A CENTURY OF GOVERNMENT REGULATED LAND ACCESS IN TANZANIA

Discussion Paper for the
Videoconferencing Workshop on Land Administration in Africa
(Searching for Alternative Approaches), May 12 – 15, 2008,
Covering Tanzania, Ghana, Malawi and South Africa.

By

Dr. Furaha Ngeregere Lugoe
DILAPS,
P. O. Box 35424,
Dar Es Salaam,
Tanzania.

fnlugoe@yahoo.co.uk
www.dilaps.or.tz

Abstract:

Land has been, is and will continue to be, the human habitat on planet Earth. It is a resource that cannot be expanded as human population, the users, do and should therefore be managed with utmost care as a communal resource. A starting point in land management is equitable land distribution and regulation of such distribution and use. Regulation starts with a framework consisting of agreeable customs, policies, laws and other forms of governance. Land Regulation is as old as human communities, which in Africa have been subjected to involuntary interference for over a century. Many untold land use conflicts emanate therefore from circumstances that are deep rooted in history and evaluated against current day vision of economic growth, good governance and freedom from poverty.

This discussion paper presents land tenure and land access issues in a historical setting for mainland Tanzania. It reveals the dynamics of the regulatory framework for over a century starting shortly prior to colonial interventions, through to the start of the 21st Century. The paper traces major policies, laws and regulations and their impact on land use. It notes, with concern, the frameworks that led to people's displacements from ancestral lands at various times during and after colonial rule. It further reviews marginalization in incomes and redress to poverty, as a result of encumbered land utilization policies. As urban centres start to attract large populations, propelled by rural to urban migrations at independence, land starts to play a crucial role in the management of towns and cities. An enabling regulatory framework in urban centres could make land accessible for productive uses thus unlocking the potential for growth in urban economies. On the contrary, weak frameworks could continue to create slums and communities would suffer from its ills.

The paper is written with the sole purpose of guiding discussion on land policy and land administration in both rural and urban areas using Tanzania's historical land regulatory framework as a case study. It is the view of the author that there is much to be learnt from the dynamics of land administration policy in Tanzania in order to avoid disappointments.

A CENTURY OF GOVERNMENT REGULATED LAND ACCESS IN TANZANIA

INTRODUCTION

Tanzania's historical experience points to the fact that land control by communities was more of concern than land ownership in the years before the advent of colonialism. There being abundant land for everybody's needs, the issues of land-use and production for each homestead were given priority over ownership. Also history reveals that community leadership in whose hands land was vested guaranteed access. Land tenure security was therefore, not individualised but was provided in a collective way through clan and tribal leadership.

Colonial history on the subject of land access and tenure is seen in terms of conflicting interest between occupiers and natives. The setting and fixing of administrative boundaries by these powers forced many a people to settle dawn, and respond to the wishes of the colonial masters. Only occasionally, where it suited them, was customary land tenure allowed but also under the strong and watchful eye of decrees and legal statutes. Foreign concepts were also included to govern colonial interests including concepts of Right of Occupancy and Public Land. Ownership of land and occupation thereof were made distinctly different concepts for the native peoples of Tanganyika contrary to their norms.

At independence Tanzania in particular, inherited the colonial laws and policies that had been in force on the land question. These continued to vest land in the state as the ultimate landowner, without any significant modification, upholding the new order such as the leasehold systems where these existed. Land tenure reforms were rare. Legal reforms were introduced to conform with the politics of the day but, were largely cosmetic and often of a trial and error type of land administration. Again, the reforms worked towards upholding colonial arrangements and often diminishing influence of customs and traditions of local people.

Customary tenure evolves out of native use of land and as such it appears to take care of the basic human needs of shelter and food for all. Customary land rights lay at the foundation of native people as a basis for their livelihood and source of their identity. Customary tenure therefore provides and restores human fundamental dignity of belonging to some ancestral land, which should only be relinquished at will in favour of other land tenure (freehold, leasehold) systems to facilitate a multiplicity of land uses and land users. Registrable customary tenure can be correctly labeled as the corner stone of land tenure systems in sub-Saharan Africa that has a central role to play in poverty reduction in agrarian economies.

Land delivery in Tanzania is a core mandate of the land administration system of a Government Ministry responsible for lands, housing and human settlements development to provide for: (i) land and property development; (ii) use and conservation of land; (iii)

revenue collection from the land through taxation, leases and sale; and (iv) to resolve possessory and land-use disputes and conflicts for the productive, recreational, and other needs of the public - individual citizens and their businesses in accordance with agreed land use patterns.

Land delivery processes in Tanzania include the specific activities of planning, developing and regulating human settlements in the broadest sense. These functions are vested in both the MLHHSD and PMO-RALG where, in principle, the former regulates and the latter implements the developments on the ground. The national land policy of 1995, the human settlements development policy of 2000 and a number of laws and statutory instruments guide the day-to-day regulation of land access. The lands sector oversees and implements current main legislations on land namely, the Land Act, 1999; the Village Land Act, 1999; The land Disputes Courts Act (Act No. 2 of 2002); Urban Land Use Act of 2006; Rural Land Use Act of 2006; The Land Registration Ordinance (Cap 334); The Land Survey Ordinance (Cap 390) of 1959; The Professional Surveyors Registration Act of 1977; and corresponding subsidiary legislations and regulations.

PRE-INDEPENDENCE LAND REGULATION

A Glance at The Pre-Colonial Dispensation:
The history of most African peoples over a century ago was one of migrations, and resettlements until interventionist forces from Europe took firm hold on such freedom. The sealing of borders around multi-tribal territories, through the Berlin Conference decrees and provisions of 1884, and the introduction of internal administrative boundaries including the appointment of chiefs by the colonial governments, where none existed, meant that the colonial powers stopped large-scale migrations and territorialized nomadic practices in many African countries. In this regard, micro-scale migration of herders and some of farmers, which were introduced as Government programs, continued after this time. The cause and effect of territorial boundaries had grave consequences to socio-economic life and their relationships to their lands.

Historians agree that at their inception colonial Governments succeeded through territorial rule to introduce the ownership concept at the peril of well-cherished land control. Land ownership was the goal in colonial policies so as to accommodate settlers from abroad and their interests. Land ownership was therefore, availed mostly to settlers, but was denied of the native populations, save for *ad hoc* powers granted to chiefs and clan elders in later years. Capitalising on customary clan governance modes in Africa, and seeking to have governable communities, Colonial Governments accepted clan based land use and ownership as a policy option. In this regard, it is often correctly stated that traditional land holding in 19th Century Tanganyika was based on customary laws of various ethnic groups. Further, that land was communally owned and chiefs, headmen and elders had the powers to administer lands in trust for the communities. Such a situation evolved and developed as a spin off of territoriality and centralised governance. In Tanganyika it continued and was upheld throughout the colonial era, by German and later, by British colonial dispensation.

German Decrees the Rights of Occupancy Concept in Tanganyika:
As a part of early land policy, the Germans issued the Imperial Decree of November 1895, which declared that all land in *Deustch Ost Afrika*, whether occupied or not, was to be regarded as "not owned". This policy was clearly more of a display of authority over existing clan and tribal rulers, as it was over land. It disposed the haves and the powerful of the time. All that followed, with regard to land policy, thereafter was to reveal the essence of domination and subjugation. The lands were to be vested in the Empire as crown lands as a consequence of the declared policy and in total disregard of any existing land dispensation. The crown was to pick and choose who in the territories was to have legal access to land. The decree introduced the concept of a right of occupancy or a lease arrangement from the Crown, as distinctly different from ownership of land. In regulating this decree, statutes were enacted that introduced ownership, as a concept that could be proved only by documentary evidence issued by the state. Land Occupation became a concept that had nothing in common with ownership. Occupation of land was to be recognised if the land was under cultivation and was put under use through dwellings that were erected on it.

In practice, only settlers or immigrants could provide documentary evidence and thus enjoyed granted rights of occupancy and state guarantees of tenure security. Settlers also therefore enjoyed other pertinent legal rights including the right to sell or lease-out their lands. On the other hand, the indigenous people were left with permissive rights of occupancy on the lands that now belonged to the imperial state. Thus were lands alienated from the indigenous peoples of Tanganyika to foreigners. The record shows that by the end of the German era, in 1914, some 1.3 million acres of fertile lands in the northern highlands and the coast Districts had been alienated from customary ownership and use to settler interests and ownership.

The British Statutes Legislated the Concept of Public Lands:
Continuing the disregard for the interests of the native people of Tanganyika, as were the Germans, British land tenure policy was shaped by two major factors. The first is Tanganyika's international legal status as a mandated territory of the League of Nations, now the United Nations that conferred upon it the status of a "trust territory". The second factor was British colonial policy for Tanganyika irrespective of the UN mandate. British policy was developed so that Tanganyika was to be a source of raw materials for industries in Britain. It is not difficult for one to see reasons why Tanganyika was transformed into plantations, under this rule, and encouraged peasant farming to produce cheap raw materials for overseas markets. Article 8 of UN Trusteeship Agreement required Britain to "take into consideration native laws and customs" and to "respect the rights and safeguard the interests of both present and future of the native population''. As it turned out, Her Majesty's Government in Britain did not respect this agreement. In 1923, the British passed the Land Ordinance (CAP 113), which did not consider the UN requirement as a specific article except in the preamble.

The legacy of the Land Ordinance, enacted under British land policies, had serious effects on the way that the people of Tanganyika had access to land including the

following dispensations: (i) all lands, whether occupied or unoccupied, were declared to be public lands, except for the title or interest to land, which had been lawfully acquired before the ordinance (Section 3) came into force; (ii) all public lands were vested in the Governor to be held for use and common benefits of "the natives"; (iii) no title to the occupation and use of any public lands would be valid without the consent of the Governor (Section 4); (iv) a new land tenure system, i.e., the right of occupancy was legally introduced and could only be granted by the Governor.

In 1928, the Land Ordinance was amended to give legal recognition to: (i) customary ownership; (ii) right of occupancy; and (iii) a title of a native or a native community lawfully using or occupying land in accordance with native law and custom (Section 2). However, deemed rights were not categorically stated to have the same security as granted rights in the law and were governed more by administrative policy and practice. Land alienation from natives continued under British rule and land policy. Under British rule 3.5 million acres were alienated from native lands towards settler interests and ownership.

Displacements from Ancestral Lands:
Customary tenure, upheld through tribal traditions, assured that economic interests of each member of the clan were preserved. When properly considered, this principle can still guide policy on employment and poverty reduction at national level particularly, in agrarian economies. It must be recalled here, that colonial interventions that declared all land as "not owned" left many natives labelled as trespassers on their ancestral lands. This colonial policy resulted in many lands poorly managed (deforested, eroded, and derelict) and refuelled migrations both voluntary and forced. The benefactors of the policy can point to land developments in the interest of "the economy" as an advantage worthy the course. But it is development at the cost of many native peoples in turn being displaced from settled lands to start life a new.

In Tanzania, development activities that fuelled displacements of natives from their lands by this colonial policy include: (i) development of sisal, tea, coffee estates; (ii) development for way leave to pave way to various forms of infrastructure; (iii) the development of Towns; (iv) development of ujamaa villages, etc.

POST INDEPENDENCE MODES of LAND ACCESS

The national Government in Tanganyika inherited the colonial laws and policy on land at independence. The new dispensation continued to vest land in the state as the ultimate landowner, without any significant modification (except the changes in the title of ultimate owner, or the radical titles, from the Governor to the President). The role of Chiefs and Clan Elders on land that had somewhat been spared from colonial intervention was farther substantially diminished with changes in governance when in 1963 executive powers of Chiefs and Chiefdoms, were abolished. The Chiefs rule, that had hitherto been a part of local government machinery, lost grip of land administration to their erstwhile subjects. Since 1963, elected village councils replaced chiefs, headmen and elders who

were responsible for administering village lands, until the passing of the national land policy and the enactment of the Village Land Act No. 5 of 1999.

In a period of 35 years of independence, the Tanzania Government introduced only marginal reforms and amendments to the inherited Land Ordinance and supporting legislation. Some legal reforms were introduced in 1963 when Freehold Titles were converted to Government Leaseholds. The effect of these changes was to reduce interest in land from being perpetual to a definite period with a maximum term of 99 years. Further, in 1965 the Rural Farmlands (Acquisition and Regnant) Act was passed enfranchising the Nyarubanja tenants to do away with feudal tenure in northeast Tanzania. The Act was amended in 1968 to include all types of customary tenants including, feudal tenancies in Pare, Moshi and Tukuyu Districts in 1969. Government leaseholds were also converted into rights of occupancy in 1969 and land rent and development conditions, similar to those pertaining to a right of occupancy, were attached to all leases. It is acknowledged that these were primarily legal reforms and neither land reforms nor land rights reforms in perspective.

Land rights reforms could have been directed at granting and guaranteeing landed property rights mindful of the fact that land is a limited resource. In this regard land rights that are monopolistic by nature have to be secured by the Government if the owner is to enjoy them, without encumbrances, and enable economic growth and poverty reduction. Tenure security includes legal restrictions on access and against trespass and other forms of violations from non-rights holders. However, it also means that legal mechanisms for access to shelter and landed recreation facilities, by non-rights holders, have to be put in place through land use agreements, way leaves, public rights, etc.

In short, at independence Tanzania in particular, inherited the colonial laws and policies that had been in force on the land question. These continued to vest land in the state as the ultimate landowner, without any significant modification, upholding the new order such as the leasehold systems where these existed. Land tenure reforms were rare. Legal reforms were introduced to conform with the politics of the day but, were largely cosmetic and often of a trial and error type. Again, the reforms worked towards upholding colonial arrangements and often diminishing influence of customs and traditions of local people.

Land Policy Under Ujamaa Policy:

The Villages and Ujamaa Villages Act No. 21 was passed by parliament in 1975 giving powers to Village Governments to acquire and plan land within their boundaries. Ujamaa villages were off-springs of the villagisation programme that created nucleated settlements in many parts of the country. In the implementation of this programme, people were removed, sometimes forcibly, from their isolated homesteads and were brought together in designated settlements, mostly along roads. There, each family was given a piece of land for housing construction. Land for communal services, such as schools and pasture was also provided. The programme was carried out rather hurriedly and in many instances in an *ad hoc* manner. The question of possessory rights to land was not a part of the legislation. By 1979 there were about 15 million people living in 8,300

Registered Ujamaa and Development Villages on mainland Tanzania with a population of 250-500 families or 1,500 - 7,500 people per village, displaced from ancestral lands. (SPILL, 2005).

With regard to displacements caused in implementing ujamaa village policies, the law now makes the process irreversible as per section 15(1) of the Village Land Act No. 5 of 1999. All former owners of customary land rights on these lands cannot claim or have such rights converted under current dispensations. This does not mean that affected peoples are satisfied with the clause. In a land issues meeting in Kiagata, Musoma District, in 2004, delegates herd of claims and counter claims of property including graveyards that authorities had refused to return to families affected by displacements during villagisation. Ill-informed village officials often enforce the quoted section instead of applying simple common sense and logic. One affected lady thought the decisions were ridiculous in the least and would not avert further conflict.

Ujamaa Villages and Land Tenure Policy:

We explore the scenario in Tanzania about a decade into independence as reported by Professor G. M. Fimbo. The Tanzania Government economic planning blue print at the time was the Five-year plans. The first Five Year Development Plan sought to achieve rural transformation through village settlement schemes under the so called Transformation Approach recommended by the World Bank Mission in 1960. The view of the government was that there were two cardinal problems of peasant production, namely, **land tenure and agricultural underdevelopment**. It felt that the solution to these problems lay in the transformation approach whose stated goal according to Fimbo was *"the introduction of technical, social and legal systems which allow the exercise of modern agricultural techniques based on relatively high productivity and which consequently justify considerable investment in capital."* The focus of this approach was towards regrouping or resettling of peasants in new lands through capital-intensive new settlements, which were supervised by government officials.

Village settlements were governed by the Villages and Ujamaa Villages (Registration, Designation and Administration) Act No.21 of 1975. Fimbo (2004) analyses the situation further that the said Act, did not contain any provisions on land tenure. The obvious question would be that how would anyone moving into a village acquire land and how would the same dispose of land wherever s/he is coming from? In practice, the village council of the ujamaa village government was obliged to *"take such measures as may be necessary to acquire rights of occupancy in respect of land within the limits of the village and no other person should have any right, title or interest in or over any land within such limits"* . Such provisions were included in 'Directives' made under Act No. 21 of 1975 and published in the Government Gazette as G.N. No. 168. It was intended that anyone living in a village would not receive title to land. In other words, customary tenure would cease to exist. The whole essence of land rights in village lands and corresponding benefits would be meaningless, thus opening up to chaos and poor custody of land.

The Regulation of Land Tenure (Established Villages) Act, No. 22 of 1992 was instrumental in the relocation of peasants during Operation Vijiji without compensation and hence a cause of land tenure confusion and numerous disputes in Tanzania. The clauses were held to be unconstitutional and struck out of the statute book by the Court of Appeal of Tanzania at the instance of two peasants in Attorney-General Vs. Akonaay and Lohay.

The 1992 Shivji Commission recommended two forms of tenure, that is to say, the right of occupancy and "customary rights" which have been upheld in the National Land Policy of 1995. On the relationship between the two it stated that (Fimbo, 2004); "*The land tenure system is based on multiple land regimes all existing side by side and none of which should be considered superior to the other and interests under each of them shall enjoy equal security of tenure under the law."* This recommendation has also found way into the Village Land Act No.5 of 1999, which divides village land into communal land and land which may be occupied or used by an individual or family or group of persons under customary law. The latter can be issued with a certificate of customary rights of occupancy (CCRO) in the name of the landholder.

Customary tenure does not apply to village land only; it also applies to general land, reserved land as well as urban land and peri-urban areas. Fimbo reports that in an earlier case whose decision was delivered on 21st June 1985 the same judge had affirmed the decision of the trial judge that a holder of land under customary tenure can only be evicted or dispossessed under the provisions of the Land Acquisition Act, No 47 of 1967.

Tenure Security and Access to Customary Land:

Fimbo (2004) argues further that Land allocated by a village council "whether made under and in pursuance of a law or contrary to or in disregard of any law" is confirmed to be held for a customary right of occupancy. These provisions have promoted the holder of customary right of occupancy from a bare licensee to a rights holder.

Under section 20-(1) of the Land Act the law provides that a non-citizen of Tanzania shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act, 1997. It is intended that land for investment purposes will be identified, gazetted and allocated to the Tanzania Investment Centre (TIC) by way of right of occupancy. The TIC will, in turn, grant derivative rights to investors.

Fimbo (2004) elaborates that the above restriction on access relates to direct grants of rights of occupancy from the government. The Act does not restrict other forms of acquisition of land rights by non-citizens. There is no restriction on purchases from government through auctions or tenders or from the Presidential Parastatal Sector Reform Commission (PSRC) in the process of privatization of public enterprises. Further, a non-citizen may obtain a derivative right from a village council (section 32 of the Village Land Act). Nor is there any restriction placed on purchases, by non-citizens, of rights of occupancy or even customary rights of occupancy in the market place. Further, there is no restriction on purchase by non-citizens of shares in companies holding rights

of occupancy. The thrust of the legislation is to enable foreign investors to access land since they are considered agents for development.

The National Land Policy (NLP) of 1995:
The NLP document states that: "*the policy reiterates and retains the four central land tenure tenets in a modified form that land is publicly owned and vested in the president as a trustee on behalf of the citizens; speculation in land will be controlled; rights of occupancy whether statutory or customary are and will continue to be the only recognised types of land tenure; and rights and title to land under any consolidated or new land laws will continue to be based mainly on use and occupation*" (GoT, 1995). Under this system therefore, the land is "not owned" but leased from the State for a specified number of years. It is vested in the Presidency and availed to users through a mechanism that is centred in the Minister responsible for lands, Commissioner of Lands and the land administration system centred around that office.

In a leasehold system, the land user briefly owns the land rights and developments made to the land. Land rights can either be granted or deemed to have been granted and certificates are issued and registered to prove the identity of the rights owner. For the time of the lease the recipient, *de facto,* owns the land and can do whatever is possible under the terms of the lease. However, there are limitations as to the extent to which land rights can be enjoyed under lease conditions, depending on whether or not the land administration system is able to guarantee the security of tenure and the sanctity of the certificates of title. The effectiveness of the NLP and legislation emanating out of this policy hinges on the effectiveness of the land administration system in the country. The NLP and the new land laws (Land Act No.4 and Village Land Act No. 5 both of 1999) have a set of 15 fundamental principles that " … *all persons exercising powers are to have regard to* … (GoT, 1995)." On the face of it, the set is a brilliant framework for land administration. Experience of the past 12 years since they were adopted seem to show, unfortunately, that many land administrators do not apply these principles or find it hard to break the old mindset on land administration and adopt the new dispensation.

The Role of Government in Land administration:
Land tenure system may have not changed over the past century in Tanzania but policies used in the administration of land by the Government in power, at any given time, have. The strong role of government in land administration can be inferred from the policy setting and emphasis. Government has the leading role in land administration and non-Governmental and professional institutions are only its close partners. The reasons for the government's key role include: (i) firstly, that land and property rights are of central importance in governance. Good governance dictates that an important resource such as land must be administered as a collective asset and be managed under the premise that as population grows the territorial jurisdiction remains the same, i.e., land cannot be created. (ii) Secondly, land administration is a public good as lives and the economy depend on it and as a collective asset that it is, land administration is a public expenditure that must be budgeted for by the national treasury, and where necessary, to be supplemented by user fees and donations, with government being the collecting and disbursement channel (Lugoe, 2007).

In essence the central role of Government in land administration remains crucial to the success of the tenure system selected and to the roles assigned to land in the lives of the people. The preface to the National Land Policy document drawn up by the then Minister responsible for Lands agrees that the "the present system of land tenure accepted since independence, and further developed over three decades **is a product of the past**" (GoT, 1995). He noted further that the right to land with secure tenure must be respected, but land problems extend much further than individual claims to tenure rights. They involve other issues such as the economic use of land, rural and urban development, housing, squatting, the quality and security of title, advancement of agriculture and the protection of the environment.

A key aspect of the land tenure system of Tanzania as provided in the Land Act no. 4 and the Village Land Act no. 5 of 1999 is the enhancement of the right of vulnerable groups (women, children, minorities) in society (Shivji, 1997). The male dominant structure of society governs nearly 80% of the rural population including succession and inheritance in Tanzania. The problems are deep-rooted in succession or inheritance of immovable property including land by the female gender. Custom, culture and certain religious practices have combined to produce a bias against vulnerable groups.

Both Land Act No. 4 and Village Land Act No. 5 of 1999 have attempted to put into effect the above statements with provisions relating to repugnancy of customary law, acquisition of land rights and sales or assignments of land and mortgages. A number of critical statements against gender discrimination are provided in the Land Act no. 4, in the context of co-ownership and mortgages (see sections 85, 112, and 161 (2)), which apply to the Village Land Act as well. The latter is very specific on the rights of children in sections 20(2), 23(2) (e) (iv), 30(3) c) and 33 (1) c) and that of pastoralists in sections 29 (2) (a) (iii), 3 (1) (l), 7 (1) and 8 (8) (d). The Village Land Act provides for a **representation of women** (at least 25%) on the Village Council, at least 4 members of the Village Adjudication Committee and at least 3 on the Village Land Council (dispute settlement) to guard against discrimination in the access to land.

Both Land Acts contain gender-neutral provisions on acquisition of lands rights in Tanzania. Thus it is open to any man or woman, being a citizen of Tanzania, to apply for granted right of occupancy or customary right of occupancy. With an eye on gender equality, section 23- (3) of the Village Land Act No. 4 of 1999 provides that in determining whether to grant a customary right of occupancy, the village council shall; "have special regard in respect of the equality of all persons, such as: that an application from a woman, or group of women no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women". Sub-section (4) further provides that where an application is refused, the village council must furnish the applicant with a statement of reasons for the refusal. The significance of this provision is that the aggrieved person may wish to challenge the decision in a land court.

Another innovation in this regard relates to the concept of co-occupancy between spouses. Section 161 of the Land Act contains a presumption that spouses will hold the

land as occupiers in common in all cases where a spouse obtains land under a right of occupancy for the occupation of all spouses. In every such case the Registrar of Titles is required to register the spouses as occupiers in common. So in an appropriate case an application for a granted right of occupancy by a spouse may lead to registration of both spouses or all the spouses as occupiers in common. In addition a spouse's contribution of labour to the productivity, upkeep and improvement of land held in the name of one spouse only leads to acquisition of interest in that land by the other spouse.

LAND SUPPLY AND DEMAND ISSUES

Land scarcity in rural areas of Tanzania is a recent phenomenon and is engineered by the money economy, political policies, population growth and land degradation. However, there has always been a demand for plots in urban areas of Tanzania following the urbanisation trend of recent times. Reports of the various divisions of the land sector Ministry in Government, indicate the ability to cope with the situation of increasing demand for land in urban centres throughout the 1960s. At this time the needs for plots, both residential and commercial, were supplied in accordance with demands, which were promptly met. Demands were satisfied on a policy objective so as "not to stall development on account of absence of plots." The scenario changed abruptly in 1972 and could not be rectified until today.

ISSUES OF SUPPLY OF URBAN PLOTS

Each Government of the day, in pursuit of its policy objectives, has tried to cope with the perceived demand for plots in various ways. This section discusses plot outputs that are necessary in addressing land scarcity as indicated earlier. It starts with analysing the trend in plot outputs in the context of resources.

Urban Land Access within a Decade After Independence:
Plot numbers given in the annual reports of the Survey Division for the respective years have been assembled for the purpose of this report as can be seen in the tables in the appendix to this report.

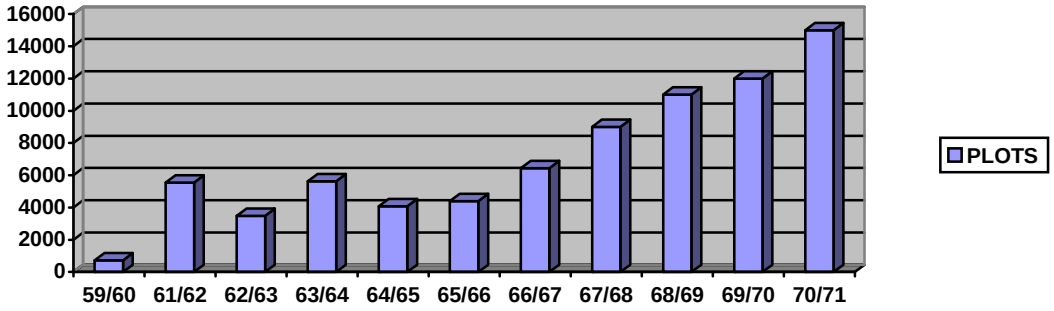

Figure 4: Trend in Output of Urban Plots in the 1960s

When these annual plot production numbers are presented in chart form, a trend evolves that typifies a decade's production. Figure 4 indicates the supply or outputs in plots surveyed, which is seen to be rising with time from 720 in 1959 to 3,493 in 1963 and higher in subsequent years.

The divisional annual reports further show that the plots were produced by an average of between 46 and 56 surveyors and assistant surveyors countrywide. However, measures taken to allow assistant surveyors and survey assistants more responsibility in plot production towards the end of the decade, coupled with University of Nairobi outputs,

starting late in the same decade, worked well (Lugoe, in CASLE, 2007b). In December 1969 all non-Tanzanian surveyors resigned and left the country. Paradoxically, the resignations did not adversely affect plot production. On the contrary, as Figure 4 shows, there was a sharp increase, in the output of plots in the following two years.

Assessment of the annual divisional reports shows that the country witnessed an exponential growth in plot production, from 12,000 plots in 1969 to 15,000 in 1972 when it reached a three-decade supremum (MLHSD, 1959-1967). The figure of 15,000 urban plots output, attained in 1970/71, remained the highest output in nearly thirty years in spite of technological backwardness, inferior skills and lower capacity levels of that era. Experts are of the opinion that had this momentum been kept at this level or higher, Tanzania would have avoided the kind of gravity in urban land use problems that are a daily living in today's Tanzania.

Supply of Plots Under "*Madaraka Mikoani*":

The production of urban plots grew in late 1960s and early 1970s alongside demarcations of plots in Ujamaa villages, as can be seen in Figure 5 below, where the number of urban plots produced decreased sharply. It is not clear whether or not policy makers expected Ujamaa Villages to filter out or control the flow of populations into the urban centres, at the time, enough to deliberately warrant slowing down the creation of urban plots in favour of land demarcations in the villages.

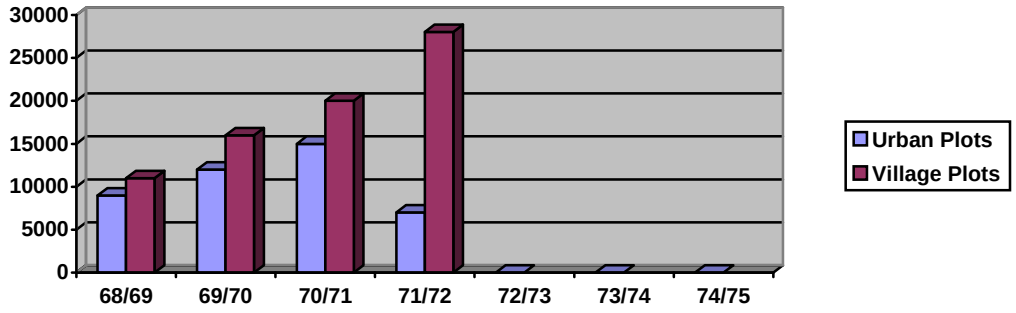

Figure 5: Growth in Urban and Village Plots (1968 Onwards)

The production of urban plots nearly came to a halt starting 1972/73, with a national average annual output of 2,000 plots only for the over 100 towns of Tanzania. The gloomy scenario with urban plot production in the late 1970s continued into the 1980s as is provided in the chart (Figure 6) below. The chart reflects an average annual production of 4480 plots equivalent with the 1965/66 output – about two decades earlier. Peaks in the chart are outputs from special projects particularly, the sites and services project that had been brought on stream in the city of Dar Es Salaam and will be discussed briefly later in this report.

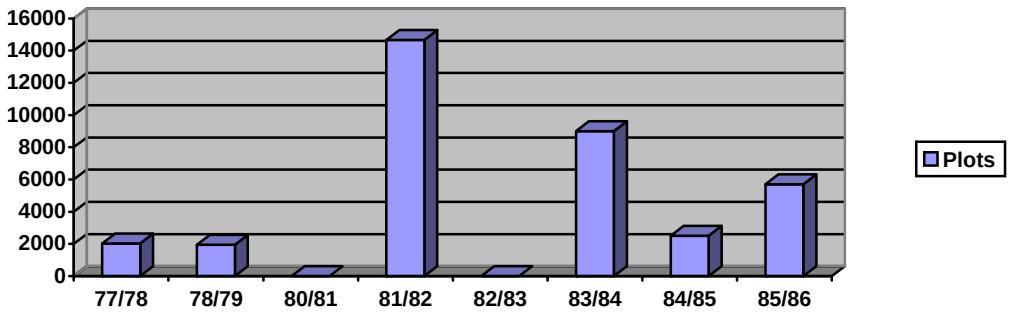

Figure 6: Trend in Output of Urban Plots from 1977/78 – 1985/86

The plot production numbers decreased at a time when more Government surveyors were available than ever before. The Survey Training Centre that produced survey technicians in the 1960s had been expanded and upgraded both in quality and quantity to Ardhi Institute in 1972. Ardhi Institute was producing assistant surveyors from 1974 and professional surveyors from 1978. Many of its graduates had already joined the job market as Government Surveyors in the Ministry of Lands and in the Regional Surveyors' Offices. In addition, Graduates from Universities abroad, at the rate of between three and five annually increased this number from 1978, and almost all had been absorbed by the Ministry of Lands and into Regional Land Survey Offices.

Key Land Delivery Processes Decelerating to a Halt:
Whatever extinguished the 1962-1972 land delivery flame seen in Figure 4 above, has been a subject of discussions, studies, policy proposals, strategic thinking, legal amendments, regulation, etc, for over thirty years now and a solution, though crystal clear to professionals, has not adequately been assimilated by policy makers and financiers.

Implications of Policy Changes: In 1972 Government administration machinery was decentralised to the Regions as stated in section 2.1.1. All land delivery activities were brought under the DDD/RDD except the issuance of Title Deeds. Following these changes in Government Administration Policy that engulfed the abolition of local governments, the Ministry of Lands left all plot surveys in the hands of regional staff who were also dealing with urban and village plots with more emphasis on the latter. There was no budget item for surveys at the sector Ministry.

As production of village plots went up, that of urban plots went down and before long many towns could not satisfy even 10% of the demand as the Figure 7 shows. Noting the effect of this neglect of urban plot production on urban housing, the Arusha Conference on Housing Policy suggested that "slum development should be forestalled by provision of well defined plots." But, diminished total output nationally, continued well throughout the 1980s and 1990s until the commencement of the 20,000 Plots project in 2002.

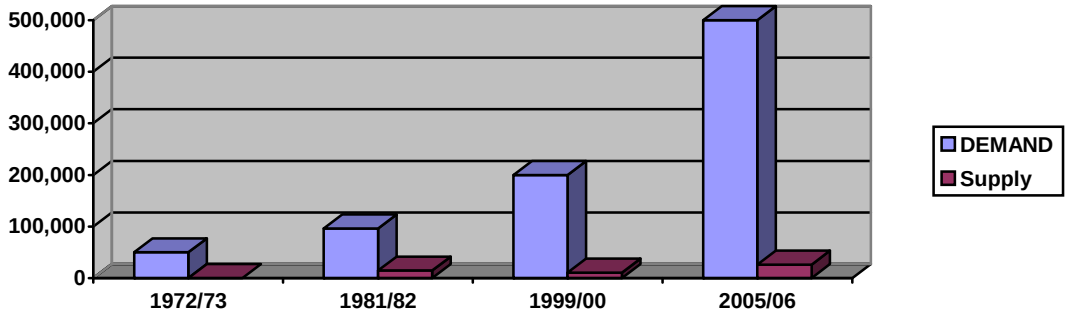

Figure 7: Supply and Accumulated Demand of Plots at Different Epochs Compared

With the problem growing worse in townships and Dar Es Salaam City in particular, Government sought World Bank assistance and embarked on the Sites and Services Schemes (SSS). The project was operated by the Ministry of Lands by setting up survey teams for the regional towns and Dar Es Salaam. But, even this coordination was surrounded with problems. Among the problems included capacity, as surveyors had been demobilised to undertake plot demarcations in villages. The Minister of Lands' Budget Speech of 1976/77 states, in part, that the Ministry had not succeeded in setting up "the two teams promised in the previous year" due to "difficult economic times and lack of professionals for these teams". It is noted that the re-assignment of many professional surveyors to the demarcation of village plots was political priority. Also, consequences of the "Iddi Amin War In Uganda" and poor performance of the economy were now heavily felt by Government and particularly by the land delivery mechanism.

This trend in budgeting was set to continue for many years into the future as no turn around in policy and economic fortunes were in sight. ***As history would have it the Ministry of Lands, and SMD in particular, would be forced to suspend most of its activities and its products would not be made available for physical planning and land delivery in towns for many years to come for lack of a development budget (GoT, 2001).*** Suspending its activities meant adding insult to injury as production of urban plots had already stalled.

GOVERNMENT REMEDIAL SUPPLY OF URBAN LAND:

The Government of Tanzania started financing land development projects just after attaining independence in 1961. Access to decent housing was a political priority issue of the newly independent nation. Hence, the focus was on provision of residential plots in urban areas. Government started off by providing plots urgently and timely in order to avoid delays in urban development (1961 – 1972), before adopting the squatter clearance programs and squatter upgrading when urbanisation overwhelmed urban planning. Subsequently, the sites and services scheme was launched and the NHC established. These were seen as moves aimed at addressing land and housing availability for those living in squatters. In addition, the Government introduced the housing finance approach by establishing the Tanzania Housing Bank. All these programs were directed at facilitating the development of housing for low-income earners. Allocation was directed

towards local population and land was considered to have no value hence urban plots were allocated free of charge.

In the year 1978 the government embarked on a broader land delivery programme[1] for housing purposes. It initiated the planning and survey of residential plots in Tabata, Mbagala, Kinyerezi and Mbezi areas of Dar Es Salaam City. The residential plots produced through these programmes were of the single lot development type. Almost all of them were designed for single-family occupancy. There were no areas set aside for large-scale investments in housing or other big businesses. There were no sites for apartments and no areas for condominiums in the developed schemes. Plots for other non-residential uses included in the planning schemes were coincidental rather than complementary. There were no thorough studies on the demand for plots for particular land use in a certain location. For example industrial sites at Kitunda, also in Dar Es Salaam, were never developed as was intended.

The Government came up with the Growth Centre Policy during the Second Five Year Development Plan that had an impact in land delivery in Tanzania. Nine major urban centres were given special attention as growth centres, so as to reduce the pressure on Dar Es Salaam. For example, Morogoro town was considered as the best alternative to Dar Es Salaam in industrial development. A number of industrial plots were surveyed in Morogoro but, almost all of them were allocated to public-owned corporations.

In more recent years, Government has attempted to address itself to urban land delivery and land use problems through a number of initiatives. These include: (i) the Sites and Services Schemes, SSS; (ii) the 20,000 Plots Project; (iii) Property Adjudication and Registration in Irregular Settlements of Dar Es Salaam (Mazagazaga); (iv) Land Reform Component of the Private Sector Competitiveness Project; and (v) the Property and Business Formalization Programme (PBFP) or Mazagazaga.

[1] The regulatory framework for land access in urban Tanzania has provided no room for informal land access. Once declared a planning area, landowners in that area are supposed to desist from "permanent" developments unless under permission of the rightful authority. It was envisaged that informal land access would simply NOT be possible, as planning and surveying (fixed boundaries approach) would be ahead of developments, which was possible in the 1960s. It is worthy of note that Section 22 (c) of the Land Act No.4 of 1999 sets as a condition that: *"a granted right of occupancy shall be of land that has been surveyed."* Further, section 22 (d) continues that; *"a granted right of occupancy shall be required to be registered under the Land Registration Ordinance, ..."* In turn section 88 (i) of the Land Registration Ordinance reiterates the provision of section 22 (c) of the Land Act stating that; *"no estate shall be registered .... and no parcel shall be divided on a disposition, transmission or mutation except in accordance with an approved survey plan."* In short, no survey, no grant and registration of a right of occupancy.

LAND FOR INVESTMENT UNDER THE NLP

The context of a land bank is covered with reference to the Tanzania Investment Centre Act No.26 of 1997 that includes the whole concept of derivative rights and granting such rights to investors. The Act enables a situation whereby despite achievements in national land policy and legal reforms of 1995 to 2002, there still remain serious difficulties in accessing land in all categories of investment. Procedures of obtaining land in the villages are cumbersome. An investor would prefer to be offered land that is free of third party interests, followed by a title at the shortest possible time to enable commencement of operations.

The demand for land for investment can be assessed from the total number of applications for land at the Tanzania Investment Centre. The applications require access to land of about 9.6 million hectares of land. So far TIC has managed to issue 13 titled land parcels only thus serving less than 1% of applicants. On the average TIC registers 270 applications annually out of which about 220 projects need allocation of land parcels.

The current geographical distribution of land parcel demands, for investment projects, shows marked a unevenness with 2513 focusing on Dar Es Salaam, 573 Arusha; 249 Mwanza, 156 Tanga; 145 Kilimanjaro and 104 in Morogoro Regions.

On a sectoral level, at present the manufacturing sector leads in the number of registered projects by having 37% of the total establishment. The next in line is tourism registering 21%. Construction is third by having 11% of registered projects. Trasnpotation and agriculture hold the fourth and fifth positions of 8% and 7% respectively.

However, the list of applications for land parcels at TIC, as judged by the number of acreages, suggests that land is needed mostly for agriculture, livestock development, hotel construction, tourism, manufacturing, processing plants, commercial buildings and apartments. According to the available data on acreage, agriculture is the leading sector in demand for land at 8 million hectares and also the greatest employer in the investment projects. The amount of foreign direct investment (FDI) in the applications ranks as follows: Manufacturing 21 %, of Commercial buildings 10 % followed by agriculture and livestock; construction; tourism; and transport where each of these sectors has accumulated about 9 % of total investment capital.

POSSIBLE SOURCES OF NEW LAND BANK PARCELS

The parcels will be located within the three categories of land following the broad classifications of land as spelt out in section 4 (4) of the Land Act No. 4 of 1999. Accordingly, these shall be carved out of public land of: (i) general (*urban and rural*), (ii) village (*customary, communal and vacant*) or (iii) reserve (*conservation, hazardous, way leaves, recreation, planning area*) land categories. Needs will arise necessitating the ***transfer of village to general*** lands so as to meet the needs of investors with regard to titling.

Land parcels in general lands that are planning areas (of urban areas etc), should be identified in accordance with existing Urban Development Schemes (UDS). It is prudent for this purpose to view on-going projects, such as the 20,000 Plots Project, as an engine of growth and LBP creation for the foreseeable future. It is proposed that all urban development schemes should have a vision to set aside investment sites and the same entered into the land bank.

There are, clearly, perceived needs to create LBP in such reserved lands as conservation areas, forests, national parks, etc, for investment purposes. Reserved lands are prime areas for tourism and recreation. As local tourism and mountaineering increase, the demand for construction of chalets and availability of camping sites will also increase particularly in reserved areas located close to urban centres.

Land Bank Parcels in village lands will be created to cater, mostly, for investment in agriculture, ranching (of both domesticated and wild animals), aquaculture, flower farms, etc. Great care should be exercised when selecting LBP in village lands. The purposes of the land bank parcels should fit in with the village land model (VLM) envisaged under the National Land Policy, and the Village Land Act No. 5 of 1999.

Village land should only be included in a land bank where:

(i) long term land use plans exist;
(ii) projected growth has shown continued trend for abundant vacant land
(iii) Customary land has been adjudicated and entered into a register.
(iv) the Village holds a certificates of village land (CVL) to indicate openly the boundaries of its jurisdiction
(v) the villages shows in its land use plans that the total acreage is far above needs for the foreseeable future up to 20 years.

By the same token densely populated areas could have little vacant land left and probably even the present customary holdings are inadequate for the production needs in those villages. The search of LBP for agricultural and livestock production purposes in densely populated areas will not bear fruit and is therefore not feasible.

ENABLING POLICY FOR INVESTMENT IN VILLAGE LANDS:

Section 12 of the Village Land Act provides a village land classification model (VLCM) that is comprised of customary, communal and vacant land classifications. Customary land is that land, which is being occupied or used by an individual or family or group of persons under customary law within any Village boundary. This category includes land already being held under a right of occupancy. This land category is not subject to allocation by the village council since it is already occupied. It also includes other lands, which can be the subject of a grant of customary right of occupancy by the village council to a villager who is a citizen. The category of communal land consists of land, which is occupied and used or available for occupation and use on a community and public basis by the village. This category of communal land is not available for grants of customary rights of occupancy or derivative rights to investors. The vacant land category

is land which may be available for communal or individual occupation and use through allocation by the village council by way of customary right of occupancy or derivative rights such as leases, licences and other derivative rights.

There are several challenges associated with land delivery in Villages particularly where the Village Assembly is not involved. A couple of these include: (i) a weak and relatively poor composition of the village council pitied against the powerful investors in an environment of big bucks; and (ii) the method of adjudication selected has real weaknesses unless the process is taken as a start of a more rigorous method in a progressive titling scenario. It suffers from human problems such as death, emigration or a change in mind by witnesses to the process. Also, unless the adjoining land parcel owners are always in agreement, cases of shifting evidence have been reported in many areas and could cause conflicts (Lugoe, in CASLE, 2007).

Regulation on Village Land Occupation by Non-Village Organisations:
Section 17 (5) of the Village Land Act No. 5 of 1999 relates to occupation of village land by non-village organizations. If such an organization wishes to obtain a parcel in the village for its operations it can apply to the village council for that land. Without the approval or consultation with the village assembly, the village council can recommend to the Commissioner for Lands for the grant of a right of occupancy. Also under the Village Land Act: (i) a villager may freely assign his/her customary right of occupancy to another villager or group of villagers. However, the parties are required to notify the village council of the proposed assignment.

A non-citizen has been given special consideration in the NLP and legislation, which recognizes that land is available for investment purposes. However, it is noted that in the past big parcels of land have been allocated to individuals, private firms including foreign investors regardless of their proven ability to develop the land. As a result large areas of land remain undeveloped or are held for speculative purposes. Therefore, land selected for investment and allocation should be conditional on ability to develop the land . The application of this conditionality for foreign investors is vested in the Tanzania Investment Centre. It is further worthy of note (cf. Fimbo, 2004) that: (i) there is no restriction on purchases of land parcels by investors, from government, through auctions or tenders or from the Presidential Parastatal Sector Reform Commission (PSRC) in the process of privatization of public enterprises; (ii) a non-citizen may obtain a derivative right from a village council under section 32 of the Village Land Act, nor is there any restriction placed on purchases by non-citizens of rights of occupancy or even customary rights of occupancy in the market place; (iii) there is no restriction on purchase, by non-citizens, of shares in companies holding rights of occupancy.

CONFLICTS IN VILLAGE LAND USE

Land use conflicts and disputes over land emanate from a loose form of tenure security within the legal, institutional and operational frameworks that are overburdened in the process of guaranteeing land rights and from conflicting interests over land. The causes of conflicts and disputes are many and some will be discussed here, following a recent

study conducted in Tanzania. The value of land to individuals and their businesses and lifestyles has somehow fuelled disputes sometimes even where none should evolve. Proper land-use seeks to minimize the occurrence of conflicts and disputes and enforce tenure security. The land administration system should itself be structured in such a way as to prevent and minimise the occurrence of conflicts and disputes.

Possible Origins of Rural Conflicts and Disputes:

Generally speaking, conflicts and disputes have many causes and origins such as: (i) population growth and changing economic circumstances that increase competition for access to land. Such competition exists in the Usangu and Kilombero valleys of Tanzania and also along the coastal strip that has recently seen a rapid increase of population well above natural forces, causing village populations to spiral above norms. Such conflicts should be regulated by land tenure rules that are development focused in response to shifts in social, economic and political relationships; (ii) scarcity of resources is increasing and access is reduced. At the village level resources such as communal pasture, water sources, woodlots supplying firewood or charcoal, good soils for burnt bricks, fishing ponds and rivers, are examples of communal resources. A major case in point is the Usangu valley, in Mbarali District in the Southern Western Highlands. The recent draught experienced countrywide causing dams to dry up in the last 5 years has had a big toll on livestock and pastoralists had to migrate to where water and pasture are readily available. The Usangu valley, which is a source of most southern rivers of Tanzania, has been seen as a safe haven for pastoralists at the expense of the environment and shrinkage of the ecosystem; (iii) existence of a large gap between customary and granted land rights or their derivatives, when new powerful economic interests, such as those coming from outside villages, start to invest in village lands, and where land administration machinery is unable to ensure a fair system of regulation.

Consequences of Conflicts and Disputes on the Economy:

Conflicts are not conducive to development and can lead to over-exploitation of marginal lands and degradation of the environment. Conflicts and disputes inhibit investment in housing and food production, reinforce social exclusion and poverty, undermine long term planning, and distort prices of land and services. Any land dispute infringes on the security of tenure over land in contradiction to the spirit of the national land policy and new land laws of Tanzania. Disputing forces in a democracy should have courts to hear grievances. Recognising this fact, the Government of Tanzania has enacted the Lands Disputes Courts Act No. 2 of 2002 as an instrument to deal with all such issues. At the lower level, the new system of justice has established land councils and tribunals – village land councils, ward tribunals and District land and housing tribunals. Further the NLP has defined a set of fundamental principles as a guideline for the land administration machinery to follow, which if carefully followed should do away with most conflicts and disputes. However, old habits diehard and the approach used by land administrators, during operation vijiji and after, still linger on more that ten years after the acceptance of these instruments.

What Villagers Say Regarding Land-Use Conflicts and Disputes:

A team of experts conducting grass-roots stakeholder consultative meetings in the preparation of the strategic plan for the implementation of the land laws (SPILL) in Tanzania in 2004/5 herd testimonies of land disputes in the country. The disputes can be assembled into three clusters, namely: (i) land disputes about title, boundaries, and/or conditions of tenure for individual land parcels; (ii) land disputes of a socio-economic nature that focus on the violations in land-use and protection of a grantee's land rights against encumbrances and interferences; and (iii) land disputes that are territorial in nature and involve village and township jurisdictions over land.

The testimonies also enabled the experts to list the causative factors on more recent boundary disputes, such as the bloodied disputes in Kilosa and Loliondo and which could be propagated to the on-going saga in the Mbarali ecosystem as: (i) the absence of consultations between neighbouring villages; (ii) sparseness of boundary markers - marking of village boundaries on hill tops without other markers on-line; (iii) expansion of conservation and reserve areas without consultative considerations on the welfare and aspirations of village populations; (iv) poor record keeping; (v) fast turnover of officials in Village Governments; (vi) inclusion of environmentally sensitive areas within village boundaries; (vii) the nomadic culture of some pastoral communities; (viii) blockage of traditional cattle routes by farmers; (ix) gross disregard for the carrying capacity of the land and lastly, (x) unknown and unmarked buffer zones.

The same consultative meetings conducted across the country have identified five types of such conflicts when viewed from the **tenure** point of view. These are: (i) Conflicts between villagers living in one village and in which small scale farmers and small scale herders co-exist but both sides seem to hold on to the notion that farming must be undertaken in ones customary lands while herding is conducted in any 'empty space'. Such herding does not confine itself to those areas but occasionally (purposely or by accident) the herds stray into farms under crop. *This kind of conflict is caused, principally by pressure on land-use by people struggling to rid themselves of poverty but who still think land-use violations can be tolerated;* (ii) Conflicts between predominant farmers and predominant herders living in one village. As village governments continue to allocate more land to farmers, the herders are pushed into fewer grazing areas but with the increase of the village herd the shortage of land for farmers becomes apparent. This then leads to deliberate assaults on farming areas particularly, during or immediately after harvest – a dry season that is accompanied with shortages in pasture. *The causes in such a situation emanates from one group of land users having little or no regard for the other and largely ignorant of the provisions of the NLP and Village Land Act No. 5 of 1999; (iii)* Conflicts between farmers in predominantly farming villages and herders who uphold a nomadic culture and who seem to want to go anywhere and assume control over any good pasture regardless of existing land rights over lands along their route. These do not normally have land in the transit villages and depending on the season of arrival some would like to linger on while scouting for other villages with adequate pasture areas as a next destination. *The major causative factor here, is the passion for nomadic lifestyles;* (iv) Conflicts between herders in different villages who identify common safety valves for pasture and water or both for their herds, with changing regimes during part of the year in favour of one village. Differences arise when one group either seeks to dominate

and subsequently drive away the other by force for reasons best known to themselves of maintain inviolability of their land during regime change. *The major cause is one of enforcement of law and order; a*nd, (v) Conflicts between predominantly farming villages and predominantly pastoral neighbouring villages when the latter run out of adequate pasture and/or water for their ever increasing herds. *The main cause of this conflict is excessive cattle holdings that need to be reduced to cope with the carrying capacity of the land.*

URBAN LAND USE CONSTRAINTS:

Constraint	**Manifestations**	**Remedy**
1. Scarcity of planned and surveyed land	- Disputes and conflicts over land - Demand higher than supply - Proliferation of irregular settlements - Housing shortage - Invasion of open spaces - Under utilised professional services	- Adopt cost-recovery with profit policy on value added products and services - Use finance houses to obtain capital for planning and surveying land parcels (including compensation) - Adopt partnership policy with private sector in plot surveys and land servicing - Empower professionals to deliver better services - Fully utilise production capability of professional firms and persons - Plan ahead
2. Poor Enforcement of rules and planning regulations	- Invasion of open spaces - Land development ahead of planning, surveying and services - Delays in issuing certificates of occupancy - Buildings occupying over 80% 0f plot area - Land poorly serviced	- Re-introduce zoning in new developments - Ensure surveyed plots await developers and not otherwise - Control land invasions timely (regular development control) - Speed up titling processes - Adopt IT solutions
3. Unregulated land market	- Widespread sale of land both under customary and statutory ownership - Lack of regulations/appropriate framework to guide such sale - Non-regulation of real estate agents - Market Economy in development - Difficult in buying houses - Non-uniform prices for similar properties	- Develop framework for land markets
4 Poor Provision of land services	- many properties are inaccessible - many homes have no piped water or electricity - poor rain water drainage - sewage rare in Tanzania towns	- Councils to concentrate on providing land services
5. Weakened Institutional Framework for Urban Land Development	- Weak institutional framework - Laws not in harmony - Government reluctant at ceding professional services to private sector - Overlapping and conflicting responsible organs for delivery of land services - Lack of incentives for private sector activities and investment - Long procedures for approval of settlement plans, cadastral surveys and processing and issuance of land titles - Dual accountability and answerability of local government staff to (1) District Councils & Directors, (2) Directors/CoL at MLHHSD	- Harmonise laws - Decentralise land delivery services to Districts - Build capacity and capability of land offices in LGA - Forge a public private partnership (PPP) on issues - Introduce inspections on technical performance of land offices in LGA - Establish land boards to oversee the work of land offices in Districts - Contract out plot surveys to private sector
6. An inefficient	- Under employed surveyors	- Approval of survey to be guided by

cadastral survey system	- Delays in approval of cadastral surveys - Outdated maps used for designing plot layouts - Survey standards in dire need of review - Poor access to survey records - Lack of finance	quality control - Keep cadastral surveyors busy - Surveyed plots to be sold at market prices - Computerise records and provide on-line access to public
7. Dualism in Land administration	- MLHSD at HQs carries out operational land delivery works, and so does PMO-RALG through District Land Offices - Weak institutional framework for delivery of services - Weak staffing in Council Land Offices - Staff in LGA accelerated in promotions compared to those in sector Ministry	- MLHSD to take charge of policy and regulatory directives including global issues (national mapping, land use planning, framework data, NSDI, etc) - PO-RALG to deliver services to land users (cadastral surveys, thematic mapping, valuations, GIS, planning settlement layouts
8. Centralised land administration that is detached from land users	- TP drawings, Cadastral Surveys, Valuation reports approved in Dar Es Salaam - Title adjudication for bank loans possible only at zonal offices of the Registrar of Titles - Records kept at HQs	- Decentralise land administration support services of MLHSD to District headquarters
9. land delivery trails landed property development	- Developments in Unplanned &unsurveyed areas - Many planned areas are not surveyed - Many urban areas cannot be developed as planned areas - Low value of properties (dead capital) - Dormant property markets in urban centres - Limited options for development of service and shopping centres	- Provide more urban plots at cost - Halt new developments in unplanned suburbs - Regularise tenure by upgrading the settlements to include services - Re-institute and enforce zoning in town planning practice
10.Concentration of land development services	- Land use planning a preserve of urban centres – unknown in villages - Urban maps updated more often than rural maps - Land Registries are few and centralised - Professional practitioners concentrate business in the capital city - Approval of TP drawings, valuation reports, cadastral surveys, done in Dar Es Salaam	- Empower and equip District Land Offices - Provide incentives for providing services in unattractive business areas - Provide adequate budgets - Empower private sector professionals

THE WAY FORWARD

The National Land Policy focuses on promoting a secure land tenure system, encourage the optimal use of land and facilitate a broad based socio-economic development without endangering the ecological balance of the environment. It seeks therefore to enable peasant farmers and herders to use land as an economic platform. The agricultural sector development policy and strategy support the implementation of the NLP of 1995 as it is dependent on land resources such as water, forests, etc that have a far reaching effect on production. It recognizes the importance of tenure security to land management and financial resource availability.

A paradox is observed whereby with an abundance of arable land the country still experiences marginal land access can only be explained in part in terms of overpopulation in nucleated settlements, once created as ujamaa villages with focus on services compared to production, which had been regarded as a secondary objective. An increased land access at this juncture cannot be possible without a premeditated Government intervention into reversing the effects of the settlements, caused by the

villagisation programme, to more sparse and smaller villages through an equally proactive re-settlement policy.

In the participatory processes of formulating the strategic plan for the implementation of the land laws (SPILL), stakeholders on village lands made an appeal to the Government to introduce national village resettlement scheme (NVRS) to address poverty reduction through land access to the economically landless peoples in existing villages (Lugoe et al, 2004, 2005).

Agricultural Sector Development Strategy's (ASDS) biggest concern and linkage to the lands sector is about streamlining procedures for legal access to land. According to section 5.7 and 58 of ASDS, the concern is divided into the following three aspects, namely: (i) sensitization of the public on provisions of the new Land Acts; (ii) streamlining procedures for legal and physical access to land; (iii) monitoring the implementation of the Land Acts with a view of correcting any shortcomings that may become apparent; and (iv) undertaking surveys and demarcation of potential investment zones. It must however, be pointed out first that too much emphasis has been placed on procedures and the land laws rather than on reforms and the national land policy knowingly that laws are hard to follow and interpret by the ordinary stakeholders. Easier to follow are the unique and easy to follow 15 fundamental principles of the NLP and the land laws around which the land policy and laws are built.

On Streamlining Procedures for Access:
It could do the nation a lot of good if policy translated into laws could be left to guide action in matters of land. Besides the laws and related regulations, quasi-legal procedures and directives that circumvent the legal framework overburden the lands sector operations. Perhaps this was a part of concerns that prompted the Ministry of Agriculture to seek, through development partners, a formulation of a strategic plan for the implementation of the land laws

Decentralisation has been advocated in SPILL through: (i) a phased programme for the decentralisation of all land administration support services to the District level; (ii) hiving-off non-regulatory services from the sector Ministry to local government authorities; and (iii) setting up land boards to administer and manage land matters in the Districts. In SPILL, Land Administration Support Services have been differentiated from land delivery services (LDS). The LASS includes authority to examine and approve town planning drawings, cadastral surveys, and valuation reports; signing certificates of title; undertaking title verifications, adjudications, transfers and transmissions; and keeping copies of land records, land-use plans and approved layout designs in a well-developed and maintained land information system, LIS**.** On the other hand LDS, to be provided by LGAs, include the design of settlement layouts, preparation of micro land use schemes, cadastral surveying, land development control, valuation of properties in villages and towns, land allocation, etc.

SPILL also takes a cautious approach to the decentralisation process, calling for great precaution to be taken to preserve the key aspect of all land administration services,

namely record keeping i.e., once framed and approved land records must continue to be preserved for as long as possible and be accessed with the same authority stipulated in sectoral laws, so as not to disturb, damage or in any way undervalue the century old string of records of the sector. Misplacement and loss of land records is a prime source of chaos in land tenure systems that can only serve to fuel commotion in neighbourhoods and exert stress to the land and the economy.

On Monitoring of Land Laws:
This is not an easy demand. It is up to the courts to provide an interpretation of the law in response to claims and counter claims from people in search of justice. It may be too early for the courts to publish case reports that would significantly alter or lead to amendments to the laws.

There has however been an amendment to the Land Act No 4 of 1999. The Gender Land Taskforce advocates, of over ten NGO's, reports that the amendment did not adhere to the consultative processes used in the run-up to the enactment of the new land laws. In so doing the amendment reversed many of the achievements of the NLP and new land laws with regard to common ownership, undeveloped (bare) land and notices with regard to mortgages, among others. The amendment is by far seen to favour the lenders in a mortgage and the civil society organisations have called for a re-examination of these clauses.

On Demarcation and Surveys of Investment Areas:
The process will naturally be a slow one in the beginning if the Village Land Act is to be followed. Land Administration on village lands for each village should be undertaken within known boundaries. The turnover in village management personnel does not assist this provision unless the boundaries have been surveyed and village provided with a certificate of village land. There are over 11,000 registered villages, which make it an arduous task. Not withstanding this draw back the Tanzania Investment Centre has maintained a land bank that is growing and land delivery to foreign investors has been accomplished through this mechanism.

Land Management:
Sections 6.6 and 6.7 of the ASDS are basically, sections on land management within rangelands and other land uses. It is acknowledged that productivity in the livestock sector and improvement in soil fertility will require redress to:

- The use of dams and dips, etc. This is a very forward looking approach and one that addresses land use conflicts across villages and which have costed lives recently.
- Demarcating and allocating land to be used by pastoralists and and agropastoralists is central to good land husbandry in village lands. It addresses trespass and other forms of land rights violations and leads to peace in villages.
- Sensitization of the land laws as has been addressed in this paper.
- Developing and insititutionalizing a system for early warning of droughts and floods and impending fodder shortage for livestock. Shortage of common resources for livestock has been a major cause of conflict in recent years.

Generally speaking, conflicts and disputes are on the increase when scarcity of resources is increases and access to these resources is reduced (Mung'ong'o, and Mwamfupe, 2003). At the village level resources such as communal pasture, water sources, woodlots supplying firewood or charcoal, good soils for burnt bricks, fishing ponds and rivers, are examples of communal resources. A major case in point is the Usangu valley, in Mbarali District in the Southern Western Highlands. The recent draught experienced countrywide causing dams to dry up in the last 5 years has had a big toll on livestock and pastoralists had to migrate to where water and pasture are readily available. The Usangu valley, which is a source of most southern rivers of Tanzania, has been seen as a safe haven for pastoralists at the expense of the environment and shrinkage of the ecosystem. It is most welcome to have a dam in each village where livestock if found.

Further, the ASDS calls for the preparation of comprehensive land use maps with district-by-district details including data on soils, soil fertility, water, precipitation, etc. It is not immediately known to what level of seriousness was this provision made. The preparation of land use maps is most involving in terms of skills, vastness of territory, institutions, and finances. Land use maps cannot be prepared unless the territory is endowed with good base maps with appropriate detail that can only be displayed on medium scale topographical maps. Tanzania does not have such maps serve for the Y742 series that is not incomplete in coverage but existing map sheets are outdated and in dire need of revision. Satellite imagery has the capability of studying land cover by gaining information on soil moistures, the geology, vegetation and hydrology and hydrography. Socio-economic information layers for land-use planning at lower levels must be gathered from participatory processes, taking into consideration the needs and expectation of the communities.

The national 1:50,000 basemap of Tanzania consists of 1265 map sheets compiled from aerial photographs. However, only 1255 sheets have ever been, mapped. There are 14 provisional sheets of the Tanganyika series in the northeast and, another approximately 12500 square kilometre of landscape has never been mapped, though photographed. The latter consists of the 8 map sheets of Kiomboi area in Singida Region and 2 sheets in Kagera Region. In addition to the Kiomboi and Bukoba unmapped gaps and the decay of existing maps, other deficiencies in the national mapping programme include: (i) delay in the production of maps for areas already photographed resulting in the production of already decayed maps or a waste of resources in aerial photography; (ii) maps being consistently out of print for lack of printing funds that would avail them to users; and (iii) breaking down of the antiquated printing equipment of the mapping branch in the Surveys and Mapping Division, SMD (IST, 2001).

BIBLIOGRAPHY:

1. CASLE (2006). "Proceedings of Africa Region CASLE Conference on Housing and Livelihoods." Sela-Mukono, Uganda.
2. CASLE (2006). "Proceedings of Africa Region CASLE Conference on Sustainable Land Management in Africa." Bagamoyo, Tanzania.
3. CASLE (2007). "Proceedings of Africa Region CASLE Conference on Sustainable Human Settlements for Economic and Social Development." Livingstone, Zambia.
4. Fimbo, G. M. (2004) "*Land Law Reforms in Tanzania."* Lecture Delivered in Commemoration of 60th Birthday" University of Dar Es Salaam.
5. GoT (1997). The Agriculture and Livestock Policy for Tanzania. Government Press. DSM
6. GoT (1999). The Agricultural Sector Development Strategy, Government Press, DSM.
7. GoT (2000). *Human Settlements Development Policy.* Ministry of Lands Housing and Human Settlements Development. Dar Es Salaam.
8. GoT (2001, 2002, 2004) "Report on the Public Expenditure Review Study for the Lands Sector 2000/01". MLHHSD. DSM.
9. Government of Tanzania (GoT, 1995). "National Land Policy". *Ministry of Lands, Housing and Urban Development*. Dar Es Salaam.
10. Government of Tanzania (GoT, 1999). "Land Act No. 4 of 1999." *Government Printer.* Dar Es Salaam.
11. Government of Tanzania (GoT, 1999). "Village Land Act No. 5 of (1999)". *Government Printer.* Dar Es Salaam.
12. Government of Tanzania. (GoT, 2002). *The Land Disputes Courts Act No. 2 of 2002*. Government Printer. Dar Es Salaam.
13. Government of Tanzania. (GoT, 2005). *National Strategy for Growth and Reduction of Poverty (NSGRP).* Vice President's Office. Dar Es Salaam.
14. Lugoe, F. N. (1996). "*Tanzania Re-examines its Policies on Land*". Surveying World – The Journal for Land, Engineering and Hydrographical Survey. Vol. 4, Issue 3.
15. Lugoe, F. N., F. P. Mtatifikolo and T. Ostberg (2005). "*Strategic Plan for the Implementation of the Land Laws (SPILL)"*. Main Consultancy Report, MLHHSD, Dar Es Salaam.
16. Lugoe, F. N. (2008). "Urban land Access in Tanzania" Final Study Report to the World Bank. Dar Es Salaam, Tanzania.
17. MLHSD (1999). *Land Resources Management Programme, (LRMP).* Study Report on Operationalising the New Land Acts. Ardhi House Dar Es Salaam.
18. Mollel, L. L., F. N. Lugoe and S. L. Kivinge (2008). "Further Analysis of Investor Applications for Land and the Development of a Costed and Demand-Driven Action Plan." Dar Es Salaam Institute of Land Administration and Policy Studies, Dar Es Salaam, Tanzania.
19. Mollel, L., F. N. Lugoe and S. L. Kivinge (2007). "Appraisal of Prime Issues in the Creation of a National Land Bank for Investment". Dar Es Salaam Institute of Land Administration and Policy Studies, Dar Es Salaam, Tanzania.
20. Mung'ong'o, C. and D. Mwamfupe (2003). "Poverty and Changing Livelihoods of Migrant Maasai Pastoralists in Morogoro and Kilosa Districts of Tanzania". Research Report No.03.5, REPOA. Mkuki and Nyota Publishers. Dar Es Salaam.
21. World Bank (2003). "Land Policies for Growth and Poverty Reduction - A World Bank Policy Research Report." Oxford University Press.