

**TANZANIA LAND POLICY AND GENESIS OF LAND REFORM SUB – COMPONENT OF
PRIVATE SECTOR COMPETITIVNESS PROJECT.**

1.1 Historical Context of Land Tenure:

Before colonialism landholding was based on customary laws of the different tribes in Tanzania (in all 120). Title to the land was based on traditions and customs of respective tribes. Ownership of land was communal, owned by family, clan or tribe. Chiefs, headmen and elders had the powers of land administration in trust for the community. These powers continued through the colonial era though they were limited by the newly introduced German and later British land tenure system under which all lands were declared to be crown and public lands respectively. The customary land tenure is still in place, but since 1963 the chiefs, headmen and elders have been replaced by elected village councils.

Tanzania was under German colonial rule from 1884 to 1916 and British rule from 1917 to 1961. The country attained its Independence in 1961.

The Germans issued an Imperial Decree in 1895 which declared that all land, whether occupied or not was treated as unowned crown land and vested in the Empire, except claims of ownership by private persons, chiefs or native communities which could be proved. A distinction was made between claims and rights of occupancy. Claims were to be proved by documentary evidence while occupation by fact of cultivation and possession. In practice only settlers engaged in plantation agriculture such as sisal, coffee, rubber and cotton, etc, could prove their title and enjoyed security of tenure. The indigenous people could not prove ownership. Hence, they were left with permissive rights of occupancy.

The policy of the German colonial administration vacillated between plantation agriculture run by settlers and African small peasant cultivation. Generally the policy favoured alienating land to the settlers by outright sale or lease. By the end of First World War some of the best lands in the highlands and farm amounting to 1,300,000 acres had been alienated to foreigners.

After the First World War Tanganyika became a Trust Territory under British Administration which by International Agreement was required to take into consideration native laws and customs in framing laws relating to the holding or transfer of land or natural resources and to respect the rights and safeguard the interests present and future of the native population. No native land or natural resources could be transferred to non – natives without prior consent of the competent authorities.

The British passed their major land tenure legislation in 1923 called the Land Ordinance Cap. 113 which declared all lands, whether occupied or unoccupied as public lands, except for the title or interest to land which had been lawfully acquired before the commencement of the Ordinance.

All public lands and interests were vested under the control of the Governor to be held for use and common benefits of the natives.

The new land law introduced a land tenure system called the Right of Occupancy which was either granted or deemed right. The granted right of occupancy was statutory while deemed right was customary which is a title of a native or a native community lawfully using or occupying land in accordance with native law and custom.

However, the deemed rights have never enjoyed the same security as the granted rights under the statute. In practice the customary rights were governed by administrative policy, while the granted rights were subject to legal stipulations. In the 44 years of British Rule, some 3.5 million acres were alienated from the native lands in favour of settlers (foreigners).

The approach of the colonial regimes to vest land in the State as the ultimate landlord is fundamental and was inherited unmodified by the independent Government of Tanganyika for 38 years. The basic principle of customary land tenure is that land is held for use, and as long as it is used, the occupier maintains control over it. The independent Tanzania Government maintained more or less the same colonial land policy and practices with some minor reforms till 1995. The land is vested in the President who holds the radical title.

1.2 National Land Policy 1995:

Since Tanzania attained its political independence in 1961, it has been realized that there was a need to develop a coherent and comprehensive land policy that would define the land tenure and enable proper management and allocation of land in the urban and rural areas and provide a clear position on customary land tenure in the light of profound economic and social reforms that have been undertaken in the last 34 years. Thus a new land policy was needed to:

- a) Accommodate changes in land use and increase in human population;
- b) Control large stock population which increases demand for grazing land and creates serious land degradation;
- c) Protect the environment from extension of cultivation to marginal areas;
- d) Reduce conflicts in land use between agriculturalists, livestock keepers, forest areas, wildlife areas, water sources and miners;
- e) Provide for increased urbanization requiring lands for settlements, industries and commerce and preserve valuable agriculture land;
- f) Facilitate prospective investors who require land as a result of liberalization of the economy and investment promotion;

- g) Regularise and confirm the effects of the villagisation programme, the Operation Vijiji (1973 – 1976) on customary land tenure;
- h) Protect individual land rights under a pluralistic political system since 1992 and
- i) Accommodate Appeal Court decision affirming customary land tenure rights of the local people.

The fundamental principles of the new national land policy have been incorporated in the new land Laws - Land Act No.4 and Village Land Act No.5 passed by Parliament in 1999. The new Land Laws have now become operational since May, 2001.

The entrenched fundamental principles of the new Land Laws are:

- (i) To recognize that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
- (ii) To ensure that existing rights in land and recognized long standing occupation or use of land are clarified and secured by the law;
- (iii) To facilitate an equitable distribution of and access to land by all citizens;
- (iv) To regulate the amount of land that any one person or corporate body may occupy or use;
- (v) To ensure that land is used productively and that any such use complies with the principles of sustainable development;
- (vi) To pay full, fair and prompt compensation to any person whose right of occupancy or long standing occupation or customary use of land is revoked or interfered with to their detriment by the State or is acquired;
- (vii) To provide for an efficient, effective, economical or transparent system of land adjudication;
- (viii) To enable all citizens to participate in decision making on matters connected with their occupation or use of land;
- (ix) To facilitate and regulate the operation of a market in land so as to ensure that rural and urban small holders and pastoralists are not disadvantaged;
- (x) To set out rules of land law accessibly and in a manner which can be readily understood by all citizens;
- (xi) To establish an independent expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay;
- (xii) To encourage the dissemination of information about land administration of information about land administration and land law through programmes of public and adult education using all forms of media; and

- (xiii) The right of every adult woman to acquire, hold, use deal in land shall to the same extent and subject to the same restrictions be treated as a right of any adult man.

The new land policy and laws represent a turning point in the development of Tanzania. The implementation of the new land laws will give substantive push to Government economic and social development objectives under the liberalized free market economy and poverty eradication strategy and the realization of the National Development Vision 2025.

The current situation with regard to ownership, control and management of land in Tanzania is that:

- a) The radical Title is vested in the President as trustee for and on behalf of all citizens of Tanzania.
- b) For the purposes of management only, all land is classified as general land, Village lands and reserve land. The President has powers to transfer land from one category to another. Reserve lands are forests, wildlife areas, etc. which constitute 28% of all lands. Village lands are all lands that fall under the jurisdiction of existing registered 10,832 villages in the country which constitutes nearly 70% of all lands. The rest are mostly urban lands and those already under granted titles;
- c) The Commissioner for Lands is the sole authority responsible for overall administration of all lands, but has delegated his powers to authorized land officers at district/municipal level. The Village Councils manage all village lands with advice from the Commissioner for Lands. The reserved land are managed by statutory bodies.

1.3 Preparation and Completion of the Strategic Plan.

There are many activities in these Laws which are required to be implemented, but since resources are scarce and to plan is to choose, the Ministry of Lands realized in 2003 that it was necessary to determine the prioritization, sequencing, phasing and costing of activities over short, medium and long-term periods. Hence, a group of eminent Consultants was engaged in March, 2004 to prepare a Strategic Plan and identify the priorities for implementation. This was done through a participatory process of stakeholder field consultations and validation in Tanzania Mainland.

The objective of Preparation of Strategic Plan was to design and develop a strategic framework for the land sector to implement the Land Act No.4 and Village Land Act No.5 of 1999, the Land Disputes Courts (Tribunals) Act No.2 of 2002 and the (Amendments) Act No.2 of 2004 (Mortgages) over the medium (3 years) and long (10 years) term period to contribute to the achievement of the Poverty Reduction Strategy (PRS 2000) priority sectors especially agriculture and now the National Strategy for Growth and Reduction of Poverty (NSGRP) or MKUKUTA. The Strategic Plan is aimed at maximizing the contribution of the Land Sector and the Land Acts to the Government of Tanzania (GOT) priority

sectors and policy goals. It will promote increased security of land tenure and enhance the productivity and profitability of the agriculture sector as explained in the Agriculture Sector Development

Strategy and Agriculture Sector Programme (ASDP 2003). The ASDP calls for commercialization of agriculture, identification, demarcation and survey of agricultural and livestock investment zones by the Ministry of Lands in collaboration with the Local Government Authorities (LGAS) in a phased manner according to land use plans.

The Preparation of Strategic Plan for Implementation of New Land Laws (SPILL) 1999 was completed in April, 2005 by the Consultants, engaged by the Ministry of Lands with the financial support of the European Commission. Preparation of Strategic Plan involved key stakeholder consultations and validation of a scientifically selected representative sample of 66 Villages, 15 Districts, 14 Regions and 4 Ministries of Tanzania Mainland, taking into consideration the existing economic, social, ecological, geographic and cultural diversity of the country.

The finalisation of Preparation of the Strategic Plan included organization of a One-day National Workshop of 158 Key Stakeholders in March, 2005 in Dar es Salaam. After the Plan was approved a Three-day Internalisation Workshop of the Ministry of Lands 30 top Management was conducted in Bagamoyo in April to enable the Management to understand and own, adopt and sustainably implement the approved Strategic Plan.

1.4 A Brief Review of Strategic Plan (SPILL).

The Key interventions under SPILL, with the priorities assigned by SPILL shown as high (**H**), medium (**M**) and Low (**L**), and grouped into the three land categories set out in the Land Act No. 4 of 1999 (village, general and reserve land) are:

a) Village Land.

- 1). Curbing sources of land conflict (**H**).
- 2). Instituting lower or minimum limits on land holding (**H**).
- 3). Increasing the number of surveyed villages and delivering Certificates of customary right of occupation (**CCRO**) (**H**).
- 4). Conceiving and introducing a national village resettlement scheme (**M**).
- 5). Setting up Village Land Councils and other Land Courts (**H**).

b) General Land.

- 6). Regularise tenure and introduce social services (**M, L**).
- 7). Undertake cadastral surveys in urban areas whilst addressing the issue of property rights in unplanned areas (**M**).

c) Reserve Land.

8). Delineate the boundaries of conservation areas, game reserves and national parks (M).

d) All Lands

9). Removing discrimination of vulnerable groups through affirmative action (H).

10). Develop land information systems in District land offices (M).

11). Expand, empower and facilitate the National Council of Professional Surveyors (H).

12). Provide public education (H, M).

13). Provide national mapping infrastructure (geodetic network); conduct topographic mapping (H,M).

14) Produce participatory land use plans at all levels (H,M).

15). Develop a modern land administration infrastructure in both Ministry of Lands, Housing and Human Settlements Development (MLHSD) and Prime Ministers Office, Regional Administration and Local Governments (PMO – RALG) (H,M).

16. Challenge and influence the institutions of higher learning to change the Curriculum and run well tailored short courses (M).

17). Decentralise land administration support services within MLHSD and hive off non – regulatory functions (H,M).

18). Amend legislation to provide harmony in land sector laws (H, M).

19). Form the National Land Advisory Council as a cross - sector organization (H).

20). Establish District Compensation Funds and agree on a source of funding (M, L).

21). Establish a forum for the interaction of public and private sectors (M, L).

22). Enforce land development conditions on delivered land parcels (no priority assigned).

The total cost of Implementation of SPILL was estimated at 300 billion shillings or US \$ 300 million over a 10 year period.

1.5 Review of Recent Pilot Experiences.

(a) Property Register for Unplanned Urban Settlements in Dar es Salaam.

It is estimated that there are 400,000 plots of unplanned housing in Dar es Salaam. This is a two year project commenced in 2004/05 with the objective of gathering data for all unplanned plots, issuing Residential Licences under Section 23 of the Land Act and building a Computer Register of the properties in the three (3) Local Government Authorities of Ilala, Kinondoni and Temeke. The project uses high resolution satellite imagery to produce mapping at a scale of 1:1,500. This image is used to identify properties and natural and manmade features. Data on the properties is gathered on the ground using questionnaires. The data includes household characteristics such as income and expenditure, housing

conditions, services, etc. This data is entered into a computer where it is integrated with the maps in Geographic Information System (GIS) using Arc View Software. Public Awareness Campaigns are conducted and residents are encouraged to apply for Residential Licences. In Ilala Municipal Council to date 16,830 Residential Licences have been issued, 12,929 to males (73%) and 3,911 to female (23%).

In Kinondoni Municipal Councils a total of 17,422 Residential Licences have been issued, 13,551 to males (72%) and 4,871 to females (28%). To date the project has mapped 220,000 properties and issued 47,000 Residential Licences. In Ilala District eleven (11) property owners have obtained Bank Credit using their Residential Licences and in Kinondoni 3. It is also reported that Savings and Credit Cooperative Societies (SACCOs) are providing credit to their members using the Residential Licences and even private rich individuals are reported to be advancing credit to residential Licence holders at interest of 16% compared to bank interest rate of 22%. The Residential Licences are also used as security for University students Loans and as surety for court bails. The cost of this activity is US \$ 6.1 million.

(b) Pilot Village Land Certification in Mbozi.

Pilot Village Certification in Mbozi District was started in 1999 as practical efforts to implement Village Land Act No 5 of 1999. The Village Land Act and its Regulation 2001 represent a new experience for Tanzania and there is limited international experience to draw upon. Aerial photography was used in 2001 to map village boundaries and identify individual land parcels.

To date in Mbozi District the boundaries of all 175 Villages have been surveyed and 158 have been issued with Certificates of Village Land (CVL). A total number of 1,117 Certificates of Customary Rights (CCROs) have been issued to 765 males (68.5%), 42 to Females (3.8%) and 310 jointly (27.8%). Five (5) persons have obtained loans from credit institutions using their CCROs.

So far the Mbozi Pilot experience has been extended to ten (10) Districts: Iringa 40 Villages, Handeni 6 Villages, Kilindi 10 Villages, Babati 5 Villages, Monduli 49 Villages, Kiteto 6, Kilolo 9 Villages, Namtumbo Villages, Ngorongoro 1 Village, and Muleba 2 Villages. All these Villages have been issued with Certificates of Village Land (CVL), and by June 2006, 1,088 CCROs have been issued in these Villages. The estimated cost of this activity is US \$ 3.6 million.

(c) Dispute Resolution Mechanism.

Under the Land Dispute Courts Act No.2 of 2002 and Regulations G.N. 174 of 2003, Land Tribunals have been established in 23 Districts since October, 2004 and the High Court Land Division is also in place. By April, 2006, 5,583 cases had been filed in the Land Tribunals and 2,632 have been decided, 2,951 cases are pending. Most disputes are about ownership of land, land boundaries, non – payment of house rents, inheritance of land/houses, etc. The estimated cost of this activity is US \$ 5.5 million.

(d) Land Registration and Land Information.

Most property rights in Land in Tanzania are not documented or mapped to facilitate land transactions because only 150,000 land parcels are registered. Registration of land in rural areas under customary land only commenced with the Mbozi Pilot District in 2004. Consequently 90% of Tanzanians cannot be located through the property registration system which would allow them to gain access to collateral - based credit and exercise their rights as contracting parties and citizens. The land registration procedures are slow, costly and expensive for firms, private individuals and the poor. It requires prior authorisation from Government land Registrars, Valuers and Land Officers. Property is not readily liquid. It is also difficult to mobilize, transfer, combine, divide or leverage land into credit and capital.

The Land Information and data are scattered in the Ministry of Lands, Local Government Authorities and Village Councils. There is no coherent system for collection, storage and retrieval of land information. It is therefore proposed to re-engineer the existing land registration and information system and produce new streamlined procedure and data system. The estimated cost of this activity is **US \$ 4.9 million.**

(e) Geodetic Network and Mapping.

Tanzania has only a skeleton geodetic network dating from the colonial era and most maps of scale 1:50,000 are outdated. Hence, it necessary to establish a new primary geodetic framework for Mainland Tanzania. It is also planned to establish two continuous GPS Stations (CGPS). A Primary network with 50 kilometre spacing with 400 points will be established. Maps in 15 Project Districts will be revised and updated at a scale of 1:50,000 using satellite imagery: The estimated cost of this activity is US \$ 7.5 million.

(f) Capacity Building (Training of Staff)

About 25 technical and professional staff involved in the implementation will receive training including in- house training, Local Universities and Colleges and in International Universities. The estimated cost for this activity is US \$ 2.4 million

1.6 Land Reform Project Identification.

The preparation of SPILL was at the behest of Development Partners especially the World Bank and the European Commission whose primary interest is the implementation of the Agricultural Sector Development Strategy (ASDS) and Programme (ASDP). Since agricultural activities take place on the land, it was necessary to ensure that the new Land Policy and Laws are implemented to facilitate agricultural development.

Local people have to be provided with equitable and secure access to Land and to make easier for investors to access and use land. Time take to allocate and register land rights and subsequent dealings in those rights and land disputes must be reduced.

After the completion of SPILL in April 2005, a World Bank Land Expert in June, 2005 identified Seven (7) potential Land projects, for implementation of SPILL. They are Land Registration and Land Information, Geodetic Network and Mapping, Implementation of Village Land Act, House Registration in Unplanned Urban Settlements, Dispute Resolution Mechanism, Capacity Building and Survey of 20,000 plots in Dar es salaam because it involved displacement and resettlement of population.

In August 2005 a World Bank Consultant came to Tanzania to design the Land Reform Project, but dropped Plot Survey in Dar es Salaam.

A Land Reform Project costing US \$ 30 million was proposed. In October/November, 2005 the World Bank and Government of Tanzania held negotiations and agreed on a Project Appraisal Document (PAD) where the Land Reform was made an integral part of a Basket Fund under the Private Sector Competitiveness Project (PSCP) costing a total of US \$ 95 million. The purpose of PSCP is to create sustainable conditions for enterprise creation, growth and innovation which respond to market opportunities.

It is hoped the Project will lend to the development of a healthy and competitive domestic private sector, measured in the number of new businesses, growth of existing businesses and increasing formalization of informal businesses. This will reduce the cost of doing business and increase the capacity of local private sector participation in domestic and internal markets.

The Implementation of the Six Activities over the next 5 years starting from 2006/07 to 2011/2012 will have a big impact on the land Sector. It will enhance the security of Land in the 15 Project district, and in unplanned areas in major cities, resolve land disputes, provide base maps for land use planning, provide a more efficient land registration system and land information, enhance Local and Cetral Government revenues accruing from land, etc.

1.7 The Major Land Issues in Tanzania and Strategies for their Resolution.

The major land issues in Tanzania are:

- a) Lack of adequate security of tenure for majority of rural and urban people. In Urban areas 70% live in unplanned settlements besieged by health hazards and insecurity.
- b) Conflicts of Land Use in rural areas especially between farmers and livestock keepers and persistent land disputes as a result of rapid expansion of towns encroaching on surrounding farming areas, tenurial conflicts between customary and granted Land rights.

- c) Land degradation and destruction of water sources.
- d) Absence of adequate and coordinated Land Information.
- e) Inadequate human, institutional and infrastructural capital.

The Strategies for dealing with issues are:

- a) Rural, Village and urban topographical mapping.
- b) Urban and Rural Land Use Planning, demarcating land for different uses.
- c) Cadastral surveying of Urban plots and farm parcels in the Villages.
- d) Titling and Registration of Urban and Village Land Parcels.
- e) Decentralization of Land delivery to Local Levels – Local Government Authorities and Village Councils. There are 5 cities, 16 Municipal Councils, 4 Town Councils, 90 Township Authorities and 10,000 registered villages in Tanzania (Village Councils).
- f) Capacity Building.

There is acute shortage of qualified and experienced technical and professional staff such as Land Surveyors, Valuers, Land Officers, Town Planners especially in Local Government Authorities. Mapping is critical to land delivery and land use planning. Yet its an area where the Government of Tanzania and most development partners don't want to venture because its costly. This is a dilemma. Mapping of Land should be treated as part of provision of national infrastructure just like roads, water, electricity, railways, ports, airports, etc because without maps even the infrastructure services cannot be planned and built.