

**THE WORLD BANK**



**TANZANIA**

**LGAF SYNTHESIS REPORT**

**COUNTRY COORDINATOR**

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## TABLE OF CONTENTS

ABREVIATIONS AND ACRONYMS.....	iii
EXECUTIVE SUMMARY .....	vi
LGAF CONSOLIDATED SCORECARD .....	xi
Chapter One: Conceptual Framework .....	1
1.0 Introduction.....	1
1.2 Key Land Governance Issues .....	1
Chapter Two: Methodology.....	8
2.0 Introduction.....	8
2.1 Background to LGAF Process.....	8
2.3 Background Reviews .....	9
Chapter Three: Context Analysis, Institutional Mapping and Land Tenure .....	10
3.1 Tanzania - Geographical Data .....	10
3.2 History of Tanzania, with Particular Emphasis on Evolution of Land Laws.....	10
3.3 Key Social and Economic Indicators.....	12
3.4 Political System.....	14
3.5 Institutional Mapping.....	16
3.6 Land Tenure System .....	19
3.6.1 Fundamental Principles of Land Policy .....	21
3.6.2 The Granted Right of Occupancy .....	22
3.6.3 Customary Right of Occupancy.....	24
3.6.4 Leasehold .....	25
3.6.5 Derivative Rights and Residential Licenses .....	25
3.7 Land related laws and sectors. ....	25
Chapter Four: Tenure Typology and Land Use in Tanzania .....	29
4.0 Introduction .....	29
4.1 Tenure Typology .....	29
4.2 Urban Land Typology .....	29
4.2.1 Private Formal Land.....	31
4.2.1 Private Semi-Formal Land .....	32
4.2.3 Private Informal Landholding.....	33
4.2.4 Communal Use of Urban Land .....	34
4.2.5 Informal Occupation of State Urban Land.....	34
4.3 Rural Land Typology.....	36
4.3.1 General Land .....	36
4.3.2 Village Land .....	36
4.3.3 Reserved Land .....	37
4.4.1 Land Resources and Existing Land Uses (National Land Use Framework Plan 2013 – 2033) ..	41
Chapter Five: Substantive Findings.....	45
5.1 Land Tenure Recognition .....	45
5.2 Forests, Common Property Resources, and Rural Land Use in Tanzania .....	54
5.3 Urban Land Use, Planning and Development in Tanzania.....	65
5.4 Public Land Management.....	69

5.5 Transfer of Public Land to Private Use.....	75
5.6 Public Land Information: Registry and Cadastre .....	81
5.7 Land Valuation and Taxation .....	87
5.8 Dispute Resolution and Conflict Management .....	89
5.9 Institutional Arrangements & Policies.....	91
Chapter Six: Policy Recommendations (Short, Medium and Long Term).....	96
6.0 Introduction .....	96
6.1 Concluding Remarks.....	96
6.2 Recommendations on Thematic Areas .....	99
Review of the Definitions, LGI and Dimensions.....	101

## ABBREVIATIONS AND ACRONYMS

ASDP	Agricultural Sector Development Programme.
ASDS	Agricultural Sector Development Strategy.
BRN	Big Results Now!
CAADP	Comprehensive African Agriculture Development Program
CAP	Community Action Plan
Cap.	Chapter
CBFM	Community Based Forest Management
CC	Country Coordinator
CCRO	Certificate of Customary Right of Occupancy
CFR	Community Forest Reserves
CGA	Game Controlled Area
CGRO	Certificate of Granted Right of Occupancy (a.k.a. CT)
CL	Commissioner for Lands
Co.	Company
CRO	Customary Right of Occupancy
CSOs	Civil Society Organizations
CT	Certificate of Title
CVL	Certificate of Village Land
DCI.	Development Cooperation Ireland
DLHT	District land and Housing Tribunal
DPP	Director of Policy and Planning
EI	Expert Investigator
EIA	Environmental Impact Assessment
EMA	Environmental Management Act
ESRF	Economic and Social Research Foundation
FAO	Food and Agriculture Organization
GLTN	Global Land Tool Network
G.N.	Government Notice
GoT	Government of Tanzania
GRO	Granted Right of Occupancy
Ha	Hectares
HakiArdhi	Land Rights Research and Resources Institute
IDPs	Internally Displaced Persons
IFAD	International Fund for Agriculture Development
IFPRI	International Food Policy Research Institute
ILMIS	Integrated Land Management Information System
LA	Land Act, Cap. 113
LAFRs	Local Authority Forests Reserves
LAI	Land Administration Infrastructure
LEAT	Lawyers' Environmental Action Team
LGAF	Land Governance Assessment Framework
LGA	Local Government Authority
LGI	Land Governance Indicator
LGSP	Land Governance Support Project
LHRC	Legal and Human Rights Centre
LIS	Land Information System
LTSP	Land Tenure Support Programme
Ltd.	Limited

MAFSC	Ministry of Agriculture, Food Security and Cooperatives
MEM	Ministry of Energy and Minerals
MIS	Management Information System
MJCA	Ministry of Justice and Constitutional Affairs
MKURABITA	Mpango wa Kurasimisha Rasilimali na Biashara Tanzania
MLFD	Ministry of Livestock, and Fisheries Development
MLHSD	Ministry of Land Housing and Human Settlement Development
MNRT	Ministry of Natural Resources and Tourism
MoW	Ministry of Water
NEMC	National Environment Management Council
NFRs	National Forest Reserves
NGOs	Non-governmental Organizations
NHC	National Housing Corporation
NLUPC	National Land Use Planning Commission
No.	Number
NSGRP	National Strategy for Growth and Reduction of Poverty (MKUKUTA)
NSSF	National Social Security Fund
OBC	Ortelo Business Corporation
PFM	Participatory Forest Management
PLUM	Participatory Land Use management
PMO-RALG	Prime Minister's Office –Regional Administration and Local Government
PRA	Participatory Rural Appraisal
R.E.	Revised Edition
REPOA	Research on Poverty Alleviation
RITA	Registration, Insolvency and Trusteeship Agency
RL	Residential Licence
RoT	Registrar of Titles
RUBADA	Rufiji Basin Development Authority
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
SATTFP	Southern Africa Trade and Transportation Facilitation Project
Sect	Section
SIA	Social Impact Assessment
SPILL	Strategic Plan for the Implementation of the Land Laws
Ss.	Sections
TANAPA	Tanzania National Parks Authority
TASAF	Tanzania Social Action Fund
TIC	Tanzania Investment Centre
TNGP	Tanzania Gender Network Programme
TNRF	Tanzania Natural Resourced Forum
TOR	Terms of Reference
UN Habitat	United Nations Habitat
UNECE	United Nations Economic Commission for Europe
URT	United Republic of Tanzania
USAID	United States Agency for International Development
VGGTs	Voluntary Guidelines for Responsible Governance of Land Tenure
VLA	Village Land Act, Cap. 114
VLFRs	Village Land Forest Reserves
VLUP	Village Land Use Plan
VPO	Vice President's Office
WB	World Bank
WCA	Wildlife Conservation Act

[v]

WDC	Ward Development Committee
WMAs	Wildlife Management Areas
WRMA	Water Resources Management Act
WSSA	Water Supply and Sanitation Act,

## EXECUTIVE SUMMARY

### Tanzania – Land Statement

The Land Governance Assessment Framework (LGAF) assesses the status of land governance at Country level in a participatory process that draws systematically on local expertise and existing evidence. The LGAF is designed to help countries to involve all relevant stakeholder groups to participate in technical assessment to assess and rank countries' land governance status against global good practice using a common framework. In Tanzania the framework for landholding is regulated under a set of statutes that recognize grants of Rights of Occupancy (GRO) with Certificates of Title, in what are categorized as General and Reserved Lands. Alongside these are Customary Rights of Occupancy (CRO) that may be granted or issued with Certificates of Customary Rights of Occupancy (CCRO) which relate mostly to the category of Village Land. The Land Act, Cap. 113 regulates the issuance of GRO while the Village Land Act Cap. 114 (VLA) regulates CRO and the issuance of CCRO, together these statutes are known as the Land Acts. While GROs are largely granted in the urban and formal sector, the CCRO are largely issued in rural areas. With regard to these occupancy arrangements this report makes certain overall findings that are summarily presented herein below.

### Substantive Findings

The LGAF has found that protection of Individuals' rural land tenure rights, under the 'deeming provisions' of the VLA (s. 18) that recognize Customary landholding do not provide a method for protection of various interests that a landholder in the rural arrears would have, e.g. rights of access, rights of use, rights of disposition, etc. The VLA relegates these incidences to the domain of customary law of the given locality and therefore relegating these back to the regime of collective memory on what the traditional law provides. In a situation where formal institutions overlap with traditional systems confusion is always generated regarding applicability of the law which generates uncertainty and finally insecurity. In so far as some communities and areas have no conflict and the Community is stable and ethnically homogeneous the customary practices do offer protection. But in areas where urban meets rural, or ethnic groups are heterogeneous, or land use practices differ (e.g. between farmers and pastoralists) then land conflicts constantly ensue. Hence, one of the policy means for lessening the insecurity and confusion is to inventorize land interest and actually carry out systematic land adjudication and registration of interests.

The LGAF also noted that women's access to land is still restricted notwithstanding provisions of the Land Acts that invalidate discriminatory practices in the application of land laws. For communities that occupy land that is communally held, such as pastoralists, and hunters / gatherers, the law has not been definitive in its provisions, though there are various salutary phrases in the Land Acts that appear to recognize such rights. In practice, land held by these groups has continually been subjected to rampant acquisitions from state actors, investors and individuals. There is need to have more robust initiative to put the Land Acts into practice by vindicating the rights of such vulnerable communities.

There are notable longstanding disputes between the Government and mining investors on the one hand and local communities who claim to be treated unfairly on the other hand. Mining is given preferential rights over land right holders. Likewise, multiple rights exist such as right to cultivate, graze, hunt and gathering

but there is a weak dispute settlement mechanism that has resulted into some of the rights being overshadowed by other formal rights especially where they override rights involving minority groups like hunters or pastoralists. The Land Acts, especially the Village Land Act, does provide opportunities for collective or communal titles. The problem has always been lack of necessary infrastructure in most villages to undertake land use planning, adjudication and the registration of collective rights. So far systematic registration has not been possible but only spot based registration on select pilot projects expected to be scaled up to possibly cover the whole country (Mbozi, Handeni, Babati, Bariadi, Kiteto, Njombe Districts, etc.). It is argued that rolling out comprehensive /systematic registration requires huge amount of money that the government finds hard to commit in a single budget. This is an area that requires development partners' support but also to ensure value for money the most cost effective approach should be adopted. The current Big Results Now (BRN) initiative with regard to land points out critical areas and steps in land formalization that are geared to achieve what is stated here in the shortest time possible.

As far as allocation of land to foreigners is concerned there is little scope for non-citizens to enjoy limited grants of rights of occupancy under section 19 and 20 of the Land Act, Cap. 113. Where the land is in rural area the same limitations apply and the land has to be identified, gazette and allocated to the Tanzania Investment Centre (TIC). Because most land is in rural areas [about 70% as Village land, while general land is 2% and reserved land is 28%,] village lands are constantly targeted for transfer to general land before the same is allocated to the TIC and subsequently the investor under a Derivative Right (usually a Leasehold). There Report suggest an urgent need for caution and importance of setting in transparent protocols for regulation of large scale investments, especially in agriculture, that have the tendency of 'land grabbing', and need careful attention and oversight. Adoption in domestic statutory regulation of the internationally acknowledged '*Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources*', (FAO, WB, IFAD, etc) and the AU's '*Guiding Principles on Large Scale Land Based Investments in Africa*' and other key protocols is central for responsible governance in this key area.

The process of 'village land transfers' under section 4 of the Land Act, Cap. 113, is conceded to be long and overly detailed. It requires comprehensive consultations and detailed property inventory for compensations. In some cases, the process of transfer has led to justifiable resistance and complaints from village residents and neighboring villages. This has often resulted from inadequate consultative process or compensation rates. Compensation for village land occupiers is complicated compared to compensation for occupiers of general land (namely holders of granted rights of occupancy) this is due to the fact that most of the holdings in villages are not surveyed - the land might be used rotationally or under shifting cultivation, or is reserved village land or communal land. The Report supports the view that without a comprehensive countrywide land use plan conflicts and dead-end initiatives for transfers of land between categories of land would be a recurring feature in land delivery and management. It is therefore imperative that programs such as BRN or SPILL receive the critical attention they deserve.

Although the Land Use Planning Act, 2007 provides different levels of land use planning from the national level to the district and village level there has not been meaningful land-use process to promote land-use planning with a view to safeguard the land rights of the relevant communities. This has been contributed by the slow speed of the process of land use planning rendering land occupiers insecure. A critical aspect in the regulation and restriction of land use change and development in urban areas is through proper implementation of master plans / development plans. Although 50 master plans / development plans for towns and cities have been prepared so far in Tanzania, their implementation has not been satisfactory resulting into violations within entire local planning areas. Due to deficiency in the process for urban expansion compounded by poor circulation of information on urban expansion and infrastructure development, there is

need for adequate public involvement in order to safeguard peoples' land rights. Also, since the process of plan preparation is not clear to most of the urban residents, master plans preparation procedures should involve section of stakeholder specially land owners from the local level. The Ministry of Land has undertaken pro-active steps in this regard including distribution of survey maps to ward leaders under local authorities so that community members may have a neighborhood reference point.

Although information on public land inventory is possessed by various agencies and departments like LGAs, TIC and some departments in the MLHSD it is neither consolidated nor publicly accessible. Though the authorized land officers of districts, towns, municipalities, and cities simply manage large chunks of public land in the country, the Commissioner for Lands does not have the information centrally available. So, there is need to ensure that land information is consolidated and made accessible to the public in a systematic and coordinated fashion. The same should be shared with other line ministries and departments. This requires enhancing the capacity of the land registries to ensure that information registered / recorded is for public consumption and be made accessible at minimum cost. This should go hand in hand with addressing the shortage of surveyors, land valuers, town planners and land officers which has hampered survey and management of both urban and village land where it is estimated that about 70% of urban land is unsurveyed and over 80% of village land is unsurveyed and with no CCROs. The Ministry of Lands has currently land information retrieval systems within it such as the Management of Land Information System- (MOLIS) and the Land Rent Management System – (LRMS). The Minister for Lands, Hon. William Lukuvi has informed parliament in his recent budget speeches that government has initiated a more comprehensive, sector-wide and inclusive land information system known as Integrated Land Management Information System – (ILMIS), the electronic system is to be fully deployed by 2020. And since under BRN this is also a targeted project there is hope that a publically accessible land information system would go a long way to lessen the current lack of information between departments and sectors that work on land matters.

Despite the government setting conditions on land acquisitions and has called for tenders from the general public for purchasing land in earmarked areas, there is no consolidated data on how much land has been transferred from the public to the private sector in the past years. Many land holders in mineral rich areas have however been evicted from their lands to pave way for large scale mining operations without effective participation or receiving fair and prompt compensation. The government has weak mechanisms to monitor secondary transfers of mining rights that at times encroach on mining areas of small artisanal miners – eg. sale of prospecting Licence over Mkuju River Uranium Mine by an Australian Company to a Russian company. Cases of improper acquisition of land for urban planning purposes have arisen (e.g. New Kigamboni City), and even when done properly failure to compensate landholders in an adequate and timely manner has often failed, and no proper resettlement schemes have been put in place. There is need to ensure public involvement and transparency when dealing with land acquisition issues that affect interests in land. Where compensation is to be paid then valuation should be done openly and with clear and detailed criteria that commands objectivity and public trust. The Valuer must be independent and should be tasked, if need be, to provide evidence of how he came to the assessed value.

There has generally been limited room for public oversight on public contracts or contractual obligations. The process has been overshadowed by secrecy and the whole procedure has been deemed confidential. In most investment projects in Tanzania contracts are not signed to back-up the investment except respective licenses. The TIC does not sign binding contracts with investors but issues them with investment certificates upon providing documents required by the SIA. There should be thorough mechanisms to screen potential investors and ensure that only genuine investors are allowed in the country. To ensure effective

monitoring of investors in land the public should get window of participation in the EIA process. This should start with providing meaningful participation in EIAs process. The public should get project information in a language they understand and with adequate time to read and prepare informed contributions. The period of 30 days given by Minister to challenge the grant of the Environmental Certificate which is advertised in Government Gazette provides little room for many people do not know and make contribution. Both formal and informal means of communication deemed effective in particular areas should be used to ensure effective public participation. SIA has also been noted to be conducted sporadically and not as required by the Environmental Management Act (EMA) especially the policy implications of new project or laws, the exercise should be done more objectively and systematically.

Since there is no comprehensive resettlement policy but fragmentary resettlement policies for different development schemes such as Resettlement Policy Framework by TANROADS, SAGCOT etc. the policies lack legal underpinnings thus save only hortatory aims. A comprehensive national resettlement policy should be developed, approved and operationalized.

The process for transferring property is long and expensive as a result most of properties in both rural and urban areas are not registered due to the complex process involved. The problem is exacerbated by lack of coordination between various authorities such as local authorities and public utility agencies.

On taxation, there has been an observation that local authorities do not collect adequately revenue from sources available to them including property tax. In 2008 the government decided to transfer property tax administration including collection to the TRA who were seen as having better capacity to collect however, evidence suggests that collection went down absolutely and relatively. There is therefore a serious need for more systematic approach to collect property revenue since huge revenue is left uncollected. To ensure smooth collection and avoid informal payments property tax rates should be kept moderate and routinely reviewed to avoid evasion.

On the institutional level, there has been weak or lack of coordination between the land sector and other sectoral ministries. For instance, while most functions are undertaken at the local government level, local government authorities are not under the Ministry of Lands but PMO-RALG. Land officers are accountable to the Ministry of Lands but their functions are dependent on the priorities and efficiency of the relevant local authority. Also, in principle, the Ministry of Lands is responsible for policy and regulatory services whilst the PMO-RALG deals with land users directly in the execution of physical planning processes, cadastral processes and land registration and control. The responsibilities expected of District Land Offices (whose span covers land use planning, land administration, surveying and valuation) include authority to prepare master plans and town plan drawings, approval of 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 pertaining to the specific Districts in a well-developed and maintained land information system. Also the current institutional framework for resolving land disputes has not been as efficient in reducing number of cases in formal legal system. The system is faced with inadequate land courts, human resources and financial resources. There is need for a thorough reconsideration of the institutional responsibilities with respect to the spectrum of land related issues, jurisdiction and capacity of the various established courts.

It is therefore recommended among other things that the government has to initiate strategic programs to reconsider and revoke land transfers that contravene intended use. It must carry out comprehensive land

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use plans, adjudication and registration of parcels of land; review land values and publish regular data on land and property values throughout the country; review property tax regime to be embedded within the realm of local government authorities; survey and issue urban property titles; develop comprehensive urban building codes to provide for space standards and regulate development in all areas, including hazard areas, provide effective enforcement of regulations and implementing master plans / development plans; undertake village boundary survey for all villages and issue certificates of village land for all villages and re-consider the institutional responsibilities with respect to the spectrum of land related issues, jurisdiction and capacity of the various established courts to mention a few.

## LGAF CONSOLIDATED SCORECARD

### Introduction

The color-coded LGAF-Tanzania scorecards is as developed by the assessment instrument in 2015. All the indicators and dimension scores from A-D are outlined and the IE's choice and the Panel scores are discussed in detail in the relevant parts of the report. The Scorecard is important as it summarizes the critical trends on land governance assessment in the country.

Pan	LGI	Dim	Topic	Score			
				A	B	C	D
<b>PANEL 1: Land Rights Recognition</b>							
<i>LGI 1.1: Recognition of a continuum of rights</i>							
1	1	1	Individuals' rural land tenure rights are legally recognized and protected in practice.		Yellow		
1	1	1a	Individuals' rural land tenure rights are legally recognized		Yellow		
1	1	1b	Individuals' rural land tenure rights are protected in practice.			Orange	
1	1	2	Customary tenure rights are legally recognized and protected in practice.		Yellow		
1	1	3	Indigenous rights to land and forest are legally recognized and protected in practice.			Orange	
1	1	4	Urban land tenure rights are legally recognized and protected in practice.				Red
<i>LGI 1.2: Respect for and enforcement of rights</i>							
1	2	1	Accessible opportunities for tenure individualization exist.			Orange	
1	2	2	Individual land in rural areas is formally registered				Red
1	2	3	Individual land in urban areas is formally registered				Red
1	2	4	The number of illegal land sales is low.			Orange	
1	2	5	The number of illegal lease transactions is low.			Orange	
1	2	6	Women's rights are registered and recognized in practice in both rural and urban areas.				Red
1	2	7	Women's property rights to land are equal to those by men		Yellow		
<b>PANEL 2: Rights to Forest, Common Lands &amp; Rural Land Use in Tanzania</b>							
<i>LGI 2.1: Rights to Forest and Common Lands</i>							
2	1	1	Forests are clearly identified in law and responsibility for use is clearly assigned.		Yellow		
2	1	2	Common lands are clearly identified in law and responsibility for use is clearly assigned		Yellow		Red
2	1	3	Rural group rights are formally recognized and can be enforced.			Orange	
2	1	4	Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice.		Yellow		

Pan	LGI	Dim	Topic	Score			
				A	B	C	D
2	1	5	Multiple rights over common land and natural resources on these lands can legally coexist.		Yellow		
2	1	6	Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.		Yellow		
2	1	7	Multiple rights over land and mining/other sub-soil resources located on the same plot can legally coexist.		Yellow		Red
2	1	8	Accessible opportunities exist for mapping and recording of group rights.			Orange	
2	1	9	Boundary demarcation of communal land.			Orange	
<i>LGI 2.2: Effectiveness and equity of rural land use regulations</i>							
2	2	1	Restrictions regarding rural land use are justified and enforced.		Yellow		
2	2	2	Restrictions on rural land transferability effectively serve public policy objectives.		Yellow		
2	2	3	Rural land use plans are elaborated/changed via public process and resulting burdens are shared.	Green			
2	2	4	Rural lands, the use of which is changed, are swiftly transferred to the destined use.				Red
2	2	5	Rezoning of rural land use follows a public process that safeguards existing rights.		Yellow		
2	2	6	For protected rural land use (forest, pastures, wetlands, national parks, etc.) plans correspond to actual use.	Green			
<b>PANEL 3: Urban Land Use, Planning, and Development</b>							
<i>LGI 3.1: Restrictions on Rights</i>							
3	1	1	Restrictions on urban land ownership/transfer effectively serve public policy objectives.		Yellow		
3	1	2	Restrictions on urban land use (disaster risk) effectively serve public policy objectives.		Yellow		
<i>LGI 3.2: Transparency of Land Use Restrictions changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups.</i>							
3	2	1	Process of urban expansion/infrastructure development process is transparent and respects existing rights.		Yellow		
3	2	2	Changes in urban land use plans are based on a clear public process and input by all stakeholders.		Yellow		
3	2	3	Approved requests for change in urban land use are swiftly followed by development on these parcels of land.	Green			
<i>LGI 3.3: Efficiency in the Urban Land Use Planning Process: Land use plans are current, implemented, do not drive people into informality, and cope with urban growth</i>							
3	3	1	Policy to ensure delivery of low-cost housing and services exists and is progressively implemented.				Red
3	3	2	Land use planning effectively guides urban spatial expansion in the largest city.			Orange	
3	3	3	Land use planning effectively guides urban development in the four next largest cities.			Orange	
3	3	4	Planning processes are able to cope with urban growth.			Orange	

Pan	LGI	Dim	Topic	Score			
				A	B	C	D
<i>LGI 3.4: Speed and Predictability of Enforcement of Restricted Land Uses</i>							
3	4	1	Provisions for residential building permits are appropriate, affordable and complied with.		Yellow		
3	4	2	A building permit for a residential dwelling can be obtained quickly and at a low cost.	Green			
<i>LGI 3.5: Tenure regularization schemes in urban areas</i>							
3	5	1	Formalization of urban residential housing is feasible and affordable.		Yellow		
3	5	2	In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing.			Orange	
3	5	3	A condominium regime allows effective management and recording of urban property.			Orange	
<b>PANEL 4: Public Land Management</b>							
<i>LGI 4.1: Identification of Public Land and Clear Management</i>							
4	1	1	Criteria for public land ownership are clearly defined and assigned to the right level of government.			Orange	
4	1	2	There is a complete recording of public land.			Orange	
4	1	3	Information on public land is publicly accessible.			Orange	
4	1	4	The management responsibility for different types of public land is unambiguously assigned.		Yellow		
4	1	5	Responsible public institutions have sufficient resources for their land management responsibilities.			Orange	
4	1	6	All essential information on public land allocations to private interests is publicly accessible.			Orange	
<i>LGI 4.2: Justification and Time-Efficiency of Acquisition Processes</i>							
4	2	1	There is minimal transfer of acquired land to private interests.	Green			
4	2	2	Acquired land is transferred to destined use in a timely manner.			Orange	
4	2	3	The threat of land acquisition does not lead to pre-emptive action by private parties.		Yellow		
<i>LGI 4.3: Transparency and Fairness of Acquisition Procedures</i>							
4	3	1	Compensation is provided for the acquisition of all rights regardless of their recording status.				Red
4	3	2	Land use change resulting in selective loss of rights there is compensated for.				Red
4	3	3	Acquired owners are compensated promptly.				Red
4	3	4	There are independent and accessible avenues for appeal against acquisition.			Orange	
4	3	5	Timely decisions are made regarding complaints about acquisition.			Orange	
<b>PANEL 5: Transfer of Large Tracts of Land to Investors</b>							
<i>LGI 5.1: Transfer of Public Land to Private Use Follows a Clear, Competitive Process and Payments are Collected</i>							
5	1	1	Public land transactions are conducted in an open transparent manner.				Red
5	1	2	Payments for public leases are collected.				Red

Pan	LGI	Dim	Topic	Score			
				A	B	C	D
5	1	3	Public land is transacted at market prices unless guided by equity objectives.				
5	1	4	The public captures benefits arising from changes in permitted land use.				
5	1	5	Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored.				
<i>LGI 5.2: Private Investment Strategy</i>							
5	2	1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders.				
5	2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process.				
5	2	3	Public institutions transferring land to investors are clearly identified and regularly audited.				
5	2	4	Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (incl. sub-soil).				
5	2	5	Compliance with contractual obligations is regularly monitored and remedial action taken if needed.				
5	2	6	Safeguards effectively reduce the risk of negative effects from large scale land-related investments.				
5	2	7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.				
<i>LGI 5.3: Policy Implementation is Effective, Consistent and Transparent</i>							
5	3	1	Investors provide sufficient information to allow rigorous evaluation of proposed investments.				
5	3	2	Approval of investment plans follows a clear process with reasonable timelines.				
5	3	3	Right holders and investors negotiate freely and directly with full access to relevant information.				
5	3	4	Contractual provisions regarding benefit sharing are publicly disclosed.				
<i>LGI 5.4: Contracts Involving Public Land are Public and Accessible</i>							
5	4	1	Information on spatial extent and duration of approved concessions is publicly available.				
5	4	2	Compliance with safeguards on concessions is monitored and enforced effectively and consistently.				
5	4	3	Avenues to deal with non-compliance exist and obtain timely and fair decisions.				
<b>PANEL 6: Public Provision of Land Information: Registry and Cadastre</b>							
<i>LGI 6.1: Mechanisms for Recognition of Rights</i>							
6	1	1	Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.				
6	1	2	Non-documentary evidence is effectively used to help establish rights.				
6	1	3	Long-term unchallenged possession is formally recognized.				

Pan	LGI	Dim	Topic	Score			
				A	B	C	D
6	1	4	First-time recording of rights on demand includes proper safeguards and access is not restricted by high fees.		Yellow		
<i>LGI 6.2: Completeness of the Land Registry</i>							
6	2	1	Total cost of recording a property transfer is low.				Red
6	2	2	Information held in records is linked to maps that reflect current reality.				Red
6	2	3	All relevant private encumbrances are recorded.			Yellow	
6	2	4	All relevant public restrictions or charges are recorded.			Yellow	
6	2	5	There is a timely response to requests for accessing registry records.			Yellow	
6	2	6	The registry is searchable.			Yellow	
6	2	7	Land information records are easily accessed.	Green			
<i>LGI 6.3: Reliability of Registry Information</i>							
6	3	1	Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost.				Red
6	3	2	Registry information is up-to-date and reflects reality on the ground				Red
<i>LGI 6.4: Cost-effectiveness and Sustainability of Land Administration Services</i>							
6	4	1	The registry is financially sustainable through fee collection to finance its operations.	Green			
6	4	2	Investment in land administration is sufficient to cope with demand for high quality services.			Yellow	
<i>LGI 6.5: Fees are Determined Transparently</i>							
6	5	1a	Fees have a clear rationale				Red
6	5	1b	Fee schedule is public, and all payments are accounted for.		Yellow		
6	5	2	Informal payments are discouraged.		Yellow		
6	5	3	Service standards are published and regularly monitored.			Yellow	
<b>PANEL 7: Land Valuation and Taxation</b>							
<i>LGI 7.1: Transparency of Valuations</i>							
7	1	1	There is a clear process of property valuation.			Yellow	
7	1	2	Valuation rolls are publicly accessible.			Yellow	
<i>LGI 7.2: Collection Efficiency</i>							
7	2	1	Exemptions from property taxes payment are justified and transparent.	Green			
7	2	2	All property holders liable to pay property tax are listed on the tax roll.				Red
7	2	3	Assessed property taxes are collected.				Red
7	2	4	Receipts from property tax exceed the cost of collection.	Green			
<b>PANEL 8: Dispute Resolution</b>							

Pan	LGI	Dim	Topic	Score			
				A	B	C	D
<i>LGI 8.1: Assignment of Responsibility</i>							
8	1	1	There is clear assignment of responsibility for conflict resolution.	Green			
8	1	2	Conflict resolution mechanisms are accessible to the public.		Yellow		
8	1	3	Mutually accepted agreements reached through informal dispute resolution systems are encouraged.	Green			
8	1	4	There is an accessible, affordable and timely process for appealing disputed rulings.			Orange	
<i>LGI 8.2: The Share of Land Affected by Pending Conflicts is Low and Decreasing</i>							
8	2	1	Land disputes constitute a small proportion of cases in the formal legal system.				Red
8	2	2	Conflicts in the formal system are resolved in a timely manner.	Green			Red
8	2	3	There are few long-standing (> 5 years) land conflicts.				Red
<b>PANEL 9: Institutional Arrangements and Policies</b>							
<i>LGI 9.1: Clarity of Mandates and Practice</i>							
9	1	1	Land policy formulation, implementation and arbitration are separated to avoid conflict of interest.			Orange	
9	1	2	Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).			Orange	
9	1	3	Administrative (vertical) overlap is avoided.		Yellow		
9	1	4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible.				Red
9	1	5	Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.			Orange	
9	1	6	Ambiguity in institutional mandates (based on institutional map) does not cause problems.				Red
<i>LGI 9.2: Equity and Non-discrimination in the Decision-making Process</i>							
9	2	1	Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.			Orange	
9	2	2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.			Orange	
9	2	3	Land policies address ecological and environmental goals; progress towards these is publicly monitored.			Orange	
9	2	4	The implementation of land policy is costed, matched with benefits and adequately resourced.			Orange	
9	2	5	There is regular and public reporting indicating progress in policy implementation.			Orange	
9	2	6	Land policies help to improve land use by low-income groups and those who experienced injustice.		Yellow		
9	2	7	Land policies proactively and effectively reduce future disaster risk.			Orange	

**Key Colour Codes:**



The above scorecard provides the trend in land governance indicators and dimensions as scored by EI and vetted by the LGA country panels. The scored result leans upon the Panels' scores and where they differ with the Panels explanations are given. The scorecard will be a useful tool to reflect the trend in land governance themes and where interventions are urgently needed and/or where more effort is required.

## Chapter One: Conceptual Framework

### 1.0 Introduction

It is clear that the need for a systematic assessment of land governance is an important initiative. It helps to monitor the trends in demand for land in many areas, soaring global demand for land as a source of food, fuel and environmental amenities and the need for structural transformation that transfers labour out of agriculture and land for urban growth. It also assists in considering the performance of the relevant institutions and their adequacy in terms of their arrangements to govern land. Moreover, due to the increase of institutions that deal with land delivery, having a tool to assess their operations and performance is quite important. In Africa and Tanzania in particular land is a cross-cutting resource governed by multiple institutions. It touches on the essential sources of livelihood necessary for survival and prosperity. So, the land governance assessment framework (LGAF) allows identification of how arrangements in specific countries are done compared to global good practices. The key issues of good governance that have been identified under the LGAF which are significant to Tanzania are: (i) how property rights to land (at group or individual level) are defined, can be exchanged, and transformed; (ii) how public oversight over land use, management, and taxation is exercised; (iii) how land owned by the state is defined, how the state exercises it, and how state land is acquired or disposed of; (iv) the management of land information and ways in which it can be accessed; (v) avenues to resolve and manage disputes and hold officials to account; and (vi) procedures to deal with land-related investment.

### 1.2 Key Land Governance Issues

The above mentioned key areas under the LGAF framework are important when assessing land governance in Tanzania. Studies that have been undertaken in Tanzania<sup>1</sup> have noted that increased population leads to increased land degradation and environmental stress especially in terms of removal of forest cover as the demand for land increases. Also, shortage of land has been singled out as one of the major cause of many land disputes especially between pastoralists and farmers in many parts of the country. Ongoing population redistribution in the country as more and more people migrate to urban areas has further added on to the land stress question. For instance, at present the urban population is around 30%<sup>2</sup> which does not

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<sup>1</sup> See for instance SPILL 2013.

<sup>2</sup> See Kironde L. Improving Land Sector Governance in Africa: The Case of Tanzania, Paper prepared for the “Workshop on “Land Governance in support of the MDGs: Responding to New Challenges” Washington DC March 9-10 2009.

take into consideration small urban areas and trade centres which are growing rapidly and in many cases in an unplanned manner resulting into further poor settlements distribution and squatter syndrome.

Increased discoveries of valuable minerals such as gold, nickel, uranium and natural gas have impacted on communities and in some cases leading to the displacement of villages. This has been one of the major causes of tension between small scale miners and large scale miners. Resolution of disputes resulting from the various conflicts has also been slow as a result courts of law being overwhelmed with backlog of cases defying the principle of speedy adjudication of disputes.

The URT Constitution (1977) and its amendments and the celebrated Land Acts<sup>3</sup> have not fully secured women land rights from discriminatory practices entertained by some customs. Traditional customs have continued to pose a challenge in many places and some of the discriminatory laws such as the Local Customary Law Declaration Order of 1963 are still in force. Conflict between granted right and customary right continues to be on the rise. Displacement of customary right holders in the event of acquisition by the state under the power of the eminent domain for public interest is on the increase. Compensation paid has continued to be inadequate, inventorization and assessment of properties has always been a bone of contention. Cases of double allocation, allocation of fertile lands to investors who do not effectively utilize them has also been on the increase. So, having a systematic tool that can help determine the trend in the governance of land is of utmost importance. With such a tool there is room for reform and adjustment of the governance approaches.

### **1.3 Land Governance Approaches in Tanzania**

Under the National Land Policy, 1995 (NLP) the issue of land governance is widely provided in the various policy statements and their resultant policy recommendations. The Shivji Commission Report (1992) on land matters, which preceded the NLP, canvassed extensively matters related to land governance. The approaches that are addressed in the reports and policy documents arise out of the land tenure arrangements that have their historical origins in the colonial policies. According to Issa G. Shivji (1996):

*The existing land tenure structure and legal regime governing land in Tanzania Mainland find their genesis in the colonial political economy. The colonial land regimes established by the Germans (1885-1916) and the British (1918-1961) assumed that indigenous occupants had no ownership*

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<sup>3</sup> See Section 3 of the Land Act No 4 of 1999, [Cap. 113 R.E. 2002] and Village Land Act No 5 of 1999, [Cap. 114 R.E. 2002].

*rights over land. This was a convenient assumption. The colonial state was not only a political sovereign, which sovereignty was installed by conquest, but also interested in exploiting the resources of the colonized peoples. The property regime established by the colonial state was intended to facilitate such exploitation under the close supervision of the state. The central mechanism to achieve this was to place all lands in the hands of the state. Property and sovereignty merged in one entity. The vesting of radical title (ultimate ownership and control) to all lands in the state by the relevant legal instruments was the fundamental premise of the colonial land regime.*

The right of occupancy system of land tenure has assumptions within it that land is held in the last instance by the state and that land occupation is similarly 'granted' and regulated by the state. The use of land and its disposition is consequently done under the superintendence of the state which may have the final say over the appropriateness of any grants, uses and dealings in land. Such assumptions are further reinforced by the power of the state to compulsorily acquire individually held land for public interest under assumed 'eminent domain' powers of the sovereign.<sup>4</sup> The power is summarized as follows:

*The principle that private property may be taken for public uses can be traced back to English common law where it was presumed that the king ultimately held the title to all the land. This meant that if the king needed the property, he was permitted to take it.<sup>5</sup>*

From these assumptions the administrative structure which supports land management and land administration infrastructure (LAI) have become highly regulated with a concomitant sizeable bureaucracy. The Land Act, Village Land Act, Land Registration Act, Land Planning Acts, Land Disputes Courts Act, etc. all have provisions for the administrative structures which support the various land governance divisions. These governance areas have been addressed by the Ministry of Lands Housing and Human Settlements Development (MLHSD) reports, especially Strategic Plan for Implementation of Land Laws (SPILL) – which is covered in two separate reports: SPILL I (2005) and SPILL II (2013). For purposes of this chapter it is appropriate to briefly survey the two reports.

SPILL I (2005).

In 2005, the MLHSD issued a Strategic Plan for Implementation of Land Laws (SPILL) which was designed to provide a systematic framework for the implementation of the new land acts that were enacted under the umbrella of the National Land Policy of 1995, namely, the Land Act Cap. 113 (No.4 of 1999), the

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<sup>4</sup> Benson, 'EVOLUTION OF EMINENT DOMAIN' Independent Rev. 2003 (US) - traces the history of eminent domain from William the Conqueror's practices as far back as 1066 in ancient England

<sup>5</sup> Kelly, Daniel B., 'The Public Use Requirement in Eminent Domain Law - A Rationale Based on Secret Purchases and Private Influence' ssn-id760405

Village Land Act, Cap. 114 (No. 5 of 1999), and the Land Disputes Courts Act, Cap. 216 (No. 2 of 2002). These laws replace the colonial British Land Ordinance of 1923, which outlived its usefulness way after independence due to changing conditions of land tenure and land use, but was kept operative up to May, 2001 when the new land laws became operational. The three pieces of legislation find origins in the fundamental principles of the National Land Policy (NLP) of 1995, all of which focus on: streamlining land delivery; enhancing security of Tanzania's land tenure system; encouraging optimal use of land and its resources and; facilitating a broad-based socio-economic development without overburdening and threatening the national ecological balance.<sup>6</sup>

It is also important to affirm, at the outset, that all has not been going well in the sector, particularly in the hitherto three decades before land acts were passed. The consultants for SPILL referred to an environmental scan by the MLHSD that revealed four clusters of problems in the sector that had to be addressed as part of the implementation of the new laws. These were:

- A. Systemic: Problems reflecting policies of the past such as villagisation of the 1970s whose results are difficult to reverse, gender imbalance, poor enforcement of law and order, and some urbanization and housing policies of the past.
- B. Exogenous Dynamics: Forces like uncontrolled urbanization, population movement and shift to the east of the country, rural-urban migration, lagging urban infrastructure, corruption and the development of spontaneous settlements are developments taking place outside the capacity of the lands sector, or even the nation.
- C. Policy Derived: Problems of limited capacity for policy analysis and planning, inefficiency and stagnation in land delivery, poor enforcement of planning and building regulations, skilled manpower retrenchments, unregulated land markets, non-empowerment of dispute settlement machinery and the weak enforcement of law and order; all fall into this category.
- D. Financial Resource Constraints: The near freeze on topographical mapping and land use planning services, a stagnant cadastral survey system, incomplete village boundary survey, a run-down land administration infrastructure, proliferation of irregular settlements and, poorly facilitated law enforcement institutions are some of the core manifestations.<sup>7</sup>

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<sup>6</sup> Lugoe F., Mtatifikolo F., & Ostberg T. **SPILL – Executive Summary**, April, 2005

<sup>7</sup> Lugoe, et al. *ibid.*; Hakikazi, Land Peace - A Plain Language Guide to SPILL (July, 2006)

These clusters of problems impacted negatively towards land governance in both the central government level and the local government level as follows:

At the central government level –

- ✓ lack of vertical and horizontal linkage and policy harmonization, and
- ✓ under-resourcing of the Land Administration Infrastructure (LAI) which means that Land Administration Support Services are less effective than they could be.

At the local government level –

- ✓ insecurity about land tenure and thus more conflicts and disputes than the Courts can handle, and
- ✓ lack of clarity about the respective roles of government officials as a result of the decentralization policy.

The objective of SPILL was to tackle these constraints. It was designed as a planning tool with a ten year time frame which outlines a way of implementing the existing laws. It was estimated to cost around 300 billion Tanzanian shillings over a period of ten years (2005/06 to 2014/15), i.e. up to this year. SPILL was also designed in a way that: (a) it involves a large and systematic process of consultation and participation to make sure that it meets the needs and concerns of all stakeholders, and, (b) it harmonizes well with other development initiatives which included, amongst many others, the *National Strategy for Growth and the Reduction of Poverty (MKUKUTA)*, the *Local Government Reform Programme (LGRP)*, the *Rural Development Strategy (RDS)*, the *Agriculture Sector Development Strategy and Programme (ASDS and ASDP)*, and the *Property and Business Formalisation Programme (MKURABITA)*.

Through a design process that involved an extensive stakeholder consultation SPILL recognized 9 Key Result Areas (KRA) and 39 Strategic Principles. Between them these covered most of the issues raised by stakeholders during the consultation process. The nine KRA are: 1. Land tenure, Access and Land Rights; 2. Tenure Security, Law and Order, Justice; 3. Performance of the Land Administration Infrastructure (LAI); 4. Land Administration Financial Resource Mobilisation and Financial Management; 5. Land as a Resource, Land Markets, and Public-Private Sector Operations; 6. Land Management, the Environment, and Community-based, participatory decision making and facilitation; 7. Capacity Building; 8. Public Education,

Awareness Creation and Enhancement (PEACE); 9. Performance Monitoring, Regulation, Supervision and Evaluation.

What is significant here for this report is that a major component of recommendations by SPILL deal with land governance (i.e. recommendations dealing with the leadership, management and administration processes that are essential to addressing the land issues). The rest of the recommendations deal with land issues per se (i.e. land rights, conditions of use, gender, dispositions, etc.).

A Land Reform Program was designed to support key activities of SPILL in order to facilitate the development of a competitive domestic private sector. The support was given to the more urgent activities identified for implementation in the first five years falling in the 10-years term of the SPILL, with the objective of developing efficient land registration and administration services by re-engineering and computerizing land registration processes and workflows; Strengthening disputes resolution mechanism; improving the infrastructure for surveying, mapping, and registration; and decentralizing land administration services to the district and village levels in about 15 districts.

#### SPILL II (2013)

Understanding of the SPILL II report is key to any current conceptual elaboration of the foundation to land governance in Tanzania. This document provides the highlights for policy analysis and strategies for the implementation of the land laws and other key statutes that have been enacted in the course of the last 10 years and provides a roadmap for the foreseeable future. The relationship now between the MLHSD and PMO-RALG must be properly understood and institutionally rationalized in order to understand the roles of each institution in relation to land governance and land delivery services. In this regard, SPILL II provides a roadmap for the current institutional arrangements and there is need to give here a summary of its major recommendations.

The Government of Tanzania, through the MLHSD, engaged a consultancy team from Land and Equity International (of Australia) led by a renown land specialist, Tony Burns, to undertake extensive research, review and consultation to provide a general appraisal of SPILL (2005) and, identify priority areas for implementation over the next 10 years, with more details on the first 5 years to enable the completion of the on-going initiatives, to scale up recent pilot projects and take advantage of the newly established geodetic

network and the newly introduced Integrated Land Information Management System (ILMIS). A key part of the review was an assessment of SPILL (2005) and the experience gained during its implementation as well as the changes that had taken place and the proposed improvements in the underlying land-related laws. Working closely with MLHSD, as a roadmap for the development of the Land Sector in mainland Tanzania, SPILL (2013) was developed with wide consultation to be a comprehensive vision and action plan, as well as providing prioritization and sequencing of activities under known constraints and resource challenges. It considered various costings and financing arrangements for sustainable implementation and identified priority areas and activities to assist the government to achieve its broader development goals of poverty reduction, agricultural transformation, and good governance.

Starting with a SWOT analysis the report identifies areas of governance that need reform and new areas that have to be considered given changes in the legal framework and the socio-economic context. The report considers policy changes as well that have been brought about by programmes adopted and implemented by the government and have effect on the implementation of the land laws these are: Big Results Now!;<sup>8</sup> G8 Tanzania Land Transparency Partnership; Kilimo Kwanza;<sup>9</sup> Decentralization by Devolution. The report also notes the recognition by Tanzania of international guidelines on Land Governance that must be taken on board:

*In particular it is realized that the **Voluntary Guidelines for Responsible Governance of Land Tenure** (VGGTs) agreed by the Committee on World Food Security (CFS) in 2012 and **the African Union's Framework and Guidelines on Land Policy**, adopted in 2009, and not well known in the country. (Emphasis added)*

Taking into account what has been considered in these two SPILL reports, the present land governance assessment will use them as the primary official backdrop for what has been achieved by government and what has to be done in the future.

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<sup>8</sup> From 2013/2014 Financial Year, Tanzania, with support from Development Partners, adopted a Big Results Now (BRN) initiative, based on Malaysian development model to transition from a low to a middle- income economy, this initiative has been applied to Land as well.

<sup>9</sup> KILIMO KWANZA (Agriculture First!) Initiative, 2009, whose central objective is to pioneer Tanzania's Green Revolution by transforming its agriculture into a modern commercial sector through addressing 10 Programmatic Pillars

## Chapter Two: Methodology

### 2.0 Introduction

The need for a systematic assessment of land governance arises from three factors. First, with stagnant or low productivity of land in many areas, soaring global demand for land as a source of food, fuel and environmental amenities, a need for structural transformation that transfers labour out of agriculture and land for urban growth, institutional arrangements governing land have emerged as a key factor for sustainable growth and poverty reduction. Second, as a result of institutional fragmentation, where responsibility for land is spread over a large number of government institutions which are often poorly coordinated, there can be a wide gap between legal provisions and their actual implementation. Third, the technical complexity and context specificity of land issues, and the fact that change may be resisted by powerful stakeholders benefiting from the status quo, implies that progress will depend on the ability to forge a consensus among experts in a participatory and deliberative process, based on a comprehensive analysis.

### 2.1 Background to LGAF Process

The LGAF was developed by the World Bank in partnership with FAO, UN Habitat, IFAD, IFPRI, the African Union, and bilateral partners. The objective of the land governance assessment framework (LGAF) is to identify how arrangements in these countries compare to global good practice in key areas of good governance identified as (i) how property rights to land (at group or individual level) are defined, can be exchanged, and transformed; (ii) how public oversight over land use, management, and taxation is exercised; (iii) how the extent of land owned by the state is defined, how the state exercises it, and how state land it is acquired or disposed of; (iv) the management of land information and ways in which it can be accessed; (v) avenues to resolve and manage disputes and hold officials to account; and (vi) procedures to deal with land-related investment. Modelled closely on similar tools in the field of public expenditure and finance, it aims to assess key dimensions of land governance at the country level in a way that is technical and comprehensive, generates clear recommendations and builds a constituency for reform. The ranking is based on a comprehensive review of available conceptual and empirical material regarding experience in land governance by local experts. Moreover, the use of a consistent framework facilitates transfer of good practice across countries. Experience suggests that building on the foundation of the first LGAF for monitoring and dialogue with national stakeholder platforms is relatively simple and can be done with limited resources. The LGAF highlights areas for legal, policy or procedural reform to improve governance in land administration over time. The LGAF also proposes criteria to assess the effectiveness of these measures.

### 2.2 Scope of the Work

The scope of the work involved reviewing of the LGAF framework to identify areas where customization to country conditions may be needed as well as data availability for analysing dimensions; resource planning, such as identification of the team of expert investigators and time plan; and proposed steps for government buy-in, mapping out the tenure typology that describes key types of tenure in the country; combined with institutional structures of land agencies and a description of the evolution of land governance, best practices and challenges and collecting studies and data sets (hard and soft copies).

The Country Coordinator (CC) in consultation with the project Coordinator identified and engaged a list of qualified experts with vast experience in real property to undertake comprehensive review and write background reports. The

engaged experts were Prof. Lussuga Kironde (former LGAF Country Coordinator), Ringo Willy Tenga current CC, Sist Joseph Mramba, Rugemeleza Nshalla, Gerald Mango and Ebenezer Mshana. The background reports guided discussions in the panel groups and helped panelist to rank the indicators on the basis of the assigned dimensions. The names of engaged panelists are: Israel Simba, Barney Laseko, Rachael Kilasi, David Malisa and Abdon Rwegasira<sup>10</sup> for land tenure recognition; Charles Meshack, John Ruttagwaba, Joseph Chiombola and Swagile Msananga for rights to forest and common lands & rural land use regulations; Catherine Makundi, Marco Burra, Rugambwa M. and Kagimbo P. for urban land use, planning and development; Swagile Msananga, Christopher Mwasage, Alain Ngama, Domina Maledia and John Nyamiti for public land management; Martin Mhagama, Joseph Chiombola, Dr. Adam P. Nyaruhuma John Kyaruzi, and Harvey Kombe, for transparent process and economic benefit; Bumi Mwasaka, William Genya, Silvanus Mlola and Odetha Nyalubanzi for public provision of land information: registry and cadastre; Dr. Hidaya Kayuza, E. D. Ndyetabura, Adam Yusuf, Odetha Nyarubanzi, Beatus Malima, Adv. for land valuation and taxation; Adam Mambi, Hon. Salima Chikoyo, Dr. Jesse James and Hon. Jose Mlyambina for dispute resolution.

In addition, the work involved providing general analysis of the current status of the assigned panel topic(s), analysing the data in the context of the assigned indicators and their dimensions, and provide gaps analysis and preliminary ranking as per table 1 below, providing policy recommendations per dimension, and providing best practice per indicator or panel topic(s), identifying priority actions regarding (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, (iii) identifying new approaches and interventions to improve land governance on a broader scale (e.g. by strengthening land rights and improving their enforcement); and (iv) criteria to assess the effectiveness of these measures.

### 2.3 Background Reviews

The review process involved two phases namely; initial/preliminary phase and comprehensive phase. The preliminary phase was undertaken by the Country Coordinator (CC). This initial phase provided preliminary tenure typology, land institutional governance agencies and structures, data availability and sources for the comprehensive review. The comprehensive review was undertaken by the EI on the basis of the LGAF themes, land governance indicators, dimensions and pre-coded statements that draw on global experience scaled from A to D. It involved thorough review of the existing Land Governance Framework; laws, policies, plans and strategies are carefully studied to establish developments in the land tenure structure in the Country. The review also involved gathering and assessing available statistics, procedural reports, surveys, studies and other forms of accessible data. The review involved initial and comprehensive phases. The comprehensive review was the basis for the background reports for assessing the indicators and dimensions.

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<sup>10</sup> Author of - Rwegasira, Abdon (2012) **Land as a Human Right: A History of Land Law and Practice in Tanzania**, Mkuki na Nyota Publishers (Dar Es Salaam),

## Chapter Three: Context Analysis, Institutional Mapping and Land Tenure.

### 3.1 Tanzania - Geographical Data

Tanzania is an East African Country made up of the former Tanganyika and Zanzibar. Its land mass is composed of 945,087 sq.km (land –886,037sq.m, and water 59,050sq km.); it is the largest country in East Africa, larger than Kenya and Uganda combined. Geographically it is comprised of the mainland and Indian Ocean islands of Mafia, Pemba and Unguja.

TABLE 4: TANZANIA - TOTAL AREA IN FIGURES

AREA	SUB-PART	SQ. KM
TANZANIA MAINLAND	TANZANIA MAINLAND	883,600
	TANZANIA ZANZIBAR	2,500
MAJOR ISLANDS: TANZANIA MAINLAND	UKEREWE	647
	MAFIA	518
MAJOR ISLANDS: TANZANIA ZANZIBAR	UNGUJA	1,666
	PEMBA	988

SOURCE: Tanzania in Figures, 2012 - National Bureau of Statistics (NBS)

### 3.2 History of Tanzania, with Particular Emphasis on Evolution of Land Laws.

Tanzania's history broadly goes along with that of Eastern Coast of Africa. The eastern coast of Africa has for over more than 1,000 years been linked to the trade routes of Asia and the Middle East.<sup>11</sup> When the Portuguese explorer, Vasco Da Gama, visited its coastal ports in 1498 he found ports such as Kilwa, south of Tanzania, bustling with trade and commercial activities. The native inhabitants were mainly African ethnic tribes that were holding land under native laws and customs of each group. By then Tanzania was gradually being taken into the Arab sphere of influence which continued to strengthen up to the 19th Century when the Sultans of Oman, by 1832, moved their seat of government from Oman to Zanzibar. By the end of the 19th Century German Occupation created the first colonial state that covered the mainland of present day Tanzania named German East Africa in 1890. Five years later in 1895 the Germans passed the Imperial Decree on Land Matters that created the original dual system of land tenure: All land, occupied or unoccupied, was declared Crown Land under the German Kaiser and power was given to the Governor to grant formal titles (Conveyances of Ownership) and leases. On the other hand, land that was under native occupation was recognised and regulated under pre-existing native law and custom. An original Land Registry was established for formal titles and some administrative machinery established. After World War I in 1918 the League of

<sup>11</sup> See generally, Illife, John. **A Modern History of Tanganyika**. Cambridge University Press, 1979.

Nations placed the German Territory, renamed Tanganyika, under the custodianship of the British, and its colonial administration established the core system of governance that to-date defines the Tanzanian system of government. The British established the legislative, executive and judicial systems as authorised under the British Mandate for East Africa and through the 1920 Order in Council of the British sovereign formally established the governance system. The Order in Council had a reception clause that received all pre-existing English laws and principles of common law into the territory. Regulation of land tenure was established through a series of statutes that re-defined German land system to fit the Mandates system of the League of Nations. It established registration of titles where all the German Titles would be converted into Freehold Titles and formally registered. A Land Ordinance, Cap. 113 was enacted in 1923 which declared all land to be Public Land under the trusteeship of the British Governor of the territory. The Governor was empowered to grant Certificates of Occupancy for periods up to 99 years. Granted rights of occupancy for more than 5 years were compulsorily registered by a Registrar of Titles. Land occupied by the natives was merely 'deemed' to be granted to the landholders under native laws and customs of particular African communities as usufructuary titles.<sup>12</sup> This re-established the German dual system of land tenure: Formal Titles established by statute and Customary Titles for native communities.

After Independence in 1961, the new constitution re-established the colonial system of Governance with the President sitting in the place of the Governor. Freehold Titles were converted into Government Leases in 1963, and in 1969 the Government Leases were converted into Granted Rights of Occupancy. In intervening years Tanganyika united with Zanzibar to form the United Republic of Tanzania. Henceforth the system of governance was defined under a Union Constitution whose current version is the Constitution of 1977. Recently there has been a government initiative to change that Constitution into a new Constitution that would be the subject of a National Referendum.

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<sup>12</sup> **Usufruct - Usufruit** - *'This is a technical legal term which brings together two aspects of property law, the usus and the fructus. It is the right to use, harvest and profit from the use of a property. If the property in question belongs to another person, then there is an implied condition that the property itself remain uninjured through such use.'* See, Leonard, Rebecca and Judy Longbottom.(2000) '**Land Tenure Lexicon - A glossary of terms from English and French speaking West Africa**', IIED, Lond.



**MAP 01: Tanzania Map**

### 3.3 Key Social and Economic Indicators

Analyses done on the intercensal population data note that the total population of the United Republic of Tanzania according to the 2012 Census is 44,929,002, compared to 34,443,603 in 2002.<sup>13</sup> Population of Mainland Tanzania according to 2012 Census is 43,625,434 (compared to 33,461,849 in 2002) which means that the population of Tanzania has grown by 10,485,399 persons or 30.4% since 2002. This translates into a rate of growth of 2.7 percent per annum for Tanzania during the intercensal period 2002-2012, compared to 2.9 percent per annum in the previous period (1988-2002). The corresponding population increases since 2002 for Tanzania Mainland and Zanzibar are 10,163,585 (30.4%) and 321,814 (32.8%) respectively. These represent a growth rate of 2.7% and 2.8% per annum

<sup>13</sup> Agwanda, Alfred and Haidari Amani (2014) 'Population Growth, Structure and Momentum in Tanzania' THDR 2014: Background Paper No. 7 ESRF Discussion Paper 61

for the 2002-2012 intercensal period for Tanzania Mainland and Zanzibar, down from 2.9% and 3% percent per annum respectively during the previous period. The enumerated population in 2012 is about 3 fold that of 1967. The current average annual growth rate of 2.7 percent per annum translates to about slightly over 1.2 million people per year.

**TABLE No. 5 : TANZANIA POPULATION - 1967 - 2014\***

	1967	1978	1988	2002	2012	2014
Number of Persons in '000'Tanzania	12,313	17,512	23,225	34,444	44,929	47,422
Tanzania Mainland	11,959	17,036	22,584	33,462	43,625	46,046
Tanzania Zanzibar	354	476	641	982	1,304	1,379
Population Density (pop/km <sup>2</sup> )						
Tanzania	14	20	26	39	51	54
Tanzania Mainland	14	19	25	38	49	52
Tanzania Zanzibar	144	194	260	399	530	560

Number of Persons ("000") and National Population Density, by Census Years, Tanzania

*Source: National Bureau of Statistics, 1988, 1988, 2002 and 2012 Census (Tanzania: Facts and Figures 2015 (NBS))*

Tanzania has been doing well in terms of economic growth, with GDP growing at an average rate of 6.8 percent between 2005 and 2010 against the targeted 8 percent stipulated by the Tanzania Development Vision (TDV) 2025. Five Year Development Plans (FYDP) are currently the basis of Planning in Tanzania, and the current FYDP should be at its end this year, i.e. from 2011. The mid-term review between 2011-2013 has reported that real GDP trended upward slightly from 6.4 percent in 2011 to 7.0 percent in 2013.<sup>14</sup> During the first two and half years of the FYDP I the fastest growing sectors which grew by annual rates of more than 8 percent on average include: construction (8.9 percent), trade and repairs (8.1 percent), communications (21.1 percent) and financial intermediation (11.6 percent). The agriculture sector which is the largest employer (around 73 percent of the labour force) in the economy grew by an annual average of 4.1 percent. This is below the FYDP's target of achieving 6 percent annual average growth rate

<sup>14</sup> President's Planning Commission 'FYDP (I) MID-TERM REVIEW REPORT, 2013'GoT, 2015 - Figure & Table 2.1 at pp. 5 and 6

by 2015. The growth trend in agriculture is far below an annual rate of 7 percent required to provide broad-based growth and reduce levels of poverty. Table 2.1 of the Report presents sector wise and real GDP growth rates for the period reviewed (Takes 2010 as baseline; 2014 and 2015 are projections).

Among the main initiatives undertaken by Government to support the ambitious goals on sustaining economic growth include implementation of the second National Strategy for Growth and Reduction of Poverty (NSGRP II), implementation of 'Kilimo Kwanza' (Agriculture First Strategy) in order to transform agriculture through programmes such as the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) and improvements in the investment climate by easing conditions and costs for doing business. The government has also initiated and implemented the Big Results Now (BRN) approach in order to speed up the implementation of projects identified by FYDP I.

The reports note the most critical challenges in the medium term including:

- (i) Poor quality of infrastructure especially transport network, and in particular rural feeder roads, railways and sea ports;
- (ii) Scarce irrigation facilities given weather extremes particularly drought;
- (iii) Low technology in many productive sectors in both rural and urban areas;
- (iv) Low quality education and health service;
- (v) Limited access to secure land rights;
- (vi) Lack of access to finance, especially for Small and Medium Enterprises (SMEs) and the agriculture sector;
- (vii) Low domestic value-addition for primary products leading to exports of unprocessed products that fetch low and unstable prices;
- (viii) Uneven impact as the majority of Tanzanians living in rural areas have benefited the least (rural-urban divide); the sectors that are driving economic growth do not employ the majority of the population who mostly depend on agriculture.

### **3.4 Political System**

The United Republic of Tanzania is a unitary state that is composed of two territories (Tanganyika and Zanzibar) whose affairs are regulated and defined under the URT Constitution of 1977. A major amendment was introduced in 1992 that regulates the formation of political parties in a multi-party democratic platform. According to the National Bureau of Statistics Report of 2014 registered Political Parties are about 23.<sup>15</sup> The political parties in turn are regulated under the Political Parties Act, Cap. 258 (R.E. 2002), which not only provides for the registration of parties, but also provides for a system of statutory compliance of the parties. A Registrar of Political Parties is appointed who manages the administration of the Act. According to the Constitution the country is administratively divided between the Union government that oversees all matters connected with the union of Tanganyika and Zanzibar as defined in the scheduled Articles of the Union, and also regulates matters pertaining to the mainland area (formerly Tanganyi-

<sup>15</sup>GoT 'Tanzania in Figures 2014' Tanzania Bureau of Statistics, NBS, 2015 p. 21.

ka). Matters related to Zanzibar have their separate governmental structure defined under the Constitution of Zanzibar of 1984. Land is not a union matter, as such the Ministry of Land in the mainland only deals with land matters that pertain to Tanzania mainland, which is the focus of the present report. The Tanzanian state is constitutionally organised under three branches: legislative, executive, and judicial - and a brief description of each is given hereunder.

The National Assembly ('Bunge' in Swahili) is the main legislative organ of the URT that passes legislation and oversees the accountability of the Government of the URT, and all its organs, to the citizens of Tanzania. The legislature is headed by a Speaker, who is assisted by a Deputy Speaker, and a Clerk who heads its Secretariat. The parliament has various standing Committees to support in its various functions, select committees are appointed on an ad hoc basis to deal with specific matters. About 18 standing committees have been so far established and the principal committee dealing with land matters is the 'Lands, Natural Resources and Environment Committee'. The Parliament is constituted in a unicameral chamber, with members elected from constituencies across mainland Tanzania and Zanzibar. Under the Constitution, women's representation is provided for as a special category, in order to increase the participation of women in national politics. Ten (10) seats are reserved for presidential appointees of the President, and one seat for the Attorney General. Elections are supervised by the National Electoral Commission which is established under the Constitution and this year in October there shall be General Elections signifying the end of presidential tenure of the current President, Hon. Jakaya M. Kikwete.

The Executive, or government, is headed by the President who is assisted by a Vice President. For the Mainland the Prime Minister oversees the administration of Government divided in Ministries that run the Central Government headed by Ministers. The Ministry of Lands, Housing and Human Settlements Development is the principal ministry that oversees administration of land. Matters related to Regional and Local Governments Administration are overseen by the Prime Minister as well (PMO-RALG). The country is administratively divided in 30 Regions headed by Regional Commissioners, and each Region is divided into Districts, headed by a District Commissioner.<sup>16</sup> The Districts are divided into Divisions (Tarafa in Swahili), and below them into Wards (Kata) and into Villages (Vijiji). Administration of Local Governments starts from District Level, where the District Authorities are established, and below them Wards and Village Councils. In land administration the lowest administrative rung is at the level of the Village Council. Due to this fact the Prime Minister's Office (PMO-RALG) has a very significant and critical role in land administration as 70% of all land in Tanzania is under Village Council administration.

The Judicial Branch is headed by a Chief Justice who is appointed by the President. The judicial system is provided for in the Constitution and detailed in terms of functions and jurisdiction in a number of statutes including the Judicature and Application of Laws Act, the Appellate Jurisdiction Act, the Magistrates Courts' Act, and various acts that establish a system of Tribunals. Court of Appeal of the United Republic of Tanzania is the highest court in the country (consists of the Chief Justice and 14 justices); the next is the High Court of the United Republic for Mainland Tanzania consisting of the Principal Judge ('Jaji Kiongozi' in Kiswahili) and judges organized into Commercial, Land, and Labour courts; High Court of Zanzibar (consists of the chief justice and judges). Then for a variety of cases there are is a Tribunal system that is established by specific statutory schemes including tax tribunals, land, etc. The

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<sup>16</sup> Currently the Regions are: Arusha, Dar es Salaam, Dodoma, Geita, Iringa, Kagera, Kaskazini Pemba (Pemba North), Kaskazini Unguja (Zanzibar North), Katavi, Kigoma, Kilimanjaro, Kusini Pemba (Pemba South), Kusini Unguja (Zanzibar Central/South), Lindi, Manyara, Mara, Mbeya, Mjini Magharibi (Zanzibar Urban/West), Morogoro, Mtwara, Mwanza, Njombe, Pwani (Coast), Rukwa, Ruvuma, Shinyanga, Simiyu, Singida, Tabora, Tanga.

Land Courts are specifically provided for in the Land Act, Cap 113 and the Land Disputes Courts Act, a unique system that gives special attention to Land Disputes.

### 3.5 Institutional Mapping

The institutional mapping for purposes of Land governance must start with the Land Act, Cap. 113, the Village Land Act, Cap. 114, the Land Registration Act, Cap. 334, the Planning Acts, Local Governments Acts, and other acts that have critical impact on land use and land tenure. The Constitution of URT provides for the right to own and old property, and other rights that ensure the economic survival of an individual groups. In the same line, statutory schemes and instruments regulate and administer these rights and concomitant duties. In Tanzania, the control and disposition of public land is vested in the President. The Land Act clearly provides that all land in Tanzania is public land vested in the President, as a trustee for and on behalf of all the citizens of Tanzania. The President is required to manage the land for the benefit of the citizens as he can acquire land for public purposes or transfer land from one category to a different category. Despite this custodial duty vested in the President, land administration is undertaken by specific officers legally mandated. The objective of the Act may be summed as to promote the National Land Policy, and ensuring control and proper disposition of public land through principles such as; effective, efficient, economical and transparent system of land administration. The rationale being to make the President remain with limited overarching powers and the management and administration of land to institutions and officials. Disposition and control of public land is vested in the Minister responsible for Land, the Commissioner for Land, Land Allocation Committees and Local Government Authorities. Therefore, the institutions and officers under the Land Acts of 1999 are:- the Minister for Land Matters, the Commissioner for Land, Appointed Officers, Land Allocation Committees, Local Government Authorities, and National Land Advisory Council, Matters, the Commissioner for Land, Appointed Officers, Land Allocation Committees, Local Government Authorities, and National Land Advisory Council.<sup>17</sup>

The regional restructuring and local government reforms have assigned much of the responsibility for land administration, particularly the interaction with land users, to Local Government Authorities (LGAs) which are under the authority of the Prime Minister's Office - Regional Administration and Local Governments (PMO-RALG). The Ministry of Lands remains responsible for sector management including policy, regulatory, support and capacity building roles, as well as national functions such as national mapping, land-use planning, and record keeping that cannot be fragmented into district and village functions which remains in the hands of the Ministry of Lands or other national institutions such as the National Land Use Planning Commission (NLUPC). On the institutional framework, effective land governance requires strong institutional linkages and capacity.

At the macro level, the government is generally in charge of management of land, promulgating decisions guiding the implementation of the land laws, make decision concerning land planning and land use planning throughout the country, supervise the implementation of policies, land laws and land use and developing land-use plan and use. It is also regarded as the key agency responsible for preparing bills to be submitted in the National Assembly for enactment into law based on the documents developed and submitted by the Government. The National Assembly is not entirely independent in legislative function; law formulation is still implemented by the Government. For a Land Bill to become law, it has to be assented to by the President. Some Government entities have the power to make regulations having force of law such as Minister for land, local government authorities. At the same time the Government implements a part of critical tasks in building the Land Law of Legislative branch. The Judicial branch is the state

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<sup>17</sup> Tenga, R.W. and Sist Mramba, (2014) **Theoretical Foundations of Land Law in Tanzania**. LawAfrica Publishing, Nairobi, pp. 98 - 104

organ vested with mandate to interpret laws but there are quasi-judicial bodies that are also vested with powers to adjudicate on land matters such as the District Land and Housing Tribunals (DLHTs), Ward Tribunals and Village Land Councils. The Judiciary interprets laws and executes administrative decisions, hears and decides cases filed before the courts of law as well as facilitating maintenance of peace and order through good governance and the rule of law.

Sector wise, there are various ministries and agencies that are vested with land related functions. The Ministry of Land Housing Human Settlement Development (MLHSD) is the overall in charge of land administration, land tribunals namely; the Village Land Councils, Ward Tribunals, and District Land and Housing Tribunals (DLHTs). It deals with the functions of land management; oversees the Land Administration Infrastructure(LAI), drafts land laws; issues circulars guiding the implementation of land laws, propagates and publishes policies on land; inspects land administration and use; manages and advises on appropriate land rent; manages land registration, sets cadastral documentations and issues certificate; manages land use planning, draft and plans national land use; and resolves disputes and complaints. In overall it is the key line ministry that deals with land administration.<sup>18</sup> However, there is some overlap in certain levels among a number of other ministries and agencies responsible for land use and administration, financial management of land and handling administrative complaints on land. For instance, the Ministry of Finance and Tanzania Revenue Authority (TRA) manages the revenue for the State budget including revenue from land which could overlap with MLHSD on the management of public land with public assets, management of land pricing and revenue from land. The Prime Minister's Office Regional Administration and Local Governance (PMO-RALG) finds itself dealing with Village Land (70% of all land – under Village Councils) and part of General Land in urban areas with responsibilities for urban planning and property levy, issues building permits and planning consents, surveys and issuance of land titles, advice on management of village land, maintenance of district land registries, planning and management of housing development within respective local jurisdiction.<sup>19</sup> It develops policies on real estate market including how to do business on real estate and pricing services. As a result, there is potential for overlaps and gaps in terms of implementation of land related programs. Land officers in the LGAs are under the MLHSD and are paid by the Ministry but facilitating land function in the LGAs (PMO-RALG). Dispute settlement are handled by District Land and Housing Tribunals, Ward Tribunals and Village Land Councils which conflict with judicial functions of the courts. LGAs e.g. Village Councils, Ward Tribunals, Urban & District councils are under PMO-RALG but discharge land functions vested to MLHSD.<sup>20</sup>

As for the Ministry of Natural Resources and Tourism (MNRT) it deals with reserved lands.<sup>21</sup> It is responsible for planning and management of forests, fisheries and fisheries resources, wildlife resources and habitat, marine parks and reserves, national parks, game reserves, conservation areas, catchment forests etc. It develops and implements policies on reserved lands, protects the boundaries of reserved areas and their resources. There is potential for overlap between MNRT and the MLHSD on delineation of boundaries of conservation areas, game reserves and na-

<sup>18</sup> Land Act Cap. 113 – See PART IV ADMINISTRATION Ss 8–18 – (8. *Minister's responsibilities*; 9. *Appointment of Commissioner for Lands*; 10. *Functions of the Commissioner*; 11. *Appointment of Officers*; 12. *Land Allocations Committees*; 13. *Information from the Commissioner to members of the public*; 14. *Functions and roles of local government authorities under this Act*; 15. *Conflict of interests*; 16. *Protection of officers*; 17. *National Land Advisory Council*; and, 18. *Inquiries*).

<sup>19</sup> See for example - **The Local Government (Urban Authorities) (Development Control) Regulations, 2008**, GN No. 242 of 2004 (*sic!*) dealing with Building Control in Urban areas.

<sup>20</sup> SPILL I (2005) and SPILL II (2013) both note this conflict/overlap between MLHSD and PMO-RALG that at times has led to isolation of MLHSD in its functions and has negatively impacted on Land delivery services of the LAI, hence the need of clarifying and strengthening the interlinkages between the two Organs.

<sup>21</sup> See section 6 of the Land Act on categories of reserved lands.

tional parks. The Minister may declare an area to be a Wildlife Management Area in the respective village land and set aside areas for community-based wildlife conservation. Village land forest reserves, community forest reserves are created out of village forests, unreserved forests which are on village lands are managed by Village Councils. Private forests by individuals may be created on village land held under customary right of occupancy (CRO). There is need for close collaboration in terms of their functions and plans.

As for the Ministry of Water and Irrigation (MoWI), this is responsible for the management of water basins, catchment areas, and irrigation schemes. It develops policies on the management of water and irrigation policies. In this ministry there is no overlap but there is a need for clear collaboration between the MLHHS and MoWI on the management of land where the water basins and catchment areas are found. The Minister is mandated to designate areas to be water catchment areas or sub-catchment areas. Ministry of Livestock and Fisheries Development (MLFD) this develops, manages, and regulates livestock and fisheries resources. There are no overlaps but there are weak linkages between MLHHS and MLFD due to explosive land conflicts on village lands resulting into poor protection and violation of pastoral land rights and nomadic livelihoods. There is also conflict between MLFD and MAFC as the former oversees livestock and the latter oversees agriculture both of which are competitors for land.

The Ministry of Energy and Minerals (MEM) is in charge of energy and mineral resources. It monitors the implementation of policies, strategies and laws for sustainability of energy and mineral resources to enhance growth and development of the economy. There is critical overlap with MLHHS as mineral discoveries have impacted on communities and in some cases have led to the displacement of villages. Prospecting for minerals or carrying out of mining operations on or in any land must have the authority of a mineral right granted under the Mining Act. The Ministry of Agriculture, Food and Cooperatives deals with overall food and agricultural policy formulation and implementation. It promotes land acquisition and development for agricultural development. There are no overlaps but there is need for close collaboration with the MLHHS as land for agriculture is governed by the MLHHS in terms of land tenure while the actual agricultural production is overseen by Ministry of agriculture. Effective agricultural production is dependent on issuance of land titles by the MLHHS.

The Ministry of Environment is vested with overall function of management of the environment. It issues policies, guidelines and circulars on implementation of environmental laws. There could be overlaps with MLHHS on declaration and management of hazardous lands. Under the Land Act power to declare hazardous land is vested in the President while under the Environmental Management Act, the power is vested in the Minister. Also Minister for Environment may prescribe additional environmental protection conditions to be complied with by grantees of rights of occupancy in addition to terms and conditions in the rights of occupancy. The MLHHS must submit a report of state of environmental management to the Director of Environment. Ministry of Infrastructure Development, deals with implementation of infrastructure development legislation and policies. There is lack of coordination between the MLHHS and MID that has led to various conflicts where road authorities claim that a given stretch of land is a road reserve but without the concerned owners being aware and this being registered nowhere. The Minister for roads may declare by order published in the Gazette any cartway, pathway, bridle track or other road to be a public highway and every such cartway, pathway, bridle track or other road shall, from the time specified in such declaration, be deemed to be a public highway. The Minister may also declare, closures, diversions, turnings, substitutions, widening and enlarging of public highways.

In terms of other entities, the Rufiji Basin Development Authority (RUBADA) for instance, is the manager of land in the Rufiji basin which may result into conflict of administration with the MLHHS. It has been allocating land to investors operating in the basin while that function is vested to the President. Due to the vastness of the land under RUBADA some communities have established themselves as villages within its area of control raising frequent conflicts between the recognized investors, RUBADA and such villages. Efforts to evict such villagers have often been complicated and with no success. (see annexes table for more agencies). On dispute settlement, there are overlaps between the judiciary and the MLHHS as the DLHTs are administered by the MLHHS and not the Judiciary or LGAs. The appointment of the chairman is done by the MLHHS but an appeal from the DLHT lies to the High Court which purely falls under the realm of the Judiciary thus clogging the sanctity of separation of powers. Ward Tribunals are administered by LGAs not the MLHHS. Likewise Village councils are administered by LGAs not the MLHHS and the Village land council require to be facilitated by the PMORALG and manage land functions under MLHHS.<sup>23</sup> So, in general there is need for reconsidering the lines of responsibility to streamline cases of overlaps or possible overlaps while maximizing coordination and cooperation between ministries agencies and departments that impacts on land.

### 3.6 Land Tenure System

All land in Tanzania is public land under the trusteeship of the President.<sup>24</sup> According to the section,

*'[a]ll land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania...The President and every person to whom the President may delegate any of his functions under this Act, and any person exercising powers under this Act, shall at all times exercise those functions and powers and discharge duties as a trustee of all the land in Tanzania so as to advance the economic and social welfare of the citizens.'*

The Land Act [No. 4 of 1999 –herein LA or Cap.113], dealing with General Land and Administration of Land in general; and the Village Land Act, Cap.114[No. 5 of 1999 –herein VLA or Cap.114] are the principal legislation governing tenure and access to land in Tanzania. The Land Act provides the legal categorisation of land. In total there are three categories, namely general land, village land and reserved land. The general effect of the Acts is that they confirm the dual regime of land ownership under the Right of Occupancy system of land holding. The Granted Right of Occupancy (CRO) re-asserts the pre-existing system of formal land titles, whilst the Customary Right of Occupancy allows Village Councils to issue Certificates of Customary Rights of Occupancy (CCRO) thus, in effect, offering a window for formalisation of customary tenures in cases where such Councils make a grant of land to a citizen.

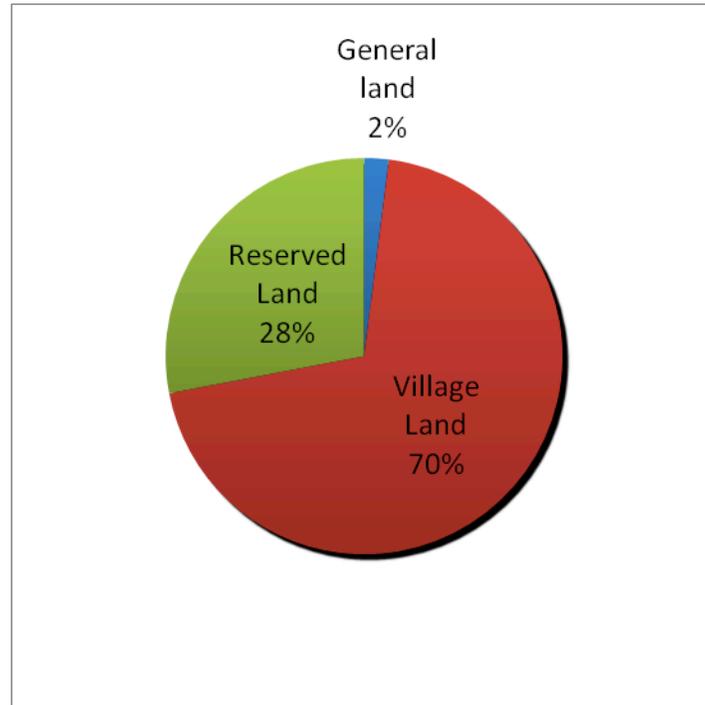
Reserved Land denotes all land set aside for special purposes, including forest reserves, game parks, game reserves, land reserved for public utilities and highways, hazardous land and land designated under the Town and Country Planning Act. The percentage of land that fall under the jurisdiction of existing registered 11,817 (approx.) villages is considered to be 70% supporting 80% of the population (farmers and pastoralists), reserved land (forests, national parks, game reserves) 28% and general (mainly urban and over estates where granted rights of occupancy have been given) 2% land supporting 20% of the population.

<sup>22</sup> See RUBADA's establishment statute - **The Rufiji Basin Development Authority Act, Cap. 138** (of 1975)

<sup>23</sup> See annexed table on Institutional Mapping. With the recent new government line up with some portfolios consolidated, some of the ministerial functions have crossed ministries.

<sup>24</sup>Section 4(1)&(2) Land Act, [Cap. 113 R.E. 113].

Figure 1: Land Categorisation in Tanzania

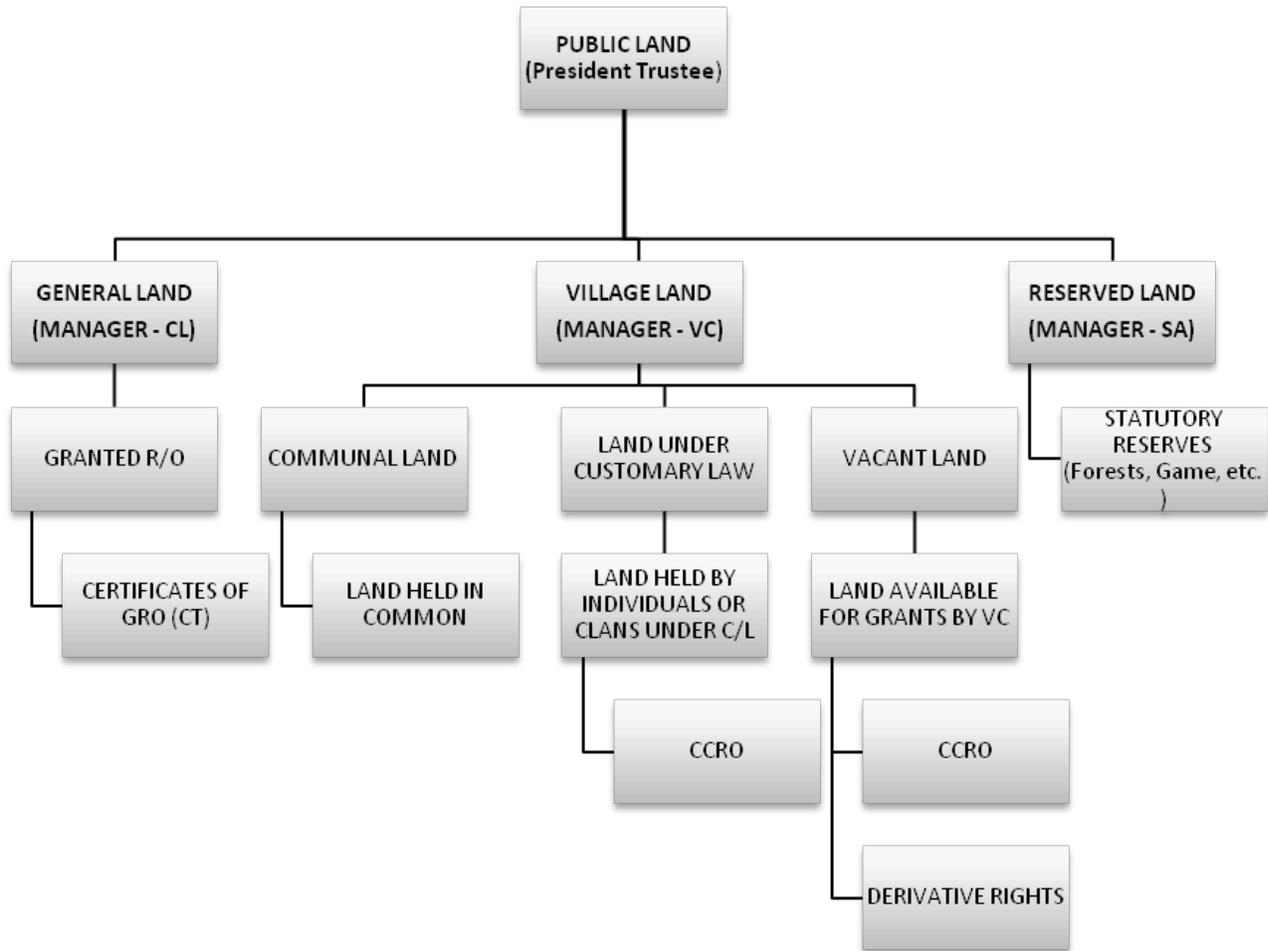


Sundet notes that the distinction of reserved land from general land does not alter much in relation to the present system of tenure. It does little more than to draw attention to the fact that reserved land has been set aside for a special purpose under a different legislation. For example, forestry reserves continue to be administered according to the legal provisions of the Forest Act.<sup>25</sup> General land includes all land that is not reserved land or village land. There has been an apparent ambiguity which stems from the definition of general land in that 'general land' means all public land which is not reserved land or village land and include unoccupied or unused village land<sup>26</sup>. Indeed, there are no provisions in the Acts to clarify what is exactly implied by unoccupied or unused village land. It is doubted that the definition may lead into freeing of reserved village land for external investors.

Land Tenure in the context of the Land Acts can be summarised as in the Table below:

<sup>25</sup>Sundet G., *The 1999 Land Act and Village Land Act: A Technical Analysis of the Practical Implications of the Acts*, 28 February 2005. REPOA.

<sup>26</sup>Section 2 of the Land Act [Cap. 113 R.E. 113].

TABLE 7: Land Tenure Chart

Source: WB SAGCOT REPORT 2013

### 3.6.1 Fundamental Principles of Land Policy

The Land Act, Cap. 113 and the Village Land Act, Cap. 114 ( Land Acts) provide for protection of individual and groups rights through various legal tools. One important tool that the Act uses is principles of land policy and law. The Land Act under section 3 of Part II provides for fundamental principles of national policy. These principles are pivotal for the implementation and enforcement of the Land Acts. Any executive officer and any adjudicatory organ dealing with land issues must be guided by these principles. According to the Acts when applying or interpreting the Acts, one must have regard to the fundamental principles of land policy. Under section 180(3) of the Land Act courts of law have a duty to ensure that when interpreting and applying the Act and all other laws relating to land in Tanzania they are guided *at all times* (our emphasis) by the fundamental principles of land policy set out in section 3 of the Act. The section also provides that all persons exercising powers, applying or interpreting the Act must have regard to the fundamental principles of land policy.<sup>27</sup>The principles include all land in Tanzania continues to be public land,<sup>28</sup>

<sup>27</sup> See also Tenga W.R & Mramba S.J., *Theoretical Foundations of Land Law in Tanzania* (LawAfrica, Dar Es Salaam, 2014) p110.; and, generally Rwegasira, Abdon (2012) *Land as a Human Right: A History of Land Law and Practice in Tanzania*, (Mkuki na Nyota Publishers (Dar Es Salaam))

protection of pre-existing rights in land,<sup>29</sup> equitable access and distribution of land,<sup>30</sup> productive and sustainable use of land,<sup>31</sup> entitlement to full, fair and prompt compensation,<sup>32</sup> transparency in land delivery<sup>33</sup> and citizen participation in land decision-making.<sup>34</sup>

### 3.6.2 The Granted Right of Occupancy

This is the main form of the registered land title that is managed by the Commissioner for Lands and directly registrable in the Registry of Titles. It is granted by the President, through the Commissioner for Lands in either General or Reserved Land. The Incidents, or rather the characteristics of this kind of statutory tenure are outlined under section 22 of the Land Act Cap. 113:

#### **Section 22 (1)**

*A granted right of occupancy shall be -*

*(a) granted by the President;*

*(b) in general or reserved land;*

*(c) of land which has been surveyed;*

*(d) required to be registered under the Land Registration Act [Cap 334], to be valid and, subject to the provisions of that law and this Act, indefeasible;*

*(e) for a period up to but not exceeding 99 years;*

*(f) at a premium;*

*(g) for an annual rent which may be revised from time to time;*

*(h) subject to any prescribed conditions;*

*(i) capable of being the subject of dispositions;*

*(j) liable, subject to the provisions of this Act, to revocation;*

*(k) liable, subject to the prompt payment of full compensation, to compulsory acquisition by the state for public purposes*

**(2)** *A granted right of occupancy shall not confer on the holder any water rights or rights over the foreshore unless those rights are expressly mentioned nor shall it confer on the holder or any person acting under the authority of the holder any rights to mines, minerals, or gas or the right to appropriate and remove from the country for gain or for purposes of research of any kind any flora or fauna naturally occurring or present on the land or any paleontological or archaeological remains found on the land.*

The incidents define the security and the conditions that a holder of such right enjoys or is bound to observe. The Land Act provides that the rights to occupy land which a citizen, a group of two or more citizens whether formed together in an association or not, a partnership or a corporate body, under the Act or any other law can enjoy are a

<sup>28</sup> Section 3(1) of the Land Act, Act No 4 of 1999, Cap 113 (R.E 2002) and Village Land Act, Act No 5 of 1999, Cap 114 (R.E 2002).

<sup>29</sup> Land Act and Village Land Act, section 3(1)(b).

<sup>30</sup> *Ibid*, section 3(1)(c).

<sup>31</sup> *Ibid*, section 3(1)(e).

<sup>32</sup> *Ibid*, section 3(1)(g).

<sup>33</sup> *Ibid*, section 3(1)(h).

<sup>34</sup> *Ibid*, section 3(1)(i).

granted right of occupancy and a right derivative from a granted right of occupancy.<sup>35</sup> For non-citizens their occupation of land is qualified and restricted to investments approved by the Tanzania Investment Centre (TIC) only.<sup>36</sup> In order for the foreigner to obtain a right of occupancy, he must secure a Certificate of Incentives from the Tanzania Investment Centre (TIC) as evidence to the Commissioner of Lands (COL) of the approval by the TIC of the investment. As noted, there is also a possibility for a foreigner to obtain a derivative right in the form of a license or lease on land from private persons. Such foreigners may occupy the land individually or collectively where they form majority in the shareholding of a body corporate.<sup>37</sup>

In addition, the law also provides room for partial transfer of interest by a citizen for the purposes of investment approved under the Tanzania Investment Act, 1997 in a joint venture to facilitate compliance with development conditions.<sup>38</sup> This can happen where a citizen who lawfully occupies land wants to enter into a partnership with a foreigner either for the sake of investment or compliance with development conditions. In case he enters into a joint venture his land will serve as part of his stake in the investment. Otherwise non-citizens cannot be allocated land for any other purpose than investment.<sup>39</sup> Even if an application is for a right of occupancy or a derivative right, which is made by a non-citizen or a foreign company is for residential purposes, the use of such land must be secondary or ancillary to the investment approved under the Tanzania Investment Act.<sup>40</sup> So, there is a possibility for individuals to occupancy land as well as group of individuals formed in an association or as corporate body. Practically, a foreigner can only obtain a derivative right issued as a leasehold title by the TIC. The conditions that bind the foreigner are those that govern the right of occupancy upon which the derivative right is derived as well as any terms that the lessor, for that matter the TIC, may prescribe.

The framework for holding property especially in the GRO requires a consideration of conditions of use of the particular type of Right of Occupancy. The Right of Occupancy is 'a right to use and occupy land' according to the Land Act, and includes a title for the right to use land under customary law.<sup>41</sup> Hence, apart from residence on land as proof of effective occupation, use of land is a critical condition as otherwise the land would be taken to have been abandoned and subject to revocation of the grant.<sup>42</sup> The *Land (Conditions of Rights of Occupancy) Regulations, 2001*. (GN. No. 77 of 2001) made under Section 34 of the Land Act, recognize, in terms of use, four main types of GRO i.e.: Agricultural, Pastoral, Mixed Agricultural & Pastoral, and the Right of Occupancy for Building Purposes. On the one hand, the *Land Use Planning Act, Act No 6 of 2007* and the *Urban Planning Act, 2007*, on the other hand, provide for a legal regime to ensure that land tenure is streamlined with land use plans. A list of authorities have been mandated to ensure that land use plans are in place and complied with. The authorities with land use planning mandates include village councils; district councils, National Land Use Commission; and bodies or organs declared by the Minister as planning authority by order published in the *Gazette*.

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<sup>35</sup> Land Act, section 19(1).

<sup>36</sup>*Id.*, Section 20(1).

<sup>37</sup>*Id.*, section 19(1).

<sup>38</sup>*Id.*, section 19(2) (a-c).

<sup>39</sup>*Id.*, section 20(1).

<sup>40</sup>*Id.*, section 25(1)(i).

<sup>41</sup> *Id.*, section 2 - "right of occupancy" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law;

<sup>42</sup>*Id.*, Ss. 42 and 43.

### 3.6.3 Customary Right of Occupancy

The main form of land tenure that covers the hitherto form of landholding by the natives of Tanzania was the 'Deemed' Right of Occupancy under the Land Ordinance of 1923. The main characteristic of this tenure was that it was informally held by the original African people who were found in occupation by colonial powers and mostly applied to rural lands held by the natives. After the passage of the Land Acts most of the bulk of land held under this tenure is now regulated under the Village Land act, Cap. 114. This Act, under section 18 defines incidents or characteristics of what is now known as the Customary Right of Occupancy, as follows:

Section .18 (1) of the VLA provides for the Incidents of customary right of occupancy. That,

- 1) *A customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy and shall, subject to the provision of this Act, be—*
  - (a) *capable of being allocated by a village council to a citizen, a family of citizens a group of two or more citizens whether associated together under any law or not, a partnership or a corporate body the majority of whose members or shareholders are citizens;*
  - (b) *in village land, general land or reserved land;*
  - (c) *capable of being of indefinite duration;*
  - (d) *governed by customary law in respect of any dealings, including intestate succession between persons residing in or occupying and using land:—*
    - (i) *within the village having jurisdiction over that land; or*
    - (ii) *where the customary right of occupancy has been granted in land other than village land, contiguous to or surrounding the land which has been granted for a customary right of occupancy;*
  - (e) *subject to any conditions which are set out in section 29 or as may be prescribed and to any other conditions which the village council having jurisdiction over that land shall determine;*
  - (f) *may be granted subject to a premium and an annual rent, which may be varied from time to time;*
  - (g) *capable of being assigned to a citizen or a group of citizens, having a residence or place of business in the village where the land is situate, or a body corporate the majority of whose shareholders or members are citizens having a place of business in that village;*
  - (h) *inheritable and transmissible by will;*
  - (i) *liable, subject to the prompt payment of full and fair compensation, to acquisition by the State for public purposes in accordance with any law making provision for that action.'*

The larger portion of Village Land is held under traditional customary land tenure and passed from generation to generation through inheritance. Under the current provisions of Village Land Act one may register his land and get a Certificate of Customary Right of Occupancy (CCRO). Since all land under a Village Council is not necessarily held under customary land tenure vacant land which is not even the subject of Communal use, is open for allocation by the Village Council. This land may be granted by the Village

Council in the form of a Customary Right of Occupancy and may be issued a CCRO which is registrable under the Act. It is also possible for the Village Council or a Villager to lease out land that may be held by the prospective tenant as a leasehold. As stated under section 18 (1) (g) above a group of citizens, such as Pastoralists, may also hold land as a group and get an allocation of a Customary Right of Occupancy.

#### **3.6.4 Leasehold**

The lease is a derivative tenure, meaning it is a right derived from some other primary tenure. In the case of Tanzania, the primary tenure would be either a granted right of occupancy or a customary right of occupancy. In both cases one may hold a lease that is created by a Landlord, who holds the primary tenure, and a Tenant who would possess the secondary tenure for a period of time that is less than that of a primary tenure. The Land Act under Ch. IX provides for Leases, and the Village Land Act under section 19 provides for the creation of customary leases, subject to rules applicable to leases under the Land Act, Cap. 113. Village Councils may in certain circumstances lease Village Land to Non-Villagers and create derivative Right.

#### **3.6.5 Derivative Rights and Residential Licenses**

The Land Act, Cap. 113 mentions what a Derivative Right is in relation to Land that may be granted to anyone (s. 19 (1) (b)). This right is one that can be derived from the Right of Occupancy, which means it may be any kind of right that may be derived thereby - such as a Lease, a sub-title, an easement, or any other secondary interest. Yet the Land Act under section 19(2) (b) mentions a Derivative Right for investment purposes. This has become the main form of tenure that non-citizen investors get when they apply for land for investment purposes. Such land is first granted to the Tanzania Investment Centre (TIC), which holds the primary title, then a Leasehold of lesser years is given to the foreign investor.

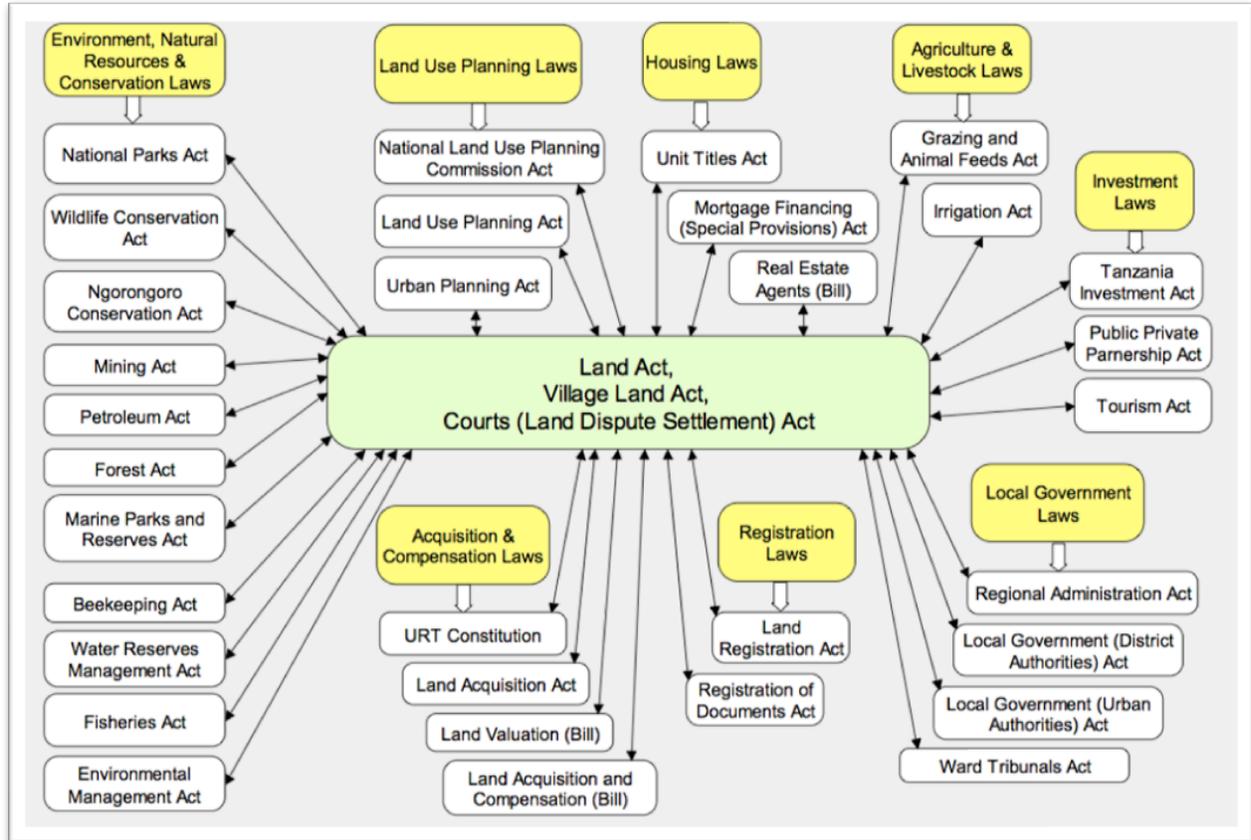
The Land Act has made provision for Licenses, under section 23, that may be given by local authorities in urban areas for temporary occupation purposes before a fully recognised tenure is granted. These are known as residential licences that are defined as Derivative rights that are commonly given in urban and peri-urban areas. In Urban areas such as Dar es Salaam where informality is rampant, almost 80% of all settlements are in informal areas, the need for some form of 'stop - gap' formal recognition has been very clear.<sup>43</sup>

### **3.7 Land related laws and sectors.**

Dealing with land in Tanzania requires a survey of a whole list of laws of which impacts on land. The laws range from those that deal with environment to those that establishes and mandates local governments. The chart below summarizes the important laws in land administration.

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<sup>43</sup> Kyessi, A.G. and Tumpale Sekiete 'Formalising Property Rights in Informal Settlements & Its Implications on Poverty Reduction - The Case of Dar Es Salaam, Tanzania' 5(12) - J. of Business Economics, pp. 2352-2370; Kyessi, Sarah 'From Residential Licences to Full Title in Tanzania' Nanjing, China, 2008.



Source: Revised Spill 2013 p. 11

#### (a) Land Use Planning

The *Land Use Planning Act, Act No 6 of 2007* provides for land use planning authorities which include; village council; district council, National Land Use Commission; and any such body or organ which the Minister may, by order published in the *Gazette*, declare to be a planning authority. For the purposes of land use planning the village council is a planning authority for its respective village. In carrying out its function, the village council has to notify the Ward Development Committee having jurisdiction in the area where the village is situated on matters of land use planning. The Act does also establish Regional Planning Secretariats that co-ordinates preparation and implementation of land use plans by the district councils in the respective region. The Regional Secretariat is also bound to co-ordinate inter and intra district land use planning including the preparation of resource management sector plans within the region.

The *Urban Planning Act, Act No 7 of 2007* deals with urban planning and establishes the office of the Director of Urban Planning. The Director is the principal adviser to the Minister on land use plans. Every city council, Municipal council, town council, district council and township authority shall each become a planning authority in respect of its area of jurisdiction. There is some overlapping of planning powers provided by the Land Use Planning Act and the Urban Planning Act to local government authorities and this reflects the historical evolution of the Acts. The repealed Town and Country Planning Ordinance covered both urban and rural areas and this had to be taken into consideration in formulating the new Acts.

Other Areas that touch on Land governance with institutional set-ups include:

**(b) Environmental Sector**

The management of the environment at ministerial level is vested in the office of the Vice President's Office (VPO). The Minister responsible deals with all matters relating to the environment and articulates policy guidelines for the promotion, protection and sustainable management of the environment. He may issue general guidelines necessary for implementing the *Environmental Management Act* (EMA). He may issue directives for the performance or prohibiting any activity detrimental to the environment.<sup>44</sup> Since before the enactment of the EMA all functions related to environmental management were vested in the Vice President's Office Division of Environment. With the EMA in place environmental management remains in the VPO's but with much clear descriptions. Since environment management nationally has been institutionalized, it is difficult to undertake any environment related activity without the involvement of the Ministry responsible for environment.

**(c) Forest Resources**

The *Forest Act No 14 of 2002, Cap 323* was enacted to *inter alia*: encourage and facilitate the active participation of citizens in planning, management, use and conservation of forest resources by developing user rights, ensuring ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility, ensuring sustainable supply of services by maintaining sufficient forest area under efficient and effective management, and promoting coordination and cooperation between the forest sector and other agencies and bodies in the public and private sector in respect of the management of the natural resources of Tanzania. The law classifies forests into four categories *viz.*

- a) National forests reserve which include forest reserves or nature forest reserves and forests on general land;
- b) Local authority forests reserve *viz.* local authority forest reserves, forests on general land;
- c) Village forests *viz.* village land forest reserves, community forest reserves created from village forests, unreserved forests on village land vested in village councils;
- d) private forests *viz.* forests on village land held under customary right of occupancy, including forests on general or village land of which the rights of occupancy or lease have been granted to a person or persons, a partnership or a corporate body for the purposes of managing the forest.

**(d) Water Sector**

Water is one of the basic needs for sustaining life. The *Water Policy of 2002* stipulates that water is an integrated party of the environment. The Policy divides Tanzania into nine river basins that do not follow administrative boundaries. There are nine hydrological basis in Tanzania that is:-

- 1) Pangani River Basin,
- 2) Wami-Ruvu Rivers Basin,
- 3) Rufiji River Basin,
- 4) Ruvuma and the Southern coast,
- 5) Lake Nyasa (Malawi),
- 6) Lake Rukwa,
- 7) Lake Tanganyika,
- 8) Lake Victoria, and,

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<sup>44</sup> EMA sections 13 (1),(2) & (3).

- 9) Internal Drainage basins: L. Eyasi, Manyara and Bubu Depressions.

Two statutes regulate water resource in the country namely; the Water Resources Management Act, Act No 11 of 2009, and the Water Supply and Sanitation Act, Act No 12 of 2009. The Water Resources Management Act (WRMA) provides for the management of water resource while the water supply and sanitation (WSSA) deals with provision of water services. The WRMA outlines rights and responsibility associated with water resource user rights and its management. It provides for institutions and mandates for water resource management in the country. The Water Supply and Sanitation Act, (WSSA) mainly deals with water works and services.

**(e) Wildlife Sector**

The wildlife sector is currently regulated under the Wildlife Conservation Act, Act No 5 of 2009 and other specific laws for national parks and conservation areas. The Act provides that conservation area includes a marine reserve established under the Marine Parks and Reserves Act. But also wildlife includes habitats and ecosystems found on, and, or in land or water. The Act provides for various levels of institutions. These are the Director of Wildlife, the Minister Responsible for wildlife and the President of the United Republic. The President may, declare any area of Tanzania to be a Game Reserve.<sup>45</sup> He can modify any of the restrictions imposed in relation to a game reserve, game controlled area or a wetlands reserve.<sup>46</sup>

**(f) Fisheries Sector**

The Fisheries sector is governed by the National Fisheries Sector Policy and Strategy Statement of 1997 and the Fisheries Act, 2003. The Act stipulates that all biological resources and their intangible products whether naturally occurring or naturalized within fisheries including genetic resources belonging to the Government in accordance with Article 27 of the Constitution, shall be conserved and utilized for the people of Tanzania. Hence, any transfer of any biological resources, their derivative products intangible components from fisheries shall not operate to extinguish the sovereignty of Tanzania over those resources. The Act is the key legislation that deals with fisheries management in Tanzania. The Act provides for the institutional authorities for regulating the fishing industry. The authorities under the Act include the Minister who is responsible for policy formulation and ensuring the execution functions connected with the implementation of the Act.<sup>47</sup>

**(g) Mining Sector**

The Mining Act, Act No 14 of 2010 confer the entire property and control over minerals on, in or under the land to is vested in the United Republic.<sup>48</sup> Any person who wants to prospect for minerals or carry on mining operations shall on or in any land must have the authority of a mineral right granted or deemed to have been granted, under the Act. A holder of a mineral right cannot exercise any of his rights without the written consent of the responsible Minister, in respect of any land dedicated or set apart for any public purpose other than mining; any land dedicated as a place of burial; or any land which is the site of or is within 100 metres of any building, reservoir or dam owned by the Government. Such limitation extends to reserved area unless there is thorough consultation with the relevant Local Government Authority, including the Village Council.

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<sup>45</sup> *Ibid*, section 14(1).

<sup>46</sup> *Ibid*, section 29.

<sup>47</sup> Fisheries Act, Section 3(1).

<sup>48</sup> *Ibid*, section 5.

## Chapter Four: Tenure Typology and Land Use in Tanzania

### 4.0 Introduction

This chapter discusses the tenure typology in the country and its distribution. It identifies the types of tenure, quantification of the different types of tenure area and people. It provides a succinct account of land tenure framework in both rural and urban sectors under the framework of laws of Tanzania particularly the Land Act, Cap. 113 R.E. 2002] and the Village Land Act, Cap. 114 R.E. 2002 in the context of the LGAF framework. It also provides a description of potential contradictions or overlaps.

### 4.1 Tenure Typology

As noted all land in Tanzania is public land under the trusteeship of the President.<sup>49</sup> The formal tenure has been discussed in the Chapter above, what the Tenure Typology seeks to do is to enlarge the description scope and include all landholding situations be they formal or not. An original investigation of Tenure Typologies was done by the Institute of Liberty and Democracy of Lima, Peru in 2004 to 2006.<sup>50</sup> The structuring of tenure typologies realized then that Tanzania has a statutory land planning system that distinguishes urban and rural land through the Town and Country Planning Act, Cap. 355, which was a year later repealed and categorized into the Urban Planning Act, 2007 for urban land, and Land Use Planning Act, 2007 (No. 2 of 2007). In the report of MKURABITA the typologies of tenure were structured in the manner later summarised by Kironde in 2012.<sup>51</sup>

### 4.2 Urban Land Typology

According to the MKURABITA Report (2005), urban areas in Tanzania are characterized by a high concentration of buildings and economic and social activities over a limited area of the land.<sup>52</sup> The main economic activities are non- agricultural, but, at the present stage of the nation's development, there is a significant amount of urban farming in the less built up areas. For the purpose of this study, we have adopted the administrative definition of urban areas as described under the national local government legislation, which

<sup>49</sup> Section 4(1)&(2) Land Act, [Cap. 113 R.E. 113].

<sup>50</sup> De Soto, Hernando (2006), 'The challenge of connecting informal and formal property systems. Some reflections based on the case of Tanzania'. Realizing property rights. H. de Soto and F. Cheneval. Bern, Rüffer & Rug: 18-67. See the Report: ILD 'The Extralegal Economy - Its Archetypes and Size' MKURABITA Vol II, 2005 - Archetypes., also 'The Legal Economy Its Institutions and Costs' MKURABITA Report -GoT- Volume III , 2005

<sup>51</sup> Deininger, Klaus W., Harris Selod, and Anthony Burns. (2012) **The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in The Land Sector** World Bank, Washington, at p. 78. – Summary of Tenure Typologies compiled by Prof. Lussugga Kironde.

<sup>52</sup> MKURABITA Report, Ibid.

includes cities, municipalities, and towns. All these meet basic population, functional, and land use requirements as stipulated by the Ministry of Land and Human Settlements. They are gazetted. In many cases, they include within their boundaries large areas that are rural but with limited population and dwellings. Section 7(2) of the Urban Planning Act (5th Schedule) identifies Urban Areas as those characterized as:

- **Minor Settlement (Trading Centre)** - A Minor Settlement (Trading Centre) (Minor Settlements Act, Cap. 102).S
- **Township** - The Urban Planning Act [CAP 355 R.E. 2009] District administrative centres may be classified as townships provided they have a minimum Population of 10,000 people
- **Town** - Is an urban area should have a minimum population of 30,000 people.
- **Municipality** - Is an urban area should have a minimum population of 100,000 people.
- **City** - Is an urban area should have a minimum population of 500,000 people.
- **Mega City** - Is an urban area should have a minimum population of 4,000,000 people.

The MKURABITA Report in 2005 had found that in most Urban areas informal landholding was rampant and that even where a formal title was acknowledged it was held illegally as the holder usually breached most planning statutory conditions or allowed trespassers to use the land illegally. The report defined this as possession that was extra-legal. The main reasons for classifying a property as extralegal in urban areas are:

- *Land development (construction) did not comply with the requirements of building permits.*
- *Land use does not comply with the conditions attached to the title deed.*
- *Terms of granted rights have lapsed without renewal.*
- *Rights of occupancy have not yet been registered because procedures are incomplete.*
- *Registration is still pending because of non-acceptance of the “letter of offer” and / or non-payment of the necessary charges. As a result, property is not yet legally transferred*
- *The time period specified for acceptance has elapsed and the authority might revoke the offer.*
- *Extralegally subdivided properties lack registered titles, preventing holders from making full use of the land.*
- *Loopholes in the institutional framework make it difficult for the owners to recover rented out properties when, for example, tenants stop paying rent.*
- *Dwellings are built on land reserved for public use and land has been improperly subdivided before rezoning approval was granted.*
- *Dwellings are built on unplanned areas; these areas do not have an approved, detailed planning scheme and therefore, certificates of title cannot be issued.*
- *Dwellings are built in hazardous areas, not suitable for residential purposes.*

The results of the Report showed that there are close to 335,000 extralegal properties in Dar es Salaam alone. This represents 78% of total plots in the city (427,000 properties). Near 43% of extralegal properties are rented out; 46% are owner occupied and the rest (11%) are vacant plots. The study was extended to cover all major urban centres. The various forms of landholding in urban areas as studied are identifiable

throughout the three categories of land, i.e. General Land, Village Land and Reserved Land. Table 5a shows these various land typologies within each land categories in urban areas:

#### 4.2.1 Private Formal Land

GRO (CT - 33, 66 or 99 yrs.) - Residential, Commercial, Industrial, Public Institutions? The main form of statutory tenure is the granted right of occupancy (GRO)<sup>53</sup>. The Right of Occupancy is defined as ‘the right to the use and occupation of land’. The use conditions are provided for under section 34 of the Land Act and detailed in regulations issued thereunder. Under the Land Act Cap. 113, the President through the Commissioner for Lands may grant the GRO for up to 99, for a variety of purposes including Agricultural, Pastoral, Mixed Agricultural & Pastoral, and Building purposes.<sup>54</sup> The area under this kind formal tenure is estimated to cover 10,400 ha, and is held by a population of 1.6 Million, and accordingly by 2012 was the subject of 350,000 Titles.<sup>55</sup> Apart from being legally recognised the GRO granted for over 5 years is compulsorily registrable in the main Registry of Titles and may not be effectual for any transaction where it is not so registered.<sup>56</sup> These registered titles are transferable as the right of disposition is one of the incidents of its tenure, subject to the approval of commissioner for lands or of an authorised officer on his behalf.

The GRO has issues that have been connected largely with bureaucratic red-tape and non-conformity with development conditions. Hitherto titles were taking too long to be issued and the ‘Doing Business Reports’ of the World Bank still rank this to be a problem although government has taken critical steps in mitigating it. According to the most recent report for registering a disposition it still takes between 42 - 60 days, almost 2 months for getting approval and registering the property. Nevertheless Tanzania is ahead of the regional average, although far below the Botswana, the regional leader.<sup>57</sup> The justification for stringent process in granting approvals for dispositions, especially between citizens, is not yet clear. Steps have to be taken to clear this hurdle as it is a serious block in opening the land markets and not within the spirit of the National Land Policy. The lack of infrastructure for the land delivery system is still a critical challenge and the government has addressed the issue both in SPILL (I) and SPILL (II)<sup>58</sup>. To show how serious this challenge is the Big Results Now! (BRN) program has taken it to be one of issues to be addressed at National Level within the current Five Years Development Plan (FYDP).<sup>59</sup> The GRO is granted subject to development conditions that are time delimited. Most grantees do not follow strictly the conditions and the Ministry of Lands has been lax in enforcing the time lines. In many cases conditions are revisited when occupiers are disposing land or when the Ministry goes on selective campaigns to uncover underdeveloped land. At the core of the problem is lack of supervisory machinery, with Land Rangers, which can continuously monitor whether the land granted to occupiers is being developed in accordance with the conditions.

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<sup>53</sup> Section 22 of Cap. 113

<sup>54</sup> Section 34 of Cap. 113

<sup>55</sup> Estimates from MKURABITA Reports in 2005 and extended by Kironde in 2012.

<sup>56</sup> Section 27, Land Registration Act, Cap. 113

<sup>57</sup> WB ‘Going Beyond Efficiency - TANZANIA Economy Profile’ Doing Business, 2015, pp. 38 – 43.

<sup>58</sup> MLHSD ‘Strategic Plan for the Implementation of Land Laws (SPILL)’ 2005 (I) and 2013 (II).

<sup>59</sup> GoT ‘BIG RESULTS NOW!’ Report, March, 2015.

#### 4.2.1 Private Semi-Formal Land

The Land Act, Cap. 113 recognises certain rights that are semi-formal in the sense that they are mere licences other than rights that are rooted in ownership of land.<sup>60</sup> They are largely occupational rights that are given some form of legal recognition. Such licenses aim at solving the squatter problem by conferring the occupiers with limited rights. Residential license can be granted to a person who occupies land in non-hazardous land<sup>61</sup> and reserved for public utilities, surveyed land, urban or peri-urban area<sup>62</sup> for a given period of time.<sup>63</sup> In a study by the Ministry of Lands<sup>64</sup> it was estimated that there are 400,000 plots of unplanned housing in Dar es Salaam. So a two year project commencing from 2004/05 was carried out 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 Local Government Authorities of Ilala, Kinondoni and Temeke. In Ilala Municipal Council over 16,830 Residential Licences were issued. In Kinondoni Municipal Councils a total of 17,422 Residential Licences were issued. It is estimated that over 220,000 properties have been mapped under the project and more than 47,000 people have been issued residential Licences. Individuals entitled to this right are those who have occupied the land as their home without official title for not less than 3 years. A residential licensee who has occupied land with his family for more than 3 years will have the right to be compensated in case the land will be acquired for public purpose under the Land Acquisition Act of 1967.<sup>65</sup> The residential license is nonetheless not assignable and it binds the successor in title to the licensor who obtains the land with actual or constructive notice of the license. Where it has been enjoyed for three years or more and the occupier is to be removed from the land he has to be treated as if the holder had a right of occupancy in the land.<sup>66</sup> The grantor of residential licence is the Local Government Authority with jurisdiction in the area. Such licence can be granted subject to certain conditions. The conditions are as stipulated herein. The grantee must have occupied the land without official title or right within the area of jurisdiction of that local authority as his home. The term of the grant should not be less than 6 months and not more than two years which may be renewed for a similar term. The licence is subject to conditions, including conditions as to the payment of any fees or charges which may be specified in the license or which may be prescribed.<sup>67</sup>

It is a temporary status that shields the urban dwellers from being legal squatters. The process of obtaining these licences is simple and it is on record that where 91,000 applied and 86,000 got their licences which is equivalent to over 95%.<sup>68</sup> Although on the Gender score the projects still favour men to women, and

<sup>60</sup>Tenga&Sist Chpt. 7.7 pp. 122-123.

<sup>61</sup>See meaning of hazardous land on section 2 and 7 of the Land Act.

<sup>62</sup>See the meaning on section 2 of the Land Act.

<sup>63</sup>See Village Land form no. 40 on residential licence.

<sup>64</sup>Tanzania Land Policy and Genesis of Land Reform Sub – Component of Private Sector Competitiveness Projec (undated) p 4.

<sup>65</sup>Section 23 (6) of the Land Act.

<sup>66</sup>*Id.*, section 23 (4-6).

<sup>67</sup>*Id.*, section 23 (3).

<sup>68</sup>Kyessi,A.G.&TumpaleSekiete 2014 'Formalising Property Rights in Informal Settlements and Its Implications on Poverty Reduction: The Case of Dar es Salaam, Tanzania' 5(12) J. of Business & Economics' pp. 2352-2370 DOI: 10.15341/jbe(2155-7950)/12.05.2014/016; Kironde,Lusugga J.M. 'ISSUING of RESI-

Kironde (2006) noted that in many cases, more than 65%, the licences are issued to men. Kironde acknowledged however that the program is a success for the disadvantaged, as such it is pro-poor, and pro majority for urban residents. On the other hand Sarah Kyessi, a Director of Settlement Regularisation in the Ministry of Land, notes that it is not as yet clear how a Residential Licence, a Derivative Title in some sense, may be upgraded to a full-fledged granted Right of Occupancy.<sup>69</sup> This seems to be a discrepancy in the law, and necessary amendments are appropriate, in the Land Act and Land (Schemes of Regularisation) Regulations, Urban Planning Act, and the Land Surveys Act, to provide a path where landholders in Regularised settlements may up-scale their residential licences.<sup>70</sup>

#### 4.2.3 Private Informal Landholding

No involvement of Public Authorities - There is informal private individual use of urban land, covering about 51,350 ha. This land is used by about 6.4 million people which is quite high. The implication is that there is a large majority of people in urban areas who occupy land informally. The rules of tenure have not managed to unlock these informal tenures and attract occupiers into the formal land sector. Both the MKURABITA Report of 2005 and the National Programme for Regularisation of Planned Settlements have recorded a wide range of informality especially in the case of urban settlements. These may be typically classified based on location, housing density and housing conditions. With regard to location there are settlements in urban fringes that were actually Villages that were incorporated in urban areas where boundaries were so extended. Typically the regulatory tenure is still Customary Law as regulated by elders. Overtime these areas gradually take a sub-urban change that is characterised by high densities in terms of housing and since they are unplanned they degenerate into slums. Areas of Dar es Salaam such as Manzese, Keko, Buguruni, Tandale, etc. and in Mbeya the Mwanjelwa Area, or in Arusha the the Unga Limited Area. These areas tend to have the highest unplanned housing densities in Tanzania.<sup>71</sup> Secondly some unplanned settlements arise from encroachment of titles belonging to absentee occupiers of registered land who through neglect or abandonment have left the land under no care or development for a long period of time. This is typical of Ex-Freehold estates where the workers of the estates built on the land and transformed themselves into informal allocators of land to encroachers. In Dar es Salaam examples of these estates that turned into such informal settlements are Hannanasif, Sharif Shamba, Mtoni kwa Azizi Ali, Kurasini, Parts of Salasala, Mbezi, Mbweni, etc. Thirdly, there are developments of unplanned settlements over hazardous land, such as flood plains, steep terrain, quarry sites, etc. Encroachment in such areas is totally uncontrollable and haphazard, and provision of social services is often not possible. These areas are seen in Dar es Salaam (Kunduchi quarries, Jangwani and Msimbazi River valleys), or Bugando area in

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*DENTIAL LICENCES to LANDOWNERS in UNPLANNED SETTLEMENTS in DAR ES SALAAM TANZANIA* UN HABITAT Study, 2006; Kyessi, A.G. (2006). 'Participatory Planning in Regularization of Informal Settlements in Mwanza, Tanzania'. The Territorium, Journal of the Institute for Spatial Planning, Faculty of Geography, University of Belgrade, Serbia and Montenegro; and, Kyessi, Sarah 'From Residential Licenses to Full Title in Tanzania' [Nanjing, China, 2008]

<sup>69</sup> *Ibid*, See Sarah Kyessi.

<sup>70</sup> MLHSD 'National Programme for Regularisation and Prevention of Unplanned Settlements 2012-2021' GoT, Nov. 2012, Chpt. 4, 5, and 6 and p. 212.

<sup>71</sup> *Ibid*, p. 19-20.

Mwanza City. Much as this kind of land has to be regulated under the Land Act, provisions for regulation are yet to be in place and control is mostly left to local authorities' disaster management programmes.<sup>72</sup>

The classification of informality may as well be seen through housing density and housing conditions. Criteria that is applied on the ground generally shows the failure of planning regulation in the sense that housing density may be so high or conditions of housing so sub-standard when measured against relevant planning standards. This kind of informality may be addressed elsewhere as it may not impact on tenure directly, but rather on failure of implementation of conditions of tenure by both landholders and authorities.

A major drawback in terms of land tenure is that often conflicts arise from lack of formalisation (boundary conflicts, rights of access through easements, etc.) and conflicts arise where planned schemes, which lead to compulsory acquisition, are introduced in a non-participatory manner over unplanned settlements that are privately regulated. Ambitious land delivery projects in Urban Areas, such as the 20,000 Plots Programme, have proven to be a serious failure of consultation that negatively affected livelihoods of hundreds of residents leading to serious breaches of basic rights to property.<sup>73</sup> Lack of a land cadastre and failure to properly compensate appropriated landholders in an adequate and timely manner have been the source of perennial land disputes in such areas.

#### **4.2.4 Communal Use of Urban Land**

Condominium Property - Unit Titles - Under the Unit Titles Act, 2008 condominium like properties may be created and formally recognised under the Unit Titles system. As can be noted, on the ground communal use of urban land (group/condominium type of use or tenure) is not much pronounced in urban areas. Some historical examples exist under the cooperatives and corporate arrangements that are prototypes of condominiums but these were not yet formalized.

#### **4.2.5 Informal Occupation of State Urban Land**

Legal Squatting - Informal occupation of state urban land (legal squatting) is on the increase. Here encroachment happens in areas that are reserved for public use in planned areas such as communal areas designated as Open Spaces, school areas, hospitals and reserved land for infrastructure development for utilities, roads and other kinds of buffer zones. As a result about 400,000 people, by 2012, have encroached upon state land due to lack of clear demarcation and protection. These have temporarily been recognized under the guise of residential licensees which exacerbates informality and diminishes the size of state land reserved for public purposes. (See consolidated table below for urban land tenure typology).

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<sup>72</sup> *Ibid.*

<sup>73</sup> Msangi, Daniel E. 'Land Acquisition for Urban Expansion - Process and Impacts on Livelihoods of Peri Urban Households, Dar Es Salaam, Tanzania' Master's Thesis SUAS, Uppsala, Sweden, 2011 p. 143-144; Mwiga, B. G. (2011). Evaluating the Effectiveness of the Regulatory Framework in Providing Planned Land in Urban Areas: The Case of 20,000 Plots Project, Tanzania, Enschede, The Netherlands; Martin, Geoffrey Mugisha 'The Nature of Resistance and Conflicts on Compulsory Land Acquisition Process in Tanzania - The Case of Expansion of JNIA project at Kipawa area in DSM'. Erasmus U. Netherlands, 2010. See also Nnkya, T.J. (2008). Why Planning Does Not Work? Land Use Planning and Residents' Rights in Tanzania, MkukinaNyota Publishers, Dar es Salaam, Tanzania.

URBAN SECTOR LAND HOLDINGS	TENURE TYPOLOGY IN TANZANIA: (URBAN LAND - 2012)		
TENURE TYPE	Area & Population	Legal Recognition & Characteristics	Issues & Potential Overlaps
<b>PRIVATE FORMAL LAND: GRO (CT - 33, 66 or 99 yrs.)</b> Residential Commercial Industrial Public Institutions?	Area: 10,400 ha Population: 1.6 Million Number: 350,000 Titles	Legal Recognition: Yes, by s. 19-22 of Cap. 113 Registration: Yes Cap. 334 Transferability: Yes, subject to approval.	Titles take long to Issue Lack of Infrastructure Slow Development of land Non-Conformity to Conditions Approvals still delay dispositions
<b>PRIVATE SEMI-FORMAL LAND:</b> Derivative Right: Residential Licence (RL) for 2-5 yrs (renewable)	Area: 680 ha Population: 1.6 Million Surveyed Prop: 263,000 Applied for RL: 91,000 RLs Issued: 86,000	Legal Recognition: Yes, by s.23 of Cap.113 Registration/Recording: Based on surveys Boundaries: not clear subject to Regularization Transferability: Yes, subject to subdivision restrictions	Demand and renewal rates are limited Collateral has limited Usefulness. No formal process exists for upgrading from RL to GRO.
<b>PRIVATE INFORMAL LAND-HOLDING:</b> No involvement of Public Authorities	Area: 51,350 ha Population: 6.4 Million	Legal Recognition: Undefined vaguely recognized as potential RLs. Registration: No Transferability: Yes, informally.	Conflicts btw urban & village land where urban boundaries are extended. Dispossession & conflicts through surveys & planning schemes
<b>COMMUNAL USE OF URBAN LAND:</b> Condominium Property Unit Titles	Area: Negligible Population: Negligible	Legal Recognition: Yes. By the Unit Titles Act, 2008 Registration: Yes. By Registrar of Unit Titles Transferability: Yes, subject to approval by Unit Association.	Still a new form of tenure. Subject to Approvals for dispositions potentially to be a source of delays. Existence of Archetypes(Unit Titles, Company, Cooperatives, etc.) No Rules as yet for conversion of existing properties.
<b>INFORMAL OCCUPATION OF STATE URBAN LAND:</b> Legal Squatting	Area: 2,600 Ha Population: 400,000	Legal Recognition: No, vaguely recognized as potential RLs. Registration: Rarely Transferability: Yes, informally.	Dispossession through surveys & planning schemes Compensation Arbitrary Encroachments rampant

**Table 8a: Land Tenure Typology-Urban Land**

### 4.3 Rural Land Typology

The definition of Rural Land is the opposite of Urban land as defined above. Accordingly Rural Land in the Tanzanian context is taken to be land that is characterized by rather low concentration of human settlements and economic activities and covers all the non-urban land. Legislation in Tanzania tends to mirror this division. Whilst on one hand Urban Land is covered largely by the Land Act, Cap. 113 with the GRO being the formal land tenure, the Rural Land is regulated largely by the Village Land Act, Cap. 114, with the Customary Right of Occupancy (CRO) being the main land tenure which may be formalized by registration or grant of a Certificate of Customary Right of Occupancy (CCRO). This is the case of the divide between Local Governments (Urban Authorities) vis-a-vis Local Governments (District Authorities) that largely cover rural areas; or similarly, the Urban Planning Act vis-a-vis the Land Use Planning Act, both of 2007. In the colonial nomenclature there is a divide between Town and Country.<sup>74</sup> This definition of Rural Land does cover settled areas and non-settled areas. The operational definition of rural land adopted by the MKU-RABITA REPORT (2005) is all the land mass of Tanzania that is not classified as, or considered to be, urban land and includes land used as village settlements, forests, national parks and game reserves, wetlands, and undeveloped grasslands, and woodlands. A review of land tenure in the rural areas must start from looking at the typologies of land tenure under the three (3) categories of land in Tanzania: General, Village and Reserved Lands.

#### 4.3.1 General Land

##### (a). Private Use of Individual Rural Lands

((i) -GRO with CT (ii) -DR as Leaseholds for Foreign Investors)

#### 4.3.2 Village Land

##### (b). Private Individual Use under Certificate of Customary Right of Occupancy (CCRO):

Private individual land use under Certificate of Customary Right of Occupancy (CCRO) is the preferred mode of occupation in villages but the process is dependent on land use planning and/or spot adjudication leading to survey of village boundaries and issuance of a certificate of village land CVL which has not been happening at the required speed. As a result there is still high degree of informality and lack of security of tenure to most villagers impacting on 80% of rural population.

##### (c). Communal Use of Rural Land

Customary Communal Tenure)

Communal use of rural land; customary communal tenure is still prevalent in rural areas. However due to poor land use planning there has been continuous occurrence of land use conflicts between communities namely farmers and pastoralists and between rival pastoral groups themselves. There has also been en-

<sup>74</sup> See the Town & Country Planning Act, Cap. 355 (now repealed by the two Planning Acts - one for Urban and the Other for Rural, though not so neatly done).

croachment of reserved lands by some communities and in some cases courts of law had to be involved to resolve the disputes like the *Murtango's* case in Kiteto Arusha.<sup>75</sup>

### 4.3.3 Reserved Land

#### (a) Informal Occupation of Reserved Land (Legal Squatting)

In reserved areas there has continued to be informal occupation by pastoral communities. These have been what is regarded as the magic of co-existence between humans and wildlife in some areas. But of recent due to change in livelihoods in occupations like hunting to farming has resulted into campaigns to evict such communities from their ancestral lands to other areas like the Ngorongoro Conservation Area. (See table below for a summary of key aspects in rural tenure typology)

RURAL SECTOR LAND HOLDINGS	TENURE TYPOLOGY IN TANZANIA: (RURAL LAND - 2012)		
TENURE TYPE	Area & Population	Legal Recognition & Characteristics	Issues & Potential Overlaps
<b>GENERAL LAND</b>			
<b>GENERAL LAND:</b> <b>PRIVATE USE OF INDIVIDUAL RURAL LANDS</b> -GRO with CT -DR as Leaseholds for Foreign Investors	Area: 1.1 Million ha Population: 200,000	-Legal Recognition: Yes, by s. 19-22 of Cap. 113, up to 99yrs to Farmers & Investors. Foreigners land held under Tenancy in Common or Joint Ventures -Registration: Yes Cap. 334 Transferability: Yes, subject to approval.	-Current or Potential Village Land may be passed to Investors to the detriment of Village Small holders (Peasants, Pastoralists, Hunters & Gatherers, etc.) -The wide Powers of Commissioner for Lands
<b>VILLAGE LAND</b>			
<b>PRIVATE INDIVIDUAL USE UNDER CERTIFICATE OF CUSTOMARY RIGHT OF OCCUPANCY (CCRO):</b> Derivative Right: -Residential Licence (RL) for 2-5 yrs (renewable)	Area: 4.1 Million ha Population: 26 Million	-Legal Recognition: Yes, by s.23 of Cap.113 -Registration/Recording: Few CCROs issued -Transferability: Unrestricted within village; difficult to outsiders.	-Recognition overlaps with General Land in Peri-Urban Areas -CVL must be issued to allow issuance of CCROs -Failure to properly recognize a
<b>COMMUNAL USE OF RURAL LAND:</b> Customary Communal Tenure	Area: 35 Million ha Population: 3 Million	-Legal Recognition: Yes, s. 18 VLA -Registration: Unrecorded but for Few Districts with VLUP -Transferability: No	-Overlaps with individual villages and reserved lands -Disputes with disputes between pastoralists & farmers -Pastoralists often removed by force

<sup>75</sup> Kelly Askew, Faustin Maganga and Rie Odgaard "OF LAND AND LEGITIMACY: A TALE OF TWO LAWSUITS", 83(1) Africa, pp 120-141 - February 2013, considering 2 cases: (1) *Tito Shumo and 49 Others vs Kiteto District Council (Land Case No. 6 of 2007)* and, (2) *Rashidi Omari Kiboma vs Mkoa Kaipay and Ndatoya Tang'idi (Application No. 6 of 2011, DLHT (Simanjiro District))*

RESERVED LAND			
Informal Occupation of Reserved Land (Legal Squatting)	Area: 35 Million ha Population: 3 Million	-Legal Recognition: Yes, s. 18 VLA -Registration: Unrecorded but for Few Districts with VLUP -Transferability: No	-Legal Recognition: Yes, s. 18 VLA -Registration: Unrecorded but for Few Districts with VLUP Transferability: No

**Table 8b: Land Tenure Typology -Rural Land: Source: *LGAF Book* (2012) p. 79, Kironde, 2012, and *MKU-RABITA*, 2005.**

#### 4.4 Land Use In Tanzania

The National Land Use Planning Commission (NLUPC) has reported on land use changes from 2002 - 2012. The Report lays out about 6 general land use zones. And these by 2012 included:-

- **Conservation Areas,**

These are protected areas that include both wildlife and forest areas, equivalent to the Reserved Land category under Land Acts, covering 31.2% of land (294,932 sq.km).

- **Village Settlements,**

These are the land use zones that have very low population densities but are used for grazing, hunting or harvesting of non-woody products, largely in Game Controlled Areas (GCAs), and covering 10.4% of land (98,297 sq.km).

- **Scattered Village Settlements,**

These land use zones are those with low population density, low intensity human activities such as farming, livestock keeping and utilization of natural vegetation, and covering 18% of the land (172,583 sq.km).

- **Urban Settlements**

These are land use zones dominated by high population density, farming, livestock keeping, utilization of natural vegetation and mining, covering 21.5% of the land (203,250sq.km).

- **Water Resources Uses,**

These are land use zones with activities such as Fishing, transportation, water supply and conservation in different types of water bodies, covering 6.2% of the land (58,610 sq.km).

- **Woody & Non-Woody Production.**

In these zones there are no permanent human settlements but they are used for harvesting non-woody products, including ecosystem maintenance, and they cover 12.4% of the land (117,415 sq.km).

Human Settlements in terms of understanding the tenure typology generally occurs in areas that are categorized as Village Settlements, Scattered Village Settlements and in Urban settlements. Remarkable change is seen in Urban Settlements that have had a percentage change of 26%, that is from 166,388 sq.km in 2002 (17% of all land) to 203,250 sq. km in 2012 (21.5% of all land). This means in terms of ten-

ure focus of changing relations ought to be in urban expansion where land delivery services would require extra effort. (See table below)

Land Use Composition in 2002				Land Use Composition in 2012			% -age of Changes
	Land Use Type	Area in Sq. Km	% of Land Use	Land Use Type	Area in Sq. Km	% of Land Use	
1	Conservation	271, 832	28.7	Protected Areas for Conservation	294,932	31.2	8.50%
2	Village Settlements , Grazing, Hunting & Woody Area	97,568	10.3	Grazing	98,297	10.4	0.75%
3	Scattered Village Settlements, Agriculture & Mining	198,253	21.0	Scattered Settlements & Agriculture	172,583	18.3	-12.95%
4	Urban Settlements, Agriculture & Mining	160,388	17.0	Settlements & Agriculture	203,250	21.5	26.72%
5	Water Resources Uses	62,865	6.7	WaterBodies	58,610	6.2	- 6.77%
6	Woody & Non Woody Production	154,181	16.3	Woody & Non Woody Harvesting	117,415	12.4	- 23.85%
	TOTAL	945,087	100%		945,087	100%	

**TABLE - 8C: Land Use Changes, 2002-2012**

#### 4.4.1 Land Resources and Existing Land Uses (National Land Use Framework Plan 2013 – 2033)

Land uses found in Tanzania cover generally the following activities –crop farming, livestock grazing, human settlements, energy generation and harvesting, mining, forestry, infrastructure, protection, conservation, fishing, and tourism.<sup>76</sup> An examination of land use activities between 1960's, 2002 on one hand, and between 2002 to 2012 show that generally, there has been an increase in the exploitation or use of most of the natural resources; and, there has been spatial expansion of these activities in some cases into marginal areas or disaster prone areas. See Table 5C and 5D. Also there has been intensification and consolidation of these activities overtime. Besides such expansion the examination by NLUPC shows that there has been underutilization of some resources, especially marine resources.<sup>77</sup> In the analysis several issues have been indicated, including:-

- a) Under-exploited resources such as marine, non-wood products and tourism attraction especially in the southern parts of the country;
- b) Inadequate Resource management particularly, inadequate control over the exploitation of mineral, forest, fish and water resources.
- c) Increasing conflicts between competing land uses and increasing land degradation;
- d) Poor transport linkages and under-exploitation of potential alternative transport means.
- e) Although water and energy resources contribute significantly to the Gross Domestic Product (GDP), but not optimally exploitation and manage. There is overdependence on Hydroelectric Power (HEP) and wood fuel that is detrimental to the national economy;
- f) Unbalanced distribution and poor spatial organization of human settlements and services;
- g) Low organizational capacity and inadequate institutional coordination;

Analysis of land use activities and trends between 1960s and 2002 indicates that overall there had been an increase in the exploitation or use of most of the natural resources. For some land uses, for instance, crop farming (0.6% to 14%), livestock keeping (1.5% to 25%) and settlements (0.3 to 0.6%), there has been

<sup>76</sup>See NLUPC 'National Land Use Framework Plan 2013 – 2033' MLHSD, August, 2013.

<sup>77</sup>*Ibid.*, p. VI.

expansion of these activities and in some cases into marginal areas or disaster prone areas. The productivity in some land uses is low, falling or not optimal for example in agriculture and fuel wood harvesting and utilization. More recent information based on the 2012 study by the Tanzania Forest Resources Monitoring and Assessment indicate significant changes in land cover composition between over the past decade, most notably in the area under settlements and agriculture increased from 14.6% to 39.8% while the area used for grazing declined from 25% to 10.4%.

A trend analysis of the land use patterns from 2002 to 2012 reveals significant increases in land used for settlements (urban) by 26.7% and conservation activities by 8.5%. The area of land used for wood and non-woody production (harvesting) declined by a significant 23.8% as well as that of scattered (village) settlements and agriculture, which declined by 12.9% over the same period. It is important to note that the area of land under water resources uses (water bodies) declined by 6.8% over the ten year period, a result of the impact of climate change and poor land use and environmental management practices. A description of the various land use categories for the year 2012 is presented in Table 5C. The main characteristics of the six major land use categories have not changed significantly over the last decade.

Land resources of Tanzania include the landmass, soils, vegetation, waters, minerals, oil and gas, wildlife and fisheries. The major land uses and land cover types in the country include agricultural lands, built-up areas, bush land, grassland, mangrove forests, woodlands, forest plantations, water bodies and wetlands. Analysis of land cover changes shows an overall decrease of woody vegetation resources, agricultural lands and non-woody vegetation as shown in **Table 8D**.

**Table 8D: Land Cover and Land Cover Changes 1960 – 2002**

	Cover Type	Coverage in 1960's		Coverage in 2002		Comments on Magnitude	Comments on trends
		Km <sup>2</sup>	%	Km <sup>2</sup>	%		
1	Cultivation	6,070.87	0.6	128,181.21	13.6	Not Dominant	Increasing
2	Bare Soil	0	0	1,411.11	0.2	Low	Increasing
3	Built –up area	2,806.33	0.3	5,512.44	0.6	Not Dominant	Increasing
4	Bush land	12,757.80	1.3	235,001.72	25	Dominant	Increasing
5.	Forest	80,949.74	8.4	47,620.79	5	Low	Decreasing
6	Forest plantation	247.437,494.2	0	1,093.09	0.1	Low	Increasing

7	Grassland	27,144.81	2.8	151,140.04	16	Not Dominant	Increasing
8	Mangrove forest	2,413.28	0.3	1,512.12	0.2	Low	Decreasing
9.	Woodland	716,399.77	74.4	315,841.87	33.2	Dominant	Decreasing
10	Wetlands	96,296.97	10	57,772.60	6.1	Not Dominant	Decreasing
	<b>Total</b>	<b>945,087.00</b>	<b>100</b>	<b>945,087.00</b>	<b>100</b>		

Source: Afri Cover, 2002

The National Land Use Framework Plan, 2013, (NLUFP) seeks presently to depart from the hitherto ad hoc planning into a more systematic planning based on the Plan as a guide for detailed land use planning at zonal, special areas, regional, district and village levels. It seeks to translate in spatial terms the strategies and objectives of the Framework Plan and minimize existing and potential conflicts that arise from sectoral land uses and activities. Most important for land tenure is that the Framework Plan seeks to create compatibility between land uses and land ownership at the national, regional, district and lower levels. In doing so the land use categories have been refined into 8 categories that would guide land use planning from 2013 to 2033. Table 5E gives the new designated land use categories as compared to existing land use categories (i.e. up to 2012). Scattered Village settlements, for example, are now divided into areas for large scale commercial crop cultivation and ranching, and, coastal settlements and areas for ecological functions. The former category would accommodate large scale agricultural zones such as SAGCOT and about 18.7% (176,747 sq.km) which would be planned for investment purposes and discourage intensive urban settlements; whilst the latter category i.e. coastal settlements would only cover 0.4% of land (4,112 sq.km) and center on coastal settlement, fishing, beach development and ecological sites. Community ranching activities would be undertaken within a special land category covering 13.1% of the land (123,460 sq. km) and if this is carried out it would go a long way in developing joint village land use plans and sustainable land use management. Present day Conservation is split into two new land use categories i.e. Community Conservation (5.7%) mainly for new WMAs created from former GCAs; and, Reserved Land (29.7%) which is land targeted for conservation of biodiversity, such as wildlife corridors, wetlands and water catchment areas. See summary under **Table 8E**.

**Table 8E: Existing and Proposed Land Use Categories 2013-2033**

<b>Existing Land Use Categories</b>	<b>Planned Land Use Categories</b>	<b>Area (Sq. km)</b>	<b>% of Total</b>
1. Urban settlements, Agriculture and grazing	Areas for intensification of crop cultivation, grazing and settlements	165,605.0	17.5
2. Scattered Village settlements, Agriculture and grazing	Areas for large scale commercial crop cultivation and ranching	176,747.0	18.7
	Coastal settlements and ecological functions	4,112.0	0.4
3. Grazing, Hunting and conservation	Community ranching areas	123,460.0	13.1
4. Open lands and ecosystem maintenance	Open land uses and ecological function	77,101.0	8.2
5. Water resources	Water resources	63,172.0	6.7
6. Conservation	Community conservation	53,464.0	5.7
	Reserved Lands (Conservation of biodiversity)	281,357.0	29.7
<b>Total</b>		<b>945,018.0</b>	<b>100.0</b>

## Chapter Five: Substantive Findings

### 5.0 Introduction

This chapter deals with the LGAF-Tanzania substantive findings. It details issues ranging from land rights recognition, common lands management, urban planning land use, valuation and taxation, registration and dispute settlement. In each of these aspects there key findings worthy of clear policy action. The findings have been discussed under specific headings to keep track of all the pertinent issues.

### 5.1 Land Tenure Recognition

1.1.1	Individuals' rural land tenure rights are legally recognized and protected in practice			Existing legal framework recognizes and protects rights held by 70% - 90% of the rural population
1.1.1a	Individuals' rural land tenure rights are legally recognized			Existing legal framework recognizes rights held by more than 90% of the rural population
1.1.1b	Individuals' rural land tenure rights are protected in practice			Existing legal framework protects rights held by 50% - 70% of the rural population
1.1.2	Customary tenure rights are legally recognized and protected in practice			Not scored
1.1.3	Indigenous rights to land and forest are legally recognized and protected in practice.			Part-recognition of indigenous rights, which are protected
1.1.4	Urban land tenure rights are legally recognized and protected in practice.			Existing legal framework recognizes and protects rights held by 70% - 90% of the urban population

The Land Acts recognize Occupancy Rights held by a majority of landholders in the rural areas, as Customary Rights of Occupancy (CRO), especially those in predominantly agricultural areas<sup>78</sup>.

Household Indicators (Agriculture)	For 2007/8		
	TANZANIA	Mainland	Zanzibar
<b>POPULATION</b>			
Rural Population involved in Agriculture	31,013,026	30,264,358	748,668
Male/	15,487,216	15,114,238	372,978
Female	15,525,809	15,150,119	375,690
<b>LAND OWNERSHIP/TENURE(%)</b>			
Land Owned under Customary Law	69.3	69.5	39.4
Land Owned by buying	15.7	15.8	7.3
Land owned under Official Land Titles	5.6	5.5	14

Source: NBS 'TANZANIA IN FIGURES 2012' Ministry of Finance, GoT, extract from p. 46.

If one takes account of the unspecified status of Women in the Customary Law Regime and the precariousness of pastoral land tenure and the land rights of Hunters and Gatherers the legal framework may be said to recognize rights held by 70%- 90% of the rural population. The Customary Right of Occupancy is recognized for land acquired from time immemorial through custom and traditional practices of about 120 tribes in Tanzania. This type of landholding is recognized under Sections 7(1)(c), 12(1)(b), 14 and 18 of the Village Land Act, Cap. 114. The division of Village Land as defined under Section 7 and 12 of the Act in-

<sup>78</sup> The Village Land Act Cap.114.

cludes “land which is being occupied or used by an individual or family or group of persons under customary law”. Section 14 outlines how the Customary right of occupancy is recognised. As shown above, in the MKURABITA Report of 2005, for people living in the rural areas about 80% acquire their land through Customary Land holding. Village allocations to individuals account for only 20%.

The Customary Right of Occupancy used to be known as the Deemed Right of Occupancy as under the colonial Land Ordinance of 1923 it was recognized in a backhanded manner through deeming provisions in the definitions sections of that Ordinance. Its incidences were never elaborated under statutory law as Section 18 of the Village Land Act does. Its existence could nevertheless be proved in courts of law through the provisions of the Judicature and Application of Laws Act, Cap. 358, that recognized the applicability of Customary Law. Individuals and Non-Village Members can also hold land directly from allocations by the Village Council and this includes corporations. According to the National Statistics Bureau’s reports from 2008/09 to 2012/13 about 201,602 customary rights of occupancy and 11,131 village certificates were granted.<sup>79</sup>

Financial Year	Certificates of Customary Right of Occupancy (CCRO)	Village Certificates
2008/09	8,815	351
2009/10	46,063	3,283
2010/11	93,400	3,296
2011/12	21,169	3,732
2012/13	32,155	469
<b>TOTAL</b>	<b>201,602</b>	<b>11,131</b>

Source: Ministry of Lands, Housing and Human Settlements Development

### **Individuals' rural land tenure rights are legally recognized**

The Panel noted that if one reviews the Incidents of Customary Rights of Occupancy (CRO) as stipulated under Section 18 of the VLA it is clear that most provisions are ‘deeming provisions’ which essentially give statutory recognition to landholding by native populations of Tanzania and all Villagers who are resident in Village Lands and are so recognized as landholding Members of such Villages. The VLA in essence transforms the hitherto Deemed Right Of Occupancy into a formally recognized CRO whether one has a Certificate of Title (CCRO) or not. All that the landholder has to show is that he or she is holding land and is a recognized resident of a Village as established under the Local Governments Acts under District Councils or Urban Councils. Furthermore the Tenure Typology for 2012 notes that Village land that is under ‘Private individual land use under Certificate of Customary Right of Occupancy (CCRO) (customary individual tenure; indefinite duration; no development conditions)’ covers about an area equal to 4.1 million ha, occupied by a population of 26 million out of Tanzania’s total population of 46,000,000, i.e, more than half of Tanzania’s population. Yet it is common knowledge that individual tenure is mostly subject to customary rules on

<sup>79</sup>Fig. 3.2 at p. 38 in the NBS ‘Basic Facts and Figures on Human Settlements, 2012 – Tanzania Mainland’ Ministry of Finance, GoT, 2012.

family or clan land. Individual land is only land that is self-acquired, mostly in urban areas, or on land allocated by the Village Councils to individuals.

Further the Tenure Typology records that the CRO is recognized under Village Land Act Cap. 114 (VLA). Comparatively few landholders have registered CCROs issued to them, since issuance is contingent on survey of village boundaries and issuance of a certificate of village land [CVL]. A greater percentage hold land based on inheritance and customary succession to land and others having land allocated to them by statutory land allocating authorities such as Village Councils (VC). However they hold the land with unrestricted transferability within the village, but with difficulty outside the Village as consent requirements have to be followed as stipulated under the VLA. El's choice is B. (*Existing legal framework recognizes rights held by 70% - 90% of the rural population*) and his reasoning was the Land Acts recognize Occupancy Rights held by a majority of landholders in the rural areas, as Customary Rights of Occupancy (CRO), especially those in predominantly agricultural areas.<sup>80</sup>

### **Individuals' rural land tenure rights are protected in practice.**

Most Panel members felt that Tanzania's performance on this score is average. To protect rights in practice means understanding all kinds of interests existing in parcels of land and means of the protection clearly stated. The individual is part of a collective in most rural areas. The 'deeming provisions' of the VLA that recognize Customary Landholding do not appear to provide a method for protection of various interests that a landholder in the rural areas would have, e.g. Rights of access, rights of use, rights of disposition, etc. The VLA relegates these incidences to the domain of customary law of the given locality and therefore back to the regime of collective memory of what the traditional law provides. In a situation where formal institutions overlap with traditional ones confusion is always generated regarding applicability of the law which generates uncertainty and finally insecurity. In so far as some communities and areas have no conflict and the Community is stable and ethnically homogeneous the customary practices do offer protection. But in areas where urban meets rural, or ethnic groups are heterogeneous, or land use practices differ (e.g. between farmers and Pastoralists) then land conflicts constantly ensue. One of the Policy means for lessening the insecurity and confusion is to inventory land interest and actually carry out systematic land adjudication and registration of interests. This recordation would surely go a long way to lessen the disputes and insecurity that arises from informality. El's choice is B, *Existing legal framework protects rights held by 50% -70% of the rural population.*

### **Customary tenure rights are legally recognized.**

The rationale for this choice of B is based on grounds similar to the commentary above. It is only important to emphasize that according to MKURABITA's Report of 2005 about 50% of access to rural landholding is through Inheritance. This means that for African populations in Tanzania the main right of access to land is through Family held land. The rules of succession here are based on customary law. The problem with customary law is that it is mostly based on patrilineal principles whereby only the male line is recognized. Which means women's access to land is restricted notwithstanding provisions of the Land Acts that invalidate discriminatory practices in the application of land laws. Furthermore, for communities that occupy land that is communally held, such as Pastoralists, and Hunters/Gatherers, the law has not been definitive in its provisions, though there are various salutary phrases in the Acts that appear to recognize such rights. The Incidences of Customary Right of Occupancy under Section 7(7) of the Village Land act appear to do so but in practice land held by these groups has continually faced rampant acquisitions from state actors, in-

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<sup>80</sup>The Village Land Act Cap.114.

vestors and individuals. The recent violent clashes in Kiteto District are the result of this precariousness landholding based on the community landholding principles.

Some controversy still exists in Tanzania on the recognition of Indigenous Land Tenure. Basically it is a definition problem as most ethnic African communities regard themselves as literally Indigenous within their countries. The distinction between the African societies would be in the sense that the groups that may be recognized as 'indigenous' strictly, may be only those which have 'Group Tenure' over land and are in the Minority. Yet they cannot be squarely said to be having Minority Tenure again as International definitions of Minority Rights do not cover them as well. The UN Convention on Indigenous Peoples of 2007 has set criteria for the recognition of Indigenous peoples: 'Among the main criteria is; people must identify themselves as indigenous peoples, their livelihood system must be attached to that specific environment and finally their cultural system and livelihoods should be directly attached to land'.<sup>81</sup> Tanzania is a signatory of International Conventions that recognize Indigenous people, but there is no active domestic application of these rights in statutes or policies. The IWGIA –Indigenous Peoples NGO based in Denmark generally sums up the situation as follows:

"While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organizing themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Population estimates put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000 and the Akie (Ndorobo) at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalisation. They also experience similar problems in relation to tenure insecurity, poverty and inadequate political representation"<sup>82</sup>

Similarly local Human Rights Organizations like the LHRC, HakiArdhi, PINGOs, TAPHGO, CORDS, etc are not impressed by the Government lackluster performance in this area. The LHRC in its 2012 Human Rights Report of Tanzania notes its disappointment by stating:

The Land Acts recognize forms of indigenous rights to land and natural resources rather indirectly through Group Tenure, this takes care of the pastoralists who generally hold land as a community as together they have rights over pasture lands for livestock keeping and access to other resources. In Tanzania such groups are like those in Maasai lands and the Barabaig pastoralists in the Hanang Districts. Similarly the Hadzabe Hunters and Gatherers have rights over forest and bush lands that must be guaranteed over the natural resources that assure them of their livelihoods. However, the incidences of such tenure remain either problematic or unregulated as they are recognized strictly under customary models of land or range management. A typical example of the vagueness of statutory provisions in relation to such tenure is in relation to traditional Pastoralists (Maasai, Barabaig, Gogo, Sukuma, etc.) who use nomadic methods of range utilization and therefore require extensive pasture on marginal lands. The law is unclear on how exactly rangelands have to be secured by traditional pastoralists and under what forms of management. Should they devise modern organizational forms or retain the traditional range management organization? If it is the later how is a traditional grazing-land group to be registered? The failures of the Range Management Act 1964 are lessons against haphazard legislative provisions that are not sensitive to the dynamics of range management for traditional pastoralists. The case is similar or worse for the hunters and gatherers who 'own' forests and game land.

Section 20 (4) (d) of the Village Land Act, Cap. 114 recognizes the application of customary law provided it is not repugnant to the Land Policy and statutory law; and in relation to pastoralists it states:

<sup>81</sup> LHRC 'Tanzania Human Rights Report 2012' p. 180 – 184.

<sup>82</sup> Source: <http://www.iwgia.org/regions/africa/tanzania>.

The customary law which shall be applied to determine any matters referred to in subsections (1), (2) and (3) shall be in the case of any land customarily used by pastoralists, the customary law recognized as such by those pastoralists.

Failure to provide for a traditional land administration framework has serious consequences in that the Village Council may be totally unfit to run a traditional range management scheme and yet no legislation exists to recognize the authority of say a Maasai traditional pasture management organization – recognition of the law applicable, per se, does not answer the institutional issue. In this case one would either choose B. or C in this Dimension and be relatively right in the case of Tanzania. The reason why C is favored here is that these Groups, led by NGOs such as PINGOs, in the recent Constitutional Reform process worked so hard to have the recognition of their right to their own kind of livelihoods be incorporated in Constitutional protections. According to IWGIA 2014 Report on Tanzania's situation 'From the very beginning, indigenous peoples organized themselves under a joint new mechanism called the "Pastoralists and Hunter-Gatherers Katiba Initiative" (Kai Initiative), which brings together more than 14 pastoralist and hunter/gatherer organizations with a view to engaging in the constitutional review process. The statutory 'protections' in existence are rather of general nature and do not cover the whole range of indigenous rights, for example, the rights of Hunters and Gatherers are not mentioned in the Land acts'.<sup>83</sup> The proposed Constitution has a Part on Land (Ardhi) and in connection to protection of rights, including Indigenous peoples, proposed Article 23 (2) (c) states: Ibara ya 23 (2) (c)

*...haki ya kumiliki, kutumia, kuendeleza na kuhifadhi ardhi kwa ajili ya mtu yeyote au makundi ya jamii ya kiwemo wakulima, wavuvi, wafugaji, wachimbaji madini na makundi madogo itatambuliwa na kulindwa kwa mujibuwa Katiba hii;*<sup>84</sup>

The English translation (from Swahili) could state: '

The right to own land, to use it, develop and sustain it for every person or social groups including farmers, fishermen, livestock keepers, miners and smaller groups is recognised and protected under this Constitution'.

Within these general terms it is assumed, by stakeholders, that the right of indigenous people to own and hold land as acceptable to their society, culture and system of livelihood would be protected.

### **Urban land tenure rights are legally recognized**

In the 2005 MKURABITA Report (Vol. II) it is claimed that 86% of Land owners in Urban areas lack a secure legal title to land. Kyessi, an Assistant Commissioner for Lands, argues that 80% of the all residential houses in Dar es Salaam (400,000 out of 500,000) are found in unplanned settlements, and 70% of Dar es Salaam residents live in unplanned settlement, with no formal legal recognition. In other words, Dar Es Salaam is a City of 'Squatters'. Salome Sijaona, the Permanent Secretary of the Ministry of Lands, notes that only 33% of urban people hold or access Land through Government Allocation<sup>85</sup>.

<sup>83</sup> <http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2014/TanzaniaIW2014.pdf>.

<sup>84</sup> See - <http://www.bungemaalum.go.tz/publications/katiba>.

<sup>85</sup> See generally: Kombe, Wilbard & Volker Kreibich "Informal Land Management in Tanzania and the Misconception about its illegality" (2001); Kauzeni, A. S. et al 1993. "Land use Planning and Resource Assessment in Tanzania: A Case Study" [IRA, Dar es Salaam, IIED, Lond.]; Gastorn, K. G. 2003 "Schemes of Regularisation of Land Rights: Old package in a New approach" (Faculty of Law, University of Dar es Salaam – Mimeo); URT (1994) Report of the Presidential Commission of Inquiry into Land Matters (Vol.1) [MLHUD + SIAS, Uppsala Sweden]; Sijaona, Salome, 2002 'Identification and characterization of Priority and Critical Land Issues in Tanzania' [Country Case Study – Tanzania for Kampala Workshop, MLHUD, Dar es Salaam]; Kyessi, Sarah A. 2008 Formalisation of Landed Properties in unplanned settlements: For Residential Licenses to full Title in Tanzania [MLHSD, 2008]; Josefsson, Emma & Aberg, Pia (2005) An Evaluation of the Land Laws in Tanzania (Master's Thesis, SHU, Sweden).

[Legal Framework for allocation the recognition of Property Rights – See **MKURABITA TABLE III. 3.1)**

Formalized properties in the Urban Areas are paradoxically much less than in the Rural Areas. Urban Land is in the main formalized through the grant of Rights of Occupancy which are predicated upon the availability of surveyed lands. Since urban areas are largely in the General Land category it is the Commissioner for Lands who is the land manager for such lands. Formal legal recognitions are not made through customary Law but rather statutory law in the form of certificates of Rights of Occupancy or through Residential Licences given by Municipal authorities of Local Government. In a City like Dar es Salaam studies show surveyed land can cater for less than 30% of the total households. The mitigating factor is that the Residential Licences programs may have increased the formalized properties to more than 30%. In a study carried out in 2006 Prof. Kironde of Ardhi University notes that most landed properties in Tanzania are not documented or mapped to facilitate land transactions or mapped for effective legal recognition. Only 150,000 land parcels were then registered nationwide. As a result, 90% of Tanzanians cannot be located through the property registration system which would then allow them, if they so wished, to gain access to collateral-based credit and exercise their rights as contracting parties and citizens. This means the majority of landowners lack formal security. Only 2% of rural land is held under statutory tenure. In urban areas some 80% of land holdings are informal without formal titles according to his view. He further noted:

Tanzania is urbanizing very rapidly. From 1980 to 1997, the urban population grew at a rate of about 10 percent per annum. Around 36 percent of the total population of 34,569,000 is currently living in urban areas, if population living in townships and trade centres is included. Dar-es-Salaam alone, the largest urban area in the country, is said to receive between 100,000 to 300,000 people a year. Most of these migrants live in unserviced parts of the city with environmental conditions, which threaten their own lives and health. Here, land is informally acquired and in most cases it carries no legal evidence of ownership. Studies by the Ministry of Lands and Human Settlements Development have shown that about 80% of people in urban areas live in unplanned settlements. This rapidly growing population means extra stress on land resources.<sup>86</sup>

The MKURABITA overview of informality in 2007 confirms the increasing informality and suggests that the strategies taken for protecting informal tenure are still problematic: i.e. Validation, Regularization & Residential Licenses.<sup>87</sup> This situation appears to be persistent to date and statistical reports are indicative of this despite of the efforts made by Government to regularise informal Settlements in urban areas, take a gentle approach towards squatters through a variety of strategies including validation of informal properties, and encourage private developers to acquire large tracts of land for Housing Schemes. By 2009 the Human Settlements Report noted:

In urban areas increasing trend of migration of people from rural to urban areas for economic reasons leads to the growth of unplanned settlements and slums. The rapid growth of cities and towns puts an ever increasing pressure on the urban infrastructure (transport, housing, water, and sanitation, energy and crimes). Urban housing is a good example of the pressures that fast population growth will exert on the social and physical infrastructure of the towns and cities.

The 2012 population census report notes that the annual growth rate of the Urban population is 5.2 percent for Tanzania mainland and the level of urbanization in Tanzania stands at 29.1%. As compared to the annual growth rate of the Rural areas of only 1.8% Tanzania is rapidly urbanizing, the rural areas face stagnation. While in 1967 the urbanization figure stood at 5.7% by 2012 it had grown to 29.1%! People living in the rural areas decreased from 94.3% in 1967 to 70.9 in 2012.<sup>88</sup> With such phenomenal urbanization land

<sup>86</sup>Kironde, J.M. Lusugga 'Land Tenure, Land Use, And Land Reform In Tanzania: A Synopsis' (ILEG 2006).

<sup>87</sup>See MKURABITA "Baseline Study of Informal Properties and Businesses in Dar es Salaam: Final Report" [ Prepared by the Economic Research Bureau of the University of Dar es Salaam and the National Bureau of Statistics July 2007].

<sup>88</sup>NBS 'Basic Facts and Figures, 2012 on Human Settlements in Tanzania Mainland' Ministry of Finance, GoT, 2012 pp. 25 – 29.

delivery services at the present are ill equipped to provide formally recognized land to the exploding urban population. The stress on infrastructure, social services, including provision of land, is therefore high and government's land allocation authorities can hardly cope given their resources and preparedness. EI's choice is C: *Existing legal framework recognizes rights held by 50% -70% of the urban population*

### LGI 1.2. Respect for and enforcement of rights

1.2.1	Accessible Opportunities For Tenure individualization Exist.					The law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.
1.2.2	Individually held land in Rural areas is Formally Registered.					Less than 50%of individual land in rural areas is formally registered.
1.2.3	Individually held land in urban areas is Formally Registered.					Less than 50%of individual land in urban areas is formally registered.
1.2.4	The number of illegal land Sales is low.					The number of illegal land transactions is high and some are unambiguously identified on a routine basis
1.2.5	The number of Illegal lease transactions is low.					Existing legal restrictions on land leases are clearly identified but not fully justified or accepted by land users, so that compliance is partial
1.2.6	Women's Rights are Registered and recognized in Practice in both Urban and Rural areas.					Less than 50% of the cases are effectively recorded.
1.2.7	Women's property Rights to land are equal to those by Men.					Equality of women's property rights to those by men is established by law, but there are considerable limitations to exercising such rights in practice.

This Dimension essentially refers to Individualization of Customary Tenure that is based on Group Tenure. The Tanzanian situation has certain historical complexity in the sense that while on the one hand individualization may be achieved legally where individuals so desire, at the same time the law protects Group Tenure, such as Clan or Family land, in such a manner that makes individualization difficult and risky. The Land Acts, especially the Village Land Act, does provide opportunities for transformation of Collective or Communal Titles into individual titles.<sup>89</sup> But again the same acts are totally unclear about the INCIDENCES of the CCRO, it relegates the definition of such a tenure to CUSTOMARY LAW and the specificity of the customary definition of the incidences would vary from one locality to the next.<sup>90</sup> Hans Cory tried to formalize the recognition of Customary Tenure which resulted in the Customary Law Declarations of 1963. To date those declarations are the official reflection of customary law of persons, but they do not cover Land Law.

Under the present law it is only on the application of an Individual to the Village Council that will initiate the process of land allocation out of the land category within the Village that the Council has authority over it. Then the individual will be granted a Customary Right of Occupancy. Where registration is possible then the particular individual may register his land and obtain a Certificate of the Customary Right of Occupancy (CCRO). *EI's choice is C. The law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.*

### Individually held land in rural areas is formally registered

<sup>89</sup> Section 30, Village Land Act, Cap.114 – allows assignment of the Customary Title to another person provided there is consent from the Village Council. Also see Sanga, RomanusTitus 'Assessing the Impact of Customary land Rights Registration on Credit Access by Farmers in Tanzania - A Case Study in Mbozi District' ITC, International Institute for Geo-Information, The Netherlands, 2009.

<sup>90</sup> Section 18 & 20, Cap.114.

There is a contradictory situation where on one hand you have individuals who have self-acquired properties in Villages and are not registered, and also where Individuals within Villages have registered customary titles. Figures that are in existence are those related to registered customary titles and not those which are unregistered. Therefore the figures that are displayed above: According to the National Statistics Bureau's reports from 2008/09 to 2012/13 about 201,602 customary rights of occupancy and 11,131 village certificates were granted.

For Village Formalization and Registrations the Property and Business Formalization Program (MKURABITA) has done significant amount of work in the area. In its current Report (August, 2014) between 2008 – 2008, MKURABITA has worked in 22 Regions in Tanzania, and 39 Districts, where in 94, Villages capacity Building programs have been carried out including establishment of 42 Village Registries in 17 Villages that are required by the Village Land Act.<sup>91</sup> El's choice is *D: Less than 50% of individual land in rural areas is formally registered.*

### **Individually held land in urban areas is formally registered**

Individually held land is usually registrable in Urban areas. Whether it is actually registered is another matter, verifiable data appears scanty much as the Ministry of Lands has set up a Land Information System in the Head Office from about 2007. Researchers on informality of landholding in urban areas such as Professors Kombe and Kironde are of the view that informal land occupation by and large outpaces the registration processes.<sup>92</sup> There are some ways that urban land may be registered, including, first, direct registration of a granted Right of Occupancy (GRO) under the Land Registration Act, Cap. 334. The assumption being that the land is surveyed, and is general land, and has been allocated as provided under the Urban Land Planning Act, 2007 and the Land Act, Cap. 334. Second one may acquire formality on unregistered land through validation of interests. The process is provided for under the Land Act, Cap. 113.

According to Gastorn Kennedy this process was somehow limited under the Act itself as it was supposed to be undertaken within a certain timeframe from the inception or commencement of the Act itself, counted from 1st of May 2001. It is therefore arguable if actually a significant number of urban properties managed to be registered through Validation and whether this kind of registration is still current and available to those interested. The third, is the Regularization process as envisaged under the Land Act, Cap. 113. According to both Sheuya, Kyessi, and Gastorn Kennedy this process is a good example of slum or informal settlements upgrading schemes. It is a relatively comprehensive process that involves the standard titling steps of adjudication of landholdings, consolidation, and, registration of formal titles to Land. It has been undertaken by authorities in the Urban areas, especially Dar Es Salaam, where there was originally the 1st and 2nd National Sites and Services and Squatter Upgrading Projects from 1974 to 1984, funded by the World Bank and covered areas like Manzese, Sinza, Mabibo, Mburahati, Mikocheni and Kijitonyama. The projects became costly and unmanageable by end of 1980s. Then there was the Community-Managed Upgrading Project in Hann- Nassif Area, Dar Es Salaam. This project was managed by a group of stakeholders from the community, government, Ardhi university, NGOs, international agencies, etc.,. The WAT -Human Settlements Trust, a women NGO, became central in securing titles for the project, which made it relatively successful and a Model. Regularization therefore appears as the culminating point for informal settlements upgrading to formal land holding and is completed by the grant of a Residential License to the individual

<sup>91</sup>MKURABITA, 'Rural Properties Formalization' August, 2014.

<sup>92</sup>Sheuya, Shaaban 'Informal Settlements and Finance in Dar Es Salaam, Tanzania' UN HABITAT, Nairobi, 2010. This Report is the most current comprehensive evaluation of informal settlements, using Dar es Salaam as an example. Both works of Kironde, Kombe, Kyessi, etc are evaluated critically and Government and NGO initiatives at upgrading informality in Urban areas.

landholder. The project creates the Comprehensive Urban Land Property Register for Economic empowerment of residents in Unplanned settlements in Dar es Salaam, where Residential Licenses are registered. The targeted properties are 220,000 plots and by the end of the 1st phase of the project 61,000 (27.7%) Residential Licenses had been issued by April 2007 according to Sheuya. The 2nd phase was to start after funding was obtained as the government's target is to accomplish phase 2 by 2020. Other Agencies such as the Property and Business Formalization Program (MKURABITA) has programs of formalization based on Community Participation approach in the Njombe Town Council (Njombe Region), Morogoro Municipality (Morogoro Region), and, Arusha City (Arusha Region). Thus the program is in other urban centres, as well.<sup>93</sup> According to its recent estimates MKURABITA gives a projection of 1,166,000 Plots requiring Licenses in unplanned Settlements in 25 Regional Headquarters and 106 District Headquarters across Tanzania. El's choice is *D: Less than 50% of individual land in urban areas is formally registered.*

### **The number of illegal land sales is low**

Based on the high informality of landholding one can say sales outside the purview of 'formal law' are high.<sup>94</sup> It is rather obvious that many of these transactions would not be monitored by the land allocating authorities, but some can be unambiguously identified. Exact figures are not recorded anywhere as no registration system exists for transactions of these nature. Both Kironde and Kyessi seem to suggest that the reckoning of the extent of informal settlements in urban areas is largely based on projections that give workable figures.<sup>95</sup> The presumptions of illegality of these transactions are doubtful as Courts enforce regularly these agreements especially if one assumes that informal landholding is a form of Customary Law that is similarly rife with elements of informality, such as lack of records, consent of parties being the guide, and community recognition. *El's choice is C: The number of illegal land transactions is high and some are unambiguously identified on a routine basis.*

### **The number of illegal lease transactions is low**

The law of leases forms Part. 9 of the Land Act, Cap. 113, hence the law per se is clearly identifiable. Under the Village Land Act, Cap. 114, there are provisions for Customary leases of land, where the incidences of such land occupation may be similar to those provided under the Land Act, Cap. 113. The grant allocated by the authorities is a Right of Occupancy which essentially is periodic, and not in excess of 99 years for General Land grants, as such it is periodic just as leases. The difference is while the Right of Occupancy is granted by the President through the Commissioner for Lands, a lease is based on contract between a holder of a Right of Occupancy and another person, and is therefore a private transaction, largely guided by statutory law and common law principles on the relationship between landlord and tenant. In the case of informal settlements which, as noted above, outstrip the formal settlements, the Landlords and Tenants hardly follow formal law although they may have a record of the transaction. However, in cases of enforcement of leases they often find recourse to formal Courts, though the transaction itself goes unregulated.

Similarly, formal leases are not strictly required to be registered. The Land Registration Act, Cap. 334 only requires leases of more than 5 years to be compulsorily registered. Which means many leases that are for

<sup>93</sup>MKURABITA 'Formalization of Informal Urban settlements in Tanzania' 2012.

<sup>94</sup>Seleki, Blasi 'Urban Housing problems in Tanzania – some Possible Interventions', Ministry of Lands, 2001.

<sup>95</sup>Kironde, J.M. (1992) 'Land Scarcity Amidst Land Abundance: paradoxes of Tanzania's urban Land Policy' Open House International 17:1, 3-10; and Kironde (2000) ' Understanding Land markets in African urban Areas: The Case of Dar Es Salaam, Tanzania' Habitat international 24, 151-165; Kombe, W.J. (2005) 'Land Use Dynamics in Peri-Urban areas and their Implications on Urban Growth and Form: the Case of Dar Es Salaam, Tanzania' Habitat International, 29, 113-135.

shorter periods than 5 years, such as month to month or year to year tenancies, go unregistered and 'under the radar' of the authorities. The Income Tax laws require that Tenants should withhold 15% of the Rent as Withholding Tax, but here as well rarely does withholding happen. Figures are therefore scanty and one may just assume that transactions of this nature are high as the number of owners of residential premises is outstripped by the number of residents, which means a majority of residents of Dar es Salaam are tenants, and where one considers the incidence of owner-occupiers, who own houses but do not rent, then the number of tenants gets even higher. A Shelter Afrique Study in 2012 estimates that 80% of urban residents in Tanzania are tenants.<sup>96</sup> *El's choice is C: Existing legal restrictions on land leases are clearly identified but not fully justified or accepted by land users, so that compliance is partial.*

### **Women's rights are registered and recognized in practice in both urban and rural areas**

Although there is general lack of figures Women would have much less percentage in having land rights. In the Formal area of the Law of course Women's Rights are recognized. Women's land rights and interests are protected in the Land Acts, yet given the patriarchal mindset, a sociological problem at that, the protection is much below expectation in practice. [See WAT, TNGP, Reports]. According to the Women Advancement Trust (WAT) Report (2001) women are in reality barred to access land by tradition & culture, in that the patrilineal tribal system does not recognize landholding by women; the property registration system is averse to registration of women as landholders; when the husband dies the widow becomes extremely insecure as the husband's relatives completely strip her of all the matrimonial property; where a husband dies of HIV/AIDS the woman becomes a pariah and is isolated from the family, as such she cannot access the family properties, including land; and, lastly, the formal courts are usually least accessed by women who out of fear or illiteracy are the last to access the Courts. *El's choice is D: Less than 50% of the cases are effectively recorded*

### **Women's property rights to land are equal to those by men**

The law has equality of access to land and now the Constitution that is proposed has a direct provision that guarantees women's access to land to be in every sense equal to that of men. The government has taken many steps to create favourable conditions under which women are to be regarded as equal to men in terms of Human, Social and Economic Rights. The Ministry of Community Development, Gender & Children has gender empowerment programs:

- ✓ Economic Empowerment of Women and Poverty Eradication Eg. Establishment of the Women's Bank
- ✓ Promotion of Women's Employment Opportunities and equal treatment in Working Places.
- ✓ Improvement of Women's Access to Education and Training.
- ✓ Increasing of Legal capacity that seeks to redraft Inheritance Laws, the Law of Marriage Act, and Implementation of international Agreements on Gender equality

The existing social structures are still the main cause of limits in bringing about actual equality in practice.

*El's choice is C: Equality of women's property rights to those by men is established by law, but there are considerable limitations to exercising such rights in practice.*

## **5.2 Forests, Common Property Resources, and Rural Land Use in Tanzania**

### **2.1. Rights to forest and common lands**

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<sup>96</sup> Shelter Afrique 'Study on the Housing Sector – Tanzania' Urban Solutions, 2012.

2.1 Rights to forest and common lands					
2.1.1	Forests are clearly identified in law and responsibility for use is clearly assigned.				Forests are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.
2.1.2	Common lands are clearly identified in law and responsibility for use is clearly assigned.				Common lands are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.
2.1.3	Rural group rights are formally recognized and can be enforced.				The tenure of most groups in rural areas is formally recognized and clear regulations regarding groups' internal organization and legal representation exist and can be enforced.
2.1.4	Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice.				Users' rights to key natural resources are legally recognized and consistently and effectively protected in practice throughout.
2.1.5	Multiple rights over common land and natural resources on these lands can legally coexist.				Co-existence is possible by law, and respected in practice but mechanisms to resolve disputes are often inadequate.
2.1.6	Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.				Co-existence is legally possible and respected in practice but mechanisms to resolve disputes are often inadequate.
2.1.7	Multiple rights over land and mining/ other sub-soil resources located on the same plot can legally coexist.				Co-existence is not possible by law; mining rights override land rights.
2.1.8	Accessible opportunities exist for mapping and recording of group rights.				The law provides opportunities for those holding group land under customary, group, or collective tenures to record and map land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.
2.1.9	Boundary demarcation of communal land.				10-40% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.

### **Forests are clearly identified in law and responsibility for use is clearly assigned**

The Forest Act clearly identifies categories of forests that can be established and the vesting of management responsibilities. The forests are :- (National Forest Reserves) NFRs , (Local Authority Forest Reserves) LAFRs, (Village Land Forest Reserves) VLFRs and private forests (Section 4 of the Forest Act). Part IV of the Act deals with Private Forests and part V with Forest Reserves encompassing (Forest Reserves other than Village and Community Forest Reserves, Village Land Forest Reserves and Community Forest Reserves) In terms of community based forest reserves; the most common form of CBFM is the establishment of VLFRs. By 2008, the country had a total of 2,328 villages from 63 different districts that had engaged in PFM, out of which only 550 had declared / gazetted village forest or signed Joint Management Agreements.<sup>97</sup> See Table for general distribution of forests in Tanzania. *El's choice is: B: Forests are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.*

### **Common lands are clearly identified in law and responsibility for use is clearly assigned.**

Rural commons include rangelands, wildlife, water sources, forests, wetlands and so on. The Wildlife Conservation Act, Forest Act, Beekeeping Act, Village Land Act, Land Act Cap 114 [R.E. 2002], Water Resources Management Act (2009), Fisheries Act, National Irrigation Master Plan, Wildlife Conservation Act (2009), Marine Parks and Reserves Act [R.E. Cap 146] and the Grazing Land and Animal Feed Resources Act have provisions addressing issues of common lands. In practice however, property rights in rural commons are opaque. This is partly due to lack of village land use plans. Clearly defined land use plans provide specific areas for various uses including lands under commons. Lack of land use plans fuel conflicts among different land users. For instance, pastoralists, who are transhumant, find it difficult to enforce their property rights over common land due to lack of clearly defined land use plans and secure property rights. Commons which may be considered marginal land such as pasture lands, catchments, and marshy lands are particularly vulnerable. There is likelihood that village authorities can allocate village communal or reserves

<sup>97</sup> URT, VPO (February 2013), National Strategy for Reduced Emissions from Deforestation and Forest Degradation (REDD+), Government Printer –Dar es Salaam –Tanzania.

lands to potential investors, thus privatizing part of the commons. While individual land owners could be issued with a CCRO, the same is not issued with regard to communal land which puts communal land rights at a disadvantage. One of the evidences that communal land rights are poorly recognized is the non-compensation of pastoralists and other communal land users, whenever their land is expropriated. *EI's choice is B: Common lands are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.*

### **Rural group rights are formally recognized and can be enforced.**

The Land Act and Village Land Act recognize occupancy rights of majority of landholders in rural areas, especially those in predominantly agricultural areas. If one takes account of the unspecified status of women in the customary law regime and the precariousness of pastoral tenure and those of hunters and gatherers the legal framework may be said to recognize rights held by 70%- 90% of the rural population. The Land Acts also recognize forms of group tenure but the incidences of such tenure remains either problematic or unregulated as they are not recognized strictly under customary models of land or range management. [CORDS Reports, MKURABITA, Tenga et al Study on Options for Pastoralists [2008], etc].

Thus, the Land Acts define rural land rights as being individual or clan realized through the operation of customary tenure. Village land also includes communal land as well as land reserved for future expansion. A certificate of village land issued by the Commissioner for Lands to a registered village confers to the Village council powers to manage village land. Rights could be vague where a village is not registered, or where village boundaries are not agreed upon with neighbouring villages or other land managers such as urban, reserved land or general land authorities. The Village Land Act establishes and defines village land. This includes;

Land within the boundaries of the village registered under section 22 of the Local Government Act No. 7 of 1982; Land designated under the Land Tenure Village Settlements Act, 1965; land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force before the coming into operation of the Villager Land Act whether that administrative procedure based on or conducted in accordance with any statute law or general principles of either received or customary law applying in Tanzania and whether that demarcation has been formally approved or gazetted or not; the land the boundaries of which have been agreed upon between the Village Council claiming jurisdiction over that land and neighboring entities; and land other than the reserved land that the villagers have been using for the last 12 years before the enactment of the VLA as village land in whatever manner. Individual land owners could be issued with a CCRO. Communal land rights holders include villager-farmers as well as pastoralists and hunters and gatherers. *EI's choice is A: The tenure of most groups in rural areas is formally recognized and clear regulations regarding groups' internal organization and legal representation exist and can be enforced.*

### **Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice**

Users' rights to natural resources such as water, wildlife, fisheries, forest resources, etc. are well provided for and protected by law. Individuals have the right of access and use of the relevant resources subject to compliance with the law. Upon securing permits, resources such as forest, minerals, fisheries, gas etc can be extracted, harvested or disposed of by the right holders. Sometimes individuals default by not obtaining the required permits either because of the strictness of procedures, fees involved or associated bureaucracy to secure one. *EI's choice is A: Users' rights to key natural resources are legally recognized and consistently and effectively protected in practice throughout.*

### **Multiple rights over common land and natural resources on these lands can legally coexist.**

Multiple rights may exist such as right to cultivate, graze, hunt and gathering. Section 4(3) of the Land Act provides that [e]very person lawfully occupying land, whether under a right of occupancy, wherever that right of occupancy was granted, or deemed to have been granted, or under customary tenure, occupies and has always occupied that land, the occupation of such land shall be deemed to be property and include the use of land from time to time for de-pasturing stock under customary tenure. Hence, the law confers multiple rights but the main problem is shortage of dispute settlement mechanisms. The Land Act, Village Land Act and the Land (Disputes) Act have provided mechanisms for dealing with land related disputes but the framework appears to jam due to increase in number of unresolved cases. Fights between pastoral communities such as the Maasai, and Sukuma, fishing communities such as rival fishing communities in Lake Victoria, and between pastoral and farming communities in Kilosa are partly due to inefficiency of the dispute settlement framework and shortage of land to meet the demands of the competing users. *El's choice is B: Co-existence is possible by law, and respected in practice but mechanisms to resolve disputes are often inadequate.*

The Legal framework follows the English framework where land is taken to include everything attached to the land.<sup>98</sup> On that basis trees and all such other resources attached to the land run with the land save for chattels. The exception though is with regard to protected natural resources which user right is dependent on a separate right of use. The right of use must be applied for through the relevant authorities and the use must observe the restrictions of use stipulate in the user permit / licence. In particular, all natural resources are deemed to be public property vested in the President as a custodian for the benefit of all citizens.<sup>99</sup> Hence, the right of the state is that of the land lord and the occupier stands as a tenant. Co-existence in the current framework can arise between individuals namely; (occupier) land lord and tenant, occupier and licensee, lender and borrower, servient owner(s) and dominant owner(s) on easements. In Zanzibar an occupier of land can own trees on the land separate from the right of occupancy.<sup>100</sup> The ownership of the trees must therefore be registered together with the ownership of the land on which they exist and if the ownership of the trees is not separately registered, there will be a rebuttable presumption that the trees are included in the right of occupancy.<sup>101</sup> *El's choice is B: Co-existence is legally possible and respected in practice but mechanisms to resolve disputes are often inadequate.*

### **Multiple rights over land and mining/ other sub-soil resources located on the same plot can legally coexist .**

Right to mining and subsoil resources are the subject of a different regime. One must apply for such right namely; mineral right etc. Section 22(2) of the Land Act provides that,

'[a] granted right of occupancy shall not confer on the holder any water rights or rights over the foreshore unless those rights are expressly mentioned nor shall it confer on the holder or any person acting under the authority of the holder any rights to mines, minerals, or gas or the right to ap-

<sup>98</sup>*Quocquid plantatur solo solo cedit.*

<sup>99</sup>See section 4(1) of the Land Act, [Cap. 113, R.E. 2002](1) [a]ll land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania; under section 5 of the Mining Act (2010) [t]he entire property and control over minerals on, in or under the land to which the Act applies is vested in the United Republic; Section 4(1) of the Wildlife Conservation Act (2009) [a]ll animals in Tanzania shall continue to be public property and remain vested in the President as a trustee for and on behalf of the people of Tanzania; Section 10(1) of the Water Resources Management Act (2009) provides that [a]ll water resources in mainland Tanzania shall continue to be public water and vested in the President as the trustee for and on behalf of citizens.

<sup>100</sup>Land Tenure Act of Zanzibar (1992)section 19.

<sup>101</sup>*Ibid.*

propriate and remove from the country for gain or for purposes of research of any kind any flora or fauna naturally occurring or present on the land or any palaeontological or archaeological remains found on the land.’

Hence, a right of occupancy confers limited rights though it has all the attributes stipulated under section 22(1) of the Land Act. Land occupiers including customary land occupiers have been evicted in favour of mining rights. As a result there have been protracted conflicts in mining areas due to relocation of occupiers in favour of mining rights. The legal basis of the relocating is acquisition for public purpose under the provisions of the Land Acquisition Act.<sup>102</sup> Under section 3 of that Act,

‘[t]he President may, subject to the provisions of this Act, acquire any land for any estate or term where such land is required for any public purpose.’ Public purpose under section 4(1)(e) is deemed to include acquisition for or in connection with mining for minerals or oil.

The problem that is apparent in this trend is impossibility of co-existence of land rights and mining rights/subsoil resources. This is often evidenced in preferential rights conferred to mineral right holder over land right holders. There has also been inadequate compensation framework that fails to take into account the potential of the underground resources when assessing the amount of compensation. The result is longstanding disputes between the Government and mining investors on the one hand and local communities who feel to be treated unfairly on the other hand. Currently, there are ongoing initiatives to rework the Land Acquisition Act and come up with a law on Land Acquisition and Compensation. It is not clear if such hurdle will be addressed in the law. El’s choice is *D: Co-existence is not possible by law; mining rights override land rights*.

### **Accessible opportunities exist for mapping and recording of group rights**

The Land Acts, especially the Village Land Act, does provide opportunities for collective or communal titles. Hence, customary right of occupancy can be occupied or used by an individual or family or group of persons under customary law for communal, individual occupation or use.<sup>103</sup> The village council is mandated to grant land to a villager or a group of citizens who are villagers or any other citizens, to be evidenced by means of a document to be known as a certificate of customary title. The village council is required to maintain a register of communal village land in accordance with any rules which may be prescribed.<sup>104</sup> Also, any land which has been set aside by a village council or village assembly for community or public occupation and use has to be registered by the village council.<sup>105</sup> Any association of persons formed in accordance with customary law for the purpose of occupying, using and managing land or any association which has come together and is recognized with the community of which it is a part as an association of persons formed to occupy, use and manage land in peri-urban area, shall, if the persons forming the association registers it in accordance with the provisions of the Trustees Cap.375 Incorporation Ordinance, be recognized as such by the Village Land Act. Generally the law provide for the need and possibility of registering the right of occupancy. The problem has always been lack of necessary infrastructure in most villages to undertake the registration. So far systematic registration has not been possible but only spot based on pilot projects expected to be scaled up to possibly cover the whole country.

According to the Revised SPILL 2013, significant work has been undertaken in establishing a new geodetic network for Tanzania. This work will be completed in the proposed 2-year extension to PSCP. Limited

<sup>102</sup>No. 47 of 1967 [Cap. 118 R.E. 2002].

<sup>103</sup> Section 12(1) of the Village Land Act.

<sup>104</sup> Section 13(6) of the Village Land Act.

<sup>105</sup>*Ibid*, section 13(7).

mapping has been undertaken. High Resolution satellite imagery has been procured for a range of applications including the systematic registration pilots in Babati and Bariadi. In 2015 7,169 villages had certificates while 182,690 households had been issued with CCROs. The 2013 SPILL report also shows that in March 2013, 9,451 villages had been surveyed. This shows a positive trend in the survey and recordation rights in villages. *El's choice is C: The law provides opportunities for those holding group land under customary, group, or collective tenures to record and map land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.*

### **Boundary demarcation of communal land**

The authority to register a village lies with the Registrar of Villages in the Ministry of Local Government. The Ministry of Lands however demarcates (maps) the village boundaries, after getting agreements from the stakeholders. After the village has been demarcated, the Commissioner issues to the village, a certificate of village land. The certificate confers upon the Village Council the authority to manage the land. There is no provision that requires that the village formally verify the boundaries stipulated in the certificate.

Once it is issued, the certificate of village land confers the management functions of land to the village council and affirms the occupation and use of the village land by the villagers; or affirms the use of land, for purposes of pasturing cattle.<sup>106</sup> As of 2015 7,169 villages have certificates. In March 2013 the Surveys and Mapping Division reported that they had surveyed 10,500 villages and had 1,317 villages to survey<sup>107</sup> implying that some of the villages do not yet know the boundaries of their village land. There are also many conflicts related to village boundaries.

It needs to be pointed out that there are many villages that are growing up spontaneously or as a result of official subdivision of existing villages. The process of village registration and village land demarcation is not taking place at the same pace as the growing in the number of villages. Essentially, the Registrar is empowered whenever he is satisfied that a prescribed number of households have settled and made their household within any area of Mainland Tanzania, and that the boundaries of that area can be particularly defined, to register that area as a village.<sup>108</sup> Conflicts over village boundaries are also increasing. Uncertainty on the status of the village means uncertainty on the status of village land.

The law provides for an adjudication process between neighbouring land owners and between villages and villages and other land use authorities.<sup>109</sup> Clarification, confirmation and or documentation of rural land rights become relatively easy when villages are surveyed and have a village land use plan. So far, 1,317 villages still need to be surveyed. There has been a surge in the number of villages with Village Land Certificates as well as in the number of CCROs issued. In one year alone, 2011/2012, 21,169 CCROs were given out, out of the planned 45,000

### **Villages' registration and award of CCROs by 2014**

Registered Villages	Surveyed Villages	Villages with Village Land Certificates	CCROs given	Villages with Land Registries

<sup>106</sup> Village Land Act, section 7(7).

<sup>107</sup> See URT, SPILL Review, 2013.

<sup>108</sup> See section 22 of the Local Government (District Authorities) Act 1982 and section 7 of the Village Land Act 1999.

<sup>109</sup> Sections 48-55 provides for village land adjudication where the boundaries are not surveyed. See also Village Land Forms No. 44-49 on adjudication.

11,817	10,500	10,341	169,362	780
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SOURCE: MLHHS D Evaluation of Government Compliance with Ruling Matter Manifesto 2010-2015 Nov. 2014.

However, majority of rural land owners (indeed, all land owners in the country) do not have Certificates to authenticate their rights. Only few individuals have certificates of customary rights of occupancy (some 169,362 CCROs in the country, out of a potential of 8 million parcels) as rural land still carries customary/traditional attitudes towards land ownership. So far there are Village Land Registries in Mbozi, Iringa Rural, Babati and Handeni. What this trend indicates is how momentous the task of clarifying and documenting land rights in villages is.

#### MKURABITA Report outline stages for Titling and Registration of Land in Rural Areas

1	2	3	4	5	6	7
Village Boundaries (Survey and demarcation with general boundaries e.g. hills, rivers, roads, rocks, etc.)	Village Land Certificate approved by Commissioner for lands)	Approval of Land Use Plan	Adjudication and registration of parcel	Application to the Village Council	Letter of Offer	Certificate of Customary Right of Occupancy.

SOURCE: MLHHS D 2005.

*El's choice is C: 10-40% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.*

2.2.1	Restrictions regarding rural land use are justified and enforced.				Regulations regarding restrictions on rural land use effectively serve public purpose and are enforced.
2.2.2	Restrictions on rural land transferability effectively serve public policy objectives.				There are a series of regulations that for the most part serve public purpose and that are enforced.
2.2.3	Rural land use plans are elaborated / changed via public process and resulting burdens are shared.				Public input is required and sought in preparing and amending rural land use plans (incl. rezoning) and relevant decisions are arrived at in a transparent and public process.
2.2.4	Rural lands, the use of which is changed, are swiftly transferred to the destined use.				Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).
2.2.5	Rezoning of rural land use follows a public process that safeguards existing rights.				Public input is required and sought in preparing and amending rural land use plans (incl. rezoning) and relevant decisions are arrived at in a transparent and public process.
2.2.6	For protected rural land use (forest, pastures, wetlands, national parks etc.) plans correspond to actual use.				The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is less than 10%.

### **Restrictions regarding rural land use are justified and enforced.**

The Village Land Act provides that village land can be occupied by villagers and non-villagers. Non-villagers include non-village organizations. The majority shareholders or members may be citizens registered or licensed to operate under any law for the time being in force in Tanzania.<sup>110</sup> In case the majority of the members are not of the village it will have to apply to the village council as usual. The village council will have to forward the application together with its recommendation to the Commissioner for the grant or refusal of such a grant.<sup>111</sup>

As per the Land Act, allocation of land to non-citizens is already restricted to investors whose investments have to be approved by the Tanzania Investment Centre. (TIC). Under section 20(1) [...] a non-citizen cannot be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act (1997). The land to be designated for investment purposes has to be identified, gazetted and allocated to the Tanzania Investment Centre which shall create derivative rights to investors. There is also little scope for non-citizens to enjoy limited grants of rights of occupancy under section 19(2). Where the land is in rural area therefore the same limitations apply and the land will have to be identified, gazette and allocated to the TIC. Because most land is in rural areas [about 70%, leaving general lands with 2% and reserved lands 28%,] village lands have been constantly transferred to general land before the same is allocated to the TIC and subsequently the investor under a derivative title. Procedures to transfer village land to general land are detailed as a safeguard to protect village lands against unscrupulous dealers.<sup>112</sup> In economic terms it does not make good sense but for the safeguard of the welfare of the rural majority, it limits the avenues for acquiring village land that may render rural landholders landless or even homeless.<sup>113</sup> There are also restrictions on use set out in section 29 of the Village Land Act or as may be prescribed by the village council having jurisdiction over that land such as; the user to keep and maintain the land in good state; farming to be in accordance with the practice of good husbandry customarily used in the area, land to be used in a sustainable manner in accordance with the highest and best customary practices, compliance with planning permission where needed, paying any rent, fees, charges, taxes and other required payments due in respect of his occupation of the land etc. So, essentially there is a whole list of restrictions on use of rural lands but the main problem lies with the enforcement of the same due to weak capacity of village councils.

The process of village land transfer under section 4 of the Land Act is long and detailed.<sup>114</sup> It requires comprehensive consultations and property inventory for compensations. In some cases, the process of transfer has led to a lot of complaints from the neighbouring villages. This is definitely a result of inadequate consultative process or compensation rates. El's choice is *A: Regulations regarding restrictions on rural land use effectively serve public purpose and are enforced.*

### **Restrictions on rural land transferability effectively serve public policy objectives.**

Compensation for village land occupiers is somehow complicated compared to compensation for occupiers of general land, namely holders of granted rights of occupancy. This is due to the fact that most of the holdings are not surveyed; the land might be used rotationally or under shifting cultivation, or is reserved village land or communal land. The process requires notices, hearings, and identification of the rightful occupiers,

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<sup>110</sup>*Ibid*, section 17(1).

<sup>111</sup>*Ibid*, section 17(5).

<sup>112</sup> See section 4 of the Village Land Act.

<sup>113</sup> Kironde L.S. & Tenga W.R., *Study of Policy, Legal and Institutional issues Related to land in the SAGGCOT AREA*. World Bank report 2012.

<sup>114</sup> See Village Land Regulations of 2001 GN # 66 of 2001 on procedure for compensation and Village Land Forms No. 8, 9, 11, 12, 13, 14, & 15.

valuation and ascertainment of the rightful people to be compensated.<sup>115</sup> The procedure for ascertaining rightful people for compensation is provided in the Land Regulations.<sup>116</sup> Sometimes compensation is disputed for want of adequacy or payment to wrongful people.<sup>117</sup> In addition, although theoretically there is abundant land in villages, large scale investors may need to acquire land from more than one village to avoid the danger of threatening available village land reserve. This process may require joint village land use plans and effective operation of Local Government Authorities.

The Village Land Act provides the prescribed forms to be used in effecting land transactions under the Act. The forms are those provided under the 1st Schedule to the Act as may be modified.<sup>118</sup> The President can transfer general or reserved land to village land. Powers of the President to convert village land is required to be used in a transparent manner with villages full involved and their opinions taken into consideration. In case of transfer or compulsory acquisition, compensation must be fairly determined and the process must be transparent. Villagers must be assured that the land that is converted to general land or is compulsorily acquired for investment purposes would revert to them at some future date, or in the case of the investor being in default. *El's choice is A: There are a series of regulations that for the most part serve public purpose and that are enforced.*

Preparation of a Village Land Use Plan is a pre-condition to systematic adjudication. The satellite imagery or aerial photography acquired for systematic adjudication provides a base for developing the Village Land Use Plan. According to the Village Land Use and Management Guidelines, the process for preparation of Village Land Use Plans are as follows; District prepare and formulates District PLUM team, Mobilization of village institution, conduct PRA and formulate Community Action Plan (CAP), Establish existing situation reports and maps, Determine future needs and draft proposed land use plan and by-laws, Approval of land use plan and village by-laws by Village Assembly, Present to the District Authority, Village Land Use Plan for advice, Present to the District Authority by-laws for approval, Implementation of Village Land Use Plan and by-laws.

The National Land Use Planning Commission has in place a set of guidelines requiring a transparent, fair, inclusive and consultative process in the planning of village land use. With the Land Use Planning Act 2007, land use plans are pre-requisites for issuing CCROs. Nevertheless, most villages do not have village land use plans. In over 105 villages 84 have been surveyed, 52 have certificate of village land and 32 have village land use plans. More than 2,000 certificates of customary right of occupancy have been issued. In Mbeya, out of 148 villages, 16 have land-use plans. In Ifakara, out of the 81 villages in the District 12 have VLUP. The Mbozi experience was scaled up and a systematic process to issue CCROs was developed in Babati and Bariadi. SPILL 2014 notes that the National Land Use Framework Plan has been prepared and agreed by Cabinet. 35 District Land Use Framework plans have been prepared. Various reasons can justify why there is lack of village land use plans for most villages. These may include lack of base maps to work upon; lack of technology to demarcate areas for various uses within the village; lack of adequate staff at District level to give assistance to villages; and the complex village land use planning requirements. There is also limited know how of villagers about land use planning. *El's choice is A: Public input is required and*

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<sup>115</sup>See Village Land Regulations 2001, GN 86/2001.

<sup>116</sup>GN # 86 of 2001.

<sup>117</sup> See for instance the findings of the URT, Report of the Presidential Commission of Inquiry into Land Matters 1992, p 88.

<sup>118</sup> Village Land Act, sections 79 & 80.

sought in preparing and amending rural land use plans (incl. rezoning) and relevant decisions are arrived at in a transparent and public process.

**Rural lands, the use of which is changed, are swiftly transferred to the destined use.**

Village land can be transferred to general land under section 4 of the Land Act. Where the President is mindful to transfer any area of village land to general or reserve for public interest, he may direct the Minister to proceed.<sup>119</sup> Public interest in this case includes investments of national interest.<sup>120</sup> Consequently, there have been conversions of land from customary right of occupancy in rural areas to granted right of occupancy in favour of non-village foreign investors.<sup>121</sup>

See Table 9 on Issues Village Land Certificates, CCRO and Land Transfers in Tanzania

District Council	Certificates	Certificates of Village Land	Certificates of Customary Right of Occupancy	Land Transfers	Notices for Land Transfers
Kinondoni	2393	0	0	355	17
Ilala	1328	0	0	218	12
Temeke	1753	0	0	232	11
Bagamoyo	1351	39	146	89	0
Kibaha	1376	0	18	74	0
Kisarawe	515	0	84	86	0
Mafia	0	0	0	0	0
Mkuranga	238	0	411	121	1
Rufiji	178	0	325	94	0
Kilosa	80	0	689	73	1
Morogoro(M)	165	0	0	215	2
Morogoro(W)	85	0	779	72	5
Mvomero	101	0	556	119	2
Kilombero	0	38	1214	0	0
Ulanga	0	25	341	55	0
Dodoma(M)	1116	0	0	44	240
Dodoma(W)	0	0	0	0	102

<sup>119</sup> *Ibid* section 4(1).

<sup>120</sup> *Ibid*, section 4(2).

<sup>121</sup> Consider cases of land transfers in Kigoma, Kisarawe, Lindi, Njombe, Loliendo fueling resentments from local communities. See studies by LEAT and HAKIARDHI on land acquisitions.

Kondoa	12	18	144	0	94
Mpwapwa	12	10	69	0	122
Ileje	203	0	0	112	52
Kyela	12	0	70	14	347
Mbeya (M)	478	0	0	125	247
Mbeya (W)	5	0	0	0	0
Mbozi	244	0	518	47	70
Mbarali	44	0	109	4	0
Rungwe	56	0	761	3	84
Chunya	16	0	0	16	54
Momba	0	0	0	0	0
Busokelo	0	0	0	0	0
Iringa(M)	251	0	0	45	179
Iringa(W)	68	24	870	0	0
Kilolo	15	27	138	16	0
Mufindi	103	0	0	0	0
Mafinga	0	0	0	7	0
Makete	7	0	0	4	0
Wanging'ombe	0	0	0	0	0
Country Total	24,651	972	24,945	3,079	3,581

Source: MLHSD Budget Speech 2014: \*Table truncated.

The trend shows that about 3,079 transfers have taken place in the year 2013-2014 which could also imply some change of use. So far, changes that have been taking place include those for declaring unreserved lands to be reserved or game controlled areas or converting land from village land to general or reserved land and vice versa.<sup>122</sup> This trend has caused resentment among local communities regarding the fate of their land as once the land is transferred there chance for it to be returned is slim. In the case of Lindi the land was transferred to Bioshape a foreign company but the investor could not carry out the investment as planned. Besides it is alleged that the company acquired more land than allowed under the Tanzania national Guidelines for Sustainable Liquid Biofuels Development which limits land to 20,000ha.<sup>123</sup> Bioshape is currently planning to transfer its interest to another investor. The Sunbiofuels operating in Kisaware also

<sup>122</sup> See section 4 of the Village Land Act and section 5 of the Land Act.

<sup>123</sup> See Report by MVIWATA, Assessing Impact of Biofuel Investments on Local Livelihoods in Tanzania: A Case of Kisarawe, Bagamoyo and Kilwa Districts, 2014, see further Kironde L.S. and Tenga W.R. Study of Policy, Legal and Institutional issues Related to land in the SAGGCOT AREA. World Bank report 2012.

had acquired 8,200ha of land. The company failed to operate as planned and sold its interest to 30 Degrees East Co. Ltd. This is a trend that points to lack of focus in using the land for the intended use. This has resulted into public resentment and turning such lands into bush or into unintended use.<sup>124</sup> Currently there are no clear mechanisms to monitor the swift compliance with the changed use.<sup>125</sup> As a result change is more dependent on the developed implementation plan and not on clearly established rules. *El's choice is B: Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).*

**Rezoning of rural land use follows a public process that safeguards existing rights.**

Essentially, the process of rezoning in rural areas takes the form of land use plans. The Land Use Planning Act 2007 provides different levels of land use plans from the national level to the district and village level. So in terms of the law there are valid provisions for promoting land-use planning<sup>126</sup> with a view to safeguard the land rights of the relevant communities. However, due to the slowness of the process of land use planning it has not resulted into widespread impact on protection of rural land rights. *El's choice is B: Processes for rezoning are public and clear but mechanisms to safeguard existing rights are not fully effective.*

**For protected rural land use (forest, pastures, wetlands, national parks etc.) plans correspond to actual use.**

The natural resources laws and land-use planning laws provide for areas for specific uses. Percentage of areas for various uses and resources such as agriculture, grazing land, social facilities, forestry, water bodies and residential are based on GIS and recorded and the uses are monitored by the Village land use management coordinator and the district land use management coordinator.. The Guidelines for Participatory Village land Use Planning, Administration and Management (2013) outlines the criteria for allocating land for livestock keeping and grazing, forest reserves, water sources, wildlife conservation areas and other uses. The Guideline provides that about 30% of the whole land is reserved land. To keep pace with these villages and district authorities have been reserving 20-30% of their land for forests. For water resources 60 metres buffer zone is left for ensuring protection of the water source. WMAs on village land takes about 20-30% of village land which may include village forest reserve where there is scarcity of land. *El's choice is A: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is less than 10%.*

**5.3 Urban Land Use, Planning and Development in Tanzania.**

**LGI: 3.1 Restrictions on rights: land rights are not conditional on adherence to unrealistic standards**

3.1.1	Restrictions regarding urban land ownership and transferability effectively serve public purpose and are enforced.				There is a series of regulations that are for the most part serve public purpose but enforcement is deficient.
3.1.2	Restrictions regarding urban land use serve public purpose and are enforced (including risk prone and protected areas).				There are a series of regulations that are for the most part serve public purpose but that are not enforced.

<sup>124</sup> Ref. cases like Bioshape in KilwaLindi and SUNBiofuel Companies that failed to utilize the land effectively. See study by LEAT, *Prospects and Challenges for Agribusiness in Tanzania*. (2010).

<sup>125</sup> See section 35 of Land Act for criteria for changing land use.

<sup>126</sup> See Part V of the Land Use Planning Act (2007).

### Restrictions regarding urban land ownership and transferability effectively serve public purpose and are enforced

These restrictions are no doubt in keeping with public interest. But, they have not been enforced by and large. The Land Act section 146 and 147 provide that right of ways, easement and other rights cannot be granted or transferred to any private person but local planning bodies allow blocking such roads and creating plots. EI's choice is *B: There is a series of regulations that are for the most part serve public purpose but enforcement is deficient.*

### Restrictions regarding urban land use serve public purpose and are enforced (including risk prone and protected areas)

A critical aspect in the regulation and restriction of land use change and development in urban areas is through proper implementation of master plans / development plans. Although 50 master plans / development plans for towns and cities have been prepared so far in Tanzania, their implementation has not been satisfactory resulting into violations within the entire local planning area. *The score is B: There are a series of regulations that are for the most part serve public purpose but that are not enforced.*

LGI 3.2 Transparency of land use restrictions: changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups.

3.2.1	There is a clear process for expansion of urban land and infrastructure development that respects existing rights and information on land use change is public and easily accessible.				Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation and a systematic process to deal with land rights by those affected in a way that is not fully in line with international standards.
3.2.2	In urban areas, and use plans and changes in these plans are based on a clear public process and on input of all relevant stakeholders.			x	Public input is not sought in preparing and amending land use plans
3.2.3	Urban land use changes to the assigned land use in a timely manner.				Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has been developed to its destined use.

### Process of urban expansion/infrastructure development process is transparent and respects existing rights

There is deficiency in the process for urban expansion. There is poor circulation of information on urban expansion and infrastructure development. As a result, there is insufficient public involvement and protection of land rights. EI's choice is *B: Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation and a systematic process to deal with land rights by those affected in a way that is not fully in line with international standards.*

### Changes in urban land use plans are based on a clear public process and input by all stakeholders.

The process of plan preparation is not clear to most of the urban residents. Master plans preparation procedures are stated in the Urban Planning Act but do not involve land owners at local level. For example the Dar es Salaam Master plan has been reviewed recently but common people do not know. Though devolution of planning function is one of the mandatory reforms to be fulfilled under Article 146 of the Constitution of Tanzania 1977 the central government is still the main actor in plan preparation and approval. *The score is D: Public input is not sought in preparing and amending land use plans*

### Approved requests for change in urban land use are swiftly followed by development on these parcels of land

The changes of land use in urban areas of Tanzania take place in unprecedented way as they are partly condoned by local bodies and even the central government. The local bodies condone land use violations by providing building permits for regularizing them. Only a few changes in land uses adhere to intended use as indicated in the master plan. Master plan recognizes the changes and subtly acknowledges the changes in the revised master plan with very minimal / without any penalties for violation of the previous plan. Land use change takes place irrespective of what is indicated in the master plan due to very poor implementation. *El's choice is B: Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has been developed to its destined use.*

**LGI: 3.3 Efficiency in the urban land use planning process: land use plans are current, implemented, do not drive people into informality, and cope with urban growth.**

3.3.1	A policy is in place and progress is being made to ensure delivery of low-cost housing and associated services to those in need.				There is a policy for low cost housing and services but implementation has major gaps so that the number of those with inadequate shelter actually increases.
3.3.2	Land use planning effectively guides urban spatial expansion in the largest city.				In the largest city, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization.
3.3.3	Land use planning effectively guides urban development in the four largest cities, excluding the largest city.				In the four major cities in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development occurs in an ad hoc manner with infrastructure provided some time after urbanization.
3.3.4.	Planning processes are able to cope with urban growth.				In the largest city, the urban planning process/authority cannot cope with the increasing demand for serviced units/land as evidenced by the fact that almost all new dwellings are informal.

**Policy to ensure delivery of low-cost housing and services exists and is progressively implemented**

The National Human Settlement Policy of 2000 provide housing and Habitat Policy 2007 taking into account changes in socio-economic aspects in urban areas and rising demands of housing and allied amenities and infrastructure. In tune with most contemporary policies, this also envisages a fair amount of 'public private partnerships' for realizing the goal of 'affordable housing for all' with special emphasis on urban poor. The new National Housing Corporation Act sets clear guidelines and calls for private participation in housing. However, on the amenities, like access to water and sanitation there are severe short-comings. The standards of buildings, the type of building materials and services required under regulations are too high for the low income earners. Therefore construction of houses is progressing without regard to building codes and regulations. *El's choice is C: There is a policy for low cost housing and services but implementation has major gaps so that the number of those with inadequate shelter actually increases.*

**Land use planning effectively guides urban spatial expansion in the largest city**

According to the existing policies, the planning though carried out by local planning authorities, has to be approved by the central government. Sometimes the master plans are initiated by the central government and not the planning authorities. However, given that the central government may make changes independently, the eventual plan may be different from reality. Master plans mostly focus on land use plans, provisioning of infrastructure and other services that rests with other agencies. As a result there are concerns of coordination. *El's choice is C: In the largest city, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization.*

**Land use planning effectively guides urban development in the four next largest cities.**

The next 4 largest cities are Mwanza, Mbeya, Arusha and Tanga, they have been given powers to prepare land use plans according to the Urban Planning Act. All these plans are taken up for revision once in every ten years. EI's choice is C: *In the four major cities in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development occurs in an ad hoc manner with infrastructure provided some time after urbanization.*

**Planning processes are able to cope with urban growth.**

Master plans are prepared as per the provisions of the Urban Planning Act 2007. Revision of master plans is done once every ten years. Despite this, given the dynamic nature of urban evolution, adaptation to newer planning methods are minimal barring the use of GIS. Such challenges have resulted in them failing to cope with urban growth. As a consequence provisioning of housing, infrastructure and services have driven informality. EI's choice is D: *In the largest city, the urban planning process/authority cannot cope with the increasing demand for serviced units/land as evidenced by the fact that almost all new dwellings are informal.*

LGI: 3.4 Speed and predictability of enforcement of restricted land uses: development permits are granted promptly and based on reasonable requirements.

3.4.1	Provisions in applications for building permits for residential dwellings are appropriate, affordable and effectively disseminated.				Requirements to obtain a building permit are over-engineered technically and not affordable.
3.4.2	The process for obtaining a building permit for a residential dwelling is short				All applications for building permits receive a decision after a period exceeding 12 months.

**Provisions for residential building permits are appropriate, affordable and complied with**

Building permits are approved by the town planning and engineering departments of the urban local body. This is mostly based on technically justified building bye-laws laid out or notified during the revision of detailed plans. The bye-laws clearly specify the requisites norms to be adhered during the construction of residential building based on size of the plot and width of the street. Accordingly, it specifies the permissible floor area ratio (limiting the no of levels) and requisite setbacks, among other such norms that are applicable. However, the compliance of such bye-laws and construction of dwelling units as per the approved building plan is far from reality. Owing to this, there has been widespread violation, leaving not adequate setbacks apart from land use as well. This has resulted to ineffective implementation and regulation of the bye-laws. *The score is D: Requirements to obtain a building permit are over-engineered technically and not affordable.*

**A building permit for a residential dwelling can be obtained quickly and at a low cost.**

Despite having Clients Service Charter, building permits receive decision after a period exceeding 12 months. Hence, the service of issuing building permits takes a long time and sometimes without no reason at all. EI's choice is D: *All applications for building permits receive a decision after a period exceeding 12 months.*

<b>LGI: 3.5 - Tenure regularization schemes in urban areas</b>					
3.5.1	Formalization of urban residential housing is feasible and affordable.				The requirements for formalizing housing in urban areas are such that formalization is deemed very difficult.
3.5.2	In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and				Strategies to deal with urban informality exist but focus only on either land or

	housing.				services but not both.
3.5.3	A condominium regime provides for appropriate management of common property (rules for common property for management of driveways, parking, gardens, stairways, etc.)				Common property under condominiums is recognized but the law lacks clear (or regulations) for management and publicity of relevant records.

**Formalization of urban residential housing is feasible and affordable**

Formalizing informal housing is complex activity marred by political interventions rather than clear policy. Though a variety of policies and schemes exist to ensure provisioning housing for urban poor, their implementation has been lacking. The urban local body along with the slum development projects of the housing department notifies slums or informal settlements based on duration of occupancy and size of such settlements. However, the process is not clearly defined and ad hoc giving raise to political manipulations. Some properties in informal areas are surveyed and have titles for 33, 66, 99 and most of them for two years. *EI's choice is D: The requirements for formalizing housing in urban areas are such that formalization is deemed very difficult.*

**In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing**

There exist many policies and schemes for housing and urban development in general. Additionally, the government provides services like access to power, community sanitation, street lighting, etc. Among these, housing and land tenure take the back seat. Mechanisms to provision housing exist but the supply so short and not affordable. Formalizing land tenure rests with government invoking amendments or provisions within the Land Act. For the urban poor, with inadequate access to shelter and housing, slums have become an inseparable aspect of any urban area across the globe. Despite the several laws and policies favouring rights and access to housing and their tenure, their implementation has been dismally poor. *EI's choice is C: Strategies to deal with urban informality exist but focus only on either land or services but not both.*

**A condominium regime allows effective management and recording of urban property.**

In Tanzania, management of common property resources rests with respective line departments owning the concerned land. For instance parks in towns and cities area are mostly with the urban local body and only a few with development authorities and horticulture department. With land treated as immovable property and its rising market prices, they have been prone to encroachments and illegal possession besides violation of various land laws. Open spaces are victims of encroachment and a number of Committees have been established to recover them. The reports showed that the vast extent of encroachment by several individuals and organizations, not necessarily the urban poor. It clearly lists and addresses this issue. Yet, with changing political mandates, the reports of the task force itself are not accepted by the government and hence no action towards this end is pursued. *EI's choice is C: Common property under condominiums is recognized but the law lacks clear (or regulations) for management and publicity of relevant records.*

**5.4 Public Land Management**

**LGI 4.1 Identification of public land and clear management: public land ownership is clearly defined, effectively serves the public purpose, is inventoried, under clear management responsibilities, and relevant information is publicly accessible.**

4.1.1	Criteria for public land ownership are clearly defined and assigned to the right level of government.				Public land ownership is justified by provision of public goods but management responsibility is often at the wrong level of government.
4.1.2	There is a complete recording of public land.				Between 30% and 60% of public land is clearly identified on the ground and on maps.
4.1.3	Information on public land is publicly accessible.				All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.
4.1.4	The management responsibility for different types of public land is unambiguously assigned.				The management responsibility for different types of public land is unambiguously assigned but this is not always consistent with objectives of equity and efficiency or institutions are not always properly equipped so that sometimes these are not achieved
4.1.5	Responsible public institutions have sufficient resources for their land management responsibilities.				There are significant constraints in the financial and/or human resource capacity but the system makes effective use of limited available resources, with limited impact on managing public lands.
4.1.6	All essential information on public land allocations to private interests is publicly accessible.				Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is recorded or partially recorded but is not publicly accessible.

### **Criteria for public land ownership are clearly defined and assigned to the right level of government.**

The Land Act Cap 113 defines all land in Tanzania is public land and the President is the trustee on behalf of all citizens of the country. However public land under section 4 of Land Acquisition Act cap 118 provides public purposes that government and related agencies can own. All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours, 61 meters width from sea and lake shorelines, airports and creeks below high water mark and of rivers, streams, lakes and tanks and all canals and water-courses and all standing and flowing waters, and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property are by laws declared to be the property of the government. *El's choice is C: Public land ownership is justified by provision of public goods but management responsibility is often at the wrong level of government.*

### **There is a complete recording of public land.**

It is recorded that only 30% of the urban land is surveyed, thus public land is recorded and mapped in those planned and surveyed areas. However, over the years there is legal and illegal transfer of public land for various private purposes and encroachments of public land, the records available with the government might not reflect the real extent of land held by the government. Overall, although public land in Tanzania is recorded, there are some discrepancies between the situation on the ground and the maps available with the Survey and Mapping Departments. *El's choice is C: Between 30% and 60% of public land is clearly identified on the ground and on maps.*

### **Information on public land is publicly accessible**

Information on public land inventory is available but it is neither consolidated nor is it publicly accessible. Various agencies/departments seem to possess this information in a scattered manner. The authorized land officers of districts, municipals, towns and cities manage the largest chunk of public land in the country

but the Commissioner for Lands does not have the information centrally available. District councils have data figures for the extent of public land available in rural areas but the land held individually by various agencies of the government is not included in this. *El's choice is C: All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.*

### **The management responsibility for different types of public land is unambiguously assigned**

There is no apparent ambiguity in assigning the responsibility of managing public land. Various kinds of public land are assigned various departments/agencies. With exception of wildlife institution the rest of these institutions are not properly equipped to manage the land assigned to them. None of the departments concerned can show an inventory of land that they were supposed to be managing. The situation is aptly captured in the dimension C above.

### **Responsible public institutions have sufficient resources for their land management responsibilities**

There are significant constraints in the adequate resources as well as inefficient organizational capacity. Open spaces do not have a defined management and people referred them as vacant land with no proper use. Hence, people used to encroach on government land and had no protection of such land. Serious shortage of surveyors, land valuers, town planners and land officers has hampered the survey and management of both public and private land in Tanzania. *El's choice is C: There are significant constraints in the financial and/or human resource capacity but the system makes effective use of limited available resources, with limited impact on managing public lands.*

### **All essential information on public land allocations to private interests is publicly accessible.**

The President, Minister, Commissioner for Lands and authorized land officers are the competent authorities to allocate public land for private use. In certain cases, mayors, District Commissioners and etc have taken steps of approving allocations of government land. The commissioner's office maintains the records of all such allocations and the districts regularly send updates to the government departments. However, the information is not readily accessible to the public. All the information is recorded at some level, they are neither consolidated nor readily available for reference. *El's choice is C: Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is recorded or partially recorded but is not publicly accessible.*

### **LGI: 4.2 - Justification and time-efficiency of acquisition processes: the state acquires land for public interest only and this is done efficiently**

4.2.1	There is minimal transfer of acquired land to private interests.				Less than 10% of land acquired in the past 3 years is used for private purposes.
4.2.2	Acquired land is transferred to destined use in a timely manner.				More than 70% of the land that has been acquired in the past 3 years has been transferred to its destined use.
4.2.3	The threat of land acquisition does not lead to pre-emptive action by private parties.				None at all.

### **There is minimal transfer of acquired land to private interests**

According to the statistics provided by the Commissioner for Lands, a total over one million hectares of land were to be acquired and transferred for private purposes in the past three years in Tanzania. However, the exact figure so far is not confirmed, to calculate what percentage of total land acquired this constitutes, to

have details of all the land acquired in the past three years – both for public and private purposes. Since no single government agency maintains the figures of the land acquired by multiple agencies for various purposes, it is difficult to calculate the proportion of the total acquired land having been transferred to private purposes. The non-Industrial purpose land acquisitions include, lands acquired for highways, irrigation projects and housing purpose. Tanzania has been especially acquiring huge amount of land for the past few years for its irrigation and farming projects. Once the land acquisition for major irrigation projects end, the proportion of the acquired land used for public purpose may decrease. As of now, in the absence of accurate figures one can estimate that between 30 per cent and 50 per cent of land might have been used for private purposes in the past three years.

**Table 5 - Procedures used by investors to acquire land**

Means of Acquiring Farm	Lake zone	Northern zone	southern zone	southwest zone	central zone	Eastern zone	Total	%
Inherited	47	71	3	70	5	7	203	27.4
Bought from an indigenous person	30	30	6	31	5	13	115	15.5
Bought from several Indigenous people	21	13	9	21	0	12	76	10.3
Allocated by the village government	41	59	2	16	13	13	144	19.5
Bought from the village government	3	17	1	17	1	5	44	6.0
Bought through court auction	1	2	0	0	0	0	3	0.4
Bought through bank auction	0	2	0	3	0	0	5	0.7
bought during privatization	2	20	0	4	0	2	28	3.8
Bought from the first owner who was a non_citizen of Tanzania	1	31	1	8	0	3	44	6.0
Got from the District Authority	6	6	0	1	0	0	13	1.8
Got from the Regional Authority	0	5	0	1	0	0	6	0.8
Got from the National level	5	18	1	4	0	3	31	4.2

Got from T IC	1	3	2	2	0	2	10	1.4
Leased	0	13	1	0	0	1	15	2.0
Others	3	0	0	0	0	0	3	0.4
Total	161	290	26	178	24	61	740	100.0

Source: DOE, 2013

From table 5, as the acquisitions by definition are done on demand by the agencies or organizations vested with the mandate of public purpose, the process of land acquisition begins with clear proposal by the agency intending to take up the project and may transfer to other investor as it may wish. **The score is A**

#### **Acquired land is transferred to destined use in a timely manner.**

As the acquisitions by definition are done on demand by the agencies or organizations vested with the mandate of public purpose, the very process of land acquisition begins with clear proposal by the agency intending to take up the project **The score is A**

#### **Recommendations:**

- Timely acquisition requires adequate financial resources especially when acquiring land already with unexhausted improvements.
- Criteria for transferring acquired land to destined user should be developed.

#### **Good Practice**

Road construction projects acquire land timely and to destined use due to financial back up of such projects..

#### **The threat of land acquisition does not lead to pre-emptive action by private parties**

Acquisitions by definition are done on demand by the agencies or organizations vested with the mandate of public purpose, the very process of land acquisition begins with clear proposal by the agency intending to take up the project **The score is A: None at all.**

<b>LGI: 4.3 - Transparency and fairness of acquisition procedures: acquisition procedures are clear and transparent and fair compensation is paid expeditiously.</b>						
4.3.1	Compensation is provided for the acquisition of all rights regardless of their recording status.				x	Compensation, in kind or in cash, is paid, however the level of compensation where rights are not recorded does not allow for maintenance of social and economic status..
4.3.2	Land use change resulting in selective loss of rights there is compensated for.				x	Where people lose rights as a result of land use change outside the acquisition process, compensation in cash or in kind is paid such that these people do not have comparable assets and cannot continue to maintain prior social and economic status.
4.3.3	Acquired owners are compensated promptly.				x	Less than 50% of acquired land owners receive compensation within one year.
4.3.4	There are independent and accessible avenues for appeal against acquisition.				x	Avenues to lodge a complaint against acquisition exist but are somewhat independent and these may or may not be accessible to those affected.
4.3.5	Timely decisions are made regarding complaints	x				A first instance decision has been reached for more than 80% of the com-

about acquisition.			plaints about acquisition lodged during the last 3 years.
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### **Compensation is provided for the acquisition of all rights regardless of their recording status.**

Section 3(g) of the Land Act Cap 113 provides payment of compensation in full, fair and prompt to persons whose land is revoked or acquired or interfered with the State. The acquisition procedures are clear and transparent; but the term 'Fair Compensation' is subject to debate. The compensation is decided by the valuations based on certain indicators which solely ignore the rehabilitation aspects, generally the compensation is not considered fair by the persons who lose land. Moreover, in certain acquisitions compensation is paid after more than six months after the valuation. Although the law provides that late payments of compensation will attract bank interest rates but the government does not abide to the law. **The score therefore is B**

#### **Recommendations:**

- Land markets should be introduced to avoid monopoly of the government in land transactions.
- The government should abide to Section 3(g) of the Land Act Cap 113 to avoid public complaints on land acquisition of private land.
- Delays in compensation should be avoided, in case of delays valuations should be redone after every six months or bank interest rates should be adopted in payment of compensations.

#### **Good Practice**

When private companies want land from private individuals they buy land from land owners. The principle of willing buyer and willing seller should apply in land transactions.

### **Land use change resulting in selective loss of rights there is compensated for.**

Existing laws do not provide for such compensation. **So the score is D**

#### **Recommendations:**

- There is need to review the Land Act Cap 113 and Land Acquisition Act Cap 118 so that loss of right due to land use change is compensated to neighbours or adjacent land.
- The introduction of bars or social halls in areas purely planned for residential areas revoke peoples right to calmness and social harmony. Compensation should be paid to neighbors who loose rights of privacy in residential areas due to change of land use.

#### **Good Practice**

Participatory land use plans should be abided as they protect social, economic and physical values of the area.

### **Acquired owners are compensated promptly**

The common practice in Tanzania is that compensation is not paid timely due to delays of budget or complaints from land owners or slackness of the administrative machinery involved in approving the compensation process. *El's choice is D: Less than 50% of acquired land owners receive compensation within one year.*

### **There are independent and accessible avenues for appeal against acquisition.**

Land Acquisition process can also be challenged and appealed on the grounds of fairness and the public purpose involved. Appeal to the court of law, however, may be sometimes expensive and therefore some accessibility constraints on this count cannot be ruled out. The courts operate independently while deciding such cases but the appeals to the revenue authorities sometimes may not very unbiased towards the land owners, especially considering the fact that courts have overruled the decisions of the revenue authorities in a number of cases. *El's choice is C: Avenues to lodge a complaint against acquisition exist but are somewhat independent and these may or may not be accessible to those affected.*

### Timely decisions are made regarding complaints about acquisition.

Since the first instance decision is made by the authorized land officer, generally the complaints are disposed of quickly. *El's choice is A: A first instance decision has been reached for more than 80% of the complaints about acquisition lodged during the last 3 years.*

## 5.5 Transfer of Public Land to Private Use

Panel 5: Transfer of Public Land to Private Use					
LGI: 5.1 Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited (with the exception of transfers to improve equity such as land distribution and land for social housing).					
5.1.1	Public Land transactions are conducted in an open transparent manner.				The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%. (Except for equity transfers).
5.1.2	Payments for Public leases are collected.				Less than 50% of the total agreed payments are collected from private parties on the lease of public lands.
5.1.3	Public land is transacted at market prices unless guided by equity objectives.				Public land is rarely or never divested at market prices in a transparent process.
5.1.4	The public captures benefits arising from changes in permitted land use.				Mechanisms to allow the public to capture significant share of the gains from changing land use are not used.
5.1.5	Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored.				Policy is in place to improve access.

### Public Land Transactions are conducted in an open transparent manner

Tender and auction are used on ad hoc basis. Despite the government setting conditions on land use and called for tenders from the general public for purchasing land earmarked areas, there is no consolidated data on how much land has been transferred from the public to the private sector in the past years.<sup>127</sup> It has also been noted that where public lands are allocated tenders / auctions are rarely used. *El's choice is D: The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%. (Except for equity transfers).*

### Payments for Public leases are collected.

Leases on public lands are mainly carried out under derivative titles granted by TIC. However, one company (Eco-Energy) obtained a direct title from the government under the land for equity scheme with the government holding 25% of the shares in the venture. In 2013, the Government raised land rent from Tsh 200(US\$0.15) per acre to Tsh 1,000(US\$.0.62) for rural lands and from Tshs 5,000.00 (US\$3.1) to Tsh 10,000(US\$6.3) for urban lands. Large-scale land owners refused to pay the raised up land rents. *El's choice is D: Less than 50% of the total agreed payments are collected from private parties on the lease of public lands.*

<sup>127</sup>Op cit note 3 p. 76.

### Public land is transacted at market prices unless guided by equity objectives.

Most of the government owned lands are sold at the instance of the purchaser or for meeting a certain target. The National Housing Corporation (NHC) has also been developing condominium properties in different parts of the country for sale to willing buyers.<sup>128</sup> The quality and price of the properties vary from high to low to cater for the higher-end buyers and lower-end buyers thus striking an equity balance. Apart from such property development schemes, land transactions lack the required transparency. *El's choice is D: Public land is rarely or never divested at market prices in a transparent process.*

### The public captures benefits arising from changes in permitted land use

Many land owners in mineral rich areas have however been evicted from their lands to pave way for large scale mining operations without effective participation or receiving fair and prompt compensation. The Maasai communities in Loliondo also "lost" their land which was subsequently given to a foreign hunting company Ortello Business Corporation (OBC) without involvement and to date their status remain unresolved. Also, the residents of Kigamboni in Dar es Salaam stand to lose their lands out of large redevelopment scheme and have not been adequately involved in the decision-making processes as required by the Urban Planning Act of 2007. *El's choice is D: Mechanisms to allow the public to capture significant share of the gains from changing land use are not used*

### Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored

The law calls for regulation of the operation of a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged. Provisions under the Village Land Act, Cap. 114 and its Regulations appear to allow access to land by private investors and somehow prohibit it at the same time through circular procedure of approval. In addition, the Local Government (District Authorities) Act empowers village councils to start economic ventures to benefit its villagers. Villagers are by virtue of the Village Land Act allowed to enter into sub-lease (derivative) arrangements with non-foreigners and possibly foreigners. *El's choice is B: Policy is in place to improve access.*

LGI: 5.2 Private investment strategy					
5.2.1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders.				A policy to identify land that can be made available to investors exists, based on ad hoc assessment of land potential and limited consultation with communities and is applied in more than 90% of identified cases.
5.2.2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process				Process is in place but many investments go ahead that are either not according to the policy or despite unfavorable outcomes.
5.2.3	Public institutions transferring land to investors are clearly identified and regularly audited				Institutions to make decisions are clearly identified but lack either capacity or incentives in ensuring socially beneficial outcomes or their decisions are not always implemented.
5.2.4	Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (including sub-soil).				No policy is in place and decisions on land use and land rights are not coordinated across sectors.
5.2.5	Compliance with contractual obligations is regularly monitored and remedial action taken if needed.				Monitoring of compliance is limited or only part of the results is accessible to the public.
5.2.6	Safeguards effectively reduce the risk of negative effects from large scale land-related investments				Substantive application of safeguards (EIA, SIA, etc.) is in line with global best practice but only part of the information is disclosed.

<sup>128</sup> See Appendix 3.

5.2.7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.				Resettlement policy does not exist; if resettlement takes place than it is in an ad-hoc manner.
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### **Land to be made available to investors is identified transparently and publicly, in agreement with right holders**

The Land Act calls for the establishment of Land Bank, which for over 14 years since the coming into force of the Act, has not been established. Land is identified on ad hoc basis upon the investor's demands and when villagers give consent to the allocation of land to investors in their villages they still think that that land belongs to them while in actual fact the land is transferred from village land to general land. Village Assemblies are not given adequate information on land allocations and the options they have while allocating lands. EI's choice is *D: There is no policy in place to identify land to be made available to investors so that any transfers are based on ad-hoc investor demands.*

### **Investments are selected based on economic, socio-cultural and environmental impacts in an open process**

Policy process is absent, besides limitations imposed by the Land Act against non-citizen investors and the processes imposed by the Tanzania Investment Centre established under Tanzania Investment Act, Cap. 38. TIC has got a check-list provided under the TIA but does not conduct due diligence of investors to ensure that the investor has the capability to deliver. The TIC's checklist is not thorough enough as it does not seek to elicit critical information from the company but to meet the Act's minimum information requirements. EI's choice is *C: Process is in place but many investments go ahead that are either not according to the policy or despite unfavorable outcomes.*

### **Public institutions transferring land to investors are clearly identified and regularly audited**

The Land Act demands that lands given to foreign investors be allocated to them via the TIC in the form of derivative title. The process of grant of land is supervised in tandem with the MLHSD. The TIC however, does not conduct due diligence to establish the capacity of the investor to undertake successful land investment ventures. In the mining sector secondary foreign mining companies, with no adequate resources have are being allocated huge chunks of lands mostly on lands owned or occupied by artisanal and small-scale miners with no titles. Upon being granted the mining concessions and undertaking further explorations to establish the mineral reserves in the concessions they quickly sell them to large mining companies. EI's choice is *C: Institutions to make decisions are clearly identified but lack either capacity or incentives in ensuring socially beneficial outcomes or their decisions are not always implemented.*

### **Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (including sub-soil).**

Government authorities rarely share information or coordinate their activities e.g. the MLHSD, Rufiji Basin Development Authority (RUBADA); Wildlife Department and Ministry of Energy and Minerals (MEM). The MLHSD is supposed to be the coordinator of land administration and allocation in Tanzania but has little powers over (MEM) on granting of mining licenses. The Environmental Management Act only provides a semblance of coordination during the performance of the EIA. The Act requires the undertaking of EIA for

projects with significant environmental impacts.<sup>129</sup> Investors as other land users do not have subsoil rights especially if minerals are discovered on their land. They must seek a separate right. *EI's choice is D: No policy is in place and decisions on land use and land rights are not coordinated across sectors.*

**Compliance with contractual obligations is regularly monitored and remedial action taken if needed**

There is limited room for public oversight over public contracts or contractual obligations. The process is overshadowed by secrecy and the whole procedure is deemed confidential. In most investment projects in Tanzania no contracts are signed to back-up the investment except respective licenses. The TIC does not sign binding contracts with investors but issues them with investment certificates upon providing documents required by the TIA. The TIC is more concerned with investor welfare by providing wholesome facilitation and after care services. *EI's choice is C: Monitoring of compliance is limited or only part of the results is accessible to the public.*

**Safeguards effectively reduce the risk of negative effects from large scale land-related investments**

The public has the right to participate in the EIA process but EIAs are conducted without availing members of the public all project information in a language they understand and with adequate time to read and prepare informed contributions. The time given to challenge the grant of the Environmental Certificate by the Minister is 30 days and this is only advertised in the Government Gazette which many people do not know of. SIA are conducted sporadically but not as required by the Environmental Management Act (EMA) especially the policy implications of new project or laws. Mining companies are rarely punished for polluting the environment e.g., Barrick Gold polluted the Tigithe River by acid leaching from the tailings and no fines or compensations to the victims was imposed although it had to “cleanup” the River. *EI's choice is B: Substantive application of safeguards (EIA, SIA, etc.) is in line with global best practice but only part of the information is disclosed.*

**The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.**

There is no comprehensive resettlement policy but there are fragmentary resettlement policies for different development schemes such as Resettlement Policy Framework by TANROADS under the Southern Africa Trade and Transportation Facilitation Project (SATTFP), TASAFA I & 2 Resettlement Policy Framework; and the Resettlement Policy for SAGCOT area. The policies replicate provisions found in the World Bank Resettlement Policy but since they have no legal underpinnings they only save hortatory aims. Communities relocated from their lands are mostly given compensation stipulated under the Land Act and if resettled then it is out of the compliance with the funding institution’s resettlement policy. *EI's choice is D: Resettlement policy does not exist; if resettlement takes place than it is in an ad-hoc manner.*

LGI: 5.3 Policy implementation is effective, consistent and transparent and involves local stakeholders.					
5.3.1	Investors provide sufficient information to allow rigorous evaluation of proposed investments.				Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is insufficient to effectively identify project risk ex ante.
5.3.2	Approval of investment plans follows a clear process with reasonable timelines.				All investment application related documents are reviewed according to a uniform process and receive a response within 3 months of date of submission.

<sup>129</sup> Section 81(1)-(3) of the Environmental Management Act No 20 of 2004.

					sion
5.3.3	Right holders and investors negotiate freely and directly with full access to relevant information.				Those holding rights to land with potential for investment have incentives to properly negotiate but their rights are unclear or opportunities to obtain relevant information or assistance do not exist.
5.3.4	Contractual provisions regarding benefit sharing are publicly disclosed.				The majority of contractual arrangements do not include information on benefit sharing.

### **Investors provide sufficient information to allow rigorous evaluation of proposed investments**

There are no thorough mechanisms to screen potential investors and ensure that only genuine investors are allowed in the country. As for the financial capital a foreign investor needs to show that at least it has US\$300,000.00 as start-up capital. Also the investment laws do not require a reasonable 2:1 debt to equity ratio so as to ensure that the investor does not saddle. *The score is C: Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is insufficient to effectively identify project risk ex ante.*

### **Approval of investment plans follows a clear process with reasonable timelines.**

The Tanzania Investment Act provides a mechanism for reviewing investment applications and makes TIC a one-stop center.<sup>130</sup> Upon submission of the investment applications the TIC is supposed to help the investor secure necessary permits and licenses from other government bodies<sup>131</sup> with sectoral ministries mandated to review project plans and application for licenses. For example extractive industry companies' license applications are reviewed by the MEM and licenses are issued upon receiving an environmental certificate within time stipulated by the Environmental Management Act (EMA).<sup>132</sup> *El's choice is A: All investment application related documents are reviewed according to a uniform process and receive a response within 3 months of date of submission.*

### **Right holders and investors negotiate freely and directly with full access to relevant information.**

Much as the law allows right holders to negotiate freely, the VLA require that any deal involving disposition of village land must be sanctioned by the village assembly.<sup>133</sup> Quite often than not, villagers are not aware that the deal they enter into will trigger-off the land in question into general land as most investors prefer to have their lands under the supervision of the Commissioner for Lands and not village councils because of the perceived "superiority" of the Granted Right of Occupancy (GRO). While negotiating villagers are not armed with relevant information on the value of their lands and its economic potential. They also lack information on the potential investor and they thus take a leap of faith on the potential investor. The asymmetry of information hinders win-win deals and they are further harmstrung for lack of support from the government that does not have a mechanism of helping vulnerable communities to negotiate with outside investors. *El's choice is C: Those holding rights to land with potential for investment have incentives to properly negotiate but their rights are unclear or opportunities to obtain relevant information or assistance do not exist.*

### **Contractual provisions regarding benefit sharing are publicly disclosed.**

<sup>130</sup> Section 6 of the Tanzania Investment Act.

<sup>131</sup> Id. Section 6(d).

<sup>132</sup> See section 81(1)-(3) of the Environmental Management Act No 20 of 2004.

<sup>133</sup> See section 8(5) of the Village Land Act.

Village governments are empowered to negotiate economic venture agreements with investors as it is for individual villagers. Most of the time these agreements are secretly negotiated and are not presented to the village assemblies for ratification as required by the VLA. The law does not require the agreements to contain benefit-sharing provisions save for the constitutional requirements that Tanzanians citizens have a duty to ensure that the natural resources of the country are assiduously managed / utilized. *El's choice is D: The majority of contractual arrangements do not include information on benefit sharing.*

LGI: 5.4 Contracts involving public land are public, easily accessible, with agreements monitored and enforced.					
5.4.1	Information on spatial extent and duration of approved concessions is publicly available.				Spatial information and temporal information is available to relevant government institutions but not accessible on a routine basis by private parties.
5.4.2	Compliance with safeguards on concessions is monitored and enforced effectively and consistently.				There is little third-party monitoring of investors' compliance with safeguards and mechanisms to quickly and effectively ensure adherence are virtually non-existent.
5.4.3	Avenues to deal with non-compliance exist and obtain timely and fair decisions.				There is little third-party monitoring of investors' compliance with contractual provisions and mechanisms to quickly and effectively reach arbitration are virtually non-existent.

#### **Information on spatial extent and duration of approved concessions is publicly available.**

There is no systematic posting and release of approved concession spatial information to the public. Government agencies treat this information to be confidential and containing “business secrets” whose release would jeopardize the interests of foreign investors who have signed them. This is contrary to the explicit and unambiguous stipulations of Article 63(3)(e) of the Tanzanian Constitution that contracts entered by the Tanzanian government must be presented to parliament for ratification. *El's choice is C: Spatial information and temporal information is available to relevant government institutions but not accessible on a routine basis by private parties.*

#### **Compliance with safeguards on concessions is monitored and enforced effectively and consistently.**

Information that would help third-parties and Civil Society Organizations (CSOs) to monitor compliance are not released to the public. Concession contracts are treated as confidential. Moreover, even Environmental Impact Statement (EISs) are not released to the public as they can only be read at NEMC offices but cannot be photocopied. Citizens are thus unable to discharge their constitutional obligations of ensuring adherence to the law and legality<sup>134</sup> and ensuring that the country's natural resources are assiduously managed.<sup>135</sup> *El's choice is D: There is little third-party monitoring of investors' compliance with safeguards and mechanisms to quickly and effectively ensure adherence are virtually non-existent.*

#### **Avenues to deal with non-compliance exist and obtain timely and fair decisions.**

Concession contracts do not contain provisions for arbitration with third parties. Third parties can only sue the concessionaire using normal courts alleging violations of the country's laws. Since arbitration is costly most third parties cannot afford them and it is thus unattractive option. In 2011 the Legal and Human Centre with two other CSOs filed a constitutional petition demanding the nullification of the arbitral award be-

<sup>134</sup> See Articles 26(1) and (2) of the Constitution of the United Republic of Tanzania Cap 2 R.E. 2002.

<sup>135</sup> Id. Article 27(1) and (2).

tween Dowans Holding S.A. v. Tanzania Electric Supply Co. Ltd. The High Court of Tanzania dismissed the petition with costs. Dowans Holding S.A filed a bill of costs against LHRC. The High Court granted Dowans legal fees to the tune of Tshs 2 billions against LHRC.<sup>136</sup> The score is D: There is little third-party monitoring of investors' compliance with contractual provisions and mechanisms to quickly and effectively reach arbitration are virtually non-existent.

## 5.6 Public Land Information: Registry and Cadastre

Panel 6: Public Provision of Land Information: Registry and Cadastre					
LGI: 6.1 Mechanisms for recognition of rights					
6.1.1	Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.				There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently.
6.1.2	Non-documentary evidence is effectively used to help establish rights.				Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. They have less strength than the provided documents.
6.1.3	Long-term unchallenged possession is formally recognized.				Non-documentary forms of evidence allow full recognition of claims to property when other forms of evidence are not available.
6.1.4	First-time recording of rights on demand includes proper safeguards and access is not restricted by high fees.				On-demand registration does not include proper safeguards to prevent abuse or costs exceed 5% of the property value.

### Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.

Tanzanian land law and practice recognises a range of rights held by individuals and groups. The degree of recognition differs. Secondary rights owners particularly tenants are many times at a disadvantage eg when land is being acquired. The rights of pastoralists as well as rights of indigenous populations have been difficult to recognise especially where it becomes contentious to define the geographical extent over which the right is recognised. In rural areas the existing legal framework recognizes rights held by 70% - 90% of the rural population, either through customary or statutory tenure regimes. The Land Acts recognize Occupancy Rights held by a majority of landholders in the rural areas, especially those in predominantly agricultural areas. If one takes account of the unspecified status of women in the customary law regime and the precariousness of range and communally used lands including pastoral land tenure and the land rights of hunters and gatherers the legal framework may be said to recognize rights held by 70%- 90% of the rural population

In urban areas, the existing legal framework recognises rights held by 70-90% of the urban population either through customary or statutory tenure regimes. Customary tenure is highly constrained in urban areas. If the law did not extend recognition to those occupying land informally, by considering them to be deemed licensees, the picture of urban land which is formally recognised would change drastically to around 20%.

*El's choice is C: The process for the formal recognition of possession is not clear and is not implemented effectively, consistently or transparently.*

<sup>136</sup> See <http://www.jamiiforums.com/jukwaa-ia-siasa/170216-dowans-yapeta-kesi-mahakama-kuu%3B-yawabwaga-wanaharakati.html> last visited March 2, 2015.

### Non-documentary evidence is effectively used to help establish rights

Most land in Tanzania is not documented. However, non-documentary evidence is accepted especially physical occupation or evidence from neighbours or local and traditional leaders. As such non-documentary forms of evidence are used alone to obtain full recognition of claims to property when other forms of evidence are not available. This has been the case in most instances of expropriation. Issues of claims to property are most critical in the case of compulsory acquisition and compensation. In practice recognition of ownership is accepted provided there are witnesses to this ownership e.g. neighbours or local government authorities. The same is the case it when it comes to sale or inheritance. *El's choice is A: Non-documentary forms of evidence allow full recognition of claims to property when other forms of evidence are not available.*

### Long-term unchallenged possession is formally recognized.

Legislation exists to formally recognize long-term, unchallenged possession but applies only to Private Land. The Law of Limitation Act may operate to bar a claim against an adverse possessor who has occupied one's land for over 12 years of uninterrupted possession. *El's choice is B. Legislation exists to formally recognize long-term, unchallenged possession but applies only to one specific type of land (e.g. either public land or private land).*

### First-time recording of rights on demand includes proper safeguards and access is not restricted by high fees

Land registration is almost assured when one is dealing with land that has been acquired from land development schemes prepared by the government. Such land would normally be surveyed. A successful applicant for such land will first of all be given an offer for a right of occupancy showing the various official costs (including registration fees and one year's land rent in advance) which one must pay before one is given a certificate of title According to Land From 20 made under section 27 of the Land Act the following must be paid: A premium, fees for a certificate of occupancy, registration fees, survey fees, deed plan fees, stamp duty on certificate and duplicate, and land rent for some specified period. *El's choice is D: On-demand registration does not include proper safeguards to prevent abuse or costs exceed 5% of the property value.*

LGI: 6.2 Completeness of the land registry					
6.2.1	Total cost of recording a property transfer is low.				The total cost for registering a property transfer is between 2% and less than 5% of the property value. About nine steps are involved in transferring property.
6.2.2	Information held in records is linked to maps that reflect current reality.				Less than 50% of records for privately held land registered in the registry are readily identifiable in maps (spatial records).
6.2.3	All relevant private encumbrances are recorded.				Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner.
6.2.4	All relevant public restrictions or charges are recorded.				Relevant public restrictions or charges are recorded but this is not done in a consistent and reliable manner.
6.2.5	There is a timely response to requests for accessing registry records				
6.2.6	The registry is searchable				
6.2.7	Land Information records are easily accessed				

### **Total cost of recording a property transfer is low.**

About nine steps are involved in transferring property. Obtaining an official search at the Land Registry; clearance by the Land Ministry of payment of land tax for the last ten years; property tax clearance from the Municipality for the last 10 years; Obtain a valuation report; Notarization and execution of the sale agreement and preparation of the transfer deed; Obtain approval for the transfer; Obtain a capital gains tax certificate from the Tanzania Revenue Authority; The transfer deed is delivered to the Land Officer for its recording under the name of the buyer at the Lands Registry. The cost for registering a property transfer is between 2% and less than 5% of the property value. But it should be noted that there is a lot of “legwork”; there are taxes to pay and many times informal payments have to be resorted to speed up matters. *El’s choice is C: The total cost for registering a property transfer is between 2% and less than 5% of the property value*

### **Information held in records is linked to maps that reflect current reality**

Most of private land lots in both rural and urban areas are not registered. There are around 500,000 entries in the land registry nationwide (the Land Registry is not exactly sure), although the potential registrable land lots are estimated to be over 8 million. The registered lots will in most cases have a deed plan which shows the boundaries and area of the registered lot and neighbouring lots. However, this is not readily identifiable on a map. In rural areas, the situation is the same with CCROs granted so far being around 300000 countrywide. Data on CCROs is not linked to a map (spatial data).

There is an enormous task to improve the coverage and usefulness of the land registry since less than 50% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre. *El’s choice is D: Less than 50% of records for privately held land registered in the registry are readily identifiable in maps (spatial records).*

### **All relevant private encumbrances are recorded**

A good number of the encumbrances (eg caveats, liens, mortgages) will be shown in the registry. The registry is out of date in cases of the death of the registered owner but in the case of sale, it is relatively fast adjusted. This is however usually at the initiative of the buyer who is required sometimes to pay those costs that would normally be paid by the seller such as capital gains tax. Requirements of the law with regard to updating information in the land registry is usually not adhered to. Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner. *El’s choice is C: Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner.*

### **All relevant public restrictions or charges are recorded**

Economically relevant public restrictions include notices to acquire land, change uses, expand roads, or to cancel or relocate rights. Some, like intention to revoke a right are usually recorded. Many others are not. There is no incentive to record restrictions

Besides, there is usually lack of coordination between various authorities such as local authorities and public utility agencies. Cases have been recorded where road authorities claim that a given stretch of land is a road reserve but without the concerned owners being aware and this being registered nowhere. The same is the case with land for conservation. An ongoing saga is related to the Kazimzumbwi Forest Reserve where the Ministry for Lands is saying one thing about the boundary of the forest reserve, while the forest Agency is saying something else. The public is put in a dilemma and is subject to untold suffering. *El’s*

*choice is C: Relevant public restrictions or charges are recorded but this is not done in a consistent and reliable manner.*

**There is a timely response to requests for accessing registry records**

The responses to requests for access to records differ with the type of records required, but it is officially given as two weeks for information on ownership and encumbrances. This can be shorter where it is possible to motivate staff to work overtime. Requests for deed plans can take much longer. Although there may be hesitation to provide the information, and the need to make a formal application, copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee.

However, this system may be constrained by problems of resources within the Registry such as lack of stationery; or machinery breakdown. It generally takes more than 1 month after request to produce a copy or extract of documents recording rights in property. *El's choice is C: It generally takes more than 1 week after request to produce a copy or extract of documents recording rights in property.*

**The registry is searchable**

The registry is searchable on request and payment of a fee, which is not unduly onerous, although getting the results may take some time. It is not yet possible to search the registry using modern ICT facilities for both the land officials and the general public. An application for a search is submitted on a prescribed form, a fee is paid and officials do the search and give results to the one wanting the information. Although there have been steps undertaken to computerise the registry, both at the Head office and in some offices in the Regions, most search is still done manually. Records are usually kept by parcel number. Besides all land parcels have a Land Office Number. Given the low level of computerisation it is not easy to search by rights holders. *El's choice is C: The records in the registry can only be searched by parcel.*

**Land Information records are easily accessed**

Although there may be hesitation to provide the information, and the need to make a formal application, copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, access is still “physical” due to low level of application of IT. There is usually a time delay between application and getting the requested copies. It is easier getting these copies if the application is made at head office and in person rather than at regional offices or by mail. *El's choice is A: Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.*

LGI: 6.3 Reliability: Registry information is updated and sufficient to make meaningful inferences on ownership				
6.3.1	Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost.			Links are in place for some types of land information and checks are insufficient to eliminate a significant number of potentially fraudulent transactions
6.3.2	Registry information is up-to-date and reflects ground reality.			Between 50% and 70% of the ownership information in registry/cadaster is up-to-date and reflects ground reality.

**Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost**

Synchronization of land information is important between the Ministry of Lands and various Ministries and agencies including the Ministry of Natural Resources and Tourism, Ministry of Environment, Ministry of Water, Ministry of Energy and Minerals, TAR, RITA and so on. Synchronization is poor and each authority tends to keep its own records. Given the low level of computerisation and inefficient linkages between various offices related to land information eg zonal registries, local government land offices, it is usually necessary to check through the whole land administration system. Land information held by land offices at local government authority levels may be different from that held at the Office of the Commissioner for Land or the Land Registry. *El's choice is C: Links are in place for some types of land information and checks are insufficient to eliminate a significant number of potentially fraudulent transactions*

**Registry information is up-to-date and reflects ground reality.**

Given numerous problems of information sharing and the limited resources, as well as legal vacuums it is not possible to rapidly update the registry. It may take very long before records are adjusted to reflect the death of the owner for example. There is no system of informing a title owner that their title is getting expired, thus many do hold onto titles whose tenure has expired. *El's choice is C: Between 50% and 70% of the ownership information in registry/cadaster is up-to-date and reflects ground reality.*

There are also many informal transfers, when, despite their being a sale agreement, the title remains in the name of the seller for a long time sometimes for failure to pay capital gains tax. Thus, only between 50% and 70% of the ownership information in registry/cadastre is up-to-date and reflects ground reality.

<b>LGI: 6.4 Cost-effectiveness and sustainability: land administration services are provided in cost-effective ways that are sustainable in the long term.</b>					
6.4.1	The registry is financially sustainable through fee collection to finance its operations.				The total fees collected by the registry are less than 50% of the total registry operating costs.
6.4.2	Investment in land administration is sufficient to cope with demand for high quality services.				There is little or no investment in capital in the system to record rights in land.

**The registry is financially sustainable through fee collection to finance its operations.**

The running of the registry is from the general budget of the Ministry of Lands. The cost of registration is low and there are no calculations that would reflect cost recovery. There has been a between 3 to 5 increase in various fees (and land rent) charged by the Ministry for the services rendered from July 2012. However, the major part of the cost of running the registry is not from user fees. The total fees collected by the registry are less than 50% of the total registry operating costs. *El's choice is D: The total fees collected by the registry are less than 50% of the total registry operating costs.*

**Investment in land administration is sufficient to cope with demand for high quality services**

Major investment in recording land rights was earmarked in SPILL I (2005). Total cost of the activity set out in SPILL (2005) was estimated at 300.1692 billion TSh of which 297.253 billion TSh (99%) was outside the standard Government MTEF process. SPILL (2005) proposed that the funding outside of MTEF was to be obtained through a Land Administration Infrastructure Fund (LAIF) that was to be established as a levy on land. The LAIF was never implemented. The Minister for Lands promised that the Ministry was now poised to implement SPILL II as well as the Ministry's Five Year Strategic Plan 2012/13-2016/17. *El's choice is D: There is little or no investment in capital in the system to record rights in land.*

<b>LGI: 6.5 Fees are determined transparently to cover the cost of service provision</b>				
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6.5.1(a)	Fees have a clear rationale, their schedule is public, and all payments are accounted for.				No rationale exists for fixing fee
6.5.1(b)	Fees Schedule is public, and all payments are accounted for				Schedule of fees for different services is not publicly accessible, but receipts are issued for all transactions.
6.5.2	Informal payments are discouraged.				Mechanisms to detect and deal with illegal staff behavior exist in some registry offices.
6.5.3	Service standards are published and regularly monitored.				Mechanisms to detect and deal with illegal staff behavior are largely non-existent.

### **Fees have a clear rationale, their schedule is public, and all payments are accounted for**

There does not seem to be a rationale for determining the various fees. Once determined, they could remain static for years. However, in July 2012, the government hiked upwards most fees charged by the Ministry of Lands including the Land Registry. The rationale behind this seems to be the drive to raise more revenue to feed into the government's general budget and to be able to implement some undertakings by the Ministry of Lands. *El's choice is D: No rationale exists for fixing fee.*

### **Fees Schedule is public, and all payments are accounted for**

A clear schedule of fees for different services is publicly available and receipts are issued for all transactions. This however does not mean that the public will know in advance what to pay since a number of fees are based on percentages of something else like property value. Schedules of fees are shown in pamphlets and fliers but these are not readily available to the general public. The Ministry makes great efforts to educate the public on the various fees in trade fairs but surprisingly these fees are not found on the Ministry's website. *El's choice is B: Schedule of fees for different services is not publicly accessible, but receipts are issued for all transactions.*

### **Informal payments are discouraged**

The government discourages informal payments but they are paid all the same. Mechanisms to detect and deal with illegal staff behaviour exist in some registry offices but follow-up is inconsistent. Informal payments are made to initiate or speed up action. There are mechanisms including those of the Prevention of Corruption Bureau, to detect illegal behaviour but this has proved difficult to eliminate and the general public does not have the incentive to report such behaviour. Instead, this is condoned usually through intermediaries as this seems to speed up delivery. There are also public notices in some offices discouraging informal payments. There are public education campaigns through printed literature and other media against informal payments but many people happily pay these and do not complain. Informal payments seem to be based on the nature of transactions and are not related to the official fees. *El's choice is C: Mechanisms to detect and deal with illegal staff behavior exist in some registry offices.*

### **Service standards are published and regularly monitored.**

The government has in recent times taken measures to improve the services of the land registry. One of these has been the establishment of 5 zonal registries in the country. The other one is the publication of a Clients' Service Charter which spells out the time it would take for a certain service to be performed, generally by the Ministry of Lands including the land registry (Tanzania, undated, but around 2008). It is doubtful however, whether the standards set in the charter were discussed with stakeholders since the time set for some activities is unduly long. Some of the time limits have been like that for a long time and have not been adhered to. For example Preparation of a Certificate of Occupancy within one month after accepting the letter of offer has been like that for decades and it has not been adhered to. Also the time set in a number

of cases does not seem to take into account conditions required for performing an activity. *El's choice is D: Mechanisms to detect and deal with illegal staff behavior are largely non-existent.*

## 5.7 Land Valuation and Taxation

<b>LGI: 7.1 Transparency of valuations: valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible. Describe the process of fixing and revising land valuation.</b>					
7.1.1	There is a clear process of property valuation.				The assessment of land/property for tax or compensation purposes has some relationship to market prices, but there are significant gaps between recorded values and market prices across different uses or types of users and valuation rolls are not updated.
7.1.2	Valuation rolls are publicly accessible.				There is a policy that valuation rolls be publicly accessible and this policy is effective for all properties that are considered for taxation

### **There is a clear process of property valuation.**

Indeed the market value for most of land transactions is unreliable. There are not many transactions and there is a lack of reliability on the sales figures declared by the sellers or buyers in part to minimize their capital gains tax liability. In practice therefore, and with the clear support of rating authorities or development partners who support property tax valuation, it is the replacement cost approach that is adopted. This is the case even when it comes to assessment for compensation purposes. Although the law on compensation supports the use of the market value, it is the replacement cost that is used, based on the principle of unexhausted improvements. A semblance of market value is used when determining the value of bare land, but this is usually based on very limited evidence. *El's choice is C: The assessment of land/property for tax or compensation purposes has some relationship to market prices, but there are significant gaps between recorded values and market prices across different uses or types of users and valuation rolls are not updated.*

### **Valuation rolls are publicly accessible**

Valuation Rolls are made available at Mtaa offices and the public is given not less than 30 days to inspect it and lodge objections, if any. If the objections are not solved between the owner, the rating surveyor and the Director of the Rating authority then it is lodged with the Valuation Rating Tribunal appointed by the Minister responsible for local government. *El's choice is A: There is a policy that valuation rolls be publicly accessible and this policy is effective for all properties that are considered for taxation.*

<b>LGI: 7.2 Collection efficiency: land and property taxes are collected and the yield from doing so exceeds collection cost</b>					
7.2.1	Exemptions from property taxes payment are justified and transparent.				The exemptions to the payment of land/property taxes are not always clearly based on equity or efficiency grounds and are not always applied in a transparent and consistent manner.
7.2.2	All property holders liable to pay property tax are listed on the tax roll.				More than 80% of property holders liable for land/property tax are listed on the tax roll.
7.2.3	Assessed property taxes are collected.				Between 50% and 70% of assessed land/property taxes are collected.
7.2.4	Receipts from property tax exceed the cost of collection.				The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than 5.

### **Exemptions from property taxes payment are justified and transparent**

All properties in an area declared to be a rating area are ratable property and therefore liable to pay property tax. There are exemptions under the UARA. Properties exempted are mainly those for public uses, but the exemption of much of government properties denies local government of badly needed revenue although these buildings receive services from these local governments. In order to remedy this, the law had provided for the central government to give local governments grants in lieu of the forgone taxes. Grants in lieu of rates are hardly paid by the central government to the local governments. While powers of exemption are not misused, it is clear that the law allows discretionary powers that are not transparently regulated. *El's choice is C: The exemptions to the payment of land/property taxes are not always clearly based on equity or efficiency grounds and are not always applied in a transparent and consistent manner.*

### **All property holders liable to pay property tax are listed on the tax roll**

All property in a ratable area liable for property tax, unless exempted. Where comprehensive property valuation is not carried out many properties may not be on the valuation roll. Until recently, only about 20% of all properties in the city of Dar es Salaam were on the valuation roll. The rest were on a flat rate where the details of the property owners are not well recorded. Moreover, valuation rolls are usually out of date meaning that many potential property tax payers do not appear on the roll since their properties are not listed. Some 17% of all properties were neither on the valuation roll, nor on the flat rate. After the comprehensive valuation supported by the LGSP the majority of properties in Dar es Salaam whether in planned or unplanned areas are now on the valuation roll. Currently more than 80% of property holders in the city of Dar es Salaam are liable for property tax is listed on the tax roll. This proportion is likely to go down with time as more properties get constructed given that updating of the valuation roll is hardly undertaken. *El's choice is A: More than 80% of property holders liable for land/property tax are listed on the tax roll.*

### **Assessed property taxes are collected.**

There has been an observation that local authorities do not collect adequately revenue from sources available to them including property tax. In 2008 the government decided to transfer property tax administration including collection to the TRA who were seen as having better capacity to collect. All evidence suggests that collection went down absolutely and relatively. Taking the Ilala Municipal Council of Dar es Salaam as an example, the Council charges 0.15% on valued residential properties, 0.2% on valued commercial properties and flat rates ranging from TZS 10,000 to TZS 15,000 for unvalued properties that reside within Ilala Municipality. Prior to July 2012, Ilala Municipal Council used to collect revenue through its own staff except Property tax which (up to January 2014) was collected by TRA under the mandate vested to it by the Central Government through The Financial Laws (Miscellaneous Amendments) Act, 2008. *El's choice is C: Between 50% and 70% of assessed land/property taxes are collected.*

### **Receipts from property tax exceed the cost of collection**

The cost of collection may be higher than necessary given the state of informality in many neighbourhoods including lack of streets and house numbers and the fact that most properties are not officially registered. Also lack of a national identification system means that potential tax payers are difficult to identify. Lack of political will (or political interference or lack of support) is another reason impacting adversely on efficient collection. *El's choice is A: The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than 5.*

While it is assumed that property tax collection involved billing and receipts, collection cannot be divorced from the whole process of property tax compliance enforcement including publicity, stationery and policing. There have been cases where property tax collection has been outsourced. Such undertakings were aban-

done in the City of Dar es Salaam with actual revenue collected or potential revenue uncollected suspected to have been lost through unethical practices. It is nevertheless not easy to compare the cost of collection to the property tax collected since tax collectors are employees of the respective councils doing many other assignments and undertakings. Given the generally low wages of local government employees, it is more likely than not that the receipts from property tax exceed the cost of collection. This is despite the low levels of property tax collection in general.

## 5.8 Dispute Resolution and Conflict Management

Dispute Resolution				
<b>LGI: 8.1 Assignment of responsibility: responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against.</b>				
8.1.1	There is clear assignment of responsibility for conflict resolution.			There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.
8.1.2	Conflict resolution mechanisms are accessible to the public.			Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized.
8.1.3	Mutually accepted agreements reached through informal dispute resolution systems are encouraged.			There is a local, informal dispute resolution system that resolves a significant number of conflicts in an effective and equitable manner but which is not recognized in the formal judicial or administrative dispute resolution system.
8.1.4	There is an accessible, affordable and timely process for appealing disputed rulings.			A process exists to appeal rulings on land cases at high cost and the process takes a long time/ the costs are low but the process takes a long time.

### **There is clear assignment of responsibility for conflict resolution.**

Laws provide for among other matters establishment, composition and jurisdiction of each land dispute settlement authority. Various avenues for conflict resolution clearly assign responsibilities between different forums with respect to different kinds of land disputes. The responsibilities of individual forums are decided based on the type of dispute, the legislation it is governed by, the geographical area in which the dispute arises and the value of the dispute. While parallel avenues exist, responsibilities are clearly assigned and widely known explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping. *El's choice is A: There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.*

### **Conflict resolution mechanisms are accessible to the public**

Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized. *El's choice is B: Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized.*

### **Mutually accepted agreements reached through informal dispute resolution systems are encouraged**

There is a community-based system or alternative dispute resolution system that resolves conflicts in an equitable manner but decisions made by this system have limited recognition in the formal judicial or administrative dispute resolution system. *El's choice is B There is a local, informal dispute resolution system that resolves a significant number of conflicts in an effective and equitable manner but which is not recognized in the formal judicial or administrative dispute resolution system.*

### **There is an accessible, affordable and timely process for appealing disputed rulings**

In Mainland Tanzania, the land disputes courts are the Court of Appeal, the High Court, the District Land and Housing Tribunal, the Ward Tribunal and the Village Land Council. In addition to geographic jurisdiction, the jurisdiction of these land courts is also determined by the pecuniary value of the suit, known as pecuniary jurisdiction. Appeals from Village Land Council lie to the Ward Tribunal. While a clear appeals process exists, it is ridden with problems of high costs and delays. *El's choice is C: A process exists to appeal rulings on land cases at high cost and the process takes a long time/ the costs are low but the process takes a long time.*

<b>LGI: 8.2 The share of land affected by pending conflicts is low and decreasing.</b>					
8.2.1	Land disputes constitute a small proportion of cases in the formal legal system.				Accurate data is not available to grade this indicator.
8.2.2	Conflicts in the formal system are resolved in a timely manner.				Accurate data is not available to grade this indicator.
8.2.3	There are few long-standing (> 5 years) land conflicts.				The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.

### **Land disputes constitute a small proportion of cases in the formal legal system**

The current institutional framework for resolving land disputes is constituted with the Court of Appeal, the High Court, the District Land and Housing Tribunal, the Ward Tribunal and the Village Land Council. However, this framework has had minimal results in reducing number of cases in formal legal system. The high rate of pendency and backlog of cases is prevalent in all courts in Mainland Tanzania and not just land courts. *El's choice is NIL: Accurate data is not available to grade this indicator.*

### **Conflicts in the formal system are resolved in a timely manner.**

One of the aims of establishing specialized land courts was timely disposal of land disputes. However, this aim is limited by high number of land disputes and inadequate land courts, human resources and financial resources. Although generally speaking conflicts in the formal system are not resolved in a timely manner but the data available cannot be used to grade this indicator. *El's choice is NIL: Accurate data is not available to grade this indicator.*

### **There are few long-standing (> 5 years) land conflicts.**

There are many long-standing land cases in Mainland Tanzania. However, data used in this sub-section are only with respect to DLHTs. *El's choice is D: The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.*

## 5.9 Institutional Arrangements & Policies

LGI: 9.1 Clarity of mandates and practice: institutional mandates concerning the regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided and information is shared as needed.					
9.1.1	Land policy formulation, implementation and arbitration are separated to avoid conflict of interest.				In situations that can entail conflicts of interest or are sensitive to abuse (e.g. transfers of land rights) there is some separation in the roles of policy formulation, implementation and arbitration
9.1.2	Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).				The mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem
9.1.3	Administrative (vertical) overlap is avoided.				Division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps.
9.1.4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible.				Information related to rights in land is available to interested institutions and although this information is available at reasonable cost, it is not readily accessible as the information is not maintained in a uniform way.
9.1.5	Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.				The legal framework and procedures for land-related matters (incl. renewable and subsoil resources) are fully consistent but there may be differences in the way complaints and grievance redress are handled.
9.1.6	Ambiguity in institutional mandates (based on institutional map) does not cause problems				Different public institutions deal with land-related matters very differently and effective mechanisms for coordination are not in place.

### Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).

There are horizontal overlaps between the MLHSD and other ministries or agencies dealing with land issues. There has also been lack of clear delineation of institutional responsibilities with respect to the spectrum of land related issues (e.g. urban, rural, and environmental or forest, mining, water/irrigation, natural resources). So, from this framework, it cannot be said that there is no overlap or inconsistency. *The Score is C: The mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem*

### Administrative (vertical) overlap is avoided.

At the central, regional and local level, institutions dealing with land have clear functions and responsibilities. All central government functions are vested in specific ministries and agencies while all local government functions are vested in the PMORALG which is in-charge of local governments. *The Score is B: Division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps.*

### Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible..

Maintenance of land information both textual and spatial has been of particular challenge. Various efforts have been taken to improve the land registry in terms of the coverage and usefulness of the registry since less than 50% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre. Accessibility of land-related information, both textual and spatial at reasonable cost

by private individuals and public institutions with interest in land issues has not been efficient due to problems identified above. *The Score is B: Information related to rights in land is available to interested institutions and although this information is available at reasonable cost, it is not readily accessible as the information is not maintained in a uniform way*

**Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.**

There has been overlap of urban areas with customary right of occupancy where customary tenure exist in peri-urban areas while the recognizable tenure is granted right of occupancy. Extension of urban boundaries into village land has been causing uncertainty over tenure in such areas unless village land is converted into general land. Customary land holders have been displaced informally without compliance with the law. In few cases modest compensation has been paid which is not commensurate with the World Bank criteria regarding resettlement. *El's choice is B: The legal framework and procedures for land-related matters (incl. renewable and subsoil resources) are fully consistent but there may be differences in the way complaints and grievance redress are handled.*

**Ambiguity in institutional mandates (based on institutional map) does not cause problems.**

There are different public institutions that deal with land-related matters but there is weak mechanism for coordination as reflected under the institutional mapping. *El's choice is D: Different public institutions deal with land-related matters very differently and effective mechanisms for coordination are not in place.*

LGI: 9.2 Equity and non-discrimination in the decision-making process: policies are formulated in a broad public process, address equity, and implementation is meaningfully monitored.					
9.2.1	Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.				Policy exists or can be inferred by the existing legislation but it is incomplete (some key aspects are missing or only covers part of the country such as only urban or only rural areas) and decisions that affect some sections of the community are made without prior consultation.
9.2.2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.				Land policies incorporate some equity and poverty objectives but these are not regularly and meaningfully monitored.
9.2.3	Land policies address ecological and environmental goals; progress towards these is publicly monitored.				Land policies incorporate some ecology and environmental sustainability objectives but these are not regularly and meaningfully monitored.
9.2.4	The implementation of land policy is costed, matched with benefits and adequately resourced.				The implementation of land policy is [not] fully costed and / or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity.
9.2.5	There is regular and public reporting indicating progress in policy implementation.				Formal land institutions report on land policy implementation but in a way that does not allow meaningful tracking of progress across different areas or in a sporadic way.
9.2.6	Land policies help to improve land use by low-income groups and those who experienced injustice.				Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective
9.2.7	Land policies proactively and effectively reduce future disaster risk.				Policy is in place to prevent settlement in high risks areas but which is not enforced.

**Land policies and regulations are developed in a participatory manner involving all relevant stakeholders**

Many land owners in mineral rich areas have been evicted from their lands to pave way for large scale mining operations without receiving fair and prompt compensation. Foreign mining companies with no ade-

quate resources are allocated huge chunks of lands mostly on lands owned or occupied by artisanal and small-scale miners with no titles. Per the current trend, the investors obtain titles swiftly and stake their claims leading to the evictions of artisanal miners thereafter they sell them to big multinationals. *El's choice is C: Policy exists or can be inferred by the existing legislation but it is incomplete (some key aspects are missing or only covers part of the country such as only urban or only rural areas) and decisions that affect some sections of the community are made without prior consultation.*

**Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.**

Women have been held to be entitled to acquire land in their own right not only through purchase but also through allocations and any customary principle should not contravene the Constitution or principles of natural justice.<sup>137</sup> Despite this policy pronouncement, women have continued to be denied justice in land matters due to tribal and customary sentiments. Various provisions exist in the Land Act and Village Land Act to ensure protection of not only women but also other vulnerable groups like the disabled, elderly, youth and children<sup>138</sup> which are yet to be matched with reality on the ground. *El's choice is C: Land policies incorporate some equity and poverty objectives but these are not regularly and meaningfully monitored.*

**Land policies address ecological and environmental goals; progress towards these is publicly monitored**

There are various land related policies that address ecological and environmental goals but there is no clear mechanism for coordination and monitoring of implementation and efficiency. The policies cover environment, forestry, wildlife, fisheries, mining and do provide for specific aspects on environment and ecology. Despite such arsenal of policies, there is need for more implementation and harmonization of the policies with the legal framework. *El's choice is C: Land policies incorporate some ecology and environmental sustainability objectives but these are not regularly and meaningfully monitored.*

**The implementation of land policy is costed, matched with benefits and adequately resourced.**

There have been efforts to monitor mechanism for the implementation of the land laws and policy through the Strategic Plan for the Implementation of Land Laws (SPILL) developed in 2005. The cost of the activities set out in SPILL (2005) was estimated at 300.1692 billion Tsh of which 297.253 billion Tsh. (99%) was outside the standard Government MTEF process. The revised SPILL 2013 provides a projected budget for the implementation of the Land Laws in the next 10 year at cost of 1,412,650 million Tsh.<sup>139</sup> and a streamlined institutional arrangement. *El's choice is C: The implementation of land policy is [not] fully costed and / or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity.<sup>140</sup>*

**There is regular and public reporting indicating progress in policy implementation**

There are no accessible public reports indicating progresses in policy implementation. As a result formal land institutions report on land policy implementation is only ad hoc to meet specific administrative needs. *El's choice is C: Formal land institutions report on land policy implementation but in a way that does not allow meaningful tracking of progress across different areas or in a sporadic way.*

<sup>137</sup> Sections 3(2) & 20(2) VLA.

<sup>138</sup> See sections 3(2), 41(2), 108 (1), 161, 162(3) LA, and sections 3(2), 20(2), 23(2) VLA.

<sup>139</sup> See Revised SPILL–Consultant's Report (2013) p 21.

<sup>140</sup> The parameters of the scores do not best express the reality. C is chosen for being closer but the ideal is 'The implementation of land policy is fully costed and / or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity.'

**Land policies help to improve land use by low-income groups and those who experienced injustice**

*Land policies provide for improvement of land use by low-income earners and those who experience injustice but the main challenge lies with the implementation.* The Land Policy for instance considers the position that women have generally occupied as being inferior relative to men so to uphold their status women are entitled to acquire land through purchase and allocation in their own name.<sup>141</sup> *El's choice is B: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective.*

**Land policies proactively and effectively reduce future disaster risk.**

The Land policies and other related policies discourage high risk areas but enforcement has been poor. Policy implementation has been poor as over 70% of the urban population dwell in unplanned areas that include fragile or disaster areas such a river valleys, steep slopes etc and there are people who invade fragile ecosystems for grazing and cultivation.

On dispute settlement, it has been noted that there has been limited interaction between the three core agencies, Ministry of Lands, PMO-RALG and Ministry of Justice & Constitutional Affairs (MJCA), particularly in the key linkages between Ministry of Lands and the District Land Offices and MJCA and the District Land and Housing Tribunals (DLHTs), Ward Tribunals and Village Land Councils. The chairman of the DLHT is an appointee of the Minister for Lands and the function he discharges are partly under the Ministry of Lands and partly under the Judiciary. This poses an administrative and legal problem. While the chairman feels accountable to the Ministry of Lands as an employee of the ministry, the decisions he makes are subject to scrutiny by the judiciary and any appeals lie to the higher courts in the judicial ladder. Also, while his decisions can be influenced by the Ministry of Lands the principles of justice he must observe are enforced by the judiciary and judges in the higher courts may call certain decisions to be sent for revision. The ward tribunals and village land councils, the lowest adjudicatory organs are neither under the Ministry of Lands nor the Judiciary but the PMO-RALG. Under the doctrine of separation of powers this framework does not find good justification. As a result, even the budgets of these different institutions cannot be streamlined as priorities in each ministry differ. This weak line of coordination has resulted into inefficiency in land governance. *El's choice is C: Policy is in place to prevent settlement in high risks areas but which is not enforced.*

In general, there has been weak or lack of coordination between the land sector and other sectoral ministries. For instance, while most functions are undertaken at the local government level, local government authorities are not under the Ministry of Lands but PMO-RALG. Land officers are accountable to the Ministry of Lands but their functions are dependent on the priorities and efficiency of the relevant local authority. Also, in principle, the Ministry of Lands is responsible for policy and regulatory services whilst the PMO-RALG deals with land users directly in the execution of physical planning processes, cadastral processes and land registration and control. The responsibilities expected of District Land Offices (whose span covers land use planning, land administration, surveying and valuation) include authority to prepare master plans and town plan drawings, approval of cadastral surveys, and valuation reports; signing certificates of title; undertaking title verifications, adjudications, transfers and transmissions; and keeping copies of land rec-

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<sup>141</sup> National Land Policy p 12, see section 3(2) of the Land Act & Village Land Act.

ords, land-use plans and approved layout designs pertaining to the specific Districts in a well-developed and maintained land information system.<sup>142</sup>

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<sup>142</sup>Refer the Land Act [Cap. 113, R.E. 2002], Land Survey Act, [Cap. 342, R.E. 2002], Land Registration Act, [Cap. 334 R.E. 2002], Urban Planning Act [Cap. 355 R.E. 2009].

## Chapter Six: Policy Recommendations (Short, Medium and Long Term)

### 6.0 Introduction

This chapter provides concluding remarks and policy recommendations on the basis of the EI's findings and the panel discussions. The recommendations are expected to provide plan of action for the government and other actors on the basis of short, medium and long term plans.

### 6.1 Concluding Summary

Regarding protection of Individuals' rural land tenure rights, it is clear that the 'deeming provisions' of the VLA that recognize Customary Landholding do not appear to provide a method for protection of various interests that a landholder in the rural arrears would have, e.g. Rights of access, rights of use, rights of disposition, etc. The VLA relegates these incidences to the domain of customary law of the given locality and therefore back to the regime of collective memory of what the traditional law provides. In a situation where formal institutions overlap with traditional ones confusion is always generated regarding applicability of the law which generates uncertainty and finally insecurity. In so far as some communities and areas have no conflict and the Community is stable and ethnically homogeneous the customary practices do offer protection. But in areas where urban meets rural, or ethnic groups are heterogeneous, or land use practices differ (e.g. between farmers and Pastoralists) then land conflicts constantly ensue. Hence, one of the policy means for lessening the insecurity and confusion is to inventories land interest and actually carry out systematic land adjudication and registration of interests.

Women's access to land is still restricted notwithstanding provisions of the Land Acts that invalidate discriminatory practices in the application of land laws. For communities that occupy land that is communally held, such as Pastoralists, and Hunters / Gatherers, the law has not been definitive in its provisions, though there are various salutary phrases in the Acts that appear to recognize such rights. In practice, land held by these groups has continually to face rampant acquisitions from state actors, investors and individuals. There is need to have more robust initiative to put the Acts into practice by vindicating the rights of such vulnerable communities.

There is notable longstanding disputes between the Government and mining investors on the one hand and local communities who feel to be treated unfairly on the other hand. Mining is given preferential rights over land right holders. Likewise multiple rights exist such as right to cultivate, graze, hunt and gathering but there is weak dispute settlement mechanism that has resulted into some of the rights to be overshadowed by others especially rights involving minority groups like hunters or pastoralists. The Land Acts, especially the Village Land Act, does provide opportunities for collective or communal titles. The problem has always been lack of necessary infrastructure in most villages to undertake the registration. So far systematic registration has not been possible but only spot based on pilot projects expected to be scaled up to possibly cover the whole country. It is intimated that rolling out comprehensive /systematic registration requires huge amount of money that the government may find hard to commit in a single budget. This is an area that requires development partners' support but also to ensure value for money the most cost effective approach should be adopted. This may therefore require a study on the best and most efficient and economic registration approach to be adopted.

On allocation of land to foreigners there is also little scope for non-citizens to enjoy limited grants of rights of occupancy under section 19(2). Where the land is in rural area the same limitations apply and the land has to be identified, gazette and allocated to the TIC. Because most land is in rural areas [about 70%, leaving general lands with 2% and reserved lands 28%,] village lands have been constantly transferred to general land before the same is allocated to the TIC and subsequently the investor under a derivative title. There is need for caution to avoid the risk of plundering rural land into general land for investment purposes without adhering to procedures and taking account of the interest of rural land occupiers.

The process of village land transfer under section 4 of the Land Act is long and detailed. It requires comprehensive consultations and property inventory for compensations. In some cases, the process of transfer has led to a lot of complaints from the neighbouring villages. This has resulted from inadequate consultative process or compensation rates. Compensation for village land occupiers is complicated compared to compensation for occupiers of general land, namely holders of granted rights of occupancy due to the fact that most of the holdings are not surveyed; the land might be used rotationally or under shifting cultivation, or is reserved village land or communal land. So there is obvious need to have a comprehensive land use plan programme in the country.

Although the Land Use Planning Act 2007 provides different levels of land use plans from the national level to the district and village level there has not been meaningful land-use process to effect promote land-use planning with a view to safeguard the land rights of the relevant communities. This has been contributed by the slow speed of the process of land use planning rendering land occupiers insecure. A critical aspect in the regulation and restriction of land use change and development in urban areas is through proper implementation of master plans / development plans. Although 50 master plans / development plans for towns and cities have been prepared so far in Tanzania, their implementation has not been satisfactory resulting into violations within the entire local planning area. Due to deficiency in the process for urban expansion compounded by poor circulation of information on urban expansion and infrastructure development, there is need for adequate public involvement in order to safeguard peoples' land rights. Also, since the process of plan preparation is not clear to most of the urban residents master plans preparation procedures should involve section of stakeholder specially land owners from the local level.

Although information on public land inventory is available it is neither consolidated nor publicly accessible. Various agencies/departments seem to possess this information in a scattered manner. Even though the authorized land officers of districts, municipalities, towns and cities simply manage large chunk of public land in the country but the Commissioner for Lands does not have the information centrally available. So, there is need to ensure that land information is consolidated and made accessible to the public. The same should be shared with other line ministries and departments. This requires enhancing the capacity of the land registries to ensure that information registered / recorded is for public consumption and be made accessible at minimum cost. This should go hand in hand with addressing the shortage of surveyors, land valuers, town planners and land officers which has hampered survey and management of land in Tanzania.

Despite the government setting conditions on land use and called for tenders from the general public for purchasing land earmarked areas, there is no consolidated data on how much land has been transferred from the public to the private sector in the past years. Many land owners in mineral rich areas have however been evicted from their lands to pave way for large scale mining operations without effective participation or receiving fair and prompt compensation. There is need to ensure public involvement and transparency when dealing land related issues that affect their interest in land. Where compensation is to be paid then valuation should

be done openly and with clear and detailed criteria that commands objectivity and public trust. The valuer must be independent and should be tasked, if need be, to provide evidence of how he came to the assessed value.

Generally, there has been limited room for public oversight on public contracts or contractual obligations. The process has been overshadowed by secrecy and the whole procedure has been deemed confidential. In most investment projects in Tanzania contracts are not signed to back-up the investment except respective licenses. The TIC does not sign binding contracts with investors but issues them with investment certificates upon providing documents required by the TIA. There should be thorough mechanisms to screen potential investors and ensure that only genuine investors are allowed in the country. To ensure effective monitoring of investors in land the public should get window of participation in the EIA process. This should start with providing meaningful participation in EIAs process. The public should get project information in a language they understand and with adequate time to read and prepare informed contributions. The period of 30 days given by Minister to challenge the grant of the Environmental Certificate which is advertised in Government Gazette provides little room for many people do not know and make contribution. Both formal and informal means of communication deemed effective in particular areas should be used to ensure effective public participation. SIA has also been noted to be conducted sporadically and not as required by the Environmental Management Act (EMA) especially the policy implications of new project or laws, the exercise should be done more objectively and systematically.

Since there is no comprehensive resettlement policy but fragmentary resettlement policies for different development schemes such as Resettlement Policy Framework by TANROADS), SAGCOT etc the policies lack legal underpinnings thus save only hortatory aims. A comprehensive national resettlement policy should be developed, approved and operationalized.

There are about nine steps are involved in transferring property namely; obtaining an official search; clearance by the Land Ministry of payment of land tax for the last ten years; property tax clearance from the Municipality for the last 10 years; Obtain a valuation report; Notarization and execution of the sale agreement and preparation of the transfer deed; Obtain approval for the transfer; Obtain a capital gains tax certificate from the Tanzania Revenue Authority; Delivery of transfer deed to the Land Officer for its recording under the name of the buyer at the Lands Registry. In addition there are legworks involved before the process is completed. As a result most of properties in both rural and urban areas are not registered due to the complex process involved. The problem is exacerbated by lack of coordination between various authorities such as local authorities and public utility agencies.

On taxation, there has been an observation that local authorities do not collect adequately revenue from sources available to them including property tax. In 2008 the government decided to transfer property tax administration including collection to the TRA who were seen as having better capacity to collect however, evidence suggests that collection went down absolutely and relatively. There is therefore more systematic approach to collect property revenue since huge revenue is left uncollected. To ensure smooth collection and avoid informal payments property tax rates should be kept moderate and routinely reviewed to avoid evasion.

The current institutional framework for resolving land disputes has not been as efficient in reducing number of cases in formal legal system. The system is faced with inadequate land courts, human resources and financial resources. There is need for a thorough reconsideration of the institutional responsibilities with respect to the spectrum of land related issues, jurisdiction and capacity of the various established courts.

## 6.2 Recommendations on Thematic Areas

Policy issue	Proposed action	Short Term (1-2ys)	Medium Term (3-5yrs)	Long Term (5-10yrs)
<b>Land Delivery</b>				
Public land transfers has not complied with intended land use change	Initiating programme to reconsider and revoke land transfers that contravene intended uses			
Increase of land use conflicts due to insecurity of land rights.	Carrying out comprehensive land use plan, Formalise land holding, especially in rural areas and unplanned settlements in urban areas, through adjudication and registration of parcels of land.			
Lack of regular publication of data on land and property values	Reviewing land values and publishing regular data on land and property values throughout the country			
Property tax is yet to be made a custom in the realm of local government authorities	Reviewing property tax regime to be embedded within the realm of local government authorities			
Majority of urban residents lack certificates to confirm they own their properties.	Issuance of urban property titles			
Lack of streamlined coverage of urban regulations and development oversight.	Developing comprehensive urban building code to provide for space standards and regulate developments in disaster prone areas.			
	Providing effective enforcement of regulations.			
	Implementing master plans / development plans.			
Nearly 90% of rural land not surveyed and titled.	Undertaking village boundary survey for all villages			
	Issuance of certificates of village land for all villages			
	Implementing systematic registration system.			
Cumbersome process of recording and dissemination of land information.	Designing nationwide integrated land management information system (LMIS 2.0) for spatial and non-spatial data management, workflow management and document management			
Most of properties in both rural and urban areas are not registered due to the complex processes involved.	Developing simplified procedures for property registration and transfer.			
Lack of adequate information by TIC	Establishing up to date land information centre and make it available to the public and investors.			
<b>Governance</b>				
Urban planning not in line with international standards when land rights are affected	Developing comprehensive housing policy and resettlement policy			

Transfer of village land to general land has been following due process of law	Establishing clear and simplified procedures that take into account due process of law.			
Compensation schedules are not commensurate with replacement costs	Conducting regular review of compensation schedules in terms of crop costs as well as replacement costs for various categories of properties			
Presence of discriminatory practices that deny women's, pastoralists, and hunters / gatherers right to land	Initiating awareness programme to deal with discriminatory practices as well as revisiting the relevant laws.			
Lack of National Involuntary Resettlement Policy	Developing, approving and operationalizing a national involuntary resettlement policy			
There is weak capacity of dispute settlement institutions	Strengthening land dispute settlement institutions in terms of capacity, human resources and financial resources			
Delay in the settlement of land disputes	Providing time limits for disposal of cases in land dispute settlement legislation			
	Conducting special sessions of land disputes settlement institutions in order to dispose all pending cases			
Weak capacity of LGAs	Building the capacity of LGAs and strengthening interlinkages with MLHSD.			
Interference between organs of state weakening independence of the judiciary hence, ineffective land dispute settlement process.	Separate District Land and Housing Tribunals, Ward Tribunals and Village Land Councils from the executive arm of the state			
Not all district tribunals, village councils and ward tribunal are functioning	Establishing tribunals in villages, wards and districts with none			
The existing tribunals are few and they are underequipped	Establish DLHT in every district and adequately equip the tribunals with necessary facilities, including Amending laws to streamline land dispute settlement as proposed by LRCTz.			
Local authorities do not collect adequately revenue from property tax	Reviewing property tax rates to avoid evasion with innovative revenue collection system especially digital based methods.			
Shortage of district land officers and delays in issuance of titles	Hiring more district land officers to deal with delays in issuance of titles			
Institutional framework for resolving land disputes are inefficient	Reconsidering the institutional responsibilities with respect to the spectrum of land related issues, jurisdiction and capacity of the various established courts (cf. LRCTz recommendations)			

## ANNEXES

### Annex 1

#### Review of the Definitions, LGI and Dimensions

The glossary of the technical definitions provided in Annex 1 of the Manual has been reviewed. The vocabularies used for defining concepts do clarify the terms used in the LGAF except for a few. It is clear that most of the vocabularies are common and in line with the local understanding of the interpretation given in the LGAF manual except for a few of these. With regard to condominium properties Tanzanian law recognises unit title property under the Unit Titles Act, 2008 in line with its usage in other commonwealth countries such as Australia. The use of the term 'indigenous' requires clarification as there is still a debate as to who are 'indigenous' in Tanzania, since in the current state of affairs 'aboriginality' appears to be accepted as the dominant distinguishing feature of the term in western jurisprudence. It might be less divisive to use 'vulnerable' or 'marginalised' communities in order to avoid apparent volatile criticisms but bring forward distinctions between collective rights (which use the term 'indigenous rights') and individual rights (which use the term 'minority rights').<sup>143</sup> These would generally include: hunters and gatherers, pastoralists, women, migrants, long-term refugees, IDPs. The term 'municipal land' required some clarification as land administration involves central and local government authorities. But the local government authority may be municipal authority, township council, city council district council or village council. So the clarification needed was on the implication of municipal land in a case where the term municipal was just one level of administration. On 'public land' there was need for clarification as all land is public in Tanzania whether communal or private holding. The context of public land cannot be fairly summed up as a contrast of private land. The term 'state land' does not convey a clear meaning as all land in Tanzania is public land and public land does not mean land belonging to the state but the public. So the term public land may be used interchangeably with state land. The term 'secondary rights' as described is understood but a common terminology used in Tanzania is that of derivative right(s), and is used herein in that context.

#### Annex 2: List of Experts Investigators & Qualifications

Name	Qualification & Expertise	Tasks
Prof. Lussuga Kironde	(PhD.) Lecturer, Land Administration expert with experience in expropriation cases and public lease arrangements, transfer of large tracks of public land to investors, , tenure regularization both rural and urban, survey, ICT, records management, valuation and taxation (CC for the previous LGAF review)	Land Valuation and Taxation & Public Provision of Land Information: Registry and Cadastre
Willy Ringo Tenga	(JSD.) (Lecturer, advocate with experience in land law, land tenure, (urban/ rural, continuum of	Land Tenure Recognition/ Review Of Institutional Arrangements

<sup>143</sup> REPORT of the AFRICAN COMMISSION'S WORKING GROUP of EXPERTS on INDIGENOUS POPULATIONS/COMMUNITIES, ACPHR, Addis Ababa, 2005

	rights) and policy/institutional aspects related issues land law (CC)	And Policies
Sist Joseph Mramba	(PhD.) Lecturer, advocate and experienced environment, land, natural resources and common lands and forestry expert	Forests, Common Property Resources, and Rural Land Use in Tanzania / Transfer of Public Land to Private Use/ Review Of Institutional Arrangements And Policies
Rugemeleza Nshalla	(PhD) Land and Natural Resources Expert, Advocate, Exc. Director Lawyers' Environmental Action Team	Transfer of Public Land to Private Use
Gerald Mango	MSC. Planning, Former Director General NLUC with experience in land management, land use planning and taxation.	Public Land Management & Urban Land Use, Planning and Development
Ebenezer Mshana	LLM, Lecturer, advocate and experienced researcher with Knowledge on pending conflicts, alternative dispute resolution and judiciary system.	Land Dispute Resolution and Conflict Management

### Annex 3: LAND GOVERNANCE INDICATORS ASSESSED BY PANELS

#### PANEL 1: LAND RIGHTS RECOGNITION

LGI-1	LGI - 1.1				LGI - 1.2						
DIMENSION	1	2	3	4	1	2	3	4	5	6	7
PANEL SCORE	B/C	B	C	D	C	D	D	C	C	D	B
E.I SCORE	B	B	C	C	C	D	C	C	C	C	C

#### PANEL 2: RIGHTS TO FOREST AND COMMON LANDS & RURAL LAND USE REGULATIONS

LGI-2	LG 2.1									LG 2.2					
DIMENSION	1	2	3	4	5	6	7	8	9	1	2	3	4	5	6
PANEL SCORE	B	B/D	C	B	B	B	B/D	C	C/D	B	B	A	D	B	A
E.I SCORE	B	B	A	A	B	B	D	C	C	A	A	A	B	B	A

**PANEL 3: URBAN LAND USE, PLANNING, AND MANAGEMENT**

LGI-3	LGI - 3.1		LGI - 3.2			LGI - 3.3				LGI - 3.4		LGI - 3.5		
Dimension	1	2	1	2	3	1	2	3	4	1	2	1	2	3
PANEL SCORE	+B	+B	-B	-B	A	D	C	+C	C	-B	-A	B/C	+C	C
E.I SCORE	B	B	D	D	B	C	C	C	D	D	D	D	C	C

**PANEL 4: PUBLIC LAND MANAGEMENT**

LGI - 4	LGI 4.1						LGI 4.2			LGI 4.3				
Dimension	1	2	3	4	5	6	1	2	3	1	2	3	4	5
Panel Score	C+	C/D	C+	B	C+	C	A/B	C	B+	D	D	D+	C	C+
E.I Score	C	C	C	B	C+	C	A	A	B	B	D	D	C	A

**PANEL 5: TRANSFER OF PUBLIC LAND TO PRIVATE USE**

LGI - 5	LGI 5.1					LGI 5.2							LGI 5.3				LGI 5.4		
Dimension	1	2	3	4	5	1	2	3	4	5	6	7	1	2	3	4	1	2	3
Panel Score	D	D	D	D	B	C	C	C	D	C	A/D	B/D	C	A	C	D	C	C	C
E.I Score	D	D	D	D	B	D	C	D	D	C	B	D	C	A	C	D	C	D	D

**PANEL 6. PUBLIC PROVISION OF LAND INFORMATION: REGISTRY AND CADASTRE**

LGI-6	LGI-6.1					LGI-6.2							LGI-6.3		LGI-6.4		LGI-6.5		
Dimension	1	2	3	4	5	1	2	3	4	5	6	7	1	2	1	2	1	2	3
PANEL SCORE	B	C	B	B	D	D	D	A/C	C	C	C	A	D	D	A	C	D	B	C
E.I SCORE	C	A	B	D	D	C	D	C	C	C	C	A	C	C	D	D	D/B	C	D

**PANEL 7: LAND VALUATION AND TAXATION**

LGI-7	LGI - 7.1				LGI - 7.2							
Dimension	1		2		1		2		3		4	
PANEL SCORE	C		C		A		D		D		A	
E.I. SCORE	C		A		C		A		C		A	

**PANEL 8: DISPUTE RESOLUTION**

LGI-8	LGI - 8.1				LGI - 8.2					
Dimension	1	2	3	4	1		2		3	
PANEL SCORE	A	B	A	C	D		A/D		D	

<b>E.E SCORE</b>	<b>A</b>	<b>B</b>	<b>B</b>	<b>C</b>	<b>Data N/A</b>	<b>Data N/A</b>	<b>D</b>
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**PANEL 9: INSTITUTIONAL ARRANGEMENTS AND POLICIES**

<b>LGI - 9</b>	<b>LGI - 9.1</b>						<b>LGI - 9.2</b>						
<b>Dimension</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>Panel Score</b>	<b>C</b>	<b>C</b>	<b>C/B</b>	<b>D</b>	<b>D/C</b>	<b>D</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>D/C</b>	<b>D/C</b>	<b>B/C</b>	<b>C</b>
<b>E.I Score</b>	<b>C</b>	<b>C</b>	<b>B</b>	<b>B</b>	<b>B</b>	<b>D</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>B</b>	<b>C</b>

**Annex 3: PANEL MEMBERS & QUALIFICATIONS****PANEL 1: LAND TENURE RECOGNITION**

<b>SN</b>	<b>PANELISTS</b>	<b>QUALIFICATION &amp; EXPERIENCE</b>
1	Israel Simba	Land Lawyer (LL. M) Lecturer, Valuer, (Ardhi University)
2	Barney Laseko	Public Administrator (Prime Minister's Office)
3	Rachael Kilasi	MLHSD
4	David Malisa	Land Officer (MLHSD)
5	Abdon Rwegasira -	Law Lecturer & Author (UDSoL) - Absent with Apology

**PANEL 2: RIGHTS TO FOREST AND COMMON LANDS & RURAL LAND USE REGULATIONS**

<b>SN</b>	<b>PANELISTS</b>	<b>QUALIFICATION &amp; EXPERIENCE</b>
1	Charles Meshack –	Charles Meshack –TFCG –Executive Director
2	John Ruttagwaba –	Senior Ecologist RUBADA
3	Joseph Chiombola	HAKIARDHI (Lawyer)
4	Swagile Msananga –	Swagile Msananga – Senior Land Officer (MLHSD)

**PANEL 3: URBAN LAND USE, PLANNING AND DEVELOPMENT**

<b>SN</b>	<b>PANELISTS</b>	<b>QUALIFICATION &amp; EXPERIENCE</b>
1	Catherine Makundi	National Land Use Commission
2	Marco Burra	PhD Rural Planning Studies, Senior Lecturer, Ardhi University.
3	M. Rugambwa	MSC. Development Specialist, Environment and Gender
4	P. Kagimbo	Urban Planner, Temeke Municipality.

**PANEL 4: PUBLIC LAND MANAGEMENT**

<b>SN</b>	<b>PANELISTS</b>	<b>QUALIFICATION &amp; EXPERIENCE</b>
1	Swagile Msananga	MLHSD(For Commissioner of Lands)
2	Christopher Mwamasage	MLHSD (For Commissioner of Lands)
3	Alain Ngama	Town Planner
4	DominaMaledi	Municipal Solicitor

5	John Nyamiti–	John Nyamiti–Principal Town Planner
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#### **PANEL 5: TRANSPARENT PROCESS AND ECONOMIC BENEFIT**

SN	PANELIST	QUALIFICATION & EXPERIENCE
1	Martin Mhagama	Chair
2	Joseph Chiombola	HakiArdhi
4	Dr. Adam P. Nyaruhuma	Absent with Apology
5	John Kyaruzi	Absent with Apology
6	Harvey Kombe	Absent with Apology
7	Sist Mramba	In Attendance (EI)
8	Rugemeleza Nshalla	In Attendance (EI)

#### **PANEL 6: PUBLIC PROVISION OF LAND INFORMATION: REGISTRY AND CADASTRE**

SN	PANELISTS	QUALIFICATION & EXPERIENCE
1	Bumi Mwaisaka	Senior Assistant Registrar of Titles
2	William Mgenya	Business Development Manager
3	Silvanus Mlola	Advocate
4	Odetha Nyarubnji	Principal Computer System Analyst

#### **PANEL 7: LAND VALUATION AND TAXATION**

SN	PANELISTS	QUALIFICATION & EXPERIENCE
1	Hidaya Kayuza	Ph.D, Lecturer & Consultant on Property Tax matters-Ardhi University
2	E.D.Ndyetabura	Kinondoni Municipal Council (Manager Property Tax)
3	Adam Yusuf	Principal Valuer (Ministry of Lands)
4	Odetha Nyarubnji	Deputy Director in the ICT Unit
	Beatus Malima, Adv.	Tax Lawyer and Lecturer University of Dar es Salaam

#### **PANEL 8: DISPUTE RESOLUTION**

SN	PANELISTS	QUALIFICATION & EXPERIENCE
1	Adam Mambi	Head of Research-Tanzania Law Reform Commission
2	Hon. SalimaChikoyo	District Registrar of the High Court Land Division
3	Jesse James –	Lecturer University of Dar es Salaam
4	Hon. Jose Mlyambina	Chairman -District Land And Housing Tribunal (Ilala)

#### **PANEL 9: REVIEW OF INSTITUTIONAL ARRANGEMENTS AND POLICIES.**

This panel was formed by panelists from the other panels.

Annex 4: TABLE 6 INSTITUTIONAL MAP

<i>Institutions (central and decentralized authorities)</i>	<i>Type of land/ resource</i>	<i>Responsibility /Mandate</i>	<i>Separation of policies and functions</i>	<i>Overlap with other institution</i>
The National Assembly	All	-Discuss and pass the Land Law, Audit Land administration and use.	-The National Assembly decides land laws, based on the documents developed and submitted by the Government	-The National Assembly is not entirely independent in legislative function; law formulation is still implemented by the Government. -For a Land Bill to become law, it has to be assented to by the President. -Some Government entities have the power to make regulations having force of law such as Minister for land, local government authorities.
The Government	All	-In charge of management of land, Direct to develop the Land Law, promulgate decisions guiding the implementation. -Make decision concerning land planning and land use planning throughout the country, supervise the implementation of policies, land laws and land use -Develop land-use plan and use.	-Government is regarded as key agency responsible for drafting laws and enforcement.	-The Government implements a part of critical tasks in building the Land Law of Legislative sector.
Judiciary	All	Dispense justice with equity according to laws of Tanzania. (Art. 107A(1)-URT Constitution 1977)	-Interpret laws and execute administrative decisions. -Hear and deciding cases filed before the courts of law. -Facilitating maintenances of peace and order through good governance and the rule of law.	-The Judiciary is the state organ vested with mandate to interpret laws but there are quasi-judicial bodies that are also vested with powers to adjudicate on land matters such as the District Land and Housing Tribunals (DLHTs), Ward Tribunals and Village Land Councils.

Ministry of Land Housing Settlement Development (MLHSD) -	All	<ul style="list-style-type: none"> <li>-overall in charge of land administration</li> <li>-In charge of land tribunals</li> <li>Village Land Councils- (Ward Tribunals)-District Land &amp; Housing Tribunals</li> <li>-Support the Government in land administration issues; draft Land Law; issue a circulars guiding the implementation of</li> <li>-Land laws, propagate and publish policies on land; Inspect land administration and use;</li> <li>-Manage and advice on appropriate land rent; Manage land registration, Set cadastral documentations and issue certificate; manage land use planning, draft and plan national land use; resolve disputes, complaints.</li> </ul>	Is responsible for land administration over the country	There is some overlap in certain level among a number of other ministries and agencies responsible for land use and administration, financial management of land and handling administrative complaints on land.
<b><i>Institutions (central and decentralized authorities)</i></b>	<b><i>Type of land/ resource</i></b>	<b><i>Responsibility / Mandate</i></b>	<b><i>Separation of policies and functions</i></b>	<b><i>Overlap with other institution</i></b>
Ministry of Finance and Tanzania Revenue Authority (TRA)	General Land	<ul style="list-style-type: none"> <li>-Advices on land revenues from land; Manage the tax revenue on land</li> </ul>	Manage the revenue for the State budget including revenue from land.	There is an overlap with MLHSD on the management of public land with public assets, management of land pricing and revenue from land.
Prime Minister's Office Regional Administration and Local Governance (PMO-RALG)	Village Land and part of General Land in urban areas.	<ul style="list-style-type: none"> <li>-Responsible for urban planning and property levy</li> <li>-Issue building permits and planning consents</li> <li>-Survey and issue land titles.</li> <li>-Advice on management of village land,</li> <li>-Maintain district land registries,</li> <li>-Manage housing development within respective local jurisdiction.</li> </ul>	Develop policies on real estate market including doing business on real estate and pricing services	<ul style="list-style-type: none"> <li>-There are overlaps and gaps in terms of implementation of land related programs.</li> <li>-Land officers in the LGAs are under the MLHSD and are paid by the Ministry but facilitating land function in the LGAs (PMORALG).</li> <li>-Dispute settlement are handled by District Land and Housing Tribunals, Ward Tribunals and Village Land Councils which conflict with judicial functions of the courts.</li> <li>-LGAs e.g. Village Councils, Ward Tribunals, Urban &amp; District councils are under PMORALG but discharge land functions vested to MLHSD.</li> </ul>

Ministry of Natural Resources and Tourism (MNRT)	Reserved land	Responsible for planning and management of forests, fisheries and fisheries resources, wildlife resources and habitat, marine parks and reserves, national parks, game reserves, conservation areas, catchment forests	Develop and implement policies on reserved land, Protect the boundaries of reserved areas.	<p>-There is overlap between MNRT and the MLHSD on delineation of boundaries of conservation areas, game reserves and national parks.</p> <p>-Minister may declare an area to be a Wildlife Management Area in the respective village land set aside for community-based wildlife conservation</p> <p>-Village land forest reserves, community forest reserves are created out of village forests, unreserved forests which are on village lands managed by Village Councils.</p> <p>-Private forests by individuals may be created on village land held under customary right of occupancy.</p> <p>-There is need for close collaboration in terms of their functions and plans.</p>
<b><i>Institutions (central and decentralized authorities)</i></b>	<b><i>Type of land/ resource</i></b>	<b><i>Responsibility / Mandate</i></b>	<b><i>Separation of policies and functions</i></b>	<b><i>Overlap occurs with other institution?</i></b>
Ministry of Water and Irrigation (MoWI)	Reserved lands	Responsible for the management of water basins (Catchments) and irrigation schemes.	Develop policies on the management of water and irrigation policies.	<p>-There is no overlap but there is a need for clear collaboration between the MLHSD and MoWI on the management of land where the water basins are found.</p> <p>-The Minister is mandated to designate areas to be water catchment areas or sub-catchment areas.</p>
Ministry of Livestock and Fisheries Development	Partly reserved, General and Village lands	To develop, manage, and regulate the livestock and fisheries resources	<p>-Implement policies and laws including policies and laws on land</p> <p>-Share policy with Ministry of Agriculture Foods and Cooperatives-Agriculture and Livestock Policy, 1997</p>	<p>-No overlaps but there are weak linkages between MLHSD and MLFD due to explosive land conflicts on village lands resulting poor protection and violation of pastoral land rights and nomadic cultures.</p> <p>-There is also conflict between MLFD and MAFC as the former oversees livestock and the latter oversees agriculture both of which are competitors for land</p>
Ministry of Energy and Minerals	General & Village lands	-Overall in charge of energy and mineral resources. monitor implementation of policies, strategies and laws for sustainability of energy and mineral resources to enhance growth and development of the economy	Implement policies and laws including policies and laws on land	<p>-Overlaps with MLHSD as mineral discoveries have impacted on communities and in some cases have led to the displacement of villages.</p> <p>- Prospecting for minerals or carry on mining operations on or in any land must have the authority of a mineral right granted under the Mining Act.</p>

Ministry of Agriculture, Food and Cooperatives	General & Village lands	-Overall food and agricultural policy formulation and implementation. -Promote land acquisition and development for agricultural development.	-Implement policies and laws including policies and laws on land -Share policy with Ministry of Livestock and Fisheries Development -Agriculture and livestock policy, 1997	No overlap but there is needed to be close collaboration with the MLHSD as land for agriculture is governed by the MLHSD while the actual agricultural production is overseen by Ministry of agriculture -Effective agricultural production is dependent on issuance of land titles by the MLHSD.
Ministry of Environment	All	-Overall management of the environment. -Issue policies, guidelines and circulars on implementation of environmental laws.	Implement policies and laws including policies and laws on land	Overlaps with MLHSD on declaration and management of hazardous lands. Under the Land Act power to declare hazardous land is vested in the President while under the Environmental Management Act, the power is vested in the Minister. -Also Minister for Environment may prescribe additional environmental protection conditions to be complied with by grantees of rights of occupancy in addition to terms and conditions in the rights of occupancy. -MLHSD must submit a report of state of environmental management to the Director of Environment.
<b><i>Institutions (central and decentralized authorities)</i></b>	<b><i>Type of land/resource</i></b>	<b><i>Responsibility / Mandate</i></b>	<b><i>Separation of policies and functions</i></b>	<b><i>Overlap with other institution</i></b>
Ministry of Justice and Constitutional Affairs	All	Legal drafting, review and amendments	Provide professional advice on drafting of land related laws.	There is no overlap but any land related legislative drafting requires the advice and guidance of the Ministry of Justice.
Ministry of Infrastructure Development	All	Responsible for coordinating and financing the development of the infrastructure including marine, aviation, roads, and other construction projects.	Deal with implementation of infrastructure development legislation and policies.	-There is lack of coordination MLHSD and MID has led to various conflicts where road authorities claim that a given stretch of land is a road reserve but without the concerned owners being aware and this being registered nowhere. -Minister for roads may declare by order published in the Gazette any cartway, pathway, bridle track or other road to be a public highway and every such cartway, pathway, bridle track or other road shall, from the time specified in such declaration, be deemed to be a public highway. -The Minister may also declare, closures, diversions, turnings, substitutions, widening and enlarging of public highways.

NLUPC	All	Prepare land use plans for the country	-prepare physical land use plans; formulate land use policies for implementation by the government and to specify standards, norms and criteria for protection of beneficial uses and maintenance of the quality of land. -co-ordinates land use related policies, legislation.	-There is no overlap but the Commission is an arm of the MLHSD to deal with land-use plans. –There is however loopholes on possible conflicts as the Commission is established under specific law of Parliament which confers it specific functions and mandates.
TIC	General Land	-Oversee land issues for investors	-It is a creature of statute (the Tanzania Investment Act, 1997) with mandate to serve investors as one-stop centre on <i>inter alia</i> acquisition of land for investment. -Encourage, promote and facilitate investment in Tanzania	-Need for close collaboration with the MLHSD to ensure investors comply with conditions in the right of occupancy and the approved investment projects are sound for the investor to obtain land for investment.
Planning Commission (President's Office)	All	-Overall advice on government planning on various sectors including land sector	-Advise the Government on medium and long-term strategies for socio-economic development of all sectors including land. -Monitor and analyze development trends and provide advice on macro and sectoral policies as well as broad socio-economic development issues.	-As the overall economic planner, its plans can impact on the MLHSD positively or negatively. Need for effective collaboration between the two.
RUBADA	General	-Generation of electricity by hydroworks, the undertaking of flood control measures, and the promotion and regulation of activities in the sectors of industry, agriculture, forestry, fisheries, tourism and transport in the Rufiji Basin.	-To implement laws and policies on land, agriculture, fisheries, tourism, forestry, wildlife energy etc related to the area of jurisdiction in collaboration with sector ministries.	-RUBADA has been the manager of land in the Rufiji basin which may result into conflict of administration with the MLHSD. For instance it has been allocating land to investors operating in the basin while that functions is vested to the President. -Due to the vastness of the land under RUBADA some communities have established themselves as villages within its area of control raising frequent conflicts between the recognized investors, RUBADA and such villages. -Efforts to evict such villagers have often been complicated and with no success.
NEMC	All	Ensuring integrity of the environment	Advice on environmental management	Overlaps in the management of fragile areas like steep slope, beaches and hazardous lands

<i>Institutions (central and decentralized authorities)</i>	<i>Type of land/ resource</i>	<i>Responsibility /Mandate</i>	<i>Separation of policies and functions</i>	<i>Overlap occurs with other institution?</i>
Court of Appeal	All types of land	Determine appeals on land matters	Perform the functions of the judicial system, but not completely independent	There is no overlap but there are gaps in resolving issues between administrative or judicial systems.
High Court (Land Division)	All	-Determine proceedings relating to land under any written law -Entertain land matters referred to it from the lower courts	-Original jurisdiction in all land matters. -Receive land appeals from the lower courts namely; land appeals originating from the Ward Tribunal and the District Land and Housing Tribunal. -Has supervisory and revisional powers over the District Land and Housing Tribunal	-No overlap but there is need to have close collaboration between the Judiciary and the MLHSD on nature of most disputes and form strategies on how to minimize them. The HC-Land Division is under the Judiciary and not the MLHSD although it deals with land disputes.
District Land & Housing Tribunal	All	- Established at district, region or zone levels. -Handle and determine proceedings relating to land subject to pecuniary jurisdiction.	-Exercise original jurisdiction in all proceedings under the Land Act, 1999 and Village Land Act, 1999.  -Hear appeals against decision of the Ward Tribunal  -Enforce all decisions and orders of the Ward Tribunal.	-Overlaps between the judiciary and the MLHSD as the DLHTs are administered by the MLHSD and not the Judiciary or LGAs. The appointment of the chairman is done by the MLHSD but an appeal from the DLHHT lies to the High Court which purely falls under the realm of the Judiciary thus defiling the sanctity of separation of powers.
Magistrates' courts (DM and RM's courts)	All	Entertain all proceedings of a criminal nature under the Land Act, 1999 and the Village Land Act, 1999	Deal with land matters of criminal nature only.	-Does not fall in the hierarchy of land dispute settlement framework but is specifically mandated to handle land matters of criminal nature. -The DM and RM's courts are administered by the Judiciary not the MLHSD
Ward Tribunal	Village Land General Land	-Mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.	-Handle land disputes where value of land not exceed three million shillings.  -Entertain reference of dispute from Village Land Council	-The overlap is that Ward Tribunals are administered by LGAs not the MLHSD. -Also Ward Tribunals require capacity building in terms of training and working facilities, financial resource and extension of pecuniary jurisdiction.

<p>Village Land Council</p>	<p>Village Land</p>	<p>-Receive complaints from parties in respect of land;</p> <p>-Mediate between and assist parties to arrive at a mutually acceptable settlement of the disputes on any matter concerning land within its area of jurisdiction</p>	<p>-Mediate parties on any matter concerning land within its area of jurisdiction.</p>	<p>-The overlap is that VLCs are administered by LGAs not the MLHSD and the VLC require to be facilitated to manage in functions in terms of training and working facilities.</p>
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**Annex 5: LIST OF KEY POLICY & LEGAL DOCUMENTS**

<b>THEME</b>	<b>POLICY</b>	<b>LEGISLATION</b>
Recognition and respect for existing rights	National Land Policy (1995)  National Forest Policy (1998), Wildlife Policy (1997), national Water Policy (2002), Mineral Sector Policy 1997	URT Constitution, Cap 2 [R.E. 2002], Land Act, Cap 113 [R.E 2002]  Village Land Act, Cap 114 [R.E 2002], Land Acquisition Act Cap 118 [R.E 2002], Registration of Documents Act Cap 117 [R.E 2002], Courts (Land Disputes Settlements) Act 2002, Forest Act (2002), Water Resources Management Act (2009), Wildlife Act (2004), Marine Parks and Reserves Act (1994), Tanzania Investment Act 1997, Fisheries Act (2002) and Beekeeping Act (2002) Land Regulations GNs #
Land use planning, management and taxation	National Land Policy (1995) and the Human Settlements Development Policy 2000	Land Act, Cap 113, [R.E. 2002] Urban Planning Act, No 2007, National Land Use Planning Act, No 2007, Urban Planners Act. No. 7 of 2007, National Land Use Planning Commission Act, Architects & Quantity Surveyors Registration Act No. 16 of 1997  Income Tax Act
Management of public land	National Land Policy (1995)	Land Act, Cap 113, [R.E. 2002], Village Land Act, Forests Act [Cap 323];  National Parks Act [Cap 282]; Ngorongoro Conservation Area Act [Cap 284, Urban Planning Act and Land Use Planning Act, of 2007, Highway Act [Cap 167]; Public Recreation Grounds Act [Cap 320], Rufiji Basin Development Authority, Act, 1971 – RUBADA
Public provision of land information	National Land Policy (1995)	Land Act, Cap 113, [R.E. 2002], Land Registration Act Cap 334 [R.E. 2002]  Land Survey Act, Cap 324, Professional Surveyors (Registration) Act 1978, Town Planners (Registration) Act 2007
Dispute resolution and conflict management	National Land Policy 1995	Land Act Cap 113, [R.E. 113], Village Land Act Cap 114 [R.E. 2002] Land Disputes Courts Act Cap 216, Mining Act 2010, Water Resources Management Act, Act No 11 of 2009

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