in Bagamoyo had already been surveyed with village borders established but they had not established Participatory Land Use Management teams by the time the pilot project started.

MKURABITA provided assistance to establish a District Land Registry, organise establishment of Participatory Land Use Management teams, computers, GPSs, software, etc to implement registration and issuing of CCROs. Those receiving the certificates have to pay 7500 Tsh. per certificate while the total cost is about 50 000 Tsh. per certificate. Certificates are issued with pictures of the owner and a small map of the plot which shows the actual shape of the plot.

Plot adjudication is used as certificates are provided based on demand. The target for the project is to prepare 3000 certificates for the 6 villages and then to leave it to the villages themselves to finish the certification after that. At the time of this review 1276 village certificates had been prepared. One of the villages, Kiwangwa, produces a lot of pineapples as a cash crop. This was the main reason why it was selected. The villages themselves are organising to build village land registries. No socio-economic information is collected from the village so they do not know the characteristics of those who demand certificates vs. those who do not demand them. This is unfortunate

¹⁴ Mkulila (2006). The Handeni Pilot Project on Land Registration in the implementation of the Village Land Act No. 5 of 1999. A brief report.

Sundet, G. (2008). Getting to grips with realities. Is it possible to realign Mkurabita to empower the poor? A report prepared for Norwegian People's Aid – Tanzania.

since much more could have been learnt from these pilots if they were accompanied with a high quality household survey.

Assessment of the pilots in a national perspective

MLHSD have gone far in demarcation of village borders in the country. The next step in terms of creating village Land Use Plans, however, is a slower process and the local knowledge about the land laws is very limited with a few exceptions where various projects and pilot studies have disseminated information and implemented land use planning.

The approach with a comprehensive participatory process, establishing permanent local land use planning teams with representatives from the major stakeholder groups, holds promise to reduce the number of land disputes and may also help to protect the interests of weaker groups, like pastoralists and women, however, there is no guarantee that this will be the case. Clearer principles and guidelines may help to ensure more successful local land use planning and management and may be implemented as local bylaws.

The establishment of village land use plans does not imply a need for individual plot registration and certification and the basic question is whether such a land titling programme should be recommended in the rural areas of the country, and if so, why and where should it be implemented? The approach to registration and certification that has been chosen in the pilot areas is expensive, much too expensive compared to the willingness and ability to pay among the majority of poor rural households. The alternatives are;

1. to implement with the current approach and with considerable subsidies;
2. to choose a more low-technology and cheaper approach; or
3. to postpone rural land certification and leave it for those few who are willing and able to pay the full price.

The first alternative requires justification for why large subsidies should be used for this (the benefits in a national perspective compared to its cost). It would require strong donor support for such a reform but even in the donor community this is controversial as many are sceptical to individual titling in customary lands. It is not advisable to raise local demands through dissemination of promises of access to credit from banks if banks will not be willing to provide their services at an affordable price to typical smallholder farmers in rural areas; for banks the only feasible clients will most likely be larger scale commercial farmers.

The second alternative, which has been implemented in other countries like Ethiopia recently and with substantial success, may also be an alternative in parts of Tanzania but it would require pilot testing and adjustment to local conditions (ref. sections below).

The third alternative is to continue on the existing model and provide registration and certification based on demand with the plot adjudication approach. The pilot studies have demonstrated that the costs of certificates with this approach can be substantially

reduced with the orchestrated approach but it is not clear how big the demand would be if the owners were to pay the full price of this approach. Modern computer technology, use of GPS, etc. have reduced the costs substantially but the costs also vary considerably with the level of technology which again determines the accuracy with which plot borders can be mapped and demarcated. There appears to be an excessive attraction in MLHSD and in MKURABITA towards a higher level of technology than can be defended on economic grounds and very little has been done in the pilots to explore cheaper alternatives or to identify the actual willingness to pay for registration and certification based on realistic assessments of the benefits that can be derived from it. Further research on this is clearly needed before implementation can be recommended.

The risk of promoting individual registration and certification based on demand should not be underestimated. Poor and vulnerable groups easily loose out with this approach. Those who can afford can get more secure property rights and may be able to encroach and grab land from less powerful and less wealthy households. The approach may therefore have negative social welfare effects. It is possible that such negative effects may be reduced substantially if village land use planning is implemented at a broad scale and the laws are strengthened to better protect against land grabbing. This is another good reason for postponing individual land titling and using a sequential approach and careful piloting combined with systematic research in areas with higher potential for individual titling. Areas with high population density and higher land values should first be selected for such piloting.

The conclusion appears to be that first priority should be to scale up comprehensive participatory land use planning with the aim to minimise land use conflicts and protect the rights of all groups that depend on the land as a livelihood. More systematic piloting is needed to improve upon the participatory land use planning approach. Proper professional research should be carried out to maximise learning from the pilot studies and more pilots should be implemented to test different approaches. Immediate action is recommended to establish baseline surveys in the pilot study areas; otherwise it will not be possible to identify impacts of land registration and certification. The World Bank is currently planning to implement household surveys in selected rural as well as urban areas to assess the potential benefits from land reforms. It may be possible to ask the World Bank to include the MKURABITA pilot areas in the planned baseline survey as the most cost-effective alternative that also would help to ensure good quality data collection.

The consequence is that much of the potential benefits in terms of knowledge generation from the pilots will be lost and most of the resources will have been wasted. Further pilot testing with more low-cost methods, allowing learning from the experience in other countries, is recommended but this should also be accompanied with professional research. The proposed research using modern impact assessment methods requires substantial professional inputs that MKURABITA and the other involved actors, including ILD and NPA do not possess today. Researchers from local universities with international professional backing should be used for this type of research to ensure good quality.

NGOs, like NPA and HAKI ARDHI, may play important roles in the scaling up of village land use planning but it is even more important to build this into or build strong links to the local governments and the local government reform programme

(LGRP). Budget lines are needed to ensure sufficient local resources for these activities.

6.2 Research and Reform Practices in other Countries

There is a vast literature on land rights, land policies and reforms in Africa. Many issues are debated and alternative views contested. First, Africa is a very diverse continent and contains accordingly very diverse land tenure systems. The land tenure system may be seen as an endogenous institutional system that is continuously undergoing changes in response to various forms of pressure.

According to the Evolutionary Property Rights Theory (Platteau, 1996)¹⁵ changes in property rights may be gradual and the stage when it becomes optimal with more individualised property rights may only appear after a certain level of population pressure, stable settlement patterns, land use practices, and social infrastructures have been established. In this perspective there can be an optimal timing for introducing more individual property rights but the optimal timing is a function of the key characteristics of the society or economy under consideration.

The benefits of private property rights are likely to be higher in locations with higher population pressure, better market access, and more economic activity. Since Tanzania also is very diverse and diversity also is substantial in rural areas, this should be taken into account when proposing reforms in the land tenure system.

The Evolutionary Property Rights Theory does not imply that land tenure institutions necessarily evolve in an optimal way. Transaction costs and political economy conditions may cause the land tenure system to respond slowly and lag behind in the adjustment or it could even be sidetracked by strong political interest groups. Policy reforms may therefore be a form of induced institutional innovation that may release the growth potential of an economy and/or it may be a way to change the distribution of the benefit stream coming from the resource utilisation.

The new land reforms that are promoted by the World Bank, the Commission for Legal Empowerment of the Poor, the Global Land Tools Network and others aim to promote growth as well as reduce poverty, but the fact that many of the past land reforms in Africa failed implies that there still is a search for better ways to design and implement such reforms.

A precondition for successful land reforms is that there is local demand and rationale but such demand should not be created by dissemination of speculative assumptions about substantial wealth increases and credit access. Rather reforms should be based on assessment of the impacts of strengthened tenure security on the amount and costs of land disputes, on land transactions, investments and productivity, or on land resource access or income benefits for different vulnerable groups like pastoralists or women. No systematic attempt at identifying and measuring such impacts has been

¹⁵ Platteau, J.P. 1996. The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. *Development and Change* 27 (1): 29–86.

made in Tanzania yet, meaning that the judgement of costs and benefits of the reforms remains speculative.

In this context it is relevant to refer to Douglas North (Nobel Prize in economics) who in his book *Structure and Change in Economic History* from 1981, distinguishes between a contract theory of the state and a predatory theory of the state. According to the contract theory the state and associated institutions provide the legal framework that enables private contracts to facilitate economic transactions (by reducing transaction costs). According to the second theory the state is an instrument to transfer resources from one group to another. North combines these theories and argues that good institutions simultaneously support private contracts and provide checks against expropriation by the government or other politically powerful groups. It appears that this perspective on the state is highly relevant also in Tanzania. Property rights institutions should protect citizens against expropriation by the government and powerful elites¹⁶

With this backdrop there are important lessons that may be drawn from other countries. In Ethiopia they have recently implemented the largest low-cost and high-speed land registration and certification programme in Africa distributing non-freehold land certificates to more than 6 million individual rural households. Their experiences may have relevance for other African countries, including Tanzania. One important lesson from Ethiopia is that research has been implemented to identify and measure the impacts of the large-scale reform in different parts of the country. These identified impacts are *not based on assumptions* about increased market value of the land but *on observed impacts*. Similar methods may be used to identify the effects of the land reforms in the pilot study areas in Tanzania.

Research on land markets in Africa

Recent research on emerging land markets in Africa¹⁷ show that land rental markets reallocate land from land-rich to land-poor households in countries with skewed land distribution while land sales markets are so thin that they have more limited impact on the distribution of land. Land rental markets have the advantage that payments per year are much smaller and renting of land therefore is more affordable by the poor. However, the research also documents that there are substantial transaction costs in the land markets, but land reforms may contribute to reduce these transaction costs and this may have positive effects on efficiency as well as poverty and equity (Holden, Deininger and Ghebru 2007).

While this type of research has not been carried out in Tanzania it is likely that similar effects may be found. Future research should therefore focus on the welfare and

¹⁶ Acemoglu and Johnson (2003), *Unbundling Institutions*. NBER Working Papers 9934, National Bureau of Economic Research, Inc.

¹⁷ Holden, Otsuka and Place (2008). *The Emergence of Land Markets in Africa:*

Assessing the Impacts on Poverty, Equity and Efficiency. Resources For the Future Press, New York. (in press).

efficiency implications of land sales and land rental markets in peri-urban and more land-scarce rural areas in the country.

The Ethiopian Experience with Low-Cost and High-Speed Land Certification

Unlike Tanzania and almost all other countries in Africa, Ethiopia was never colonised. It had a “feudal” system with rich landlords and poor tenants in the south of the country and a system with community-based land distribution in the northern parts of the country until 1974-75 when the military (Derg) regime took power and introduced a radical land reform where the state took ownership of all land and land use rights were distributed to communities and to individual resident households in the communities based on their needs.

Household size was the main determinant of land access and more or less frequent land redistributions were instituted to sustain the egalitarian land distribution over time. A basic consequence of this reform was, however, that households became tenure insecure and less willing to invest in the land because they did not know whether they would keep the land after the next land redistribution.

After the change in government in 1991 a new federal land policy was introduced in 1997 and followed up with regional land laws as well, leaving some autonomy to the different regions in the federal state. Following this the Tigray Region in northern Ethiopia was the first region to implement land registration and certification in 1998-99 and was followed by other regions, like the Amhara Region from 2003, and the Oromia and SNNP Regions from 2004-05. By 2006 more than 6 million land certificates for more than 20 million plots of land had been distributed to individual households¹⁸

The following are some lessons of relevance to MKURABITA;

- The land reforms in Ethiopia were implemented in the densely populated highland areas dominated by smallholder agriculture. They have not been implemented in the lowland pastoralist areas.
- Selling of land is still illegal and so is mortgaging of land. Land can therefore not be used as collateral for accessing financial services.
- Land certification appears to have stimulated land renting activity because potential landlords feel more tenure secure and have become more willing to rent out their lands¹⁹. Many landlord households are female-headed households that lack the necessary non-land resources to farm the land efficiently themselves. Sharecropping is the dominant contract form and the contracts help poor female-headed households to get food output and

¹⁸ Deininger, Ali, Holden and Zevenbergen (in press). Rural land certification in Ethiopia: Process, initial impact, and implications for other African countries. *World Development* (forthcoming).

¹⁹ Holden, Deininger and Ghebru (2007). Impact of Land Certification on Land Rental Market Participation in Northern Ethiopia. Paper presented at the *Nordic Development Economics Conference* in Copenhagen, June 18-19, 2007.

income from their land while the land is operated by more efficient tenants. We did not come across any good studies of land renting in Tanzania. The potential benefits of land rental markets for poverty-reduction appear to be overlooked by MKURABITA. Research on land rental markets in Africa shows that land rental markets are much more pro-poor than land sales markets which tend to be anti-poor²⁰.

- Land certification has stimulated investments in soil conservation and tree planting on certified land and has contributed to enhance land productivity on such land²¹. It is the increased tenure security which has made people more willing to invest on their land.
- Provision of joint certificates to husbands and wives, with space for the names and pictures of both spouses on the certificates, appears to have strengthened women's land rights and this may affect their position in cases of divorce and death of their husband. Particularly the position of polygamous wives appears to have been strengthened through this arrangement with joint certification which was implemented in the Oromiya and SNNP Regions of Ethiopia since 2004-05 but more time is needed to observe more substantial impacts of this element of the reform²². It appears that land titling pilots in Tanzania and even the land laws have done very little to strengthen the land rights of women.
- Land registration and certification has contributed to reduce the amount of land-related disputes both during and after the land reform was introduced. Particularly the number of border disputes has been reduced. Strong local participation is important to ensure this success as evidence from some locations where implementation was poor appeared to exaggerate land disputes²³. The large majority of land-related disputes in Ethiopia are resolved through local informal conflict mediation. Trusted local elders are mediators in such disputes. This appears as a cost-effective system and local people have more trust in the local mediators than in the judges in the formal courts, who they often perceive to be corrupt.
- The low-cost approach used in Ethiopia does not involve use of computers, GPSs or maps²⁴. The records are registered in books kept at community (kebele) and district (woreda) levels. The registration was broad-based and involved all individually held land in the communities. Students with

²⁰ Holden, Otsuka and Place (2008). *Emerging Land Markets in Africa – Implications for Poverty, Equity and Efficiency*. Resources For the Future Press, New York.

²¹ Holden, Deininger and Ghebru (2008). *Impacts of low-cost land certification on investments and productivity*. Paper presented at Annual Conference of Economists, University of Oslo, January 7-8, 2008.

²² Holden and Tefera (2007). *From Being Property of Men to Becoming Equal Owners? Impacts of Land Certification on Women in Southern Ethiopia*. Final Report for UN-Habitat, Nairobi.

²³ Holden, Deininger and Ghebru (2007). *Impact of land certification on land disputes in Tigray*. Paper prepared for the World Bank.

²⁴ There was variation across regions and even within regions in some of these practices but we cannot go into detail on this here but focus on the dominant practices.

limited training were used and local participation was strong. Community leaders and elders were involved and Village Land Administration Committees were elected with representatives from the different sub-villages to carry out the necessary fieldwork. All neighbours were to be present during observation and demarcation of plot borders and to measure the areas of plots. Only local tools were used for the measurement. A single one-page form was used for each household-farm which could consist of several separate plots of land²⁵. For each plot the name of the location of the plot, the plot size, the land quality class, and the names of all neighbours were recorded. More advanced technology approaches are tested in pilot areas with assistance from SIDA and USAID but no careful impact assessment has yet been implemented to assess whether these approaches with their added quality provide benefits that compensate for the additional costs given the level of poverty of Ethiopian rural households and the small sizes of their farms. The added Willingness to pay for such improved certificates is positive but fairly low (Deininger et al. in press; Holden and Tefera 2007). It is not obvious that maps and GPS coordinates add to tenure security. Local witnesses may be more important.

- Demarcation of borders for communal lands was left out in the early stages of the reform and has come as a follow-up second stage. New revised land laws at federal and regional levels came in 2005-2007 and these provide a stronger basis for implementation of land use planning and promoting more sustainable land use practices and with the local Land Administration Committees getting the responsibility for implementation, monitoring and enforcement. The land registration exercise was very demanding and it would not be wise to overload these local committees with too many duties at the same time. When all land has been registered and certificates have been distributed, there is more capacity to do other things but it is important to recognize that the work of these committees in Ethiopia has been unpaid work. With more permanent duties a system which provides them with a minimum of compensation needs to be introduced. It is possible that the Tanzanian approach with demarcation of village borders and establishment of land use plans before demarcation of individual holdings is more appropriate, particularly in areas with low population density and more extensive land use systems. How far one can go is depending on the possibility of mobilising local support and participation in land administration and land use planning.
- An advantage with the Ethiopian reform was that it involved all privately used land in the included communities and such a systematic registration and border demarcation is considerably cheaper than the demand-based plot adjudication that has been implemented in the Tanzanian pilot areas even when the “whole village-approach” is used. A compulsory low-cost approach may also work in Tanzania in densely populated areas but more

²⁵ Due to the Ethiopian land distribution system where each household should have a share of each land quality type in the village.

testing is needed to identify an affordable technology level and whether local demands and benefits are high enough to scale up such an approach. The cost of land registration and certification in Ethiopia has been estimated to be about 1 USD per plot and 3.6 USD per household and this is much lower than the cost estimates we were provided by MKURABITA in the pilot test areas where separate certificates were prepared for each plot. The estimated costs in Ethiopia with high precision total stations were about 6 USD per plot and about 21.6 USD per household, while an intermediate level of technology with handheld GPSs would cost about 1.5 USD per plot and 5.4 USD per household, only about 50% more expensive than the traditional low-cost method (Deininger et al. in press). This is considerably cheaper than has been found in other African countries and may serve as a useful benchmark.

Village Land Use Planning

Village land use planning is now being implemented in Tanzania and several other countries. It is a promising approach that may help to reduce and prevent land disputes. However, it faces many challenges in how to arrive at good compromise solutions when there are conflicts of interest and minority groups risk losing out to stronger majority groups. It may also be worth looking at some of the experiences in other countries where this approach is tried. One example is a strategy tested by the Customary Land Security Project in central Sudan and funded by USAID. The stages in the implementation of the approach is summarised in the box below²⁶.

Customary Land Security Project, stages in the approach:

1. Commitment to the approach through local meetings to identify that there is interest.
2. Delimiting the community domain by establishing Boundary Committee in each community responsible for working with neighbouring Boundary Committees.
3. Securing support from seasonal right holders. This is especially important in pastoral areas or where pastoralists seasonally access pastures in areas that otherwise are occupied by more permanent settlers.
4. Establishing modern customary land management by establishing Community Land Councils in each community that are responsible for land use planning and regulation of access and use. This is a community-based organ that is not paid by the Government.
5. Securing policy and legal support. This should be in place first and should make it feasible to establish district or provincial registries of Community Land Areas and for registration of common properties within those areas.
6. Final registration of community domains in the relevant registries and providing legal recognition to the Land Councils as the lawful authority.
7. Simple land use planning and regulation by Land Councils by zoning land into use classes.
8. Restoring wrongly appropriated properties where there has been conflicts.
9. Formalizing common properties.
10. Establishing community-based land dispute resolution machinery.

Source: Alden Wily (2008). Custom and commonage in Africa: rethinking the orthodoxies. *Land Use Policy* 25: 43-52

²⁶ More information about this in Alden Wily (2005), Technical Guidelines for the securitization of customary land rights in Southern Kordofan and Blue Nile States, Sudan. Customary Land Security Project for the Contested Areas, USDA/USAID, Nairobi.

6.3 Good practises related to business formalisation.

When observing practices in efforts to encourage formalisation lessons from several countries and the Doing Business Studies of the World Bank²⁷ suggests that it is important to recognise who are to be formalised and why. Informal sector businesses (or “extra legal” business) that operates outside the formal economy are highly diverse and there is significant variation in the composition of the informal economy between countries and regions and within individual countries, so also for Tanzania. People work in the informal economy for a wide variety of reasons, either through choice or because they are forced to do so.

Accordingly, informality means different things to different people and in different development contexts. People and businesses may stay in the informal economy only transitionally, or for an extended time. Informal economy enterprises may be efficient or inefficient and entrepreneurs may be well-educated or poorly educated. Much depends on individual circumstances and government policies and their implementation at local levels.

Accordingly, reform to promote formalisation should be based on robust research and grounded in a good understanding of the reality of the informal economy actors under consideration. It should not only be based on studies of barriers to enter existing formal systems but on an understanding of the desire, benefits and costs that makes business operate as informal enterprises. Removing administrative barriers may not lead to voluntary formalisation if there are other considerations that have led a person to operate informally and enforcing formalisation may even constrain rather than promote businesses and growth. In many countries, like Tanzania, the informal sector is a major contributor to growth in employment and wealth and for many the only opportunity to generate income.

The main focus of attention should be on the enterprise perspective and for those that desire to formalise as a potential for growth. This is based on the wide recognition that there is a continuum between informality and formality i.e. few enterprises follow all the rules governing enterprise behaviour, and few follow none of them. Formalisation is a *gradual process* that does not involve moving from one fixed state to another e.g. a business in Tanzania may have registered its name in BRELA but do not pay any taxes nor declare their employees for the purpose of social insurance.

Outcome of research on informal sector suggests that entrepreneurs make repeated economic calculations along the lines of a cost/benefit analysis, which determines a minimum threshold of formalisation for which the costs remain lower than the benefits, i.e. businesses will formalise to the point where the marginal costs of doing it are less than the benefits they will gain.

Research and donor experience identify a number of reasons why policy makers should give significant consideration to the informal economy:

²⁷ Ref. among others “Celebrating Reform 2007 - Eleven case studies of successful reforms from the Doing Business team” and “Doing Business 2008”. World Bank.

- The informal economy in many developing countries is large both in terms of number of actors and in terms of contribution to GDP, and the informal economy is *growing* rather than shrinking.
- The informal economy provides a *safety net* for people who are unable to find work in the formal economy, especially where population growth is outstripping the formal labour requirements and where basic skills are lacking. Many governments are undertaking interventions to address the needs of this segment of the economy, accepting that formalisation is often not a realistic or even a desired, option.
- Women and disadvantaged groups, such as people living with HIV/AIDS, are disproportionately represented in the informal economy.
- It is important to have good data about the size and composition of a country's informal economy; otherwise it is difficult to formulate evidence-based policy and reforms.

The justification for formalisation from a government perspective is frequently listed as;

- To provide higher quality, better paid, more sustainable employment.
- To reinforce the social contract between citizens and their state, strengthen the reliability of agreements between firms, and build investor confidence.
- To broaden the tax base (potentially permitting lower taxes).
- To increase information available about enterprises in order to strengthen frameworks for policy; and to reduce information asymmetries and facilitate trade and investment.
- To reduce the cash economy and provide more resources for intermediation by the formal financial sector.
- To improve access to business services, formal markets, and productive resources such as capital and land.
- To increase the welfare of marginalized groups caught in the informal economy through confirming their rights to participate in market opportunities.

However, there is limited evidence to support the assumption that formalisation actually promotes short-run growth. Countries with high levels of per capita GDP have smaller informal economies but there is no evidence to determine if formalisation is a cause or an effect of development.

Informality is frequently considered as a barrier to growth of an enterprise because it is then denied access to key services, denies them the ability to separate business and personal assets and thus increases risks which in turn constrain business growth. However, this by itself does not determine if growth promotes formalisation or formalisation promotes growth.

As an illustration; entrepreneurs in Tanzania stated that they would formalize if their business growth was dependent on it which suggests that growth leads to formalisation rather than the other way around²⁸. While there is no conclusive evidence that formalisation is in itself a major cause of economic growth, there is evidence to suggest that a large informal economy is not conducive to the long-term provision of public goods needed for growth, nor does it permit adequate social security expenditure or the creation of a society in which businesses can trade and invest with confidence. Formal economy jobs can provide greater economic and social benefits than those in the informal economy, so greater formality may also equal better pay and protections.

A large informal economy may also serve as an indicator of breakdown in the social contract between citizens and the state, a sign of a state which has lost citizens' trust is failing to deliver basic services and protections. States with large informal economies find it hard to raise the revenue necessary for investment and the provision of public goods. This leads to worse delivery of services and a vicious circle in which businesses become even less willing to pay taxes.

Research do however indicate that efforts to reduce the informal economy are likely to help reduce poverty, because *reducing barriers* to formalisation can stimulate enterprise growth and create improved working opportunities. Informal economy actors are, in relative terms, more likely to be living in extreme poverty than workers in the formal economy.

The World Bank "Doing Business report" shows no single indicator as a key factor in promoting formalisation. This is because some countries that does well in one aspect of the business environment also do well in others. However, evidence from research conclude that countries that have lower regulatory burdens also have smaller informal economies. This suggests that regulatory burdens have a cumulative impact.

Most research and studies recommend that formalisation should be *demand driven* by ways of creating a more enabling environment; where costs of complying with regulations are less then the benefits and this suggests a two-fold approach;

- initiatives aimed at increasing services to business; and
- initiatives aimed at reducing regulatory and administrative barriers to formalisation.

The former includes initiatives to provide financial services (like micro-finance), better infrastructure, procurement opportunities and other support to informal businesses. This approach seeks to strengthen the "push" effect into the formal economy in the belief that greater service provision will lead to growth and formalisation. To make this approach even more effective, service may be reserved for formal enterprises only in an effort to increase the advantages of formality.

The latter approach works on the "pull" effect by reducing the costs of formality. It includes initiatives to improve business registration and simplify tax administration.

²⁸ "Roadmap Study of the Informal Sector in Mainland Tanzania. ILO, UNIDO, UNDP". Dar es Salaam, 2002

The main focus of MKURABITA has been on the latter while the former is on the agenda of other programmes.

While improving services to informal enterprises may help them grow, there is more evidence for the removing barriers approach to formalisation. The latter also address the challenge of avoiding the potential conflicts of forcing enterprises away from a position that has been reached through rational choice as one that maximizes business performance. The removing barriers approach is essentially one that seeks to reduce the cost side of the equation for entrepreneurs in the cost/benefit analysis they undertake when considering formalisation.

The above has led to some stated good practice approaches in promoting business formalisation with emphasis on reducing barriers to formalisation;

- Introduce RIA for evidence based policy making and design of reforms.
- Simplify official administration for businesses. Review and reduce paperwork.
- Design measures to create a business-friendly culture in government and improve the quality, quantity and accessibility of services. Consider service charters and one-stop-shops for business.
- Simplify tax administration with single taxes for Micro-, small and medium scale enterprises.
- Avoid retroactive taxation for enterprises that formalize (penalty after promoted into formalisation).
- Share information on what tax revenues are used for, and how businesses will benefit from enhanced services.
- Rationalize business registration and licensing regimes, and separate the one from the other. Use ICT to streamline the process and share information.
- Separate the function of revenue generation from business registration.
- Restrict licensing to those activities where it is justified on health, safety, environmental, consumer protection or other grounds.
- Reduce registration fees and statutory requirements.
- Identify areas for labour law reform, protecting essential rights while making it easier to hire and fire workers and to employ on flexible contracts.
- Make it easier to register producer associations so that the benefits of formalisation can be made available to groups comprising individuals who would not separately have made the effort to formalize.

Whatever formalisation procedures or regulations are established, most business climate studies point to the fact that the single most important factor is not the formal legal and procedural framework that is they key issue, but their predictability in their

application i.e. that when businesses transact with the government they can predict the outcome without being subject to unforeseen delays or hassles by the bureaucracy making their own preferences on how procedures and regulations are to be interpreted.

MKURABITA focuses on the reducing barriers to formalisation. As stated above this is what has shown to be the most promising approach in promoting formalisation. It is labelled as the “pull” effect since it reduce the entry cost of those business who faces constraints in growth by operating in the informal sector (“extralegal”).

However, as suggested by studies referred to above, informal businesses make rational choices based on available information. Thus the approach promoted by MKRABITA for “massive formalisation” is not desirable nor is there evidence to suggest that formalisation by itself leads to growth in business employment and income. On the contrary, there is no evidence to suggest that formalisation is a driver for growth and certainly not for all enterprises in a diverse informal sector economy as the case is in Tanzania.

It is also important to recognise that formalisation is a continuum, that a business depending on the nature of its business and stages of growth will benefit from some regulatory requirements but not for others with the most important factor being evidence that the legal and regulatory system is in fact enforced in a predictable manner regardless of what ever legal and regulatory framework that is put in place. This suggest that the approach should be *gradual*, that business associations and others should be continuously informed of the outcomes for business formalising, which again suggests (as for formalisation of property rights) that the process is informed by continued surveys and research on the developments. It also suggests more emphasis should be put on education of government officials at local and national levels about the importance of the informal economy and the role they can play in increasing formalisation through offering improved services.

7. TIME FRAME AND RESOURCES REQUIREMENTS

This chapter will focus on the required time frame for the suggested reforms as well as the resource requirements and sustainable sources of funding for implementation. When this is stated it is important to clarify that the reform proposals that have been presented to us appear to be very preliminary and they have not undergone a thorough scrutiny by the key stakeholders in Tanzania. These key stakeholders include other reform programs that we have described in chapter 5.5.

We have found considerable overlap between these other reform programs and the MKURABITA programme. This makes it also questionable whether we should assess the resource requirements for the combined reforms or for those that, after a process with interactions with these other programs, are found to be additional to those implemented by the more specialised reform programs like the Business Environment Strengthening for Tanzania (BEST) Programme, the Strategic Plan for the Implementation of the Land Laws (SPILL) under the MLHSD, the Local Government Reform Programme led by the Ministry of Regional Administration and Local Government, and The Legal Sector Reform Programme (LSRP) led by the Ministry of Justice. Furthermore, it is highly likely that such an interaction process is likely to lead to substantial changes in these “additional reforms” that would make it even more doubtful at this stage to assess the resource requirements and necessary time frame.

Law reforms have to be implemented through the particular ministries that are responsible. This means that these ministries must be on board and take the major responsibility for pushing such law reforms. How long this will take depends on the nature of the reforms in terms of how comprehensive they are and how much resistance they meet. Such resistance can be strong if strong stakeholders see their interests threatened by the reform. We may use the land reform in Malawi as an example. After a long reform process the new land laws were ready to be passed through the Parliament in 2006. This reform had many similarities with the land law reforms that are proposed in Tanzania. But still up to now it has not been passed, primarily because of resistance among the local chiefs who also have a strong position in the Parliament. In Tanzania there are many stakeholder groups that would resist devolving too much power over the land to villages and village leaders as seen by the increasing competition for land. It may therefore not be easy to pass land laws that sufficiently protect the rights of poor and vulnerable groups.

It is possible on the basis of the pilot studies to make some rough estimation of the costs of implementing broad land registration and titling, but it would be more appropriate to work out the costs for implementing village land demarcation and village land use planning. However, since no pilot programme had specifically focused on this we have very limited data for doing it. SPILL has already gone far in demarcation of village borders. Further refinements are still needed when it comes to designing an appropriate participatory village land use planning approach. The question is how much outside training and supervision it would require and whether it would be implemented by MLHSD in collaboration with Ministry of Regional Administration and Local Government. After the institutional approach has been

identified it may take several years to fully implement the approach as time will be required for proper participatory learning by doing even if initial training is provided. Donor support may be important in the initial phase of such a reform.

The costs of the 7 years SPILL programme were estimated to be 300 million USD as compared to the 7 million USD costs of MKURABITA. Village Land surveying of about 300 villages has costed about 3.6 million USD. The total number of villages in Tanzania are more than 13 000²⁹ (a further increase from the 10 313 registered in 2006). If we assume that the pilots were excessively expensive and costs can be reduced to half, the costs of extending the survey to all villages in Tanzania would be about 78 million USD.

Broad-based titling of individual holdings may be appropriate in peri-urban areas where pressure on land is high and conflicts common. Broad baseline surveys should be carried out in such areas to better identify the problems and assess the demand for such reforms and assess their potential impacts. The costs of implementing such surveys are fairly small compared to the costs of the Diagnosis study and they would provide a better basis for identifying geographical locations that should be prioritised for follow-up reforms. Only when the “universe” for appropriate reforms has been identified (based on proper cost-benefit analysis identifying private as well as social costs and benefits, the appropriate level of technology for the reform, and the ability and willingness of the receivers of land titles to pay for certificates), can the additional costs be estimated. Based on this one may also make a realistic plan for intervention.

The Residential Licence project in unplanned settlements that is undertaken by the MLHSD gives an idea about the costs and problems of cost recovery through payment for the licences. By proper learning from this project it should be possible to both improve the quality of this type of reform and improve cost recovery but still costs are substantial. The costs of this project aiming to cover 400 000 land holdings in Dar es Salaam has been estimated to be 6.1 million USD but there is limited information on how this estimate took into account cost recovery through payment of fees etc.

The World Bank has made some estimates of the costs of various elements of a land reform. The costs of establishing better conflict resolution mechanisms, including Land Tribunals in 23 districts and High Court Land Divisions to deal with land-related disputes are estimated to 5.5 million USD. The costs of establishing a coordinated Land Registration and Information system have been estimated at 4.9 million USD while the costs of establishing a geodic system and mapping at scale 1:50 000 based on satellite images are estimated to be 7.5 million USD.

²⁹ Based on estimate provided by the LGRP management team.

8. IMPLEMENTATION ARRANGEMENTS

The review of implementation arrangements are based on the first draft reform programme proposal which still is under finalisation. This however, gives an opportunity to contribute to the discussion within the President's Office as well as among stakeholders on various options available, the benefits and likely challenges associated with the different options.

The Reform Programme document and the diagnostics report point to a need for a national level organization with sufficient mandate to supervise the formalisation processes, conduct studies required to put in context the challenges and provide permanent overall monitoring and oversight functions. According to the Programme Document two alternatives are being considered for establishing the institutional and legal framework for the implementation of the reforms:

- *Alternative 1:* Enact many miscellaneous pieces of legislation that provides for all pieces of legislation that implement the reform and empower existing departments to oversee the reforms.
- *ii. Alternative 2:* Enact one general law (special) that creates a national organ to oversee, regulate and facilitates the formalisation processes.

Alternative two implies the formation a special entity that will implement the proposed reforms. The choice made was based on an assessment of which of the existing types of public entities in Tanzania fits best with the profile of the entity that would be responsible for implementing the institutional reform programme. As an outcome of the analysis a number of initiatives and institutions that can support the formalisation processes were identified:

- BRELA/Registrar Generals Office for Zanzibar can be reformed to incorporate the responsibility of informal Business registration.
- The Ministries responsible for land can be restructured to form executive agencies for land administration and management. Those agencies will then be charged with the responsibility for informal property formalisation as well. Such an agency can enter into arrangements with the District and Village Councils for setting up and maintaining the District and Village Land Registry and ensuring that this information is availed at the ward, district and national levels.
- RITA/Registrar Generals Office for Zanzibar can be reformed to include the responsibility of designing and administering a national identity registration and management system. This is also indicated in the recent pre-feasibility study on the establishment of a national integrated registry system for persons, property and business commissioned by MKURABITA.

The programme document specifically highlights the justification for a new entity because of:

- The need to mainstream the Programme with the ongoing reforms in line with national Strategies.
- The long term nature of the Programme.
- The broad impacts on several key areas of public policy notably on land, labour, investments, trade and governance.
- The need to adopt the bottom up approach in the design of the reform and subsequent implementation.
- The need to consider piloting of the proposed reforms during Reform Design phase so as to draw lessons that will help in improving the reform design.
- The importance of continuously collecting information on similar reform activities so as to avoid duplication of efforts.
- The importance of providing a national focal point for the Formalisation Programme and other activities directly related to the programme as well as an entry point for dialogue for targeted beneficiaries.
- The need to further mobilize and manage resources for the Programme.
- The need to constantly align the Programme with prevailing socio economic environment so as to avoid dual mandate and maintain nationally and internationally accepted standards in the key areas of property management.

Based on the above justification it is proposed to establish a new institution, a commission under the President's Office with the following mandate;

- i. To spearhead policy, legal and institutional reforms that will transform Tanzania's extralegal economy into a formal economy.
- ii. To provide a permanent stewardship and oversight to the design and implementation property and business formalisation programs.
- iii. To safeguard the interests of the beneficiaries of the proposed reforms against adverse impacts emanating from socio-political and economic transitions.
- iv. To provide a forum and a think tank that will research into effective land and business administration strategies in the context of national, regional and global economic regimes.

The Commission will monitor government policies, legal instruments and institutions to ensure that the country continues to make progress and does not fall back into the state of "extralegal" economy. The Commission is foreseen as a permanent entity which will be guided by the desire to safeguard the gains by country's property and business reforms irrespective of changes in the political landscape of the country.

The proposed entity will have the primary mission and mandate of monitoring implementation and performance of public reforms and acting as an adviser to local and national governments on matters of policy, law, and institutional arrangements in its area of competence.

There are in our view two other issues to consider in deciding on what arrangements are required for implementation of proposed reforms;

- To what extent the programme requires an additional entity to implement stated reforms.
- To what extent such an entity will add value in the form of efficiency and effectiveness in implementing them.

The first issue is linked to the extent to which reforms as presented in the programme document actually represent new interventions or just a comprehensive list of already ongoing reforms; if there are new activities proposed, why can they not be incorporated into existing reform programmes managed by the current institutions implementing them (MLHHSD implementing SPILL, Ministry of Industry and Trade, the LGDP under the Ministry of Local Government promoting decentralisation through local government capacity building, etc.). In fact, BEST has in effect a similar mandate as the proposed entity and promotes many of the same reforms and support many of the same capacity building interventions and developments of support systems as proposed in the MKURABITA programme.

The question is if the proposed new entity is to substitute or complement some of the tasks of all these other institutions. In the former case one would need to carefully consider the fact that the existing ministries and entities are the ones which in any case will be the “drivers” of the proposed reforms assuming they are to be mainstreamed and not running parallel to ongoing processes and duplicate mandates of the existing ministries.

The proposal has been made without effective consultations with the Ministries and agencies. Furthermore, the proposal appears to suffer from the misconception of the convergence analysis and therefore an improper conceptualization of the roles of the Commission and the existing institutions that are also involved in similar reforms.

The proposed Bill attempt to confer wide overseer powers and mandates to impel legislative changes in a manner that most likely will be felt as intrusive to other government institutions that are to implement the reforms. This will then create a less conducive working arrangement for implementation. Accordingly, it is recommended that the organ of implementation should have more input and consensus before it is adopted into the reform designs.

What will be required is significantly more clarity on the overall Programme, if it is a complementary or comprehensive programme that includes ongoing reforms, if the reform “packages” then are to be “handed over” to relevant agencies and institutions, and if what additional institutional arrangements are then required to effectively implement them. Since the reforms are wide reaching and cross sector, it will require an arrangement for oversight, consultations and coordination, in particular related to monitoring progress in all areas. It could be subject for debate if this function best

performed by an “Inter-ministerial” committee rather than a higher level “Commission”. In any event, it will require a secretariat to support the process which could be a unit within the President’s Office rather than a “political autonomous” entity outside. The Programme is to reflect a policy, not independent of a political leadership contrary to one of the arguments for establishing a “apolitical” entity.

The secretariat would need to be staffed and resourced to fund formative research and studies related to the implementation of pilots and their outcomes and impact for the target group to inform the implementing ministries and agencies for the purpose of adjusting approaches and reforms. It means that the entity will be a coordinator and service provider for the implementing agencies rather than a decision maker and overseer of reforms. The question remains if this is a different role than what BEST is undertaking today.

ANNEX I – TERMS OF REFERENCE

UNITED REPUBLIC OF TANZANIA

PRESIDENT'S OFFICE – STATE HOUSE

PROPERTY AND BUSINESS FORMALISATION PROGRAMME

DRAFT TERMS OF REFERENCE

ANNUAL REVIEW / EVALUATION OF THE PROPERTY AND BUSINESS FORMALISATION PROGRAMME

1. BACKGROUND INFORMATION

1.1 The Government of the United Republic of Tanzania has received funds from the Government of the Kingdom of Norway to finance a Property and Business Formalisation Programme that seeks to facilitate the transformation of properties and business in the informal (extralegal) sector into formal, legally held and operated entities in the formal sector of economy.

The underlying purpose is empowerment of the majority of Tanzanian in the low income bracket to use their resources in enhancing their abilities and chances to participate in and benefit from the emerging and modernizing economy.

1.2 The objective of the Programme is to establish a unified national legal framework that govern properties and business matters for all the actors in the country.

1.3 The Government adopted the Institute of Liberty and Democracy approach for properties and business formalisation which has four phases of Diagnosis, Reform

Design, Implementation of the Reforms and Capital Formation and Good Governance.

- 1.4 The Diagnosis was satisfactorily completed in October, 2005 and the Reforms Design started thereafter.

The specific objective of the Reforms design phase is to develop specific recommendations on required changes in the current real estate and business laws and related legislations as well as the institutional arrangements so as to create the envisaged property and business laws that will facilitate the transformation of real estate and business assets in the informal sector to entities in the formal sector.

The cornerstone of these Reforms is the merging of the improved legal (policy, laws and institutions) framework and standardized archetypes (customary practices and institutions governing business and real estate in the informal sector) to produce a hybrid legal (policy, laws and institutions) framework that has the following attributes: believed to be indispensable in creating wealth.

- Legal and economic mechanisms that increase productivity through the creation of “distinct legal entities”, incorporating “asset partitioning” and an efficient “division of labor”.
- Legal means for enterprises to operate in the expanded market, acquiring the capacity to gain access to networks beyond family members and circles of acquaintances.
- Formal, fungible property rights that not only allow assets to be identified but also allow ordinary people to move them in the expanded market to capture as much economic value as possible.

1.5 The Government of Tanzania contracted the Institute of Liberty and Democracy (ILD) to lead the processes of implementing the first two phases of Diagnosis and Reforms Design.

Upon completion of the Diagnosis phase the ILD led the initial stages of the Reforms Design for nine months after which it was decided to change the Terms of Reference of the Consultancy agreement as detailed in Annex I, attached.

1.6 The Financing Agreement between the Government of Tanzania and Government of Norway provides for an annual review of progress.

It was envisaged that there will be a review of the Diagnosis phase, a mid term review (progress of the Reform Design) and a final evaluation. Both the Diagnosis phase and the Mid Term Review have been done. (1st AND 2ND ANNUAL REVIEW)

Following the changes in the Terms of Reference for the Consultancy agreement between the ILD and Government of Tanzania the time frame of the agreement was extended until March 2008. Article 2.7 states that representatives of Norway and Tanzania shall assess the Programme annually and that an independent evaluation shall precede each annual meeting. It is thus necessary and appropriate to carry out an additional Annual Review (THIRD ANNUAL REVIEW) to remain in compliance with the agreement, maintain consistency in the Programme Management and provide inputs to the Government of

Tanzania and Government of Norway consultations during the 2008 Annual Meeting.

It is for this purpose that a four members expert Team, two appointed by each government, is formed to undertake the review in accordance with the Scope of Work detailed below.

2. CONTENT OF THE THIRD ANNUAL REVIEW

2.1 The Third Annual Review precedes the Third Annual Meeting and the final evaluation of the Programme that is likely to take place in July/August, 2008. The review, to take place in December 2007, is intended to evaluate progress made since the Mid Term Evaluation and the Second Annual General Meeting and provide inputs to the Government of Tanzania and Government of Norway consultations during the 2008 Annual Meeting.

2.2 It will be governed by the provisions of Articles II, VII and IX of the Financing Agreement.

2.3 The minutes of the 2nd Annual General Meeting, the approved work plan for July 2007 – March 2008 and budget and Programme Management Unit Progress Report there from are the main documents for the Review Team.

3. SCOPE OF WORK

The scope of work for the Team will consist of:

3.1 Review the changes made in the Consultancy Agreement between the Government of Tanzania and the Institute Liberty and Democracy to determine Compliance with the

Government of Tanzania and Government of Norwegian decisions made during the Second Annual Meeting.

- 3.2 Evaluating the progress made in implementing the approved work plan in particular reflecting on the objectives of the Reforms Design phase of the Programme.
- 3.3 The Evaluators will determine the strategic fit of the Reform Proposals in the overall national efforts in promoting the growth of an inclusive formal economy largely driven by local private sector, including the poverty reduction strategies of mainland Tanzania and Zanzibar, MKUKUTA and MKUZA, the National Vision 2025 of mainland Tanzania and Vision 2020 of Zanzibar, as well as ongoing national programs in all key sectors of the economy.
- 3.4 The Evaluators will determine the extent to which key stakeholders are involved in the Reform Design processes with a view of assessing level of acceptance and sustainability of the proposed Reform packages.
- 3.5 The Evaluators will examine the proposed Formalisation framework, Reform packages and some of the proposed implementation interventions against the overall socio – economic modernization agenda, other ongoing and planned programs in the areas of land and business administration as well as the financial sector reforms and the government decentralization processes.
- 3.6 The Reviewers will assess the extent to which reform design has addressed and factored in empowerment of the poor and vulnerable groups.
- 3.7 The proposed Reforms will be compared with best practices in the Region (East and Central Africa i.e. EAC and SADC member Countries) and internationally.

- 3.8 The Reviewers will comment on the way forward advising in particular on the modality of Reforms Design, time frame and resources requirements. (This point should more clearly address the issue of sustainability of implementation, i.e. who will finance implementation of the reforms.)
- 3.9 The Reviews will provide a professional opinion on the proposed implementation arrangements of the Reforms.

4. IMPLEMENTATION ARRANGEMENTS

- 4.1 The Team will consist of a Team Leader appointed by the Government of Norway and three other members, one appointed by the Norwegian Government and the rest (two) appointed by Tanzania Government.

The Team shall as much as possible be multi disciplinary with individual members being senior professionals well versed in ongoing reform processes in Tanzania and with good insight in the property and business formalisation agenda.

- 4.2 The excise shall be carried out and completed in two weeks.
- 4.3 The Norwegian Embassy in Tanzania and the Government of the Republic of Tanzania through the PMU shall assist the Team in acquiring information and make available all necessary reports, data and documentation.

5 REPORTING

The Team will jointly produce a report to be submitted to the Governments of Tanzania and Norway. The report shall be based on the scope of assignment defined above.

The Team is required to present their, findings conclusions and recommendations in a debriefing report in a meeting with the

Royal Norwegian Embassy, prior to the submission of the Final Report.

A similar debriefing meeting shall be held for Government of Tanzania officials including the members of the Programme Steering Committee.

A final report shall be submitted not later than four weeks after the commencement date. The report shall present the views, findings and recommendations of the Team only and shall not be binding to the Tanzanian and the Norwegian Government. The report will be used as background material for the annual meeting in Dar es Salaam, Tanzania regarding the Programme.